

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

and

VALUEOPTIONS, INC.

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at Empire State Plaza, Agency Building #1, Albany, NY, 12239 and ValueOptions, Inc. (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 4 British American Boulevard, Latham, NY 12110, and collectively referred to as “the Parties.”

**WITNESSETH**

**WHEREAS**, Civil Service Law Article XI authorizes and directs the President of the State Civil Service Commission and New York State Department of Civil Service (“President”) to establish a health benefit plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers' Employees, Retirees, and their Dependents; and

**WHEREAS**, Civil Service Law Article XI authorizes and directs the President to purchase a contract or contracts to provide the benefits under the plan of health benefit; and

**WHEREAS**, The Empire Plan Mental Health and Substance Abuse Program (“Program”) provides those mental health and substance abuse health benefits, purchased by the President, for the benefit of those stated above and shall be administered in accordance with New York State laws and regulations including the Civil Service Law, the State Finance Law Article XI, and their respective implementing regulations, including but not limited to the Regulations of the Department of Civil Service (President’s Regulations); and

**WHEREAS**, on February 15, 2013, the Department of Civil Service issued a Request for Proposal (RFP) entitled “Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan” to secure the services of a qualified organization to provide Program Services as defined in the RFP; and

---

**WHEREAS**, a conditional award of the Program was made to ValueOptions on September 9, 2013; however, on December 4, 2013, the Department determined, in its sole discretion, to exercise its reserved rights under Section II.A.11(d) of the RFP entitled “Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan,” to withdraw the RFP in whole; and

**WHEREAS**, the Department of Civil Service issued a Declaration of Emergency on December 19, 2013 and desires to enter into an Emergency Contract with a Single Source Provider based upon the terms and conditions proposed in a Best and Final Offer received from the ValueOptions; and

**WHEREAS**, the Department will issue a new RFP for the Program during 2014 and requires Program Services from the Contractor, as set forth in this Agreement for a one- year term subject to one optional six-month extension upon approval by the NYS Attorney General’s Office and NYS Office of State Comptroller, commencing January 1, 2014, and ending no later than ninety (90) days following the earlier of OSC’s determination that an award should be made under the original procurement, or its approval of a contract resulting from a new procurement to be conducted in 2014; and

**WHEREAS**, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the Program Services, pursuant to the terms and conditions set forth in this Agreement;

**THEREFORE**, the Parties agree as follows:

**ARTICLE I: DEFINITION OF TERMS**

**1.1.0 Administrative Fee** means the monthly fee that the Contractor charges the MHSA Program for all administrative services, exclusive of the Shared Communication Expense as calculated on a per Enrollee contract per Month basis.

**1.2.0 Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization,

---

is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

**1.3.0 Alternate Level of Care (ALOC)** means residential treatment centers, halfway houses, group homes, partial hospitalization programs or continuing day treatment programs which satisfy the requirements of an Approved Facility.

**1.4.0 Applied Behavioral Analysis (ABA)** means a behavioral health service for teaching children with Autism Spectrum Disorder through intensive skill training.

**1.5.0 Approved Facility** means a general acute care or psychiatric hospital or clinic under the supervision of a physician. If the hospital or clinic is located in New York State, it must be certified by the Office of Alcoholism and Substance Abuse Services of the State of New York or according to the Mental Hygiene Law of New York State. If located outside New York State, it must be accredited by the Joint Commission on Accreditation of Health Care Organizations for the provision of mental health, alcoholism or drug abuse treatment. Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 23 Hour Extended Bed and 72 Hour Crisis Bed will be considered approved facilities if they satisfy the foregoing requirements. In all cases other than an emergency, the facility must also be approved by the Contractor. Residential treatment centers, halfway houses and group homes will be considered approved facilities, if they satisfy the requirements above and admission is certified by the Contractor.

**1.6.0 Business Day(s)** means every Monday through Friday, except for days designated as Business Holidays.

**1.7.0 Business Holiday(s)** means legal holidays observed by the State and any days designated by the Contractor as a holiday and approved as such by the State prior to January 1 of each Calendar Year.

**1.8.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.

**1.9.0 Call Center Hours** means 24 hours a Day, 365 Days a year.

---

**1.10.0 Certification or Certified** means a determination by the Contractor that mental health care or substance abuse care or proposed care is a Medically Necessary, Covered Service in accordance with the terms of the Agreement.

**1.11.0 Child(ren)** means children under 26 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent on the Enrollee are also eligible, subject to a statement of dependence and documentation.

**1.12.0 Clinical Manager** means licensed Ph.D.; clinical psychologist, licensed professional registered nurse, clinician or licensed master's level certified social worker with a minimum of three to five years of previous position-related clinical experience in mental health and/or substance abuse treatment or other licensed, qualified individual as approved by the Program.

**1.13.0 Clinical Referral Line** means the clinical resource and referral service called prior to receiving any Covered Services to obtain network referrals or benefit information. It is available 24 hours a Day, 365 Days a year.

**1.14.0 Coinsurance** means, for Non-Network Approved Facility services, the difference between the billed charge and the percentage covered; and, for non-network Practitioner services, the difference between the Reasonable and Customary charge and the percentage covered. The Plan's coinsurance maximum is shared between Basic Medical, the Hospital Program and the Mental Health and Substance Abuse Program. Copayments paid to a Network Practitioner (only) count toward meeting the Plan's Coinsurance Maximum.

**1.15.0 Coinsurance Maximum** means the sum of Coinsurance costs incurred under the Basic Medical Program and Non -Network Coverage under the Hospital Program and Mental Health and Substance Abuse Program. After the combined annual Coinsurance Maximum is reached, benefits are paid at 100 percent of Reasonable and Customary charges for non-network Covered Services.

- 
- 1.16.0 Contractor** means **ValueOptions, Inc**, the Contractor who executed an Agreement with the Department to provide Program Services.
- 1.17.0 Copayment** means the amount the Enrollee is required to pay per visit for Covered Services as specified by the benefit design of the Program.
- 1.18.0 Covered Services** means Medically Necessary mental health and substance abuse care as defined under the terms of the Program, except to the extent that such care is otherwise limited or excluded under the Program.
- 1.19.0 Crisis Intervention Visits** means an urgent assessment and history of a crisis state, a mental status exam, and a disposition. The treatment includes psychotherapy, mobilization of resources to defuse the crisis and restore safety, and implementation of psychotherapeutic interventions to minimize the potential for psychological trauma. The presenting problem is typically life threatening or complex and requires immediate attention to a patient in high distress.
- 1.20.0 Day(s)** means calendar days unless otherwise noted.
- 1.21.0 DCS or Department** means the New York State Department of Civil Service.
- 1.22.0 Dedicated Call Center** means a group of customer service representatives trained and capable of responding to a wide range of questions, complaints, and inquiries specific to the Program. The customer service representatives are dedicated to the Program and do not work on any other accounts.
- 1.23.0 Deductible** means the amount paid by the Enrollee each Calendar Year for Covered Services under the non-network portion before a Plan payment is made. Plan deductibles are shared between the Medical Program and the Mental Health and Substance Abuse Program. The amount applied toward satisfaction of the deductible will be the lower of the following: the amount actually paid for a Medically Necessary service under the non-network portion of the Program; or for Practitioner services, the Reasonable and Customary charge; or for Approved Facility services, the billed amount for such service.

---

**1.24.0 Dependent** means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee. Young adult dependent children age twenty-six (26) or over are also eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the New York State Health Insurance Program.

**1.25.0 Dependent Survivor** means the unremarried spouse, dependent child, or domestic partner who has not acquired another domestic partner, of an Enrollee who died after having had at least ten (10) years of service, who was covered as a dependent of the deceased Enrollee at the time of the Enrollee's death and who elects to continue coverage under NYSHIP following the three (3) month extended benefits period.

**1.26.0 Disabled Lives Benefit** means the benefits provided to an Enrollee who is Totally Disabled on the date coverage ends. The benefits are provided on the same basis as if coverage had continued with no change until the day the Enrollee is no longer Totally Disabled or for ninety (90) days after the date the coverage ended, whichever is earlier.

**1.27.0 Emergency Care** means care received for an emergency condition. An emergency condition is a medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in: placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such a person or others in serious jeopardy; serious impairment to such person's bodily functions; serious dysfunction of any bodily organ or part of such person; or serious disfigurement of such person.

**1.28.0 Employee** means "Employee" as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.

**1.29.0 Employer** means "Employer" as defined in 4 NYCRR Part 73, as amended.

**1.30.0 Enrollee** means an "Employee" or "Dependent" enrolled in the Program with mental health/ substance abuse benefits.

---

**1.31.0 ET** means prevailing Eastern Time.

**1.32.0 HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.

**1.33.0 Inpatient Services** means those services rendered in an Approved Facility to an Enrollee who has been admitted for an overnight stay and is charged for room and board.

**1.34.0 Intensive Outpatient Program (IOP)** is a freestanding or hospital-based program that provides Medically Necessary services more than once weekly. Intensive outpatient programs are used as a step-up from routine outpatient services, or as a step-down from acute inpatient, residential care or a partial hospital program. Intensive outpatient programs can be used to treat mental health conditions or substance abuse disorders, or can specialize in the treatment of co-occurring mental health conditions and substance-use disorders.

**1.35.0 Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Program Team.

**1.36.0 Maximum Out-of-Pocket** means the maximum out-of-pocket costs incurred by an Enrollee for network Copayments for the Medical, Hospital and Mental Health/Substance Abuse Programs, as required by the Affordable Care Act (ACA) for non-grandfathered Plans.

**1.37.0 Medical Necessity/Medically Necessary** means a Covered Service which the Contractor has certified to be: medically required; having a strong likelihood of improving the condition; and provided at the lowest appropriate level of care for the specific diagnosed condition, in accordance with both generally accepted mental health and substance abuse practices and the professional and technical standards adopted by the Contractor.

**1.38.0 Mental Health Care** means Medically Necessary care rendered by a covered Practitioner or Approved Facility and which, in the opinion of the Contractor, is directed predominately at treatable behavioral manifestations of a condition that the Contractor determines: is a clinically significant behavioral or psychological syndrome, pattern,

---

---

illness or disorder; and substantially or materially impairs a person's ability to function in one or more major life activities; and has been classified as a mental disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

**1.39.0 MHSA Program/Plan** means the New York State Health Insurance Program's Empire Plan Mental Health and Substance Abuse Program, the Excelsior Plan Mental Health and Substance Abuse Program and the Student Employee Health Plan Mental Health and Substance Abuse Program administered by the New York State Department of Civil Service.

**1.40.0 Network Allowance** means the amount Network Providers have agreed to accept as payment in full for services rendered, including applicable Copayment under the MHSA Program.

**1.41.0 Network Coverage** means the level of benefits provided by the Program for Medically Necessary services from a Network Provider or a Provider recommended by the Contractor.

**1.42.0 Network Facility** means an Approved Facility that has entered into a Network Provider agreement with the Contractor as an independent contractor. The records of the Contractor shall be conclusive as to whether a facility has a Network Provider agreement in effect on the date services are obtained. A Non-Network Facility can be considered a Network Facility on a case-by-case basis when approved by the Contractor.

**1.43.0 Network Practitioner** means a Practitioner who has entered into an agreement with the Contractor as an independent contractor to provide Covered Services. The records of the Contractor shall be conclusive as to whether a Practitioner had a Network Provider agreement in effect on the date services are obtained. A Non-Network Practitioner can be considered a Network Practitioner on a case-by-case basis when approved by the Contractor.

**1.44.0 Network Provider** means either a Network Practitioner or a Network Facility.



- 
- 1.45.0 Non-Network Coverage** means the level of reimbursement paid by the Program for Covered Services from a Non-Network Provider in compliance with the Program requirements outlined in the Agreement.
- 1.46.0 Non-Network Facility** means an Approved Facility that has not entered into an agreement with the Contractor as an independent contractor to provide Covered Services.
- 1.47.0 Non-Network Practitioner** means a Practitioner who has not entered into an agreement with the Contractor as an independent contractor to provide Covered Services. A Non-Network Practitioner can be considered a Network Practitioner on a case-by-case basis when approved by the Contractor.
- 1.48.0 Non-Network Provider** means a Non-Network Practitioner or Non-Network Facility.
- 1.49.0 NYS** means New York State.
- 1.50.0 NYSHIP** means the New York State Health Insurance Program.
- 1.51.0 Outpatient Services** means those services rendered in a Practitioner's office or in the department of an Approved Facility where services are rendered to persons who have not had an overnight stay and are not charged for room and board.
- 1.52.0 Partial Hospitalization** means a freestanding or hospital-based program that maintains hours of service for at least 20 hours per week and may also include half-day programs that provide services for less than 4 hours per day. A partial hospital/day treatment program may be used as a step-up from a less intensive level of care or as a step-down from a more intensive level of care and does not include an overnight stay.
- 1.53.0 Participating Agency (PA)** means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.54.0 Participating Employer (PE)** means a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects,

---

---

with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

**1.55.0 Pass-through Pricing** means the Program is charged the same mental health substance abuse services fee by the Contractor paid to the Network Provider.

**1.56.0 Peer Advisor** means a psychiatrist or Ph.D. psychologist with a minimum of five (5) years of clinical experience who renders Medical Necessity decisions.

**1.57.0 Physician** means a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.). He or she must be legally licensed to practice medicine, without limitations or restrictions.

**1.58.0 Plan Sponsor** means the Council on Employee Health Insurance, which is composed of the President of the Civil Service Commission, Director of the Governor's Office of Employee Relations, and the Director of the Division of Budget.

**1.59.0 Plan Year** means the period from January 1<sup>st</sup> to December 31<sup>st</sup> in each year covered by this Agreement, unless specified otherwise by the Program.

**1.60.0 PPACA or ACA** means Patient Protection and Affordable Care Act of 2010 and its implementing regulations.

**1.61.0 Practitioner** means:

**1.61.1** A psychiatrist; or

**1.61.2** A psychologist; or

**1.61.3** A licensed and registered clinical social worker with at least six (6) years of post-degree experience who is qualified by the New York State Board for Social Work. In New York State, this is determined by the "R" number given to qualified social workers. If services are performed outside New York State, the social worker must have the highest level of licensure awarded by that state's accrediting body;  
or

---

**1.61.4** A Registered Nurse Clinical Specialist or psychiatric nurse/clinical specialist:  
Advanced Practice nurses who hold a master's or doctoral degree in a specialized area of psychiatric nursing practice nurse; or

**1.61.5** A Registered Nurse Practitioner: a nurse with a master's degree or higher in nursing from an accredited college or university, licensed at the highest level of nursing in the state where services are provided. Nurse Practitioners may diagnose, treat, and prescribe for a patient's condition that falls within their specialty area of practice. This must be done in collaboration with a licensed psychiatrist qualified in the specialty involved and in accordance with an approved written practice agreement and protocols; or

**1.61.6** Applied behavioral analysis provider or Certified Behavioral Analyst (CBA) provider: A provider who is certified as a behavioral analyst pursuant to a behavioral analyst certification board; or

**1.61.7** Applied behavioral analysis or ABA Agency: An agency providing ABA services under the program oversight and direct supervision of a certified behavioral analyst. An ABA Agency may also employ ABA aides to deliver the treatment protocol of the ABA Provider.

**1.62.0** **President** means the President of the Civil Service Commission who is also the Commissioner of the Department of Civil Service.

**1.63.0** **Program Services** means all of the services to be provided by the Contractor as set forth in this Agreement.

**1.64.0** **Program Team** means the Contractor and those Key Subcontractors, if any, utilized by the Contractor who collectively undertake and perform the Program Services which are the subject of the Agreement.

**1.65.0** **Proposal** means the Contractor's Administrative Proposal, Technical Proposal, and Cost Proposal, including all responses to supplemental requests for clarification, information,

---

or documentation, submitted during the course of the Procurement, including Best and Final Offer pricing submitted by the Contractor on December 18, 2013.

**1.66.0 Provider** means a Practitioner or Approved Facility that supplies Covered Services under the MHSA Program.

**1.67.0 Provider Network** means the Contractor's credentialed and contracted network of Network Practitioners and Network Facilities.

**1.68.0 Reasonable and Customary** means the lowest of:

**1.67.1** The actual charge for services; or

**1.67.2** The usual charge for services by the Provider; or

**1.67.3** The usual charge for services of other Providers in the same or similar geographic area for the same or similar service.

**1.69.0 Referral** means the process by which the Contractor's toll-free Clinical Referral Line refers an Enrollee to a Network Provider to obtain Covered Services.

**1.70.0 Regulations of the President of the New York State Civil Service Commission** means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law Article XI, as amended, and including, but not limited to those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 73.

**1.71.0 Renewal Date** means January 1, 2015.

**1.72.0 Retiree** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.

**1.73.0 RFP or Procurement** means the Request for Proposals entitled "Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan, dated February 15, 2013".

- 
- 1.74.0 Shared Accumulator** means the Coinsurance and Deductible amounts shared between the MHSA, Medical and Hospital components of the Empire Plan, Student Employee Health Plan and Excelsior Plan.
- 1.75.0 Shared Communication Expense** means the expense that the Contractor will be billed and must pay on a quarterly basis to contribute toward the cost of producing various Empire Plan and NYSHIP publications (i.e. provider directories, Choices Guides, At A Glance publications, etc).
- 1.76.0 Single Case Agreement** means a unique agreement that the Contractor negotiates with a non-Network Provider to provide MHSA Program Network-level services for a specific Enrollee when there is insufficient access to a Network Provider within a certain geographic area or a Non-Network Provider possesses a unique specialty that is not currently possessed by a Network Provider within that geographic area.
- 1.77.0 State** means New York State as a whole.
- 1.78.0 Structured Outpatient Rehabilitation Program (SOP)** means a program that provides substance abuse care and is an operational component of an Approved Facility that is state licensed. If located in New York State, the program must be certified by the Office of Alcoholism and Substance Abuse Services of the State of New York. If the program is located outside New York State, it must be part of an Approved Facility accredited by the Joint Commission on Accreditation of Health Care Organizations as a hospital or as a health care organization that provides psychiatric and/or drug abuse or alcoholism services to adults and/or adolescents. The program must also meet all applicable federal, state and local laws and regulations. A Structured Outpatient Rehabilitation Program is a program, in which the patient participates, on an outpatient basis, in prescribed formalized treatment, including an aftercare component of weekly follow-up. In addition, Structured Outpatient Rehabilitation Programs include elements such as participation in support groups like Alcoholics Anonymous or Narcotics Anonymous.
- 1.79.0 Substance Abuse Care** means Medically Necessary care provided by an eligible provider for the illness or condition that the Contractor has determined: is a clinically

---

---

significant behavioral or psychological syndrome or pattern; and substantially or materially impairs a person's ability to function in one or more major life activities; and is a condition which has been classified as a substance abuse disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, unless such condition is otherwise excluded under this Program.

**1.80.0 Summary Plan Description(s) (SPD)** means the document(s) issued pursuant to and attached by reference to the Agreement. The SPD is issued to Enrollees and describes Program benefits. The SPD includes the initial SPD and amendments, if any.

**1.81.0 Total Disability and Totally Disabled** means that because of a mental health/substance abuse condition, the Enrollee cannot perform his/her job or the Dependent cannot perform the normal activities of a person that age.

**1.82.0 Urgent Care** is care that does not meet the definition of emergency care but which should be provided early in the onset of symptoms in order to alleviate or prevent permanent disability, serious medical complications, loss of life or harm to the patient or others.

**1.83.0 Utilization Review** (UR) means a medical management program which reviews the Medical Necessity of mental health and substance abuse treatment. The review should be conducted by a team of licensed and/or certified psychiatric nurses, licensed clinical social workers ("R" status), board-certified or board-eligible psychiatrists and clinical psychologists, as appropriate, to determine whether proposed services are Medically Necessary for diagnosed condition(s). Utilization review includes pre-certification, prior authorization, concurrent review and discharge planning.

**1.84.0 Vestee** means a former Employee who is entitled to continue benefits under NYSHIP because he/she has met all the requirements for NYSHIP coverage as a Retiree, except for age eligibility for pension, at the time employment terminates.

## **ARTICLE II: AGREEMENT DURATION AND AMENDMENTS**

---

**2.1.0** This Agreement, subject to prior approval by the Office of the Attorney General (“AG”) and the Office of the State Comptroller (“OSC”), shall begin on January 1, 2014, through and including December 31, 2014, with one optional six-month extension period. This Agreement shall end no later than 90 days following the earlier of OSC’s determination that an award should be made under the original procurement #2013MH-1, or its approval of a contract resulting from a new procurement to be conducted during 2014. Said optional extension period is exercisable at the sole discretion of the Department subject to the approval of the AG and the OSC. Pricing during said extension, if applicable, shall be in accordance with the rates provided in this Agreement. The Department shall provide the Contractor notice of at least thirty (30) days prior to the end of the term of this Agreement, of any such election to extend this Agreement.

**2.2.0** The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the AG and the OSC.

### **ARTICLE III: INTEGRATION**

**3.1.0** This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertakings are superseded hereby.

**3.2.0** All statements made by the Department shall be deemed to be representations and not warranties.

### **ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

**4.1.0** The Agreement consists of:

**4.1.1** The body of the Agreement (that portion preceding the signatures of the Parties in execution), and any amendments thereto;

**4.1.2** Appendix A – Standard Clauses for All New York State Contracts;

**4.1.3** Appendix B – Standard Clauses for All Department Contracts;

**4.1.4** Appendix C – Third Party Connection and Data Sharing Agreement;

**4.1.5** Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;

**4.1.6** The following Exhibits attached and incorporated by reference to the body of the Agreement:

**4.1.6a** Exhibit A: which includes: the MacBride Act Statement; and the Non-Collusive Bidding Certification;

**4.1.6b** Exhibit B: RFP Amendments and the Request for Proposals entitled “Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan,” dated February 15, 2013 and Exhibit B-1, the official Department response to questions raised concerning the RFP, dated March 11, 2013;

**4.1.6c** Exhibit C: the Contractor's Proposal; Exhibit C-1: Written responses to the Management Interview, and Exhibit C-2: Related Materials Clarifying the Contractor’s Proposal as set forth in TABLE #1 – Clarifying Materials as follows:

<b>Clarification Number</b>	<b>Document Type</b>	<b>Document Components/Dates</b>
<b>1</b>	<b>Request Response</b>	<b>Letter from Linda Burk to Scott Tabakin dated April 19, 2013 ValueOptions submitted revised Exhibit I.T and confirmed that the primary New York-based service location from which case management will be performed has URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0, as well as National Committee for Quality Assurance (NCQA) Full Accreditation-MBHO.</b>
<b><u>Clarification</u></b>	<b><u>Document</u></b>	<b><u>Document Components/Dates</u></b>



<u>Number</u>	<u>Type</u>	
5	Request  Response	Letter from Linda Burk to Scott Tabakin dated June 3, 2013  ValueOptions submitted an updated Exhibit I.Y.2 providing license numbers for the LCSW-R Providers and client references for [REDACTED] [REDACTED]
6	Request  Response	Letter from Linda Burk to Scott Tabakin Dated June 10, 2013  ValueOptions confirmed the access guarantee of [REDACTED] of Enrollees in urban areas will have at least one Network Practitioner within [REDACTED] miles.
7	Request  Response	Letter from Linda Burk to Scott Tabakin June 17, 2013  ValueOptions confirmed that all Providers listed in Exhibit I.Y.4 are participating in ValueOptions proposed Provider Network.
9	Request  Response	Letter from Linda Burk to Scott Tabakin July 26, 2013  ValueOptions submitted Geo Access Network reports in revised format as requested.

<b>10</b>	<b>Request</b>	<b>Letter from Linda Burk to Scott Tabakin August 12, 2013</b>
	<b>Response</b>	<b>ValueOptions submitted updated information on Exhibit I.Y.2, I.Y.3 and GeoAccess Report.</b>
<b>11</b>		<b>Best and Final Offer dated December 18, 2013</b>

**4.1.6d** Exhibit D: the Summary Plan Descriptions and Benefit Summaries and

**4.1.6e** Exhibit E: Average Cost per each CPT/Revenue Code

**4.1.7** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

**4.1.7a** First, Appendix A – Standard Clauses for All New York State Contracts;

**4.1.7b** Second, Appendix B – Standard Clauses for All Department of Civil Service Contracts;

**4.1.7c** Third, Appendix C –Third Party Data Connection and Data Exchange Agreement;

**4.1.7d** Fourth, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;

**4.1.7e** Fifth, any Amendments to the body of the Agreement;

**4.1.7f** Sixth, the body of the Agreement;

**4.1.7g** Seventh, Exhibit A – MacBride Act Statement and Non-Collusive Bidding Certification;

**4.1.7h** Eighth, Exhibit B, RFP Amendments and the Request for Proposals entitled “Mental Health and Substance Abuse Benefit Services for The Empire Plan, Excelsior Plan and Student Employee Health Plan,” and

Exhibit B-1, the official Department response to questions raised concerning the RFP, dated March 11, 2013;

**4.1.7i** Ninth, Exhibit C: the Contractor's Proposal; Exhibit C-1: Written responses to the Management Interview; Exhibit C-2: Related Materials Clarifying the Contractor's Proposal as follows::

<b>Clarification Number</b>	<b>Document Type</b>	<b>Document Components/Dates</b>
<b>1</b>	<b>Request Response</b>	<b>Letter from Linda Burk to Scott Tabakin dated April 19, 2013 ValueOptions submitted revised Exhibit I.T and confirmed that the primary New York-based service location from which case management will be performed has URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0, as well as National Committee for Quality Assurance (NCQA) Full Accreditation-MBHO.</b>
<b><u>Clarification Number</u></b>	<b><u>Document Type</u></b>	<b><u>Document Components/Dates</u></b>
<b>5</b>	<b>Request Response</b>	<b>Letter from Linda Burk to Scott Tabakin dated June 3, 2013 ValueOptions submitted an updated Exhibit I.Y.2 providing license numbers for the LCSW-R Providers and client references for [REDACTED] [REDACTED]</b>

	<p><b>Request</b></p> <p><b>Response</b></p>	<p><b>Letter from Linda Burk to Scott Tabakin Dated June 10, 2013</b></p> <p><b>ValueOptions confirmed the access guarantee of [REDACTED] of Enrollees in urban areas will have at least one Network Practitioner within [REDACTED] miles.</b></p>
7	<p><b>Request</b></p> <p><b>Response</b></p>	<p><b>Letter from Linda Burk to Scott Tabakin June 17, 2013</b></p> <p><b>ValueOptions confirmed that all Providers listed in Exhibit I.Y.4 are participating in ValueOptions proposed Provider Network.</b></p>
9	<p><b>Request</b></p> <p><b>Response</b></p>	<p><b>Letter from Linda Burk to Scott Tabakin July 26, 2013</b></p> <p><b>ValueOptions submitted Geo Access Network reports in revised format as requested.</b></p>
10	<p><b>Request</b></p> <p><b>Response</b></p>	<p><b>Letter from Linda Burk to Scott Tabakin August 12, 2013</b></p> <p><b>ValueOptions submitted updated information on Exhibit I.Y.2, I.Y.3 and GeoAccess Report.</b></p>
11		<p><b>Best and Final Offer dated December 18, 2013</b></p>

---

**4.1.7j** Tenth, Exhibit D, the Summary Plan Description and Benefit Summaries; and

**4.1.7k** Eleventh, Exhibit E, Average Cost per each CPT/Revenue Code

**4.2.0** The terms, provisions, representations and warranties contained in the Agreement shall survive performance hereunder.

#### **ARTICLE V: LEGAL AUTHORITY TO PERFORM**

**5.1.0** The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

**5.2.0** Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and NYS laws, rules and regulations, policies and/or guidelines now or hereafter in effect, including but not limited to the requirements set forth in Chapter 56 of the Laws of 2010.

**5.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect the performance of Contractor's duties under the Agreement.

#### **ARTICLE VI: PROGRAM SERVICES**

**6.1.0** The Contractor shall provide all of the Program Services as set forth herein this Article VI of the Agreement for the entire term of the Agreement pursuant to the Summary Plan Description(s) incorporated into this Agreement as Exhibit D. All Program Services shall be provided in accordance with the New York State Civil Service Law and its Agreement C000617

---

implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through Key Subcontractors. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by the Department. All Key Subcontracts shall expressly name the State of New York, through the Department, as the sole intended beneficiary of any such Key Subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all services and actions performed under this Agreement. The Contractor shall submit all such Key Subcontracts with no redactions to the Department before execution for its review and approval.

## **6.2.0 Account Team**

**6.2.1** The Contractor must maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the MHSA Program during implementation and operation.

**6.2.1a** The account team must be comprised of qualified and experienced individuals who are acceptable to the Department and who are responsible for ensuring that the operational, clinical, and financial resources are in place to operate the MHSA Program in an efficient manner.

**6.2.1b** The Contractor must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all MHSA Program requirements and to address any issues that may arise during the performance of the Agreement.

---

**6.2.2** The Contractor's dedicated account team must be experienced, accessible (preferably in the New York State Capital Region district) and sufficiently staffed to:

**6.2.2a** provide timely responses (within 1 to 2 Business Days) to administrative and clinical concerns and inquiries posed by the Department, or other staff on behalf of the Council on Employee Health Insurance or union representatives regarding member-specific claims issues for the duration of the Agreement to the satisfaction of the Department;

**6.2.2b** immediately notify the Department in writing of actual or anticipated events impacting MHSA Program costs and/or delivery of services to Enrollees such as but not limited to legislation, regulations, class action settlements, and operational issues.

**6.2.3** The Contractor's dedicated account team must ensure that the MHSA Program is in compliance with all legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately. The Contractor must work with the Department to develop accurate Summary Plan Descriptions (SPDs) and/or MHSA Program material.

**6.2.4** The Contractor must work with the Department to develop appropriate customized forms and letters for the MHSA Program, including but not limited to Enrollee claim forms, pre-certification forms and letters, explanation of benefits, appeal letters, etc. All such communications must be approved by the Department prior to their distribution.

**6.3.0 Premium Development Services:** The Contractor will be responsible for assisting and supporting the Department with all aspects of the premium rate development including, but not limited to:

- 
- 6.3.1** Providing a team of qualified and experienced individuals who are acceptable to the Department and who will assist and support the Department in developing premium rates consistent with the financial interests and goals of the MHSA Program and the State;
- 6.3.2** Developing projected aggregate claim, trend and Administrative Fee amounts for each MHSA Program Year. Analysis of all MHSA Program components impacting the MHSA Program cost shall be performed including, but not limited to claims, trend factors, Administrative Fees, changes in enrollment and impact of enacted legislation; and
- 6.3.3** Working with the Department and its contracted actuarial consultant through the annual premium renewal process to further document and explain any premium rate recommendation. This process includes presenting the premium rate recommendation to staff of the Department, Division of the Budget and GOER.

**6.4.0 Implementation**

- 6.4.1** The Contractor must commence an implementation period following approval of the Agreement by OSC. During the implementation period, the Contractor must undertake and complete all implementation activities, including but not limited to those specific activities set forth in Section 7.2.1 of this Agreement. Such implementation activities must be completed no later than December 31, 2013 so that the MHSA Program is fully operational on January 1, 2014.

**6.5.0 Customer Service**

- 6.5.1** The Contractor will be responsible for all customer support and services including, but not limited to:
- 6.5.1a** Providing Enrollees access to information on all MHSA benefits and services related to the MHSA Program through the Empire Plan consolidated toll-free number twenty-four (24) hours a Day, 365 Days a year;



---

**6.5.1b** The Empire Plan consolidated toll-free telephone service is provided through the AT&T voice network services under a contract with The Empire Plan's medical carrier/third party administrator and is available to callers twenty-four (24) hours a Day, 365 Days a year. The Contractor must establish and maintain a transfer connection with AT&T (T-1 line), including a back-up system which will transfer calls to the Contractor's line at their call center service site. The Contractor must sign a shared service agreement with the Empire Plan's medical carrier/third party administrator (currently UnitedHealthcare) and AT&T. In addition, the Contractor is also required to provide twenty-four (24) hours a Day, 365 Days a year access to a TTY number for callers utilizing a TTY device because of a hearing or speech disability. The TTY number must provide the same level of access to call center service as required by this Section of the Agreement;

**6.5.1c** Maintaining a Dedicated Call Center for the MHSA Program located in New York State that:

**6.5.1c(1)** Provides direct access to trained Clinicians who direct members to appropriate Network Providers, provide clinical MHSA information and if requested by the caller, assist in scheduling appointments on behalf of the member twenty-four (24) hours a Day, 365 Days a year;

**6.5.1c(2)** Provides access to fully trained customer service representatives and supervisors available between the hours of 8:00a.m. to 8:00p.m. Monday through Friday, except for legal holidays observed by the State; and

**6.5.1c(3)** Meets the Contractor's proposed call center telephone guarantees set forth in Section 7.3.0 through 7.6.0 of this Agreement.

- 
- 6.5.2** Customer service staff must use an integrated system to log and track all Enrollee calls. The system must create a record of the Enrollee contacting the call center, the call type, and all customer service actions and resolutions;
- 6.5.3** Customer service representatives must be trained and capable of responding to a wide range of questions, complaints and inquiries including but not limited to: MHSAs Program benefits levels; status of pre-certification requests; eligibility and claim status; and be able to identify calls requiring transfer to a clinician;
- 6.5.4** Maintaining a designated backup customer service staff located in the United States with MHSAs Program-specific training to handle any overflow when the Dedicated Call Center is unable to meet the Contractor's proposed customer service performance guarantees. This back-up system would also be utilized in the event the Dedicated Call Center becomes unavailable; and
- 6.5.5** Maintaining and timely updating a secure online customized website accessible by Enrollees, which is available twenty-four (24) hours a Day, 365 Days a year, except for regularly scheduled maintenance, which will provide, at a minimum access to information regarding: MHSAs Program benefits; Network Provider locations; eligibility; Copayment information; pre-authorization information; claim status; and clinically-based educational material. The Department shall be notified of all regularly scheduled maintenance at least one (1) Business Day prior to such maintenance being performed. The Contractor must establish a dedicated link to the customized website for the MHSAs Program from the Department's website with content subject to the approval of the Department and limited to information that pertains to the MHSAs Program. Links bringing a viewer back to the Department's website must be provided. No other links are permitted without the written approval of the Department. Access to the online Network Provider locator must be available to Enrollees without requiring them to register on the website. Any costs associated with customizing and updating the website or establishing a dedicated link for the MHSAs Program shall be borne solely by the Contractor. Also, the Contractor shall fully cooperate with any Department initiatives to use new technologies, processes, and methods to improve the

---

efficiencies of the customized website including development of an integrated Enrollee portal.

**6.6.0 Enrollee Communication Support**

**6.6.1** All Enrollee communications developed by the Contractor are subject to the Department's review and prior written approval, including but not limited to any regular standardized direct communication with Enrollees or their MHSA Providers in connection with covered benefits or the processing of Enrollee claims, either through mail, e-mail, fax or telephone. The Department, in its sole discretion, reserves the right to require any change it deems necessary.

**6.6.2** The Contractor will be responsible for providing Enrollee communication support and services to the Department including, but not limited to:

**6.6.2a** Developing language describing the MHSA Program for inclusion in the NYSHIP General Information Book and Empire Plan SPD, subject to the Department's review and approval;

**6.6.2b** Developing articles for inclusion in Empire Plan Reports and other publications on an "as needed" basis, detailing MHSA Program benefit features and/or highlighting trends in MHSA utilization;

**6.6.2c** Timely reviewing and commenting on proposed MHSA Program communication material developed by the Department;

**6.6.2d** Developing timely and accurate Summaries of Benefits Coverage (SBC), which will be consolidated with coverage information from other Program carriers/third party administrators for The Empire Plan, Student Employee Health Plan and Excelsior Plan. The Department will post the SBCs on NYSHIP Online. Upon Enrollee request, the Contractor must direct Enrollees to the NYSHIP Online website to view the SBC or distribute a copy of the SBC to the Enrollee within the federally required time period; and

---

**6.6.2e** Paying a portion of the Shared Communication Expenses, the cost of all production, distribution and mailing costs incurred to disseminate Program communication materials to Enrollees. The Empire Plan’s medical carrier/third party administrator will bill the Contractor on a quarterly basis for a portion of the Programs’ Shared Communication Expenses. The Department agrees that these costs are not included in Administrative Fees and that the Contractor will be reimbursed for these costs as set forth in Article XIII of the Agreement.

**6.6.3** Upon request, subject to the approval of the Department, on an “as needed” basis, the Contractor agrees to provide staff to attend Health Benefit Fairs, select conferences, and benefit design information sessions, etc. in NYS and elsewhere in the United States. The Contractor agrees that the costs associated with these services are included in the Contractor’s Administrative Fee.

**6.6.4** The Contractor must work with the Department to develop appropriate customized forms and letters for the MHSA Programs, including but not limited to Enrollee claim forms, pre-certification forms and letters, explanation of benefits, and appeal letters. All such communications must be approved by the Department, in writing, prior to distribution.

**6.7.0** **Enrollment Management** The Contractor will be responsible for the maintenance of accurate, complete, and up-to-date enrollment files, located in the United States, based on information provided by the Department. These enrollment files shall be used by the Contractor to process claims, provide customer service, identify individuals in the enrollment file for whom Medicare is primary, and produce management reports and data files. The Contractor must provide enrollment management services including but not limited to:

**6.7.1** ***Initial Testing:*** Performing an initial enrollment load to commence upon receipt of the enrollment file from the Department during MHSA Program implementation. The file may be EDI Benefit Enrollment and Maintenance Transaction set 834(ANSI x.12 834 standard either 834

---

(4010x095A1) or 834 (005010x220)), fixed length ASCII text file, or a custom file format. The determination will be made by the Department;

**6.7.2** Testing to determine if the enrollment file and enrollment transactions loaded correctly and that the enrollment system interfaces with the claims processing system to accurately adjudicate claims. The Contractor shall submit enrollment test files to the Department for auditing, provide the Department with secure, online access required to ensure accurate loading of the MHS A Program enrollment data, and promptly correct any identified issues to the satisfaction of the Department;

**6.7.3** Providing an enrollment system capable of receiving secure enrollment transactions (Monday through Friday) and having all transactions fully loaded to the claims processing system and clinical management system within twenty-four (24) hours of release of a retrievable file by the Department. The Contractor shall immediately notify the Department of any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the data supplied by the Department, the Contractor shall immediately load all records received (that meet the quality standards for loading) within twenty-four (24) hours of their release, as required. The Department will release enrollment changes to the Contractor in an electronic format daily (Monday through Friday). On occasion, the Department will release more than one enrollment file within a twenty-four (24) hour period. The Contractor must be capable of loading both files within the twenty-four (24) hour performance standard. The format of these transactions will be in an EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 transaction set in the format specified by the Department. The Contractor must also have the capability to receive alternate identification numbers and any special update files from the Department containing eligibility additions and deletions, including emergency updates, if required;

- 
- 6.7.4** Ensuring the security of all enrollment information as well as the security of a HIPAA compliant computer system in order to protect the confidentiality of Enrollee data contained in the enrollment file. Any transfers of enrollment data within the Contractor's system or to external parties must be completed via a secured process;
- 6.7.5** Providing a back-up system or have a process in place where, if enrollment information is unavailable, Enrollees can obtain Clinical Referral Line services without interruption;
- 6.7.6** Cooperating fully with any State initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of the Agreement;
- 6.7.7** Maintaining a read-only connection to the enrollment system for the purpose of providing the Contractor's staff with access to current MHSA Program enrollment information and to correct enrollment records that reject from the daily updates. Contractor's staff must be available to access enrollment information Monday through Friday, from 8:00 am to 5:00 pm ET, with the exception of NYS holidays as indicated on the Department's website; and
- 6.7.8** Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical Child Support Order (QMCSO), or the child's custodial parent, legal guardian, or the provider of services to the child, or a NYS agency to the extent assigned the child's rights, may file claims and the Contractor must make payment for covered benefits or reimbursement directly to such party. The Contractor will be required to store this information in its system(s) so that any claim payments or any other plan communication distributed by the Contractor, including access to information on the Contractor's website would go to the person designated in the QMCSO.

---

**6.8.0 Reporting:** The Contractor is responsible for accurate reporting services including, but not limited to:

**6.8.1** Ensuring that all financial reports including claim reports are generated from amounts billed to the MHSA Program, and reconcile to amounts reported in the quarterly and annual financial experience reports;

**6.8.2** Developing, in conjunction with the Department, standard electronic management, financial, and utilization reports required by the Department for its use in the review, management, monitoring and analysis of the MHSA Program. These reports must tie to the amounts billed to the MHSA Program. The final format of reports is subject to the Department review and approval;

**6.8.3** Supplying reports in paper format and/or in an electronic format including but not limited to Microsoft, Access, Excel and/or Word as determined by the Department. The reports include, but are not limited to, reports and data files listed in Article XV “Reports and Claim Files” of this Agreement;

**6.8.4** Providing ad hoc reports and other data analysis at no additional cost. The exact format, frequency, and due dates for such reports shall be specified by the Department. Information required in the ad hoc reports may include but is not limited to providing:

**6.8.4a** Forecasting and trend analysis data

**6.8.4b** Utilization data

**6.8.4c** Utilization review savings

**6.8.4d** Benefit design modeling analysis

**6.8.4e** Reports to meet clinical program review needs

**6.8.4f** Reports segregating claims experience for specific populations

**6.8.4g** Reports to monitor Agreement compliance; and

**6.8.5** Providing direct, secure access to the Contractor’s claims system and any online and web based reporting tools to authorize Department representatives.

---

---

**6.9.0 Consulting:** The Contractor will be responsible for providing advice and recommendations regarding the MHSA Program. Such responsibility shall include, but not be limited to:

**6.9.1** Informing the Department in a timely manner concerning such matters as cost containment strategies, technological improvements, Provider best practices and State/Federal legislation (e.g., Federal parity legislation, etc.) that may affect the MHSA Program. The Contractor must also make available to the Department one or more members of the clinical or account management team to discuss the implications of new trends and developments. The Department is not under any obligation to act on such advice or recommendation; and

**6.9.2** Assisting the Department with recommendations and evaluation of proposed benefit design changes and implement any changes necessary to accommodate MHSA Program modifications resulting from collective bargaining, legislation, or within the statutory discretion of the State. Recommendations must include a preliminary analysis of all associated costs, a clinical evaluation, and the anticipated impact of proposed MHSA Program modifications and contemplated benefit design changes on Enrollees. In the event of a design change and should the Contractor requests any change in compensation, any such change will be processed in accordance with Article VIII, Modification of Program Services.

**6.10.0 Network Management**

**6.10.1 Provider Network**

**6.10.1a** The Contractor must maintain a credentialed and contracted MHSA Provider Network that meets or exceeds the Contractor’s proposed access standards throughout the term of the Agreement. The access standards must be provided in terms of actual distance from Enrollees’ residences, as follows:

<b>% of Enrollees with Access to Network Facilities</b>	<b>Enrollee Location</b>	<b>Access Guarantee – 1 Network Facility at least within</b>
---------------------------------------------------------	--------------------------	--------------------------------------------------------------



█%	Urban	█ miles
█%	Suburban	█ miles
█%	Rural	█ miles

<b>% of Enrollees with Access to Network Practitioners</b>	<b>Enrollee Location</b>	<b>Access Guarantee – 1 Network Practitioner at least within</b>
█%	Urban	█ miles
█%	Suburban	█ miles
█%	Rural	█ miles

**6.10.1b** The Contractor must meet or exceed the Contractor’s proposed access standards for credentialed and contracted Certified Behavioral Analysts in the MHSA Program’s Provider Network throughout the term of the Agreement. The access standards must be provided in terms of a density ratio (the number of Network Practitioners divided by the number of Enrollees), as follows:

<b>Plan Year</b>	<b>Certified Behavioral Analyst Density Ratio</b>
1	1: █
Optional extension period	1: █

The Department and Contractor agree that this Section 6.10.1b shall not be subject to Article VII, Performance Guarantee section 7.10.1.

**6.10.1c** The MHSA Program requires that the Contractor have available to Enrollees on January 1, 2014 its fully contracted and credentialed MHSA Provider Network in accordance with the requirements set forth in Section 6.4.0 of this Agreement guaranteeing effective implementation of the MHSA Provider Network.

**6.10.1d** The Contractor shall offer participation in its MHSA Provider Network to any Provider who meets the Contractor’s credentialing criteria upon the

---

Department's request where such inclusion is deemed necessary by the Department to meet the needs of Enrollees even if not otherwise necessary to meet the minimum access guarantees set forth in sections 6.10.1a and 6.10.1b of this Agreement.

**6.10.1e** In developing its proposed MHSA Provider Network, the Contractor is expected to use its best efforts to substantially maintain the composition of Network Providers included in the MHSA Program's current Provider Network. The Contractor's proposed MHSA Provider Network must be composed of an appropriate mix of licensed and/or certified psychiatrists, and psychologists, licensed and registered Clinical Social Workers (CSW) (in NYS social workers must have an "R" number issued by the State Education Department), Registered Nurse Clinical Specialists, psychiatric nurse/clinical specialists and registered nurse practitioners, Certified Behavioral Analysts, Structured Outpatient Programs and Partial Hospitalization Programs including: residential treatment centers, group homes, hospitals and alternative treatment programs such as day/night centers, half-way houses and treatment programs for dually diagnosed individuals (e.g., mental health diagnosis and substance abuse diagnosis). Programs certified by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) must be included in the MHSA Provider Network. The MHSA Provider Network must include Providers throughout New York State and in areas with high concentrations of active and/or retired employees living outside of New York State such that the network access guarantees established by the terms of the Agreement are fully satisfied.

**6.10.2 Provider Credentialing**

**6.10.2a** The Contractor must assure its MHSA Provider Network is credentialed in accordance with all applicable federal and state laws, rules and regulations.

---

**6.10.2b** The Contractor must establish credentialing criteria for Network Practitioners and Facilities, including Alternative Levels of Care (ALOC), for the purpose of ensuring quality of the MHSA Provider Network, including, but not limited to, years of experience, level of education/certification, licensure, quality of care, practice patterns, malpractice insurance coverage, hours of operation and availability of appointments.

**6.10.2c** The Contractor must credential MHSA Network Providers in a timely manner and shall have an effective process by which to confirm MHSA Network Providers continuing compliance with credentialing standards.

**6.10.2d** The Contractor must maintain a Provider Relations staff presence within New York State.

**6.10.2e** The Contractor must maintain credentialing records and make them available for review by the Department upon request.

**6.10.3 Provider Contracting:** The Contractor will be responsible for providing Provider contracting services including but not limited to:

**6.10.3a** Negotiating pricing arrangements that utilize the MHSA Program's size to optimize the Provider fee schedule;

**6.10.3b** Ensuring that all MHSA Network Providers contractually agree to and comply with all of the MHSA Program's requirements and benefit design specifications;

**6.10.3c** Ensuring that MHSA Network Providers accept as payment-in-full, the Contractor's contractual reimbursement for all claims for Covered Services, subject to the applicable MHSA Program Copayments;

**6.10.3d** Notifying the Department in writing within one (1) Business Day of any substantial change to the number, composition or

---

terms of the Network Provider contracts utilized by the MHP Program;

**6.10.3e** Negotiating Single Case Agreements with Non-Network Providers on a case- by-case basis when the Contractor determines that it is clinically appropriate or to address guaranteed access issues;

**6.10.3f** Negotiating agreements on a case-by-case basis, with prior approval from the Department, with Licensed Marriage and Family Therapists (LMFTs) and Licensed Mental Health Counselors (LMHCs) when an LMFT or LMHC possess a particular subspecialty that is clinically appropriate or to address access issues; and

**6.10.3g** Establishing a tiered MHP Provider Network and incentives including but not limited to financial, administrative and continuing professional education to enhance Provider performance and clinical outcomes.

**6.10.4 Provider Audit and Quality Assurance:** The Contractor must have a staffed and trained audit unit employing a comprehensive Provider audit program that includes but is not limited to:

**6.10.4a** Conducting routine and targeted on-site audits of Network Providers. Providers that deviate significantly from normal patterns in terms of cost, CPT coding or utilization are to be identified and targeted for on-site and desk audits in accordance with established selection and screening criteria. On-site audits must also be conducted upon request by the Department and/or OSC, or when information is received by the Contractor that indicates a pattern of conduct by a Provider that is not consistent with the MHP Program's design and

---

objectives. Any modifications to the proposed audit program must receive prior written approval from the State;

**6.10.4b** Providing reports to the Department detailing audits planned, audits initiated, audits in progress, audits completed, audit findings, audit recoveries, and any other enforcement action by the Contractor. The Contractor must inform the Department in writing of any allegation or other indication of potential fraud and abuse identified within seven (7) Business Days of receipt of such allegations or identification of such potential fraud and/or abuse. The Department must be fully informed of all fraud and/or abuse investigations impacting the MHSA Program upon commencement, regardless of whether the individual fraud and/or abuse investigation has a material financial impact to the State;

**6.10.4c** Maintaining the capability and contractual right to effectively audit the MHSA Program's Provider Network, including the use of statistical sampling audit techniques and the extrapolation of errors;

**6.10.4d** Remitting 100% of Provider and Enrollee audit recoveries to the Department as applicable within thirty (30) Days of receipt consistent with the process specified in Section XIV, "Payments/ (Credits) to/from the Contractor" of this Agreement;

**6.10.4e** Utilizing the auditing tools and performance measures proposed by the Contractor to identify fraud and abuse by Network Providers and/or Enrollees.

**6.10.4b** The Contractor must conduct a comprehensive quality assurance program which includes, but is not limited to:

**6.10.4b(1)** Monitoring the quality of care provided by Network Providers;

- 
- 
- 6.10.4b(2)** Monitoring technical competency and customer service skills of Network Provider staff;
  - 6.10.4b(3)** Network Provider profiling;
  - 6.10.4b(4)** Peer review procedures;
  - 6.10.4b(5)** Outcome and Quality Measurement analysis; and
  - 6.10.4b(6)** Maintaining an ongoing training and education program that will be offered to Network Providers.

### **6.11.0 Claims Processing**

**6.11.1** The Contractor must provide all aspects of claims processing. Such responsibility shall include but not be limited to:

- 6.11.1a** Maintaining a claims processing center located in the United States staffed by fully trained claims processors and supervisors;
- 6.11.1b** Verifying that the MHSA Program's benefit design has been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;
- 6.11.1c** Accurate and timely processing of all claims submitted under the MHSA Program in accordance with all applicable laws as well as the benefit design applicable to the Enrollee including Copayment, Deductible, Coinsurance and Coinsurance Maximums, at the time the claim was incurred, as specified to the Contractor by the Department;
- 6.11.1d** Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered expenses only, utilizing all edits as proposed by the Contractor and approved in writing by the Department. The Contractor's system must ensure that payments are made only for authorized services;
- 6.11.1e** Maintaining claims histories for twenty-four (24) months online and archiving older claim histories for the balance of the calendar year in

---

which they were made and for six (6) additional years thereafter, per Appendix A, with procedures to easily retrieve and load claim records;

- 6.11.1f** Maintaining the security of the claim files and ensuring HIPAA compliance;
- 6.11.1g** Adjusting all attributes of claim records processed in error crediting the MHSA Program for the amount of the claim processed in error;
- 6.11.1h** Agreeing that all claims data is the property of the State. Upon the request of the Department, the Contractor shall share claims data with the Department's actuarial consultant, other Empire Plan carriers for various programs (e.g. Disease Management, Centers of Excellence) and the Department's Decision Support System vendor. The Contractor cannot share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department;
- 6.11.1i** Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible;
- 6.11.1j** Maintaining a claims processing system capable of integrating and enforcing the various clinical management and utilization review components of the MHSA Program; including pre-certification, prior authorization, concurrent review and benefit maximums including the 680 hour maximum for ABA services;
- 6.11.1k** Developing and securely routing a MHSA daily claims file that reports claims incurred to date which have been applied to the shared Deductible, Coinsurance Maximums, and Maximum Out-of-Pocket between the Empire Plan Hospital Program, Medical Program and MHSA Program and Prescription Drug Program;

- 
- 6.11.1i** Loading a daily claims file from the Empire Plan medical carrier/third party administrator and hospital carrier that reports shared Deductible, Coinsurance Maximums and Maximum Out-of-Pocket;
- 6.11.1m** Participating in Medicare Crossover by entering into an agreement with the Empire Plan medical carrier/third party administrator to accept electronic claims data record files from the medical carrier/third party administrator for Empire Plan Enrollees who have Medicare as their primary coverage. Claims data will only be sent to the Contractor for possible Empire Plan mental health and substance abuse outpatient claims which also involve Medicare coverage. The claims information sent from the medical carrier/third party administrator will include claims filed with the Center for Medicare and Medicaid Services (CMS) that should be considered by the Contractor for secondary coverage. The Empire Plan medical carrier/third party administrator will sort out any claims for benefits that are for mental health or substance abuse services and electronically forward the claim to the Contractor for consideration;
- 6.11.1n** Pursuing collection of up-to-date coordination of benefit information that is integrated into the claims processing edits and pursuing collection of any money due the MHSA Program from other payers or Enrollees who have primary MHSA coverage through another carrier;
- 6.11.1o** Analyzing and monitoring claim submissions to promptly identify errors, fraud and/or abuse and reporting to the State such information in a timely fashion in accordance with a State approved process. The Contractor will credit the MHSA Program the amount of any overpayment regardless of whether any overpayments are recovered from the Provider and/or Enrollee in instances where a claim is paid in error due to Contractor error, without administrative charge to the MHSA Program. The Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors



---

only found to be the responsibility of the State, or due to fraud and abuse the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the MHSA Programs upon receipt; however, the Contractor is not responsible to credit amounts that are not recovered;

**6.11.1p** Establishing a process through which Providers can verify eligibility of Enrollees and Dependents during Call Center Hours;

**6.11.1q** Processing claims pursuant to Enrollees covered under the Disabled Lives Benefit. The Department agrees to reimburse the Contractor for claims processed under the Disabled Lives Benefit in accordance with Article XIV, Payments/(Credits) to/from the Contractor of this Agreement; and

**6.11.1r** Processing claims in compliance with an agreed upon mixed services Protocol for covered services that include both medical and mental health and substance abuse components.

## **6.12.0 Clinical Management**

### **6.12.1 Pre-Certification of Care**

To ensure that the resources available to the MHSA Program are utilized for appropriate, medically necessary care, the Contractor is required to perform pre-certification of care which includes, at a minimum:

**6.12.1a** Use of a voluntary Clinical Referral Line (CRL) located in New York State to evaluate Enrollees' MHSA care needs and direct Enrollees to the most appropriate, cost-effective Providers and levels of care. The CRL must be structured to facilitate the Clinician's assessment of the caller's MHSA treatment needs and to provide suitable, timely referrals especially in emergency or urgent situations or for care that requires inpatient admission;

---

**6.12.1b** Use of alternate procedures to precertify care when the Enrollee fails to call the CRL, as follows:

**6.12.1b(1)** When an Enrollee contacts a Network Provider directly for treatment without calling the CRL, the Contractor is ultimately responsible for ensuring that the Enrollee receives the Network level of benefits and obtaining all necessary authorizations for treatments for Network outpatient services for “Recurrent Therapy Visits” and Network inpatient care;

**6.12.1b(2)** When an Enrollee contacts a Network Provider directly and the Network Provider is not the appropriate Provider to treat that Enrollee, the Contractor is responsible for ensuring that its Network Providers take responsibility for assisting the member in obtaining an appropriate referral;

**6.12.1b(3)** When an Enrollee contacts a Non-Network Facility directly for treatment and the Contractor is notified in advance of the admission, the Contractor must provide the Enrollee or other HIPAA-authorized representative of the Enrollee, with a written determination of medical necessity of care in advance of the inpatient admission, where feasible; and

**6.12.1b(4)** Timely written notification to the Enrollee, or other HIPAA-authorized representative of the Enrollee, of the potential financial consequences of remaining in a Non-Network Facility coincident with the initial determination of medical necessity;

**6.12.1c** Preparing and sending communications to notify Enrollees and/or their Providers of the outcome of their pre-certification or prior authorization

---

request and notifying them in writing of the date through which MHSA Program services are approved;

**6.12.1d** Promptly loading into the clinical management and/or claims processing system approved authorizations determined by the Contractor;

**6.12.1e** Pre-certifying inpatient hospital admissions for alcohol detox, advising the facility to send the claim to the Hospital Program vendor and managing the patient's care if transferred to rehab; and

**6.12.1f** Loading into the Contractor's clinical management and/or claims processing system one or more files of Prior Authorization and pre-certification approved-through dates from the incumbent contractor, prior to the January 1, 2014, during the implementation period, once acceptable files are received.

**6.12.2 Concurrent Review:** To safeguard Enrollee health and ensure adherence with the MHSA Program's benefit design and requirements on mental health parity, the Contractor must administer a concurrent utilization review program in the United States which:

**6.12.2a** Enforces the MHSA Program's benefit design features and ensures that Network Providers use the latest MHSA care protocols for Enrollees;

**6.12.2b** Uses Clinicians to review Provider treatment plans which must detail, at a minimum: past clinical and treatment history; current symptoms; functional impairment; and DSM-IV diagnosis. The Contractor must require that the Network Provider's proposed treatment plan and goals be in writing for outpatient services. The Contractor must review the treatment plan when the number of visits to the Network Provider exceed the expected duration of services for the Enrollee's clinical diagnosis;

- 
- 6.12.2c** Is conducted in a manner which is parity compliant as required by the Mental Health Parity and Addiction Equity Act;
  - 6.12.2d** Performs concurrent review of outpatient and inpatient care rendered by Non-Network Providers when requested by the Enrollee or Non-Network Provider;
  - 6.12.2e** Utilizes a process for identifying cases where a less restrictive or higher level of care is clinically appropriate. The Contractor must have procedures for identifying when transfer to an alternate inpatient or outpatient setting is appropriate and for arranging such transfers;
  - 6.12.2f** Establishes maximum time frames for inpatient review based upon the level of care provided, and a time frame that allows for discharge planning where the continued stay is not certified;
  - 6.12.2g** Employs appropriately skilled Clinicians to review treatment plans in a manner that does not disrupt or delay treatment;
  - 6.12.2h** Renders certification decisions on a timely basis and requires that Peer Advisors render non-certification decisions;
  - 6.12.2i** For Enrollees admitted to Non-Network Facilities, either arranges to transfer the Enrollee to a Network Facility as soon as medically appropriate or manages the care as if the facility was a Network Facility, including negotiating discounts with the facility;

---

**6.12.2j** Performs appropriate discharge planning by identifying when discharge from an inpatient network setting is appropriate and by directing the Enrollee to appropriate outpatient network care following discharge, including scheduling the initial appointment. Discharge planning must include continual review of the progress of aftercare treatment with the Provider by a care manager, as follows:

**6.12.2j(1)** Clinical Managers must obtain and review as part of the discharge plan, at a minimum: the name of the follow-up Provider; date and time of initial follow-up appointment; and the names of responsible family members; and

**6.12.2 j(2)** Clinical Managers must assist Providers in locating aftercare services. The Contractor must maintain a database of local community resources to assist Providers in locating aftercare services or alternative care in their areas.

**6.12.2k** The Contractor must provide case management on a voluntary basis for complex cases or cases requiring long-term treatment. The Contractor must cooperate with the Empire Plan hospital carrier and other Empire Plan carriers in cases of medical/mental health multiple diagnoses in accordance with the Mixed Services Protocol guidelines established by the Department. Under those guidelines, in cases where there is both a medical and a psychiatric diagnosis, responsibility for case management and claims payment is determined by the hospital unit (medical or psychiatric) to which the admission is made and the

---

specialty of the attending physician. When those guidelines are insufficient to determine case management responsibility, the Empire Plan hospital carrier and the Contractor must come to an agreement using other factors such as the condition causing the person to remain hospitalized and the proposed treatment plan;

**6.12.2l** The Contractor must use Clinical Managers or Peer Advisors to manage the care of members; and

**6.12.2m** The Contractor must measure and assess the effects of clinical management and utilization review processes and procedures on the quality of MHS A Program costs and care.

### **6.12.3 Disabled Dependent Determinations**

**6.12.3a** The Contractor must establish a process to perform reviews of the Department's PS-451 form and all additional medical information for mental health and substance abuse-related dependent disabilities. The review must be completed in the United States and clinical determination must be completed within 10 Business Days of receipt of a complete form.

**6.12.3b** The Contractor must send a determination letter, approved in writing by the Department, to the Enrollee and to the Department advising of the determination within 3 Business Days of the determination.

### **6.12.4 Appeal Process**

The Contractor must:

**6.12.4a** Perform administrative (non-clinical) appeals in a timely manner by an employee of the Contractor with problem-solving authority above that of the original reviewer;

---

**6.12.4b** Administer an expeditious, HIPAA and PPACA compliant internal clinical appeal process which allows Providers and/or Enrollees to appeal denied coverage on the basis of medical necessity or an experimental or investigational treatment, including:

**6.12.4b(1)** Developing a clinical appeal form and criteria for establishing medical necessity and experimental or investigational treatment;

**6.12.4b(2)** Reviewing clinical appeals for medical necessity and experimental or investigational treatment and preparing communications to notify Enrollees of the outcome of appeals; and

**6.12.4b(3)** Integrating the appeal decisions into the clinical management and claims processing systems.

**6.12.4c** Establish two levels of internal clinical appeals as follows:

**6.12.4c(1)** A level 1 clinical appeal must be performed by an independent Peer Advisor; and

**6.12.4c(2)** A level 2 clinical appeal must be conducted by a panel of two board-certified psychiatrists and a Clinical Manager who work for the Contractor. Panel members must not have been involved in the previous determinations of the case.

**6.12.4d** Complete clinical appeals in a timely manner consistent with NYS and federal laws:

- 
- 6.12.4d(1)** For a second level clinical appeal of a post-service claim, within 30 days of the member's request;
  - 6.12.4d(2)** For a second level clinical appeal of a pre-service request for benefits, within 15 days of the member's request; and
  - 6.12.4a(3)** For appeals involving urgent situations, in no more than seventy-two (72) hours following receipt of the appeal.

**6.12.4e** Responding to all External Appeals on behalf of the Department as requested by the New York State Department of Financial Services' through a process that provides an opportunity for Enrollees and Dependents to appeal when denied coverage on the basis that a service is not medically necessary or is an experimental or investigational service;

**6.12.4f** Oversee and enforce the MHSA Program's appeal processes including reporting the results of the administrative, clinical and external appeal processes for the MHSA Program to the Department in the format and frequency required in Article XV: Reports and Claim Files of this Agreement.

#### **6.12.5 Other Clinical Management Programs**

**6.12.5a** The Contractor must provide voluntary opt-in programs for Depression Management, Eating Disorders and Attention Deficit Hyperactivity Disorder (ADHD). The cost of the Depression Management, Eating Disorder and ADHD Programs shall be included in the Administrative Fee. The voluntary opt-in programs must minimally include:

- 6.12.5a(1)** a method to identify members with depression, eating disorders and ADHD using screening tools, both on-line and by mail;



- 
- 6.12.5a(2) methods to educate members about the symptoms, effects and treatment of depression, eating disorders and ADHD;
  - 6.12.5a(3) accepting referrals to Network Providers;
  - 6.12.5a(4) telephonic support, coordination with treating providers and referrals to community services; and
  - 6.12.5a(5) a method to establish contact with Empire Plan primary care physicians, and other medical specialists likely to have patients that present with symptoms of depression, eating disorders and ADHD in order to educate medical Providers about the availability of the depression, eating disorder and ADHD programs.

**6.12.5b** The Contractor proposed other voluntary opt-in programs which are available [REDACTED] including Autism Care Management Program, Outpatient Detoxification (Suboxone), Teen Screen Program (or like program) and Post-Partum Depression Screening Program. The Department will provide written notice to the Contractor of its decision to opt in to any of these voluntary programs. The Department reserves the right to not participate in any program offered and the right to opt out of any program at any time.

## **ARTICLE VII: PERFORMANCE GUARANTEES**

**7.1.0** The Parties agree that the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees shall be implemented effective January 1, 2014. The Contractor acknowledges and agrees that failure to perform the Program Services features in such a manner which either meets or exceeds any, and/or all of the Contractor Performance Guarantee(s) as set forth in this Article VII, and/or fails to make any payment(s) of any such credit amounts for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the

Agreement C000617

---

activities, duties, and obligations as otherwise set forth in the Agreement. Credit amounts are cumulative. Amounts due from the Contractor to the Department for failure to perform and audit credit amounts, as determined pursuant to Article XIV of this Agreement, shall be made in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Administrative Fee in accordance with Article XIV of this Agreement within thirty (30) Days of receiving such notification by the Department. These amounts must also be applied as a credit against the Administrative Fee and reported in the Annual Financial Report.

**7.2.0 Implementation and Start-up Guarantee and Credit Amount:**

**7.2.1 *Guarantee:*** The Contractor guarantees that all Implementation and Start-up activities will be completed no later than December 31, 2013 so that, effective January 1, 2014, the Contractor can assume full operational responsibility for the MHSA Program. For the purpose of this guarantee, the Contractor must, on January 1, 2014, have in place and operational:

**7.2.1a** A contracted Provider network (including a Certified Behavioral Analyst Provider Network) that meets the access standards set forth in Section 6.10.1 of this Agreement;

**7.2.1b** A fully operational Dedicated Call Center, including a Clinical Referral Line, providing all aspects of customer support and clinical services as set forth in Section 6.5.0 of this Agreement;

**7.2.1c** A claims processing system that processes claims in accordance with the MHSA Program's plan design and benefits, as set forth in Section 6.11.0 of this Agreement;

**7.2.1d** A claims processing system with real time access to the most updated, accurate enrollment and eligibility data provided by the Department to correctly pay claims for eligible Enrollees consistent with MHSA Program benefit design and contractual obligations; and

---

**7.2.1e** A fully functioning customized MHSA Program website with a secure dedicated link from the Department's website that provides Enrollees with on-line access to the specific website requirements as set forth in Section 6.5.5 of this Agreement.

**7.2.2 Credit Amount:** The Contractor's quoted percent to be credited for each day that all Implementation and Start-up requirements are not met is [REDACTED] (%) of the 2014 Administrative Fee (prorated on a daily basis).

**7.3.0 Call Center Availability Guarantee and Credit Amount**

**7.3.1 Guarantee:** The MHSA Program's service level standard requires that the Contractor's telephone line will be operational and available to Enrollees, Dependents and providers at least [REDACTED] of the Contractor's Call Center Hours. The call center availability shall be reported monthly and calculated annually.

**7.3.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED] that the Contractor's telephone line is not operational and available to Enrollees, Dependents and Providers during the Contractor's Call Center Hours calculated on an annual basis is [REDACTED] per year.

**7.4.0 Call Center Telephone Response Time Guarantee and Credit Amount**

**7.4.1 Guarantee:** The MHSA Program's service level standard requires that at least [REDACTED] of the incoming calls to the Contractor's telephone line will be answered by a customer service representative within [REDACTED] seconds. Response time is defined as the time it takes incoming calls to the Contractor's telephone line to be answered by a customer service representative or a Clinical Manager, if after hours. The call center telephone response time shall be reported monthly and calculated annually.

---

**7.4.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line below the standard of [REDACTED] that is not answered by a customer service or Clinical Referral Line representative within [REDACTED] seconds, calculated on an annual basis, is [REDACTED] per year.

**7.5.0 Telephone Abandonment Rate Guarantee and Credit Amount**

**7.5.1 Guarantee:** The MHSA Program's service level standard requires that the percentage of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service representative or Clinical Manager, if after hours will not exceed [REDACTED]. The telephone abandonment rate shall be reported monthly and calculated annually.

**7.5.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service or Clinical Referral Line representative in excess of the standard of [REDACTED], calculated on an annual basis, is [REDACTED] per year.

**7.6.0 Telephone Blockage Rate and Credit Amount:**

**7.6.1 Guarantee:** The MHSA Program's service level standard requires that the Contractor guarantee that not more than [REDACTED] of incoming calls to the customer service telephone line be blocked by a busy signal. The telephone blockage rate shall be reported monthly and calculated annually.

**7.6.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line that is blocked by a busy signal, in excess of the standard of [REDACTED], calculated on an annual basis is [REDACTED] per year.

**7.7.0 Enrollment Management Guarantee and Credit Amount**

---

**7.7.1 *Guarantee:*** The MHSA Program’s service level standard requires that [REDACTED] of all MHSA Program enrollment records that meet the quality standards for loading will be loaded into the Contractor’s enrollment system within [REDACTED] hours of release by the Department.

**7.7.2 *Credit Amount:*** The Contractor’s quoted amount to be credited against the Administrative Fee for each [REDACTED] hour period beyond [REDACTED] hours from the release by the Department that [REDACTED] of the MHSA Program enrollment records that meet the quality standards for loading is not loaded into the Contractor’s enrollment system is [REDACTED].

**7.8.0 Management Reports and Claim File Guarantee and Credit Amount**

**7.8.1 *Guarantee:*** The MHSA Program’s service level standard requires that accurate management reports and claim files as specified in Section 15.1.0 through 15.4.1 of this Agreement will be delivered to the Department no later than their respective due dates inclusive of the date of receipt.

**7.8.2 *Credit Amount:*** The Contractor’s quoted amount to be credited against the MHSA Program’s Administrative Fee for each management report or claim file that is not received by its respective due date, is [REDACTED] per report for each Business Day between the due date and the date the accurate management report or claims file is received by the Department inclusive of the date of receipt.

**7.9.0 Network Composition Guarantee and Credit Amount**

**7.9.1 *Guarantee:*** The MHSA Program’s service level standard requires that throughout the term of the Agreement a minimum of, [REDACTED] of the Providers in each of the eleven (11) Facility or Practitioner Licensure type categories (Mental Health Facility, Substance Abuse Facility, Mental health ALOC, Substance Abuse ALOC, Psychiatrist, Psychologist, and Licensed Clinical Social Worker with “R” designation in NYS, Certified Behavioral Analysts Provider, Applied Behavioral Analysis Agency, Registered Nurse Practitioner, Registered Clinical Nurse Specialist or psychiatric

---

---

nurse/clinical specialist), listed on Exhibit I.Y.2 (RFP) will be maintained.

Providers who are no longer actively practicing on December 31<sup>st</sup> of each year will be excluded from the annual calculation and guarantee. This standard shall be measured annually.

**7.9.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of the Providers in each of the eleven (11) Facility or Practitioner Licensure type categories (Mental Health Facility, Substance Abuse Facility, Mental health ALOC, Substance Abuse ALOC, Psychiatrist, Psychologist, and Licensed Clinical Social Worker with "R" designation in NYS, Certified Behavioral Analysts Provider, Applied Behavioral Analysis Agency, Registered Nurse Practitioner, Registered Clinical Nurse Specialist or psychiatric nurse/clinical specialist), listed on Exhibit I.Y.2 (RFP) as calculated on an annual basis is [REDACTED]. Providers who are no longer actively practicing on December 31<sup>st</sup> of each year will be excluded from the annual calculation and guarantee.

**7.10.0 Network Provider Access Guarantee and Credit Amount:**

**7.10.1 Guarantee:** The Contractor guarantees that effective January 1, 2014 and throughout the term of the Agreement:

**7.10.1a** [REDACTED] of Enrollees in urban areas will have at least one (1) Network Facility within [REDACTED] miles;

**7.10.1b** [REDACTED] of Enrollees in suburban areas will have at least one (1) Network Facility within [REDACTED] miles;

**7.10.1c** [REDACTED] of Enrollees in rural areas will have at least one (1) Network Facility within [REDACTED] miles;

**7.10.1d** [REDACTED] of Enrollees in urban areas will have at least one (1) Network Practitioner within [REDACTED] miles;

---

**7.10.1e** [REDACTED] of Enrollees in suburban areas will have at least one (1) Network Practitioner within [REDACTED] miles; and,

**7.10.1f** [REDACTED] of Enrollees in rural areas will have at least one (1) Network Practitioner within [REDACTED] miles.

**7.10.2 Credit Amounts:**

**7.10.2a** The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility Access-for Urban Areas Guarantee, is not met by the Contractor.

**7.10.2b** The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility Access-for Suburban Areas Guarantee, is not met by the Contractor.

**7.10.2c** The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility Access-for Rural Areas Guarantee, is not met by the Contractor.

**7.10.2d** The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Practitioner Access-for Urban Areas Guarantee, is not met by the Contractor.

**7.10.2e** The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED]

---

---

██████████ minimum access guarantee for any quarter in which the Network Practitioner Access-for Suburban Areas Guarantee is not met by the Contractor.

**7.10.2f** The Contractor’s quoted amount to be credited against the Administrative Fee is ██████████ for each ██████████ below the ██████████ ██████████ minimum access guarantee for any quarter in which the Network Practitioner Access-for Rural Areas Guarantee, is not met by the Contractor.

**7.10.3** Measurement of compliance with each access guarantee will be based on a “snapshot” of the Provider Network taken on the last day of each quarter within the current plan year. The results must be provided in the format contained in Exhibit I.Y.3 (RFP). The report is due thirty (30) Days after the end of the quarter.

**7.11.0 Provider Credentialing Guarantee and Credit Amount**

**7.11.1 *Guarantee:*** The MHSA Program’s service level standard requires that at least within sixty (60) Days of receipt of a completed Provider application to join the MHSA Program’s network, the review, including credentialing, will be completed and the Practitioner, ALOC Program or facility notified of the determination.

**7.11.2 *Credit Amount:*** The Contractor’s quoted amount to be credited against the Administrative Fee, is ██████████ for each Provider application to join the Program’s Network where the review, including credentialing, and notification of the determination to the Provider is not completed within sixty (60) Days.

**7.12.0 Financial Accuracy Guarantee and Credit Amount**

**7.12.1 *Guarantee:*** The Program’s service level standard requires that the MHSA Program’s financial accuracy be maintained for a minimum of ██████████ ██████████ of all claims processed and paid each Plan Year. Financial accuracy shall be measured by dividing the number of claims paid



---

correctly by the total number of claims reviewed. Results shall be determined based on an annual audit conducted by the Department using statistical estimate techniques at the ninety-five percent (95%) confidence level with precision of +/- three percent (3%). This standard shall be measured on an annual basis;

**7.12.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED] that the MHSA Program's financial accuracy isn't achieved as calculated on an annual basis is [REDACTED].

**7.13.0 Non-Financial Accuracy Guarantee and Credit Amount**

**7.13.1 Guarantee:** The MHSA Program's service level standard requires that the MHSA Program's non-financial accuracy be maintained for a minimum of at least [REDACTED] of all claims processed and paid each Plan Year. The MHSA Program's service level standard requires that the MHSA Program's non-financial accuracy be maintained for a minimum of [REDACTED] [REDACTED] of all claims processed and paid during any optional extension period of the Agreement. Non-financial accuracy shall be measured by dividing the number of claims with no errors by the total number of claims reviewed. Non-financial errors include, but are not limited to, entry of incorrect: patient name, date of service, Provider name, Provider Identification Number, and remark code, as well as incorrect application of Deductibles and/or Coinsurance amounts to the shared accumulators. Results shall be determined based on an annual audit conducted by the Department using statistical estimate techniques at the ninety-five percent (95%) confidence level with precision of +/- three percent (3%);

**7.13.2 Credit Amount:** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED] of all claims processed and paid during the first contract year [REDACTED] in any optional extension period of the Agreement) that the MHSA Program's non-financial accuracy rate isn't achieved, as calculated on an annual basis is [REDACTED].

---

---

**7.14.0 Turnaround Time for Non-Network Claims Adjudication Guarantee**

**7.14.1 *Guarantee:*** The MHS A Program’s service level standard requires that at least [REDACTED] of Enrollee-submitted claims that are received in the Contractor’s designated post office box, and require no additional information in order to be properly adjudicated, will be turned around within eighteen (18) Business Days of receipt. Turnaround time is measured from the date the Enrollee-submitted claim is received in the Contractor’s designated post office box to the date the Explanation of Benefits is received by the U.S. Post Office or Contractor’s mailing agent.

**7.14.2 *Credit Amount:*** The Contractor’s quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED] of Enrollee-submitted claims that require no additional information in order to be properly adjudicated that are received by the Contractor and not turned around within eighteen (18) Business Days from the date the claim is received in the Contractor’s designated post office box to the date the Explanation of Benefits is received by the mailing agent, as calculated on a quarterly basis, is [REDACTED].

**7.15.0 Clinical Referral Line Guarantees and Credit Amounts****7.15.1 Non-Network CRL**

**7.15.1a *Guarantee:*** The MHS A Program’s service level standard requires that when an Enrollee calls the Clinical Referral Line for a non-emergency or non-urgent referral and a Network Provider is not available for an appointment within a time frame which meets the member’s clinical needs, a referral will be made to an appropriate Non-Network Provider within two (2) Business Days of the call in at least [REDACTED] [REDACTED] of the cases as calculated annually.

**7.15.1b *Credit Amount:*** The Contractor’s quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of

---

████████████████████ of cases when an Enrollee is referred to a Non-Network Provider within two (2) Business Days (in non-emergency or non-urgent situations) because a Network Provider is not available, as calculated annually, is ██████████.

### 7.15.2 Emergency Care CRL

**7.15.2a** *Guarantee:* The MHPA Program's service level standard requires that ██████████ of Enrollees who call the CRL in need of emergency care be contacted by either the Network Provider or the Contractor's Clinicians within thirty (30) minutes of the Enrollees call to the CRL to assure their safety.

**7.15.2b** *Credit Amount:* The Contractor's quoted amount to be credited against the Administrative Fee for each ██████████ below the standard of ██████████ when an Enrollee requires emergency care, contact will be made by either the Network Provider or the Contractor's Clinicians within thirty (30) minutes of the Enrollee's call to the Clinical Referral Line, as calculated annually, is ██████████.

### 7.15.3 Urgent Care CRL

**7.15.3a** *Guarantee:* The MHPA Program's service level standard requires at least ██████████ of Enrollees in need of urgent care be contacted by the Contractor to ensure that the Network Provider contacted the Enrollee within forty-eight (48) hours of the Enrollee's call to the CRL.

**7.15.3b** *Credit Amount:* The Contractor's quoted amount to be credited against the Administrative Fee for each ██████████ below the standard of ██████████ when an Enrollee requires urgent care, contact will be made by the Contractor to ensure that the Network Provider contacted the Enrollee within forty-eight (48) hours of the call to the CRL, as calculated annually, is ██████████.

---

---

## **7.16.0 Utilization Review Guarantees and Credit Amounts**

### **7.16.1 Outpatient Treatment Utilization Review Guarantee and Credit Amount**

**7.16.1a *Guarantee:*** The MHSA Program's service level standard requires that at least [REDACTED] of outpatient treatment plans be reviewed and the Provider and Enrollee notified within twelve (12) Business Days of receipt of the report as calculated on an annual basis.

**7.16.1b *Credit Amount:*** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of outpatient treatment plans not reviewed and the Provider notified within twelve (12) Business Day of receipt of the report, is [REDACTED].

### **7.16.2 Inpatient Treatment Utilization Review Guarantee and Credit Amount**

**7.16.2a *Guarantee:*** The MHSA Program's service level standard requires that at least [REDACTED] of requests for authorization of inpatient care be reviewed and completed within twenty-four (24) hours from the receipt of the request and the Enrollee or Provider be notified within one (1) Business Day of the determination calculated on an annual basis.

**7.16.2b *Credit Amount:*** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of requests for authorization of inpatient care that are not reviewed within twenty-four (24) hours from the receipt of the request and the Enrollee or Provider notified within one (1) Business Day of the determination, is [REDACTED].

## **7.17.0 Appeal Guarantees and Credit Amounts**

### **7.17.1 Inpatient Appeal Guarantee and Credit Amount**

---

**7.17.1a *Inpatient Appeal Guarantee:*** The MHSA Program’s service level standard requires that at least [REDACTED] of level one appeal for inpatient care must be reviewed by a Peer Advisor and a determination made within one (1) Business Day of the receipt of the appeal. Cases in which there has been no success in contacting the Provider despite the Contractor having made and documented three (3) written or telephonic attempts will be included as having met the standard. Cases in which the Provider is unavailable to discuss the appeal or to provide information necessary to the disposition of the appeal, causing the appeal’s disposition to extend beyond the required timeframe, will be included as having met the standard. This standard will be calculated on an annual basis;

**7.17.1b *Inpatient Appeal Credit Amount:*** The Contractor’s quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of level one appeals for inpatient care must be reviewed by a Peer Advisor and a determination made within one (1) Business Day of the receipt of the appeal, is [REDACTED].

**7.17.2 Outpatient and ALOC Appeal Guarantee and Credit Amount**

**7.17.2a *Outpatient and ALOC Appeal Guarantee:*** The MHSA Program’s service level standard requires that at least [REDACTED] [REDACTED] Outpatient Care and Alternative Levels of Care level one appeals must be reviewed by a Peer Advisor and a determination made within two (2) Business Days of the receipt of the appeal. Cases in which there has been no success in contacting the Provider despite the Contractor having made and documented three (3) written or telephonic attempts will be included as having met the standard. Cases in which the Provider is unavailable to discuss the appeal or to provide information necessary to the disposition of the appeal, causing the

---

---

appeal's disposition to extend beyond the required timeframe, will be included as having met the standard. This standard will be calculated on an annual basis.

**7.18.2b *Outpatient and ALOC Appeal Credit Amount:*** The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of Outpatient Care and Alternative Levels of Care level one appeals that are not reviewed by a Peer Advisor and a determination made within two (2) Business Days of the receipt of the appeal, is [REDACTED].

## **ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES**

- 8.1.0** In the event that laws or regulations enacted by the Federal government and/or the State have an impact upon the conduct of this Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 8.2.0** In the event that the NYS and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise requires changes in Plan design elements or requirements of the Agreement, the Department shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 8.3.0** To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the MHSA Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The DCS reserves the right to request, and the Contractor shall agree to provide additional information and

---

---

documentation the DCS deems necessary to verify that a modification of the fees or guarantees is warranted. The DCS will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by DCS to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the DCS of the obligation to pay for Program services that are no longer required. The DCS will agree to modify guarantees as determined by DCS to be necessary to reflect MHSA Program modifications. Should the Parties agree to modify the fee(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the DCS with or without final resolution of any fee proposal.

#### **ARTICLE IX: DEVELOPMENT OF SUMMARY PLAN DESCRIPTIONS AND BENEFIT SUMMARIES**

**9.1.0** The Contractor shall present to the Department its recommendations for the development of the necessary Summary Plan Descriptions and Benefit Summaries for the Empire Plan, Excelsior Plan and Student Employee Health Plan Mental Health and Substance Abuse Programs. The Department shall review the Contractor's recommendations and shall make the final determination regarding the manner in which the Summary Plan Descriptions and Benefit Summaries shall be developed and issued by the Contractor.

#### **ARTICLE X: ENROLLMENT INFORMATION AND RECORDS**

**10.1.0** The Contractor shall maintain records in the United States from which may be determined at all times the names of all Enrollees covered hereunder, and their Dependents, and the benefits in force for each such Enrollee, together with the date when any coverage became effective and the effective date of any change in or termination of benefits.

**10.2.0** The Department shall transmit enrollment information provided by the Enrollee to the Contractor for the Program in an electronic format consistent with Section 6.7.0 of this Agreement. The eligibility rules and the enrollment reports generated as a result of these

---

---

eligibility rules shall be the sole means of determining valid enrollment for benefits under the Program.

**10.3.0** The Department and the Enrollees/Dependents shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Enrollees/Dependents under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.

**10.4.0** The Department agrees to provide the Contractor with reasonable access to records of the Department which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Administrative Fee as set forth under Article XIII of this Agreement.

#### **ARTICLE XI: DATA SHARING AND OWNERSHIP**

**11.1.0** All claims and other data related to the Department Program is the property of the State. Upon the request of the Department, the Contractor shall share claims data with other NYSHIP carriers, Department consultants, the Department's Decision Support System contractor, and Department of Health's all payer claims database.

**11.2.0** Except as directed by a court of competent jurisdiction in New York State, or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department.

#### **ARTICLE XII: DCS PROGRAM CLAIMS REIMBURSEMENT**

##### **12.1.0 Provider Network Claims**

**12.1.1** The Contractor must contract with Network Providers. The amount charged to the MHS A Program shall be the contracted Network Provider fee, less any applicable Copayment and coordination of benefits when the claim is processed as secondary coverage.



- 
- 12.1.2** The Contractor agrees that the weighted average of the actual Network Provider fees to be charged to the MHSA Program for each CPT, HCPCS and Revenue Code implemented on January 1, 2014, shall not exceed the amounts stated in Exhibit E, Average Cost per each CPT/Revenue Code. During implementation, the Contractor shall submit an analysis confirming that the weighted average contracted 2014 Provider Network fees are less than or equal to the fees stated in Exhibit E, Average Cost per each CPT/Revenue Code subject to the review and written approval of the Department. No increases to the Network Provider fees, charged to the MHSA Program, will be permitted for the 2014 Plan year.
- 12.1.3** For any optional extension period after 2014, the Contractor must manage the Network Provider fees charged to the Department such that the annualized aggregate impact on MHSA Program costs of any proposed modification to the Network Provider fees is capped by the annual increase in CPI-W for medical care, as reported by the Bureau of Labor Statistics for the month of July of the preceding calendar year.
- 12.1.4** Claim payments are to be made based on the requirements contained in Section 6.11.0 of the Agreement, including but not limited to each group's Copayments, Coinsurance, Deductible as well as the 680 hour annual maximum for ABA services as reflected in the most current Plan communication materials.
- 12.1.5 *Network Pricing Guarantee:*** The Contractor is responsible for managing modifications, if any, to the fees paid to Network Providers in any optional extension period of the Agreement to the extent such modifications in the Provider Network fees are in the best financial interest of the MHSA Program and the Department, as determined solely by the Department. During each Plan year, the Contractor must report any proposed Network Provider fee schedule modifications, if any, and the estimated financial impact to the MHSA Program to the Department prior to any such changes.
- 12.1.5.a** The MHSA Program allows for Network Provider fee increases every Plan year after 2014; however, the annualized aggregate impact on

---

MHSA Program costs of any modification to the Network Provider fees shall be reviewed and shall be capped by the annual increase in CPI-W for medical care, as reported by the Bureau of Labor Statistics for the month of July of the preceding calendar year. This annual review of any modification to the Network Provider fees shall be completed by the Contractor, in writing, for final review and written approval by the Department. The annual review provided by the Contractor shall include a calculation of the aggregate impact of the modification of Network Provider fees, for that Plan year, as compared to the Network Provider fees paid in the base year, based on the actual utilization of each Network Provider and service in the base year. The following presents the current and base years for each annual review covered by the Agreement:

<u>Report Due</u>	<u>Base Period</u>	<u>Optional Extension Period</u>
6/30/15	Contractor's Proposal For 2014 Exhibit E	N/A
6/30/16	2014 Actual Claims	2015

**12.1.5.b** The calculated aggregate impact of the Network Provider fee modification for that Plan year, normalized for any change in enrollment, will be compared to the maximum allowable CPI increase to determine the Contractor's compliance with the Network Provider pricing guarantee. At the conclusion of each annual review, the Contractor shall forfeit a specific dollar amount of the Administrative Fee for failure to meet this guarantee, as follows:

**12.1.5.c** For each annual review, the Contractor's amount to be credited against the Administrative Fee for each [REDACTED] increase in the aggregate MHSA Program Network costs in excess of the annual increase in the CPI-W for medical care as reported by the Bureau of Labor Statistics for the month of July is [REDACTED].

---

---

**12.2.0 Non-Network Claims**

**12.2.1** The cost to the MHSA Program for Covered Services for which Enrollees submit direct claims for reimbursement shall be charged to the MHSA Program at the actual amounts reimbursed by the Contractor.

**12.2.2** Payments are to be made based on the requirements contained in Section IV of Exhibit B (RFP) including but not limited to each group's Copayments, Co-insurance, Shared Accumulators and benefit maximums based on the member's benefit program assignment as reflected in Exhibit D of the Agreement.

**12.2.3** The Contractor will process Non-Network claims using Reasonable and Customary charges based on the 90<sup>th</sup> percentile of charges for each service performed. Reasonable and Customary means the lowest of:

1. The actual charge for services; or
2. The usual charge for services by the Provider for the same or similar service; or
3. The usual charge for services of other Providers in the same or similar geographic area for the same or similar service.

**12.2.4** Where a Network Provider is not available because of clinical or access considerations, the Contractor must negotiate a Single Case Agreement with a Non-Network Provider in a manner consistent with what is typically allowed for a Network Provider in the same discipline for the same service. The Contractor must pay the claim and charge the MHSA Program as if the services were incurred by a Network Provider.

**12.2.5** The Contractor will process Non-Network Provider claims and make payments directly to the Enrollee, with the expectation of Non-Network Facility claims which may be paid directly to the Facility.

**12.2.6** The Contractor will update its claims adjudication system with FAIR Health, Inc.'s database of Reasonable and Customary amounts at a minimum of twice a year.

---

---

**ARTICLE XIII: ADMINISTRATIVE FEE**

**13.1.0** The Administrative Fee is the fee that the Contractor charges the MHSA Program for all administrative services provided by the Contractor. This includes the administration of the Empire Plan, SEHP, and the Excelsior Plan. The Contractor shall:

**13.1.1** Agree that the following non-exclusive costs are not allowable and shall not be charged to the MHSA Program as either a direct or formula expense: commissions, non-Plan advertising costs, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at conferences or meetings of professional organizations unless attendance is necessary in connection with the MHSA Program and the Contractor received prior written approval by the Department and any costs related to or associated with the preparation and submission of a competitive proposal, including but not limited to the Contractor's Proposal, Exhibit C;

**13.1.2** The Department shall calculate the total Administrative Fee payable to the Contractor for each month by multiplying the per Administrative Fees of [REDACTED] by the number of Enrollee contracts in force each month as reported by the New York State Benefit Eligibility and Accounting System on the first Thursday of each month. The Department shall furnish to the Contractor a written statement for each month showing the number of Enrollee contracts then in force;

**13.1.3** Be bound by its Administrative Fee, as stated in section 13.1.2 of the Agreement, for the entire term of the Agreement unless amended in writing by the Parties;

**13.1.4** Manage all MHSA Program Enrollees based on the Contractor's Administrative Fee, stated in section 13.1.2 of the Agreement;

**13.1.5** Implement any changes necessary to accommodate MHSA Program modifications resulting from collective bargaining, legislation or within the statutory discretion of the State within 60 days of notice;

---

**13.1.6** Agree not to request a higher Administrative Fee, and the Department will not consider any increase to the Administrative Fee, that is not based on a material change to the MHSa Program requiring the Contractor to incur additional costs. The determination of what constitutes a material change will be at the sole discretion of the Department;

**13.1.7** Submit detailed documentation of additional administrative/clinical costs, over and above existing administrative/clinical costs, with any request for an increase in the Administrative Fee resulting from a material change in the benefit structure of the MHSa Program. The Department reserves the right to request and the Contractor agrees to provide any additional information and documentation the Department deems necessary to make its determination whether a the Contractor's request for an increase to the Administrative Fee is approved. The Department's decision to modify the Administrative Fee to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the Department, subject to the approval of a formal written amendment to the Agreement, signed by the Parties, and approved by the New York State Attorney General and New York State Office of State Comptroller; and

**13.1.8** Implement all benefit designs as required by the Department with or without final resolution of any request by the Contractor for a higher Administrative Fee. Refusal to implement benefit design changes will constitute a material breach of this Agreement and the Department shall take any action as may be appropriate and provided for by law, rule or in this Agreement, including, but not limited to, seeking compliance and recovering damages.

**ARTICLE XIV: Payments/(Credits) to/from the Contractor**

**14.1.0** The Contractor agrees to manage such financial transactions in accordance with the following:

**14.1.1** The Contractor shall issue claim payments by check or wire transfer to Providers and Enrollees based on the claim cycle period (e.g. weekly, monthly) agreed to by

---

the Parties. The Department shall advance funds to the Contractor periodically to ensure that sufficient funds are available before the checks/wire transfers are released. After the end of each month, the Contractor shall produce a voucher for the dollar amount of claims issued for the month. The difference between the amount of the voucher and the amount advanced during the month shall be reflected as a debit or credit to the next advance payment. If the amount of funds advanced is insufficient to fund the claims outstanding, Contractor shall only be required to release checks or wire transfers to the extent of the advanced funds and the balance of checks or wire transfers shall be released upon receipt of sufficient additional funds from the Department; and

- 14.1.2** Any credit amounts due from the Contractor to the Department for failure of the Contractor to meet the performance guarantees set forth in this Agreement shall be applied as a credit against the Administrative Fee charged to the MHSA Program in the first invoice issued by the Contractor subsequent to the Department's written approval of the performance guarantee calculation. Alternatively, the Department may request and receive payment of any performance guarantee amount directly from the Contractor, as opposed to a credit against the Administrative Fee payable to the Contractor.
- 14.2.0** Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the MHSA Programs within thirty (30) Days of the date of the Department's final determination, or within thirty (30) Days of receipt of recoveries related to fraud or abuse or Department errors.
- 14.3.0** Litigation recoveries and settlements shall be paid/credited to the MHSA Program within fifteen (15) Days of receipt by the Contractor.
- 14.4.0** The MHSA Program will pay the Administrative Fee on a monthly basis thirty (30) Days after receipt of an accurate invoice. Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the Administrative Fee charged to the MHSA Program.

---

**14.5.0** This Agreement is not subject to Article XI-A of NYS Finance Law. The Contractor agrees that Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due date as set forth in this Article XIV. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice and claims data file, as set forth in this Article XIV, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

**14.6.0** The Contractor will be billed by the Empire Plan medical carrier for the MHSA Program's portion of the Shared Communications Expense in 2014 and any optional extension period thereafter in four (4) equal installments. Subsequent years' amounts will be calculated by the Department and communicated to the Contractor during the annual premium renewal process. Upon receipt of each Shared Communications Expense bill, the Contractor may bill and the Plan will pay the Contractor an identical amount within thirty (30) Days.

## **ARTICLE XV: REPORTS AND CLAIM FILES**

### **15.1.0 Annual Reports**

**15.1.1 *Annual Financial Report:*** The Contractor must submit an annual experience report of the Program's charges and credits no later than seventy-five (75) Days after the end of each Calendar Year. These statements must detail, at minimum, claims paid during the year, projected incurred claims not yet paid, administration costs, performance credits, etc. Such detail must include all charges by the Contractor to the Program.

**15.1.2 *Annual Premium Renewal Report:*** The Contractor must submit an Annual Premium Renewal no later than September 1st of each Calendar Year. This report must detail all assumptions utilized to support recommended premium level

---

---

necessary for the following Plan Year. The report must include, but not be limited to: paid claim amounts; projected incurred claims; trend; Administrative Fees and changes in enrollment.

**15.1.3 *Annual Summary Reporting:*** The Contractor must prepare and present to the Department, GOER, Division of Budget and NYS employee unions an annual report that details MHSAs Program performance and industry trends. This presentation shall include, at a minimum, comparisons of the MHSAs Program to book of business statistics and other similar plan statistics. Clinical, financial and service issues are to be comprehensively addressed. The annual presentation and report is due each May after the end of each complete Calendar Year.

**15.1.4 *Annual Report of Claims and Credits Paid by Agency:*** The Contractor must submit a report with summary level claims and credits paid by agency. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). The report is due thirty (30) Days after the end of the Calendar Year.

## **15.2.0 Quarterly Reports**

**15.2.1 *Quarterly Financial Summary Reports:*** The Contractor must submit quarterly financial reports which present the MHSAs Program's experience for the most recent quarter (based on a Calendar Year) and the experience from the beginning of the Calendar Year to the end of the quarter being reported. The quarterly reports must also include projections of:

- annual financial performance;
- assessment of MHSAs Program costs;
- incurred claim triangles;
- audit recoveries;
- settlement and litigation recoveries;
- administrative expenses;
- trend statistics; and



- 
- such other information as the Department deems necessary.

The reports are due on a quarterly basis, fifteen (15) Days after the end of the reporting period;

**15.2.2 *Quarterly Performance Guarantee Report:*** The Contractor must submit quarterly the MHSA Program’s Performance Guarantee report that details the Contractor’s compliance with all of the Contractor’s proposed Performance Guarantees. The report should include the areas of: Implementation; customer service (telephone availability; telephone response time; abandonment rate and blockage rate); enrollment management; reporting; network composition; provider access; provider credentialing; financial and non-financial accuracy; turnaround time for processing network and non-network claims; non-network Clinical Referral Line; emergency care Clinical Referral Line; urgent care Clinical Referral Line; outpatient and inpatient Utilization Review; and inpatient and outpatient appeals. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). Documentation of compliance should be included with this report. The report is due thirty (30) Days after the end of the quarter;

**15.2.3 *Quarterly Utilization Report:*** The Contractor must submit quarterly the MHSA Program’s Quarterly Utilization Report that details the MHSA Program’s care utilization by type of service for both network and non-network authorizations, by type of treatment (inpatient, outpatient, ALOC) Applied Behavioral Analysis, collective bargaining unit, age of the member, type of Dependent, and any other category as requested by the Department. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). The report is due forty-five (45) Days after the end of each quarter;

**15.2.4 *Quarterly Network Access:*** The Contractor must submit a measurement of the Network access using GeoAccess reporting based on a “snapshot” of the network taken on the last day of each quarter. The report is due thirty (30) Days after the end of the quarter;

---

**15.2.5 *Quarterly Coordination of Benefit Report:*** The Contractor must submit a report that details the amount received as a result of coordinating benefits with other health plans including Medicare. The Contractor's report should identify the COB source, the Enrollee, the original claim amounts, and the amount received from the other insurance carriers or Medicare. The final format of this report will be determined by the Department in consultation with the Contractor. The report is due thirty (30) Days after the end of the quarter;

**15.2.6 *Quarterly Participating Agency Claims:*** The Contractor must submit a quarterly report that presents summary level claim information by Participating Agency. The Contractor shall submit this report using the data elements specified by the Department in Exhibit II.F (RFP), unless otherwise specified by the Department. The report is due thirty (30) Days after the end of the quarter; and

**15.2.7 *Quarterly Website Analytics Report:*** The Contractor must submit a quarterly report that provides comprehensive performance information for the Contractor's customized MHSa Program website as set forth in Section 6.5.5 of this Agreement. The report must include summarized and detailed website performance information and statistics, as well as proposed modifications to the layout and design of the website to improve communications with Enrollees. The report is due thirty (30) Days after the end of the quarter.

**15.2.8 *Quarterly Provider Audit Report:*** The Contractor must securely submit a provider audit report to the Department summarizing audits planned, initiated, in progress and completed, as well as audit findings, recoveries and any other enforcement action by the Contractor. The report is due thirty (30) Days after the end of each quarter.

### **15.3.0 Monthly Reports**

**15.3.1 *Monthly Report of Paid Claims by the Month Incurred:*** The Contractor must submit a monthly report that provides summarized paid claims by the month incurred. The Contractor must submit this report using data elements acceptable

---

to the Department. The report is due thirty (30) Days after the end of the month; and,

**15.3.2 MHSAs Program Customer Service Monthly Reports:** Each month the Contractor must submit a customer service report that measures the Contractor's customer service performance including call center availability, call center telephone response time, the telephone abandonment rate, the telephone blockage rate, claims processing, enrollment, and claims turnaround. The final format of these reports will be determined by the Department in consultation with the Contractor. The customer service report is due fifteen (15) Days after the end of the month. For the first two months of the Agreement, this report will be due on a weekly basis. After two months, the Department will re-examine the required frequency of this report and establish due dates with the Contractor.

#### **15.4.0 Monthly Periodic Claim File**

**15.4.1 Detailed Claim File Data:** The Contractor must transmit to the Department and/or its Decision Support System (DSS) Vendor a computerized file via secure transfer, containing detailed claim records using data elements acceptable to the Department to support all claims processed each reporting period and invoiced to the Department. The Department requires that all claims processed and/or adjusted be included in claims data. The file must facilitate reconciliation of claim payments to amounts charged to the MHSAs Program. The Contractor must securely forward the required claims data to the Department and/or its DSS vendor within fifteen (15) Days after the end of each month and submit a summarized report by month utilizing a format acceptable to the Department.

### **ARTICLE XVI: TRANSITION AND TERMINATION OF CONTRACT**

**16.1.0** The Contractor must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the MHSAs Program.

**16.1.1** The Contractor must, one hundred twenty (120) Days prior to the end of this Agreement, or within forty-five (45) Days of notification of termination, if this

---

Agreement is terminated prior to the end of its term, provide the Department with a detailed written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with:

**16.1.1a** Transition of Program data, including but not limited to a minimum of one year of historical Enrollee claim data including Providers' telephone numbers, names, addresses, zip codes and tax identification numbers, member name and address, pre-certification/prior authorization, approved - through dates, disability determination approved-through dates, detailed COB data, report formats, any exceptions that have been entered into the adjudication system on behalf of the Enrollee, as well as all Alternate Levels of Care authorizations, all Inpatient and Alternate Levels of Care open authorizations, all Single Case Agreements completed for Intensive Outpatient Programs, Partial Hospitalization Programs and Outpatient services, report of all psychological testing authorized post-termination, report of all Applied Behavioral Analysis services authorized post-termination, report of all Enrollees in Intensive Care Management or Case Management services, and other data the successor contractor may request and the Department approves during implementation of the Program by the successor contractor in the format acceptable to the Department. The transition or pre-certification/prior authorization files should include but not be limited to the following:

**16.1.1a(1)** Providing a test file to the successor contractor in advance of the implementation date to allow the successor contractor to address any potential formatting issues;

**16.1.1a(2)** Providing one or more pre-production files at least four 4 weeks prior to implementation that contains pre-certification/prior authorization approved - through dates and one year of claims history as specified by the Department working in conjunction with the successor contractor;

---

**16.1.1a(3)** Providing a second production file to the successor contractor by the close of business January 2nd (or 2 days after the Agreement terminates) that contains all pre-certification/prior authorization approved – through dates specified by the Department working in conjunction with the successor contractor.

**16.1.2** Within fifteen (15) Business Days from receipt of the Contractor’s proposed Transition Plan, the Department shall either approve the Transition Plan or notify the Contractor, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.

**16.1.3** Within fifteen (15) Business Days from the Contractor’s receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department.

**16.1.4** The Contractor shall be responsible for transitioning the MHSA Program in accordance with the approved Transition Plan.

**16.1.5** To ensure that the transition to a successor contractor provides Enrollees with uninterrupted access to MHSA Plan benefits and associated customer services, and to enable the Department to effectively manage the Agreement, the Contractor is required to provide Contractor-related obligations and deliverables to the Program through the final financial settlement of the Agreement, including but not limited to:

**16.1.5a** Provide all Contractor-provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to: paying (subject to section 14.1.1 of the Agreement) network claims, manual submit claims including but not limited to: Medicaid, out-of-network claims, foreign claims, in-network claims, COB claims, and Medicare; reimbursing late filed claims if warranted; repaying or recovering monies on behalf of the Program for Medicare

---

---

claims; and continuing to provide updates on pending litigation and settlements that the Contractor or the NYS Attorney General's Office has/may file on behalf of the Program. In addition, the Contractor must continue to provide the Department access to any online claims processing data and history and online reporting systems through the final settlement dates, unless the Department notifies the Contractor that access may be ended at an earlier date;

**16.1.5b** Complete all reports required in Article XV of this Agreement;

**16.1.5c** Provide the MHSA Program with sufficient staffing in order to address State audit requests and reports in a timely manner;

**16.1.5d** Agree to fully cooperate with all Department or Office of State Comptroller (OSC) audits consistent with the requirements of Article XVII of the Agreement and Appendices A and B;

**16.1.5e** Perform timely reviews and responses to audit findings submitted by the Department and the Comptroller's audit unit in accordance with the requirements set forth in Article XVII "Audit Authority" of the Agreement and Appendices A and B; and

**16.1.5f** Remit reimbursement due the Program within fifteen (15) days upon final audit determination consistent with the process specified in Article XVII, "Audit Authority" and Article XIV "Payments/credits) to/from the Contractor" of the Agreement and Appendices A and B.

**16.1.6** The Contractor is required to reach agreement with the Department on receiving and applying enrollment updates, keeping dedicated phone lines open with adequate available staffing to provide customer service at the same levels provided prior to termination of the Agreement, adjusting phone scripts, and transferring calls to the successor contractor's lines.

- 
- 16.1.7** The Contractor must work cooperatively with the successor contractor and the Department to develop an approach to ensure a smooth transition for members who must change Providers to maintain the network level of benefits.
- 16.1.8** The Contractor must prepare, on a case by case basis, a plan to extend and manage the care of high risk Enrollees who are nearing the end of a course of treatment beyond the transition period.
- 16.1.9** The Contractor must continue to clinically manage and pay for Covered Services for Enrollees determined to be Totally Disabled on the last day of the Contract, for ninety (90) Days or until the disability ends, whichever occurs first.
- 16.1.10** The Contractor must continue to manage and pay for Covered Services for Enrollees who are confined on or before December 31, 2014 (or the last day of the optional extension period) until the earlier of the step-down of care or midnight of the 90<sup>th</sup> day subsequent to December 31, 2014 (or the last day of the optional extension period).
- 16.1.11** If the Contractor does not meet the Transition Plan requirements in the time frame stated above, the Contractor **will permanently forfeit** [REDACTED] of all Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirement(s) to the date the Transition Plan requirement(s) are completed to the satisfaction of the Department.

## **ARTICLE XVII: AUDIT AUTHORITY**

In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

- 17.1.0** The Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of Program services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;

- 
- 
- 17.2.0** Such audit activity may include, but not necessarily be limited to, the following activities:
- 17.2.1** Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Enrollee or Dependent eligibility and application of various Department program administrative features (e.g., dependent survivor benefits, reasonable adjudication of disabled dependent status);
  - 17.2.2** Comparison of the information in the Contractor's enrollment file to that on the enrollment reports issued to the Contractor by the Department; and
  - 17.2.3** Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the Department in accordance with Article XV "Reports and Claim Files" of this Agreement.
- 17.3.0** The Contractor shall maintain and make available documentary evidence necessary to perform the reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, key subcontracts, provider agreements, and correspondence;
- 17.4.0** The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at the Department's discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department;
- 17.5.0** The Contractor shall support audits conducted by the Department, Office of the State Comptroller or any designee of these agencies, as follows, including but not limited to:
- 17.5.1** Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of the Agreement;



---

**17.5.2** The capability and contractual right of the State to effectively audit the MHSA Program’s Provider Network, including the use of statistical sampling audit techniques and the extrapolation of errors; and

**17.5.3** Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to protected health information and all other confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC’s audit unit in accordance with the requirements of Article XVII “Audit Authority” in this Agreement. Such audits may include, but are not limited to both electronically submitted and paper claims. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. The Contractor shall facilitate audits of Network Providers, including on-site audits, as requested by the Department and/or OSC;

**17.6.0** The Contractor shall, at the Department’s request, and in a time period specified by the Department, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;

**17.7.0** The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within 30 days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit

---

---

recommendation shall be subject to the Dispute Resolution provision set forth in Appendix B of this Agreement;

**17.8.0** If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the Department within ten (10) Days after receipt of such audit report by the Contractor; and

**17.9.0** The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the OSC as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All Department Contracts.

#### **ARTICLE XVIII: CONFIDENTIALITY**

In addition to the Confidentiality requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

**18.1.0** All claims and enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Section VII of this Agreement, and for providing the Department with material and information as may be specified elsewhere in this Agreement;

**18.2.0** Except as directed by a court of competent jurisdiction located in the State of New York, or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants or Key Subcontractors either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement;

- 
- 18.3.0** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors agree to comply, during the performance of the Agreement, with all applicable Federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Protection Law (New York Public Officer’s Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Enrollees and Dependents;
- 18.4.0** The Contractor shall be responsible for ensuring that any agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors contains a provision that strictly conforms to the various confidentiality provisions of this Agreement; and
- 18.5.0** The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under this Agreement, including, but not limited to, requests for any material and information provided by the Department, except as required by Key Subcontractors solely for the purpose of fulfilling the Contractor’s obligations under this Agreement or as required by law.

**ARTICLE XIX: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

- 19.1.0** For purposes of this Article, the term “Protected Health Information” (“PHI”) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department in Contractor’s capacity as a business associate. All PHI received or created by the Contractor in Contractor’s capacity as a business associate and

---

as a consequence of its performance under this Agreement is referred to herein collectively as “NYSHIP’s PHI.”

**19.2.0** The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA). The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the group health plans identified herein as “covered entities” as a consequence of the Contractor’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Contractor’s performance under this Agreement, and that the Contractor’s provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor’s disclosure to the Department of individually identifiable health information as a consequence of such services performed under this Agreement. To the extent Contractor acts as a HIPAA “business associate” of the group health plans identified as “covered entities” in this Section 19.2.0, Contractor shall adhere to the requirements as set forth in Article XIX of this Agreement.

**19.3.0 *Permitted Uses and Disclosures of NYSHIP’s PHI:*** The Contractor may create, receive, maintain, access, transmit, use and/or disclose NYSHIP’s PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use and/or disclose NYSHIP’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose NYSHIP’s PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor’s proper management and administration or to carry out the Contractor’s legal

---

responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

**19.4.0 *Nondisclosure of NYSHIP's PHI:*** The Contractor shall not create, receive, maintain, access, transmit, use or further disclose NYSHIP's PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. The Contractor shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.

**19.5.0 *Safeguards:*** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of NYSHIP's PHI otherwise than as provided for by this Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPAA Security Rule at 45 C.F.R. §§164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 C.F.R. § 164.316, appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, accesses or that it transmits on behalf of the Department pursuant to this Agreement to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed or transmitted by a group health plan identified herein.

**19.6.0 *Breach Notification:***

**19.6.1 *Reporting:*** The Contractor shall report to the Department any breach of unsecured PHI, including any access to, use or disclosure of NYSHIP's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. An acquisition, access, transmission, use or disclosure of

---

NYSHIP's PHI that is unsecured in a manner not permitted by HIPAA or this Agreement is presumed to be a breach unless the Contractor demonstrates that there is a low probability that NYSHIP's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of NYSHIP's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used NYSHIP's PHI or to whom the disclosure was made; (iii) whether NYSHIP's PHI was actually acquired or viewed; and (iv) the extent to which the risk to NYSHIP's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it becomes aware, subject to Section 19.6.5, below. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) Business Days of the date the Contractor becomes aware of the event for which reporting is required by this Section 19.6.1.

**19.6.2 Required Information:** The Contractor shall provide the following information to the Department within ten (10) Business Days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) Days from the date of discovery:

**19.6.2a** The date of the breach incident;

**19.6.2b** The date of the discovery of the breach;

**19.6.2c** A brief description of what happened;

**19.6.2d** A description of the types of unsecured PHI that were involved;

---

**19.6.2e** Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

**19.6.2f** A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

**19.6.2g** Any other details necessary to complete an assessment of the risk of harm to the individual.

**19.6.3** The Department will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary of the U.S. Department of Health and Human Services and the media, as required by 45 CFR Part 164.

**19.6.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

**19.6.5** For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI.

**19.6.6** The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.

**19.7.0 Associate’s Agents:** The Contractor shall require all of its agents or Key Subcontractors to whom it provides NYSHIP’s PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the

---

access, use, and disclosure of PHI that apply to the Contractor with respect to NYSHIP's PHI under this Agreement.

**19.8.0 *Availability of Information to the Department:*** The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of NYSHIP's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. Contractor must provide the Department with access to NYSHIP's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if NYSHIP's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.

**19.9.0 *Amendment of NYSHIP's PHI:*** The Contractor shall make NYSHIP's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to NYSHIP's PHI into copies of NYSHIP's PHI as maintained by the Contractor.

**19.10.0 *Internal Practices:*** The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of NYSHIP's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.

**19.11.0 *Termination:***



---

**19.11.1** This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.

**19.11.2 *Disposition of NYSHIP's PHI:*** At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of NYSHIP's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of NYSHIP's PHI infeasible.

**19.12.0 *Indemnification:*** The Contractor agrees to indemnify, defend and hold harmless the State, the group health plans identified herein, and the Department and its respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, Key Subcontractors, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor's acts or omissions hereunder. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

**19.13.0 *Miscellaneous:***

**19.13.1 *Amendments:*** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized

---

---

representatives of the Parties and approved by the NYS Attorney General's Office and NYS Office of the State Comptroller. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of HIPAA and its implementing regulations.

**19.13.2 *Survival:*** The respective rights and obligations of Business Associate and the "covered entities" identified herein under HIPAA and as set forth in this Article XIX shall survive termination of this Agreement.

**19.13.3 *Regulatory References:*** Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified, as of their respective compliance dates.

**19.13.4 *Interpretation:*** Any ambiguity in this Agreement shall be resolved to permit covered entities to comply with HIPAA.

## **ARTICLE XX: NOTICES**

**20.1.0** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

**20.1.1** via certified or registered United States mail, return receipt requested;

**20.1.2** by facsimile transmission;

**20.1.3** by personal delivery;

**20.1.4** by expedited delivery service; or

**20.1.5** by e-mail.

Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

**State of New York Department of Civil Service**

Name: Robert W. DuBois

Agreement C000617

---

Title: Director, Employee Benefits Division  
Address: Employee Benefits Division, Room 1106, Albany, NY 12239  
Telephone Number: [REDACTED]  
Facsimile Number: 518-473-3292  
E-Mail Address: [REDACTED]

**ValueOptions, Inc.**

Name: Scott Tabakin  
Title: Executive Vice President and Chief Financial Officer  
Address: 240 Corporate Boulevard, Norfolk, VA 23502  
Telephone Number: [REDACTED]  
Facsimile Number: 757-892-5772  
E-Mail Address: [REDACTED]

With a copy to:

Name: Daniel Risku, Esq.  
Senior Vice President and General Counsel  
Telephone Number: [REDACTED]  
Facsimile Number: 757-893-8677  
E-Mail Address: [REDACTED]

**20.2.0** Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

**20.3.0** The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**ARTICLE XXI: IRAN DIVESTMENT ACT**

**21.1.0** As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services

---

(OGS) was charged with the responsibility to develop a list (Prohibited Entities List) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted to the OGS website on August 10, 2012.

**21.2.0** By entering into this Contract, Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (Prohibited Entities List) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that after should it seek to renew or extend the Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of the Contract.

**21.3.0** During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of the Contract, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

## **ARTICLE XXII: VENDOR RESPONSIBILITY**

---

---

**22.1.0** The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

**22.2.0** The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

**22.3.0** Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

**22.4.0** Termination (for Non-Responsibility): Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the Department or his or her designee to be non-responsible. In such an event, the Commissioner or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue legal or equitable remedies for breach.

(The remainder of this page was intentionally left blank)

Contractor: ValueOptions, Inc. \_\_\_\_\_

Contract Number: C000617 \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties hereto have hereunto signed this Agreement on the day and year appearing opposite their respective signatures.

Agency Certification: "In addition to the acceptance of this Agreement, I also certify that original copies of this signature page shall be attached to all other exact copies of this Agreement."

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

Date: 12/27/13 By: \_\_\_\_\_  
Name: Jerry Boone  
Title: Commissioner

**VALUEOPTIONS, INC.**

Date: 12/26/13 By: \_\_\_\_\_  
Name: Daniel M. Risku  
Title: Executive Vice President & General Counsel

STATE OF Virginia ) ss:  
COUNTY OF Norfolk

On the 26<sup>th</sup> day of December, 2013, before me personally came Daniel M. Risku, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the EVP + General Counsel of ValueOptions, Inc. the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

My commission expires: 8/31/2017

\_\_\_\_\_  
NOTARY PUBLIC



Approved as to Form: \_\_\_\_\_  
ERIC SCHNEIDERMAN  
ATTORNEY GENERAL  
By: \_\_\_\_\_  
Date: \_\_\_\_\_  
LORRAINE J. HENNE  
PRINCIPAL ATTORNEY  
Agreement C000617

Approved: \_\_\_\_\_  
THOMAS P. DINAPOLI  
COMPTROLLER  
By: \_\_\_\_\_  
Date: \_\_\_\_\_  
**APPROVED**  
DEPT. OF AUDIT & CONTROL  
DEC 30 2013  
FOR THE STATE COMPTROLLER

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7



## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**APPENDIX B**  
**STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS**

**TABLE OF CONTENTS**

1.	INTEGRATION .....	2
2.	EXECUTORY PROVISION .....	2
3.	CHOICE OF LAW .....	2
4.	DISPUTE RESOLUTION .....	2
5.	WAIVER OF BREACH .....	2
6.	NEW YORK STATE REQUIREMENTS .....	2
7.	OUTSIDE OF SCOPE .....	3
8.	NON-ASSIGNABILITY .....	3
9.	NOTIFICATION .....	3
10.	INDEMNIFICATION.....	3
11.	PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT .....	4
12.	DATE/TIME WARRANTY.....	4-5
13.	VIRUS WARRANTY.....	5
14.	TITLE AND OWNERSHIP WARRANTY .....	5
15.	USE RESTRICTIONS AND INTELLECTUAL PROPERTY.....	5
16.	OWNERSHIP/TITLE TO PRODUCT DELIVERABLES .....	5-7
17.	FORCE MAJEURE .....	7
18.	TIME OF THE ESSENCE.....	7
19.	RIGHTS AND REMEDIES.....	7
20.	FEDERAL AND STATE COMPLIANCE.....	7
21.	TAXES.....	8
22.	INDEPENDENT CONTRACTOR.....	8
23.	NO THIRD PARTY BENEFICIARIES .....	8
24.	HEADINGS OR CAPTIONS .....	8
25.	PARTIAL INVALIDITY .....	8
26.	CONFLICT OF INTEREST .....	8-9
27.	AUDIT AUTHORITY .....	9
28.	CONFIDENTIALITY .....	9
29.	INFORMATION SECURITY REQUIREMENTS .....	9-10
30.	NONDISCLOSURE OF CONFIDENTIAL INFORMATION .....	10
31.	FREEDOM OF INFORMATION LAW.....	11
32.	TERMINATION OF AGREEMENT .....	11-12
33.	CONTRACTOR PERSONNEL.....	12
34.	OPERATIONAL CONTACTS.....	12-13
35.	SUBCONTRACTING.....	13
36.	PUBLICITY AND COMMUNICATIONS .....	14
37.	CONSULTANT DISCLOSURE REQUIREMENTS.....	14
38.	PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-J AND 139-K.....	14
39.	VENDOR RESPONSIBILITY.....	14
40.	TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES .....	15-15
41.	CONTRACT PAYMENT .....	15

**1. INTEGRATION**

The contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as the Agreement. The Agreement, including all Exhibits and Appendices, including this Appendix B, copies of which are attached thereto, and incorporated therein by reference, constitutes the entire agreement between the Parties for the purpose of the fulfillment of Program Services or Project Services. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

All statements made by the Department shall be deemed to be representations and not warranties.

**2. EXECUTORY PROVISION**

Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that, if the Agreement is for fifty thousand dollars or more, it is wholly executory until and unless approved by the Comptroller of the State of New York.

**3. CHOICE OF LAW**

The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York, except where the federal supremacy clause requires otherwise. The Contractor shall be required to bring any legal proceeding against the Department arising from the Agreement in New York State courts located in Albany County.

**4. DISPUTE RESOLUTION**

Except as otherwise provided in the Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Agreement and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the President shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the President a written appeal. In the event of an appeal, the President shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the President shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules. Pending final decision of any Article 78 proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

**5. WAIVER OF BREACH**

No term or provision of the Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Agreement shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

**6. NEW YORK STATE REQUIREMENTS**

The Contractor acknowledges that it is bound by the terms of Appendix A, Standard Clauses For All New York State Contracts, which is attached and incorporated by reference to the Agreement.

**7. OUTSIDE OF SCOPE**

The Contractor agrees that any and all work performed outside the scope of the Agreement shall be deemed to be gratuitous and not subject to any charge, cost or payment of any kind.

**8. NON-ASSIGNABILITY**

Neither the rights nor the obligations of the Contractor under the Agreement may be conveyed, assigned, delegated, or otherwise transferred in any manner whatsoever by the Contractor, either in whole or in part, without the prior written approval of the Department.

**9. NOTIFICATION**

All notices permitted or required by the Agreement to be given by one Party to the other shall be in writing and shall be transmitted either (1) via certified or registered mail, return receipt requested; (2) by facsimile transmission; (3) by personal delivery; (4) by expedited delivery service; or (5) by e-mail.

**10. INDEMNIFICATION**

The Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the Agreement. Furthermore, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the Agreement, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort



(including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement.

**11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT**

The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

**12. DATE/TIME WARRANTY**

The Contractor warrants that products furnished pursuant to the Agreement shall be able to accurately process, date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products and/or services must perform as a package or system, this warranty shall apply to the products and/or services as a system.

Where the Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure, or error due to the inaccuracy of the Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. The Contractor shall be responsible for damages resulting from any delays,

errors, or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the Agreement through a) ninety (90) days or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the Agreement for breach of warranty.

**13. VIRUS WARRANTY**

Product contains no viruses, either known to the Contractor or which reasonably should have been known to the Contractor exercising due diligence. The Contractor is not responsible for viruses introduced at the Department's site.

**14. TITLE AND OWNERSHIP WARRANTY**

The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Product(s) transferred to the Department under the Agreement. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Department may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

**15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY**

The Parties agree that all work by the Contractor for the Department is intended as work for hire. The Parties agree that the Contractor's work is specifically ordered and commissioned for use as contributions to a collective work, or is other such work as specified by section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York and the Department. Furthermore, the Department and the Contractor agree that the State of New York and the Department are the owners of all copyrights regarding the work. The Contractor warrants to the State of New York and the Department that the Contractor, and all of its subcontractors and their employees, who have been, or may be used in regard to the Agreement, forfeits all past or future claims of title or ownership to the work produced.

Materials such as forms and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

**16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES**

For purposes of this Article, the term "Department" is understood to mean the Department acting on behalf of the State.

**(A) Definitions**

1. Product(s):

A deliverable furnished under the Agreement by or through the Contractor, including existing and custom Product(s), including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); c) third party software; d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

2. Existing Product(s):  
Tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.
3. Custom Product(s):  
Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

**(B) Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the Department to perform services detailed in the Agreement. Unless otherwise specified in writing in the Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Product(s):
  - a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.
  - b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Product(s):  
Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge,

skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value as determined by the Parties at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

3. Documentation, Data & Reports

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and other documentation prepared or developed pursuant to the Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

**17. FORCE MAJEURE**

Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

**18. TIME OF THE ESSENCE**

The Department and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

**19. RIGHTS AND REMEDIES**

The rights, duties and remedies set forth in the Agreement shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

**20. FEDERAL AND STATE COMPLIANCE**

The Contractor shall ensure that its employment practices comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

The Contractor shall ensure compliance with the Americans With Disabilities Act (42 USC §2101 et. seq.) such that programs and services provided during the course of performance

of the Agreement shall be accessible under Title II of the Americans With Disabilities Act and as otherwise applicable under the Americans With Disabilities Act.

**21. TAXES**

It shall be understood that the Department, as an agency of the State of New York, is not liable for the payment of any sales, use, excise, or other form of tax however designated, levied or imposed, and shall agree to reimburse the Contractor for same only if taxes would have been incurred through the Department's normal business operations.

**22. INDEPENDENT CONTRACTOR**

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any sub-contractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Agreement, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

**23. NO THIRD PARTY BENEFICIARIES**

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

**24. HEADINGS OR CAPTIONS**

The headings or captions contained within the Agreement are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Agreement or any provisions thereof.

**25. PARTIAL INVALIDITY**

Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable federal and State laws, rules, and regulations, policies and/or guidelines now or hereafter in effect. If any term or provision of the Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, the Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken.

**26. CONFLICT OF INTEREST**

The Contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to sections 73 and 74, as amended, with regard to ethical standards applicable to State employees, and particularly POL sections 73(8)(a)(i) and (ii) regarding post-employment restrictions affecting former State employees. Additionally, the Contractor shall ensure that no violation of these provisions will occur by reason of the Contractor's proposal for or negotiation and execution of the Agreement or in its delivery of services pursuant to the Agreement. If, during the term of the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Department thereafter determine that such employment is inconsistent with State law; the Department shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be canceled. Failure to

comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law. The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 540 Broadway, Albany, NY 12207 (518) 408-3976.

**27. AUDIT AUTHORITY**

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Program Services (or Project Services) in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement, and the review of any and all activities relating to the Contractor's performance and administration of the Agreement.

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Agreement - Standards Clauses for All New York State Contracts.

**28. CONFIDENTIALITY**

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that conforms strictly to the provisions of this Article.

**29. INFORMATION SECURITY REQUIREMENTS**

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the Agreement (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA),

Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination (CSCIC), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at:  
<http://www.cscic.state.ny.us/security/securitybreach>

Contemporaneous with the execution of the Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the Agreement. This request may be waived by the Department in its sole discretion.

### **30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access in the course of the Contractor's performance under the Agreement. For purposes of the Agreement, all State information of which the Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the Department shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- (c) information that is independently developed by the Contractor without use of confidential information of the State.

The Contractor shall hold the State and the Department harmless from any loss or damage to the State or the Department resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

The Contractor shall provide for its officers, agents, employees, and subcontractors to acknowledge and execute a nondisclosure agreement containing substantially the terms described in this Article, if requested to do so by the Department or the State.

This representation shall survive termination of the Agreement.

**31. FREEDOM OF INFORMATION LAW**

Disclosure of information and material provided to the Department by the Contractor in the course of the Contractor's performance under the Agreement shall be permitted consistent with the laws of the State of New York, and specifically the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law. The Department shall take reasonable steps to protect from public disclosure any of the records relating to the Contractor's performance under the Agreement that otherwise are exempt from disclosure under FOIL.

If the Contractor believes that any information or material provided to the Department constitutes trade secret information that should be exempted from FOIL disclosure, the Contractor must, at the time of the materials' submission, request the exemption in writing, specifically identifying the material by page number, line, or other appropriate designation, and provide a particularized explanation as to why the material constitutes trade secret information and how the disclosure of the identified information would cause substantial injury to the Contractor's competitive position. The material sought to be protected from disclosure must be clearly marked in yellow highlighter, on a duplicate copy of the submission and may be provided in hardcopy or on a CD. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this Article.

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

**32. TERMINATION OF AGREEMENT**

In addition to any termination provisions specified elsewhere in the Agreement, the following provisions also shall apply:

The Agreement may be terminated by mutual written agreement of the Parties.

The Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein, provided that the Department shall give the Contractor written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) Business Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor for actual damages incurred and for all reasonable additional costs incurred in reassigning the Agreement.

The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery.



The Agreement may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination or received either orally or in writing by the Contractor from the Department.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

Upon termination of the Agreement each Party shall, if applicable, return to the other all papers, materials, and other properties of the other Party held by each for purposes of performance under the Agreement. In addition, each Party shall assist the other Party in orderly termination of the Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary to ensure the orderly administration of the State program.

### **33. CONTRACTOR PERSONNEL**

The Contractor shall designate an Account Executive, who shall be the contact person for all matters arising under the Agreement.

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of the Agreement and with all applicable federal and State laws and regulations.

The Contractor is required to commit key personnel for the administration of all aspects of the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

The Contractor shall notify the Department in writing of any changes in the key personnel designated for performance of the Agreement. This shall include any changes in the personnel designated to bind the Contractor.

The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The Department shall not exercise the authority unreasonably. The Contractor agrees to replace any employees so reassigned or canceled with an employee of equal or better qualifications. If the Department exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

### **34. OPERATIONAL CONTACTS**

The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an organization capable of delivering Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which Program Services are to be delivered pursuant to the Agreement. The Contractor also shall maintain operations, financial and legal staff that shall be directly available to the Department's operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the Department and the Contractor.

The Contractor acknowledges and agrees that no aspect of the Contractor's performance under the Agreement is contingent upon Department personnel or the availability of Department resources, with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring the Department approval. With respect to such approval, the Department shall act promptly and in good faith.

The Contractor must cooperate fully with any other contractors who may be engaged by the Department relative to the Agreement.

The Contractor must ensure that all contacts by the Contractor personnel with other New York State agencies, external organizations (Federal Agencies, Unions, etc.) which result in any charge, cost or payment of any kind, must receive prior written authorization from the Department's Contract Manager.

### **35. SUBCONTRACTING**

If allowed in the solicitation instrument (e.g., Request for Proposal, Invitation for Bids, etc.) that results in the Agreement, the Contractor may arrange for specified portion(s) of its responsibilities under the Agreement to be subcontracted to a Key Subcontractor(s). A "Key Subcontractor" means that vendor(s) with whom the Contractor subcontracts to provide any portion of Program Services. If the Contractor determines to subcontract a portion(s) of Program Services, the Key Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Agreement must be fully explained by the Contractor to the Department. The Contractor retains ultimate responsibility for all Program Services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Agreement including, but not be limited to, the body of the Agreement, Appendix A - Standard Clauses For All New York State Contracts, Appendix B - Standard Clauses for All Department Contracts and if applicable as determined by the Department, Appendix C - Third Party Connection and Data Exchange Agreement. Unless waived in writing by the Department, all subcontracts between the Contractor and a Key Subcontractor shall expressly name the State of New York, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract with a Key Subcontractor, as well as any amendments to said subcontract(s), and this right shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the Key Subcontractor or proposed Key Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and Key Subcontractor(s) is in compliance with all of the provision of this Article and any subcontract provisions contained in the Agreement. In addition to other remedies allowed by law, the Department reserves the right to terminate the Agreement for cause if an executed subcontract does not contain all of the provisions/statements stipulated above. If during the term of the Agreement, any executed subcontract between the Contractor and a Key Subcontractor is amended, the Contractor shall, within 30 calendar days of such amendment, provide a copy to the Department.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Key Subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

**36. PUBLICITY AND COMMUNICATIONS**

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**37. CONSULTANT DISCLOSURE REQUIREMENTS**

Unless directed otherwise by the Department, the Contractor shall demonstrate its compliance with Chapter 10 of the Laws of 2006 throughout the term of the Agreement by submitting to the Department and to the Office of the State Comptroller a "State Consultant Services - Contractor's Annual Employment Report" for each State Fiscal Year. Such report shall be due no later than May 15<sup>th</sup> of each year following the end of the State Fiscal Year being reported. Such report shall be required of any contract that includes services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall conform with Bulletin No. G-226 – Form B as issued by the Office of the State Comptroller. The report must be submitted to the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> floor, Albany, NY 12236, ATTN: Consultant Reporting; and to the Department's Contract Manager.

**38. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-j AND 139-k**

The Contractor certifies that all information that it has provided or will provide to the Department pursuant to State Finance Law sections 139-j and 139-k is complete, true, and accurate, including but not limited to information regarding prior determinations of non-responsibility within the past four years based upon (i) impermissible contacts of other violations of SFL section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

The Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with SFL sections 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its right to terminate the Agreement by providing written notification to the Contractor in accordance with Article 9 of this Appendix B.

**39. VENDOR RESPONSIBILITY**

The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

**40. TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES**

In the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA with the Department and a properly completed Form ST-220-TD with the Department of Taxation & Finance before the Agreement may take effect.

In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed; further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

**41. CONTRACT PAYMENT**

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under the Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

*May 2011*



State of New York  
Department of Civil Service  
Albany, New York 12239

**ADMINISTRATIVE SERVICES DIVISION**  
**Third Party Connection and Data Exchange Agreement**

ADM-125 (4/06)

Appendix C  
Page 1 of 16

**THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**

**THIS AGREEMENT** (the "Agreement") by and between the NYS Department of Civil Service ("DCS"), with principal offices in Albany, NY 12239, and

ValueOptions, Inc.

with principal offices at

240 Corporate Boulevard
Norfolk, Virginia 23502

(hereinafter "Third Party"), is entered into as of the date last written below ("the Effective Date").

This Agreement consists of this signature page and the following attachments incorporated by reference:

1. Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions
2. Attachment 2: Third Party Connection and Data Exchange Request Requirements Document
3. Attachment 3: Third Party Acceptable Use Policy and Agreement
4. Attachment 4: DCS Equipment Loan Agreement (Applicable:  Yes  No)

This Agreement may only be modified by a written document executed by the parties hereto. Any disputes arising out of or in connection with this Agreement shall be governed by New York State law without regard to choice of law provisions.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

<i>Third Party Name:</i> ValueOptions, Inc.	<i>NYS Department of Civil Service (DCS)</i>
<i>Authorized Signature</i> 	<i>Authorized Signature</i> 
<i>Name (Print)</i> Izhar Ahmed Mujaddidi, VP IT Security Services	<i>Name (Print)</i> DEIRDRE A. TAYLOR
<i>Date</i> 12/2/2013	<i>Date</i> 12.27.13



## THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

### ATTACHMENT 1 – SECURITY REQUIREMENTS

#### 1. *Right to Use Connection*

Third Party may only use the connection and the information obtained from DCS for business purposes as outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2).

#### 2. *Data Exchange*

2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.

2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

#### 3. *Network Security*

3.1 Third Party will allow only its own employees approved in advance by DCS (“Third Party Users”) to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS’ request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.

3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party’s employ or no longer requires access to the connection or DCS-owned Equipment.

3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party’s use of the connection (and Third Party’s use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party’s business records and data are protected against improper access, use, loss alteration or destruction.

3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.


3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.



- 3.6 Remote Access - Using the DCS-provided remote access software, Third Party will connect via an Internet browser. The account may be disabled until usage is required and controls are placed and managed by DCS. Third Party will be required to follow procedures to enable the account for each use.
- 3.7 Third Party Connections will be audited. All remote access user accounts for Third Parties will be given an expiration time. Renewals must be requested by Third Party and approved by the Department Sponsor. Obsolete Third Party connections will be terminated.
- 3.8 Software versions on all Third Party computers that connect to the DCS network must be versions that are currently supported by the software manufacturer, and all available security updates and hot fixes for that software must be applied in a timely fashion. Software and firmware for all Third Party networking equipment that is part of the connection to the DCS network must be kept up to date, especially with patches that fix security vulnerabilities.
- 3.9 Anti-virus software and firewalls must be installed and enabled at all times on DCS-owned computers and on Third Party computers that connect to the DCS network. Additionally, virus definition files must be kept up to date.
- 3.10 In no case may a Third Party Connection to DCS be used as an Internet Connection for Third Party or for a Third Party User.

**4. Notifications**

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.
- 4.2 Any notices required by this Agreement shall be given in hand, sent by first class mail, or via facsimile to the applicable address set forth below.

Third Party Name: ValueOptions, Inc.	NYS Department of Civil Service Empire State Plaza, Building 1 Albany, New York 12239
Address: 240 Corporate Boulevard Norfolk, Virginia 23502	
Attention: Doug Thompson 	Attention: Tricia Casella-Evans



**5. *Citizen Notifications***

If Third Party maintains "identifying personal information" on behalf of the Department and such information is compromised, Third Party shall notify the Department immediately that the information has been compromised, the circumstances under which the information was compromised, and the measures undertaken by Third Party to address those circumstances and to otherwise mitigate the effects of the compromise. If encrypted data is compromised along with the corresponding encryption key and encryption software, the data shall be considered unencrypted and the information will be considered compromised through unauthorized access. If the Department requests Third Party to do so, Third Party shall notify the persons whose identifying information was compromised. Such notification shall be communicated via postal service or email, as directed by the Department, and shall otherwise be executed in accordance with the Department's direction. Notification shall be delayed if a law enforcement agency determines that such notification may impede a criminal investigation. For the purpose of this section, "identifying personal information" shall be any information concerning an individual which, because of name, number, symbol, mark or other identifier in combination with any of the following, is unencrypted: (1) Social Security Number; or (2) driver's license number; or (3) financial account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account; or (4) password which would permit access to the individual's account.

**6. *Payment of Costs***

Each Party will be responsible for all costs incurred by that Party under this Agreement, including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the connection.

**7. *Confidentiality***

7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.

7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.

7.3 Unencrypted DCS information must not be transmitted over email.

7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the DCS Help Desk any security incident of which it becomes aware.





Appendix C

**8. *Third Party Users***

- 8.1 Third Party must require that each Third Party User executes a Third Party Acceptable Use Policy and Agreement (Attachment 3). Third Party must ensure that DCS is notified by fax or mail when the user base changes, following the specifications in the Third Party Connection & Data Exchange Agreement.
- 8.2 All aspects of Third Party connections within DCS control may be monitored by the appropriate DCS support group and/or the DCS Information Security Officer. Any unauthorized use or change to devices will be investigated immediately.
- 8.3 All Third Party Connections will be reviewed on a regular basis and information regarding specific Third Party connection will be updated as necessary. Obsolete Third Party connections will be terminated.

**9. *DCS-owned Equipment***

- 9.1 DCS may, in DCS' sole discretion, loan to Third Party certain equipment and/or software for use on Third Party premises (the DCS-owned Equipment) under the terms of the DCS Equipment Loan Agreement set forth in Attachment 4. DCS-owned equipment will only be configured for TCP/IP, and will be used solely by Third Party on Third Party's premises or other locations authorized by DCS for the purposes set forth in this Agreement. DCS is responsible for ensuring that it has the right under applicable software licenses to permit third party use.
- 9.2 Third Party may modify the configuration of the DCS-owned equipment only after notification and approval in writing by authorized DCS personnel.
- 9.3 Third Party will not change or delete any passwords set on DCS-owned equipment without prior approval by authorized DCS personnel. Promptly upon any such change, Third Party shall provide DCS with such changed password.

**10. *Term, Termination and Survival***

- 10.1 This Agreement will remain in effect until terminated by either Party, but in no event prior to the termination or expiration of any contract or agreement between the Parties for the purchase of goods or services that provides the business purpose for the exchange of data between the Parties, unless both Parties mutually agree to so terminate this Agreement.
- 10.2 Upon termination, Third Party shall return all tangible DCS data to DCS within a timeframe specified by DCS for that purpose, and further shall certify in writing to DCS that all other DCS data in whatever form has been destroyed. Additionally, any DCS-owned equipment and/or software shall be promptly returned to DCS at Third Party's expense.
- 10.3 Notwithstanding the above, the Parties' obligations to safeguard the confidentiality of the data subject to this Agreement shall survive the termination of this Agreement, and shall bind the Parties' employees, subcontractors, agents, heirs, successors and assigns.



**11. Severability**

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

**12. Waiver**

The failure of any Party to enforce any of the provisions of this Agreement will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

**13. Assignment**

Third Party may not assign this Agreement, in whole or in part, without the prior written consent from DCS. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement is for the benefit of and will be binding upon the parties' respective successors and permitted assigns.

**14. Force Majeure**

Neither Party will be liable for any failure to perform its obligations if such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any data.

**15. Partial Invalidity**

If this Agreement is entered into as a consequence of Third Party's provision of goods or services to DCS pursuant to a contract or other written agreement, that Agreement supersedes this Agreement to the extent the agreements' provisions may be inconsistent.



**THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**

**ATTACHMENT 2 – REQUEST REQUIREMENTS**

In accordance with the DCS *Third Party Connection and Data Exchange Policy*, all requests for Third Party connections and data exchanges must be accompanied by this completed requirements document. This document should be completed by the DCS person or group requesting the Third Party connection and/or data exchange. The DCS Department Sponsor must be the Director of the Division whose business requires the Third Party connection and/or data exchange. DCS Divisions are encouraged to work with their IRM Liaison to complete the information in this document.

**Part 1 – Business Justification**

**A. DCS Sponsor (Division Director)**

Name: Robert DuBois

Division: Employee Benefits Division

Office Location:

NYS Department of Civil Service

Empire State Plaza, Core 1

Albany, NY 12239

Email Address:

Phone Number:

[Redacted]

**Back-up Point of Contact: (Data Custodian)**

Name: Barbara Vaughn

Division: Employee Benefits Division

Office Location:

NYS Department of Civil Service

Empire State Plaza, Core 1

Albany, New York 12239

Phone Number:

[Redacted]

Email Address:

[Redacted]

**B. Business Reason for Connection (To be completed by Sponsor)**

State the purpose of establishing the connection and the purpose of the data transmission. Specify the business needs of the proposed connection. Use additional sheets of paper if needed.

Third Party administers The Empire Plan, Excelsior Plan, and Student Employee Health Plan's Managed Mental Health and Substance Abuse Program.

**C. Specify the details of the work to be accomplished via the connection. What applications will be used? What information will be used? What transactions will be accomplished?**

Enrollment files will be transmitted to and received by Third Party via an SFTP connection. Limited Third Party staff will have inquiry access to NYBEAS to verify Managed Mental Health and Substance Abuse Program enrollment.



**D. Specify the Third Party Controls to be Implemented for Safeguarding DCS Data:**

**Access Controls:**

Third Party has established procedures to control the allocation of access rights to Directory Services, Applications, Operating systems and Databases. The procedures cover all stages in the life cycle of user access from initial request, registration and provisioning to de-provisioning.

Access is granted on a Minimum Necessary basis, as determined by the approving manager, whereby the minimum amount of access (using the information security principle of least privilege) will be granted to an Agent based on their job function. These procedures cover, but are not limited to the following:

- User Registration process
- Uniqueness of User access
- Conditions of Access
- Acceptable Use
- Transfers and Terminations procedures
- Privilege Management
- Periodic Review of Access Rights
- Password use policies
- Clean Desk Policy
- Defined Secure log-in procedures

**Audit Controls:**

Audit logs recording user activities, exceptions, and information security events are produced and kept for an agreed period to comply with all federal and State requirements. Event logs and security logs, which record events, exceptions and other security-relevant events, will be collected by the Security Operations Center. These events will include the following:

- User identification
- Type of event
- Date and time
- Success or failure indication
- Origination of event

Working procedures or practices for handling printed material and verbal exchanges: see above.

1. Third Party maintains the privacy and security of Protected Health Insurance Information (PHI) as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other applicable state and federal laws.
2. This applies to OHI in any form whether electronic, paper, or oral.
3. It is Third Party's policy to safeguard all PHI and to use or disclose it only as permitted by HIPAA and other applicable law.



#### Method of Disposal of media and paper:

Destruction of hardcopy material is done in accordance with the Payment Card Industry Data Security Standard (PCI-DSS) requirement that states: “Hardcopy materials are cross-cut shredded, incinerated, or pulped”. Destruction of Hardcopy Confidential and Proprietary Information exist that apply to all workforce members who handle confidential and proprietary information on behalf of Third Party.

#### User Account Management, including review of accounts:

Accounts Privileges are issued on a need-to-use basis and on an event-by-event basis in line with our access control policy. Access is granted on a Minimum Necessary basis, as determined by the approving manager, whereby the minimum amount of access (using the information security principle of least privilege) will be granted to an Agent based on their job function.

#### Physical Security:

1. Security Perimeter Controls – The policy and procedures for physical security for Data Centers and High Technology areas applies to all locations, departments, programs, agents, and visitors at Third Party.
2. Physical Entry Controls – Security guards are located in buildings with data centers 24/7, 365 days a year. Access to the building is through security gates or doors, requiring card keys. Access to the area of the building containing media cabinets and/or vaults is restricted based on card keys which are distributed on a limited basis for those who require access to perform job functions.
3. Securing Offices, Rooms, and Facilities – Specific security measures are employed to control access to Third Party offices, rooms, and facilities, including:
  - a. *Badge Access* – All Third Party facilities are physically secured via card key entry control systems (“Card Key Systems”) using electronic locks.
  - b. *Camera/Video Monitoring* – Cameras are used to monitor entry into the premises and floors, including secure spaces and are located throughout the building.
  - c. *Clean Desk Policy* – Requirement that hard copy sensitive information be appropriately stored and desktop/laptop access login locked if not in office or room.
4. Working in Secure Areas – In accordance with all applicable Third Party policies, procedures, and standards, Third Party personnel are aware of the existence of, or activities within, a secure area only on a need to know basis; Unsupervised working in secure areas is avoided for safety reasons and to prevent opportunities for improper activities.
5. Public Access, Delivery, and Loading Areas – Access to a delivery and loading area from outside of the building is restricted to identified and authorized personnel. The delivery and loading area is designed so that supplies can be unloaded without delivery personnel gaining access to other parts of the building.
6. Controls Around Equipment Maintenance – Appropriate controls have been implemented such that when equipment is scheduled for maintenance, taking into account whether this maintenance is performed by personnel on site or external to the organization; where necessary, sensitive information is cleared from the equipment. All maintenance requests follow the Third Party Corporate change Management Policy.
7. Secure Disposal of Equipment – Before any electronic Media or Equipment is surpluses, traded-in, disposed of, or destroyed, and before the hard drive is replaced, all Confidential Information including, but not limited to, PHI, ePHI, PII, CHD, or any other Third Party



proprietary data or data files on any Electronic Media or Equipment must be either:

- a. *Archived* – In compliance with Third Party’s Corporate Records Management Program, which includes incorporation of all production protection standards; or
  - b. *Sanitized* – Consistent with Department of Defense (DOD) standard 5220.22-M.
8. Controls Around Removal of Property – No equipment shall be removed from any Data Center or High Technology Areas without the express authorization and approval of the Third Party Corporate Security department and such logs shall be maintained for a period of time as required by Third Party records management and retention policies, procedures, and standards. All individuals, and any equipment and materials, entering and exiting a Data Center or High Technology Area are subject to physical search.
9. Sensitive System Isolation – Sensitive systems reside in Third Party Data Centers and High Technology Areas. These areas are protected by physical controls appropriate for the size and complexity of the facility or resource and the criticality and sensitive of the systems operated at those locations and the Confidential Information residing on those systems.

Other:

**E. Estimated number of hours of use each week?**

- 1 – 20                       21 – 40                       More than 40 hours per week

**F. Anticipated normal hours of use?**

- M – F, 8:00 – 5:00 pm Eastern time                       Other (specify): System may require usage 24 hours per day, 7 days per week

**G. What is the requested installation date? (Minimum lead-time is 30 days)**

January 1, 2014

**H. Approximately how long will the connection be needed?**

- Up to 6 months                       6 – 12 months                       More than 12 months
- Specific time period:

**Note: If a connection is needed for more than a year, the Connection Agreement must be renewed annually.**



**I. Other useful information**

**J. Third Party Information**

Name of Third Party:  
ValueOptions, Inc.

Main Phone Number:  
757-459-5295

Main Office Address:  
240 Corporate Boulevard  
Norfolk, VA 23502

*Management Contact*

Name:  
Doug Thompson  
Address:  
240 Corporate Boulevard  
Norfolk, VA 23502  
Phone Number:  
[REDACTED]

Department:  
Finance  
Email Address:  
Douglas. [REDACTED]

Manager's Name:  
Heyward Donigan

Manager's Phone:  
[REDACTED]

*Backup Contact*

Name:  
Dan Risku  
Address:  
240 Corporate Boulevard  
Norfolk, VA 23502  
Phone Number:  
[REDACTED]

Department:  
Legal  
Email Address:  
[REDACTED]

Manager's Name:  
Heyward Donigan

Manager's Phone:  
[REDACTED]

*Technical Contact*

Name: Izhar Ahmed Mujaddidi  
  
Address: 12369-C Sunrise Valley Drive, Reston  
  
Phone Number: [REDACTED]

Department: National Technology Center  
Email Address: [REDACTED]

Manager's Name: Shaun Costello  
Technical Support Hours: 24/7

Manager's Phone: [REDACTED]

Escalation List: Andrew Berube (Backup)

Domain name(s): **www.valueoptions.com**

Host name(s): **ValueOptions**



**User Names and Contact Information.** (*List all employees of the Third Party who will use this access.*)

User 1 (*name, phone, email*):

Jeff Obernesser / [REDACTED] / [REDACTED]

User 2 (*name, phone, email*):

Lisa Majer / [REDACTED] / [REDACTED]

User 3 (*name, phone, email*):

User 4 (*name, phone, email*):

User 5 (*name, phone, email*):

User 6 (*name, phone, email*):

User 7 (*name, phone, email*):

User 8 (*name, phone, email*):

User 9 (*name, phone, email*):

User 10 (*name, phone, email*):

**K. Other information**





State of New York  
 Department of Civil Service  
 Albany, New York 12239

**ADMINISTRATIVE SERVICES DIVISION**  
**Third Party Connection and Data Exchange Agreement**  
**Attachment 3 – Third Party Acceptable Use Policy and Agreement**  
 ADM-125 (4/06)

Appendix C  
 Page 11 of 16

**THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**

**ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT**

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name ( <i>print</i> ):			
Organization:			
Telephone Number:	Area code	Number	Extension
Office Address:			

<i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i>	
User Signature:	Date:

**You must sign this signature page and send it to DCS. Retain a copy of the signature page and the attached Policy for your records. This form must be delivered either by fax or mail to:**

**MAIL:** NYS Department of Civil Service, Albany, NY 12239  
**Attention: Help Desk**  
**FAX:** 518-485-5588



## THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

### ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

#### I. *Protection of DCS Information*

All records and information maintained in DCS systems accessed by the User are confidential and shall be used by the User solely for the purpose of carrying out the User's official duties. Users may not use any such records and information for any other purpose. No such records or information may otherwise be used or released to any person by the User or by the User's employer or agent, except as may be required by applicable State or federal law or by a court of competent jurisdiction. All accounts and connections will be regularly reviewed.

#### II. *DCS Log-on Banner*

All users will follow the guidelines of the DCS Log-on Banner as stated below.

NOTICE \* The contents of this banner have been recommended to all State agencies by the Office for Technology in the NYS Preferred Standards and Procedures for Information Security. \* This electronic system, which includes hardware, software and network components and all data contained therein (the "system"), is the property of the New York State Department of Civil Service (DCS). \* Unauthorized use or attempted unauthorized use of this system is not permitted and may constitute a federal or state crime. Such use may subject you to appropriate disciplinary and/or criminal action. Use of this system is only permitted to the extent authorized by DCS. \* Use is limited to conducting official business of DCS. Under the Electronic Communications Privacy Act of 1986 (18 U.S.C. 2510, et seq.), notice is hereby given that there are NO facilities provided by this system for sending or receiving private confidential electronic communication. Any use, whether authorized or not, may be monitored, intercepted, recorded, read, copied, accessed or captured in any manner, and used or disclosed in any manner, by authorized DCS personnel without additional prior notice to users. In this regard, users have no legitimate expectation of privacy during any use of this system or in any data on this system. \* Use, whether authorized or unauthorized, constitutes expressed consent for DCS to monitor, intercept, record, read, copy, access or capture and use or disclose such information. \* DCS policy regarding this matter can be reviewed on the DCS internal website. Copies can also be obtained from the Office of Human Resources Management. Such policies are subject to revision. This notice is consistent with the Acceptable Use Policy issued to DCS employees regarding acceptable use, June 15, 2005. I have read and understand this notification and department policy.

#### III. *Passwords*

The User is not permitted to share his/her password with anyone. Passwords must never be written down. The User must not use the same password for multiple applications. The User must use passwords that are not easily guessed and must not use their email address as their password.



**IV. *Shared Accounts***

All use of shared accounts must be authorized by DCS. Users of shared accounts must be identified to DCS via the completion and signing of this policy/agreement. Third Parties are responsible for notification to DCS when the user base changes. Passwords for shared accounts must not be provided to individuals who have not been identified by Third Party to DCS and who have not completed and signed this policy/agreement.

**V. *Virus Protection***

Anti-virus software must be installed and enabled at all times on DCS-owned computers and on third party computers used to conduct DCS business. Virus definition files must be kept up to date. DCS Information Resource Management (IRM) provides anti-virus software and maintains the configuration of that software for all DCS-owned computers.

**VI. *Acceptable Use***

DCS computers, computing systems and their associated communication systems are provided to support the official business of DCS. All uses inconsistent with DCS' business activities and administrative objectives are considered to be inappropriate use.

Examples of unacceptable behavior include, but are not limited to the following.

- Any illegal activities that could result in legal actions against and/or financial damage to DCS.
- Computer usage that reasonably harasses or offends other employees, users, or outsiders, or results in public embarrassment to DCS.
- Computer usage that is not specifically approved and which consumes significant amounts of computer resources not commensurate with its benefit to DCS' mission or which interferes with the performance of a worker's assigned job responsibilities.
- Use in connection with compensated outside work or unauthorized not-for-profit business activities.
- Use of sniffers, spyware, ad-ware or other related technology.

**VII. *Software Protection***

The User is responsible for complying with copyright, licensing, trademark protection, and fair use restrictions.

**VIII. *Reporting Incidents***

Users are required to report incidents of system errors, data discrepancies, application performance problems, to the DCS Help Desk, at 518-457-5406 phone; 518-485-5588 fax.



**IX. *DCS Rights***

Pursuant to the Electronic Communications Privacy Act of 1986 (18 USC 2510 et seq.), notice is hereby given that there are no facilities provided by this system for sending or receiving private or confidential electronic communications. DCS has access to all access attempts, messages created and received, and information created or stored using DCS resources, and will monitor use as necessary to assure efficient performance and appropriate use. Information relating to or in support of illegal activities will be reported to the appropriate authorities.

DCS reserves the right to log and monitor use. DCS reserves the right to remove a user account from the network. DCS assumes no responsibility or liability for files or information deleted.

The DCS will not be responsible for any damages. This includes the loss of data resulting from delays, non-deliveries, or service interruptions caused by negligence, errors or omissions, or caused by the way the user chooses to use DCS computing facilities.

DCS reserves the right to change its policies and rules at any time.

**X. *Penalties***

The User shall hold the State and DCS harmless from any loss or damage to the State and/or DCS resulting from the User's inappropriate disclosure of information covered by this User Agreement. Further, the User's non-compliance with this Agreement may result in the revocation of system privileges, termination of employment or contract with DCS, and/or criminal and/or civil penalties.



Name And Address Of Borrower N/A	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (If different from borrower's)	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	

Equipment To Be Loaned		
Quantity	Description	Value

Purpose Of Loan

**CONDITIONS OF LOAN**

1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended.
2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment.
3. The Borrower shall not make any copies of DCS software included in this Agreement.
4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement.
5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS.
6. The right is reserved to cancel the loan or recall the equipment upon \_\_\_\_ days notice.
7. The Borrower shall assume all shipping and/or transportation costs involved.
8. Other conditions:



State of New York  
 Department of Civil Service  
 The State Campus  
 Albany, New York 12239

**ADMINISTRATIVE SERVICES DIVISION**  
**Third Party Connection and Data Exchange Agreement**  
**Attachment 4 –Equipment Loan Agreement**  
 ADM-125 (4/06)

<b>Agreed (Borrower)</b>	<b>Approved (DCS)</b>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
<b>RECEIPT OF EQUIPMENT</b>	
<b>Borrower</b> <i>(Upon initial receipt)</i>	<b>DCS Lender</b> <i>(Upon termination of Agreement)</i>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

October 2013

## APPENDIX D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures

### CONTRACTOR REQUIREMENTS AND OBLIGATIONS UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

---

#### I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all “State contracts” as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

#### II. Contract Goals

- A. For purposes of the Contract, the Department established an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”)

participation as subcontractors and suppliers, as relates only to the administrative cost component of the overall cost of the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in section II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

### III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded



equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department of proposed award of the Contract to the Contractor.
3. If Contractor or subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or subcontractor a model statement (see Form EEO-102 entitled "Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

d. The Contractor will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form EEO-100 – EEO Staffing Plan

To ensure compliance with this section III, the Contractor shall submit an EEO Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the EEO Staffing Plan form and submit it

as part of its Proposal or within a reasonable time, but no later than the time of proposed award of the Contract.

D. Form EEO-101 – Workforce Utilization/Compliance Report ("Workforce Report")

1. Once proposed contract award has been made and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted EEO Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the

information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**IV. MWBE Utilization Plan Form (MWBE-100) and Certification of Good Faith Efforts (Form MWBE-104)**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (form MWBE-100) either prior to, or at the time of, the execution of the Contract for Department consideration and acceptance. The Contractor shall ensure that enterprises have been identified within the MWBE Utilization Plan, and the Contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the Contractor's MWBE Utilization Plan as accepted by the Department. The Contractor must document "good faith efforts" to provide meaningful participation by New York State Certified MWBE subcontractors or suppliers in the performance of the Contract. In support of such efforts, the Contractor will include with its MWBE Utilization Plan submission a Certification of Good Faith Efforts statement (Form MWBE-104).
- B. Contractor agrees to use such MWBE Utilization Plan, as accepted by the Department, for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix D.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waiver Requests (MWBE-101)**

- A. For Waiver Requests Contractor should use Form MWBE-101 - Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the Waiver Request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly M/WBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

**VI. Quarterly M/WBE Contractor Compliance Report (Form MWBE-103)**

Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report (Form MWBE-103) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

**VII. Liquidated Damages – MWBE Participation**

- A. Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

**VII. Further Information:**

General questions concerning New York's MWBE program should be directed to:

New York State Department of Economic Development  
633 Third Avenue  
New York, NY 10017  
Telephone: (212) 803-2414

New York State Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245

Telephone: (518) 292-5150

All of the EEO and M/WBE forms referenced herein this Appendix D are available for download at the Department's website at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>). These forms are to be submitted without change to the goals specified by Department in the Contract.

1.

**Exhibit I.D – MacBride and Non-Collusive Bidding Certification**

**NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the Offeror, by submission of this bid, certifies that it or any individual or legal entity in which the Offeror holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Offeror, either (answer "yes" or "no" to one or both of the following, as applicable):

Have business operations in Northern Ireland. Yes \_\_\_\_\_ or No X

If yes:

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles. Yes \_\_\_\_\_ or No \_\_\_\_\_

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each Offeror and each person signing on behalf of any Offeror certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Date: 4-11-13

Signature

PRINT:

SIGNATORY'S NAME Scott Tabakin TITLE Chief Financial Officer

**INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF Virginia )  
City : ) SS.:  
COUNTY OF Norfolk )

On the 11<sup>th</sup> day of April in the year 2013 before me personally appeared:

Scott M. Tabakin, known to me to be the person who executed the foregoing

Instrument, who, being duly sworn by me did depose and say that he resides at 240 Corporate Blvd., Town of Norfolk, County of \_\_\_\_\_, State of VA; and further that, if applicable:

[Check One, If Applicable]

(  If a corporation): he is the Chief Financial Officer of Value Options Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(  If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_ the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Notary Public U

KAREN J. LESTER  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
NOTARY REGISTRATION NUMBER: 311922  
MY COMMISSION EXPIRES: 10/31/14

**Mental Health and Substance Abuse Program**

**Contract #C000617**

**Placeholder for Exhibit B: Request for Proposals entitled, Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan, dated February 15, 2013**

**New York State Department of Civil Service  
Request for Proposals #2013MH-1  
Mental Health and Substance Abuse Program for the Empire Plan,  
Excelsior Plan and the Student Employee Health Plan  
Official Answers to Offeror Questions**

Following are the Department's answers to questions regarding the Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and the Student Employee Health Plan RFP.

Note: If the Offeror's questions included their name, the name has been replaced with "Offeror."

**Questions and Answers as of March 11, 2013.**

<b>Section</b>	<b>Question &amp; Answer</b>
<b>Q1</b> Section I Page 1-7 & 1-8	Upon review of Exhibit V.A, it appears the code set provided does not include codes for home based counseling. Will the code(s) associated with this service be provided? If so, when?
<b>A1</b>	Exhibit V.A has been amended to include the 2013 coding set consistent with the changes required by the American Medical Association. If the Offeror uses a different CPT code for home-based counseling from the codes listed, the Offeror may add the CPT code(s) to Exhibit V.A and provide a quoted average contracted amount.
<b>Q2</b> Section I Page 1-8	Please confirm ambulance and transportation services are claims costs and are not to be included in the vendor's Administrative Fee.
<b>A2</b>	Confirmed.
<b>Q3</b> Section I Page 1-8	Are the home-based counseling and telephonic counseling requirements claims costs or clinical administration costs that should be included in the vendor's administrative fee?
<b>A3</b>	Home-based counseling and telephonic counseling are part of claims costs.
<b>Q4</b>	Was the Contract award date or a tentative award date omitted from the RFP Timeline/Key Events intentionally?
<b>A4</b>	Yes
<b>Q5</b> Section II Page 2-30	Are taxes (dollar amounts) to be included in the administrative fee or only the administration of the tax collection process?
<b>A5</b>	Taxes should not be included in the Administrative Fee. The Department and Contractor will mutually agree which of the taxes or assessments will be paid by the Contractor on behalf of the Program and charged back to the Department and which will be paid directly by the Department.
<b>Q6</b> Section III Page 3-2	Can a company count lives for which they provide both Mental Health/Substances Abuse services as well as Employee Assistance Program (EAP) services toward the 5 million threshold?
<b>A6</b>	Yes, Offerors may count lives for contracts which have both MH/SA and EAP services to demonstrate compliance with the 5 million covered lives minimum.



- Q7** Section III  
Page 3-3 Does a company need to have a Network specific to the Empire Plan, or may they use their existing commercial Network?
- A7** An Empire Plan-specific Provider Network is not required. Offerors may propose a Provider Network from their existing book of business.
- Q8** Section III  
Page 3-5 Is the expectation that the Offeror have accreditation for the site we are proposing on day one or can we be in process? Will the fact that we have other sites accredited be permitted?
- A8** An Offeror must be fully accredited at the proposed primary location from which Program Services will be delivered on the Proposal Due Date.
- Q9** Section IV  
Page 4-8 Please confirm that the existing vendor is responsible for all claims with dates of service before the new Contract effective date.
- A9** Confirmed.
- Q10** Section IV  
Page 4-11 Is the Contractor expected to establish an AT&T network or is it acceptable for the Contractor to use their existing vendor with a transfer line from The Empire Plan’s medical carrier/third party administrator (UHC) to accept/transfer calls?
- A10** The Contractor may use an AT&T network or an existing vendor to connect to the Empire Plan’s consolidated toll-free line. AT&T serves as the vendor that facilitates all calls coming into the Empire Plan toll-free line. Contractors that have AT&T can set up their routing and backup lines with AT&T and then connect to the toll-free line. AT&T would bill the Contractor directly for these services.
- If a Contractor does not have AT&T service, the medical carrier sets up all of the routing within the AT&T toll-free system and accepts those calls into the system. The medical carrier then routes those calls to the number set up by the Contractor. The medical carrier will bill the Contractor on a pass-through basis for AT&T services for every call that comes in and has to be routed to the Contractor’s phone system.
- Q11** Section IV  
Page 4-13 Call Center Telephone Guarantees: We interpret these guarantees to apply to all calls received via 1-877-7-NYSHIP. However, depending on prompt user selects call may be routed to Customer Service or the CRL. Can the guarantee be made in the aggregate and reporting provided separate for each?
- A11** Yes, the Contractor may separately report Customer Service and Clinical Referral Line calls. However, if the Contractor chooses to separately report Customer Service and Clinical Referral Line calls, the Contractor will be required to demonstrate that it has complied with the combined Call Center performance standards.
- Q12** Section IV  
Page 4-13 The performance guarantees seem to indicate the statistics are for the customer service department but state “or a clinical manager if after hours.” However on page 4-29, the Quarterly Performance Guarantee Report indicates call stats/performance is for customer service only. Do the call center performance guarantees apply to only Customer Service or are CRL business and after hour call stats also included?
- A12** The Call Center performance guarantees apply to both Customer Service and Clinical Referral Line calls.
- Q13** Section IV  
Page 4-14 Requesting confirmation that call center staff (clinical and customer service) are located in the United States, but not required to be in NY as previously required in the 2009 RFP.

- A13** Confirmed.
- Q14** Section IV  
Page 4-15 Is the requested first call resolution rate for the Customer Service only or does it include calls to CRL?
- A14** The first call resolution rate is for the Customer Service line only.
- Q15** Section IV  
Page 4-21 It is the responsibility of the Offeror to ensure that their Provider Network accepts The Empire Plan Employee Benefit Card as evidence of coverage. What is the process for notifying Providers in the current Contractor's Network as outlined in the Transition and Termination provision of their Agreement? In the event current Contractor is not awarded the Contract, we are trying to understand how providers in current Contractor's Network will know where claims need to be submitted for services rendered on or after 1/1/14.
- A15** As noted in Section IV.B.10.a (4) - Network Management, the Contractor is expected to use its best efforts to substantially maintain the participation of the Network Providers included in the MHSA Program's current Provider Network. Under the current agreement, during transition the contractor is required to provide a file listing Provider name, address, TIN, licensure type, and dollar spend. This file will be shared with the incumbent Contractor. As such, current Providers should be contacted by the Contractor to offer participation in the Provider Network and advised of the change in administrators.
- Q16** Section VI  
Page 4-26 Required reporting list does not include the Provider Audits mentioned on page 4-53. Is this an oversight?
- A16** See amended Section IV.B.7.a(7) of the RFP dated March 11, 2013.
- Q17** Section IV  
Page 4-37 Will the MH/SA vendor be responsible for any audit costs? If so, please confirm that these should be included in the Administrative Fee and provide a cost estimate. If not, are these costs to be charged back to the Department or is the vendor requirement to only participate in Department-funded audit activity?
- A17** The MHSA vendor is responsible for providing adequate resources to support Department or Office of the State Comptroller audits, both during the term of the Agreement and post-termination. These services are a contractual obligation and the associated costs should be included in the Administrative Fee. The Department will not reimburse the Contractor for audit costs.
- Q18** Section IV  
Page 4-38 What is the process outlined in the Transition and Termination provision of current Contractor's Agreement for clinically managing and paying for Covered Services of Enrollees who are confined on or before December 31, 2013?
- A18** The incumbent contractor will provide the Department with a Transition Plan explaining the process for clinical and financial management of services for members who are confined at contract termination. Prior to member discharge, the incumbent contractor is responsible for contacting the new Contractor to ensure a smooth transition to clinically appropriate Outpatient Services to the new Contractor. The Transition Plan will be shared with the new Contractor during implementation.
- Q19** Section IV  
Page 4-40 Will the Contractor be expected to contract with Providers at the request of the Department even if the Provider will not agree to Network standard rates?

- A19** Yes. However, any Network Provider who is explicitly requested to be contracted by the Department will be excluded from the pricing guarantee.
- Q20** Section IV  
Page 4-40 Can the Department define what it considers an “appropriate mix” of licensed and/or certified psychiatrists, and psychologists, licensed and registered CSWs, Registered Nurse Clinical Specialists, psychiatric nurse/clinical specialists, etc. to be?
- A20** In the context of Network Management, an “appropriate mix” is defined as the mix of Network Providers that would result from a well-managed, clinically appropriate Program that meets the access standard.
- Q21** Section IV  
Page 4-41 The request states the MHSA Provider Network must include Providers throughout NYS and in areas with high concentrations of employees outside of NYS. Is the Guaranteed Access applicable to only NYS, to all US areas, or only highly populated states designated by the Department? If guaranteed access is within NYS only, does that mean Single Case Agreements for access will not be required outside of NYS?
- A21** Guaranteed Access applies nationwide. Single Case Agreements may be necessary in certain areas of the United States in order to meet the Guaranteed Access requirement. Single Case Agreements are not included when calculating the Contractor’s compliance with the Network Provider Access Performance Guarantee.
- Q22** Section IV  
Page 4-41 Network Composition Guarantee requests agreement for Psychiatrists, Psychologists and LCSW-R, and Certified Behavioral Analysts however, Nurse Practitioners and Clinical Nurse Specialists are included as covered providers in the Certificate. Should those providers be added to the LCSW-R category for composition or excluded?
- A22** The Network Composition Guarantee applies to all Provider types. See amended Section IV.B.10 of the RFP dated March 11, 2013.
- Q23** Section IV  
Page 4-43 Request is for access guarantees for the Provider Network excluding Certified Behavior Analysts on page 4-42 but it is requested separately on page 4-43 with the term “guarantees.” Was this an oversight or is access to Certified Behavior Analysts not part of the Guaranteed Access requirement?
- A23** Certified Behavior Analysts are not included in the Network Provider Access Guarantee, however, are included in the Network Composition Guarantee.
- Q24** Section IV  
Page 4-51 Please define what is meant by “Substantial change related to number, composition, or terms of the Provider Contracts.”
- A24** A “substantial change” to the Network is one that would cause a material change to cost or disrupt Enrollees by causing a material change to access to Network Providers.
- Q25** Section IV  
Page 4-51 Can the Department provide more detail regarding the requirement associated with establishing a tiered Network? Does the current MHSA Contractor offer a tiered Network structure?
- A25** There is currently a tiered network for Physical Therapy Providers under the Empire Plan’s Medical Program. To comply with Mental Health Parity regulations, the Empire Plan’s MHSA Program should also have a tiered network. Regarding whether the current Contractor offers a tiered network, no response to the question is being provided as it is not required information in order for Offerors to submit a Proposal.

- Q26** Section IV  
Page 4-51      **Negotiating Single Case Agreements:** Is the expectation that Non-Network Providers will agree to the same terms in Offeror's Network Provider Agreement for the case vs. terms specifically outlined in the Single Case Agreement as agreed to by both parties.
- A26**      Yes, it is expected that the Contractor offer the standard terms to Providers when negotiating a Single Case Agreement. The terms may have to be modified to reach an Agreement.
- Q27** Section IV  
Page 4-51 & 52      Can the Department provide more detail on the expectations regarding the process for Single Case Agreements for non-network providers, LMHC and Licensed Marriage and Family Counselors?
- A27**      LMHCs and LMFTs are not covered Providers under the MHSA Program. Single Case Agreements should be used sparingly and only entered into with prior written approval by the Department when necessary to comply with Guaranteed Access, the Provider has a unique specialty, and/or the Provider has expanded hours and already provides services to Empire Plan Enrollees.
- Q28** Section IV  
Page 4-53      How often does the Department require the Provider Audit Reports?
- A28**      Actual Audit reports will be requested upon completion of the audits while a status report is required quarterly.
- Q29** Section IV  
Page 4-53      To what level of detail is the State looking to be included for reporting Fraud and Abuse investigations. We have daily ongoing referrals, received from our service center, sent for preliminary investigation that are reviewed and determined not to be fraudulent. Should this report include identified cases that warrant a further review based off of the initial fraud and abuse investigation?
- A29**      Under normal circumstances, the Department must be informed in writing of potential fraudulent activity after a preliminary investigation has been performed and a determination has been made that the activity warrants further review.
- Q30** Section IV  
Page 4-54      **Extrapolation of errors:** It is our understanding that DFS has previously issued a regulation limiting the use of extrapolation of audit findings. Please confirm your understanding of this regulation and confirm that having Provider Contracts that do not support extrapolation will not be deemed non-responsive and result in elimination from consideration of the bid.
- A30**      Network Provider contracts are not required to contain language requiring a refund of extrapolated overpayments. It is expected that the Contractor would utilize extrapolated audit findings to identify the magnitude of issues discovered and expand the scope of the audit, if warranted.
- Q31** Section IV  
Page 4-55      If there is a current, existing Contract between the Network Provider and Contractor with a different claim turnaround Agreement, does the 18 Business Day timeframe guarantee still apply or will the Contractor be allowed to follow the existing Contractual Agreement with their Network Providers?
- A31**      See amended Section IV.B.11.a.4 of the RFP dated March 11, 2013.

- Q32** Section IV  
Page 4-56 Must utilize all edits as proposed and utilized by the Department: Will the Department define the edits that will be proposed and/or are currently in place? If so, when?
- A32** See amended Section IV.B.11.a(1)(d) of the RFP dated March 11, 2013.
- Q33** Section IV  
Page 4-56 Maintaining claims histories for 24 months: What date does the 24 month clock initiate from? Claim received date? Claim adjudication date? Claim paid date?
- A33** The start of the 24-month period pertains to the claim adjudication date.
- Q34** Section IV  
Page 4-58 Pursuing collection of up-to-date coordination of benefit information: If COB information is not on file, will it be required to verify this information prior to processing a received claim (pursue and pay), or follow the GNYHA guideline of pay the claim in hand and pursuing the COB verification (pay and pursue)?
- A34** Although this is a self-funded Program, as required by Chapter 56 of the Laws of 2010, the Program must follow all Department of Financial Services requirements of an insured plan.. The Program will use a pay and pursue approach.
- Q35** Section IV  
Page 4-59 Please clarify, should the language for Financial accuracy reflect that it be measured by dividing the number of claims paid correctly by the total dollars vs. the total number of claims?
- A35** The Financial Accuracy performance guarantee is stated correctly.
- Q36** Section IV  
Page 4-60  
Section 11.4 Network Claims to be turned around within eighteen (18) Business Days of receipt. Can turn around time be stated in Calendar Days? For example equate the Business Day figure into a Calendar Day figure that represents the same turn-around time requirement.
- A36** See amended Section IV.B.11.a.(4) of the RFP dated March 11, 2013.
- Q37** Section IV  
Page 4-60  
Section 11.5 Non Network Claims to be turned around within eighteen (18) Business Days of receipt. Can turn around time be stated in Calendar Days? For example equate the Business Day figure into a Calendar Day figure that represents the same turn-around time requirement.
- A37** See amended Section.IV.B.11.a(5) of the RFP dated March 11, 2013.
- Q38** Section IV  
Page 4-61 Please confirm that the COB data will be included in the 834 Enrollment file.
- A38** COB data will not be included in the 834 Enrollment file.
- Q39** Section IV  
Page 4-67 Is the expectation for the Clinical Referral Line (CRL) to only be staffed by clinicians and every call be answered by a licensed clinician? Would the State permit calls to be answered by trained non-clinicians, if access to licensed clinical staff is provided for assessments, clinical review and referral, etc., and immediate access to a clinician is provided in life-threatening emergencies?
- A39** The Clinical Referral Line must be staffed by licensed clinicians to meet the MHSA Program requirements.
- Q40** Section IV  
Page 4-67Therapy On page 4-66, this statement is made: “Under the MHSA Program, Recurring Outpatient visits may be reviewed prior to the 11th visit, but services may not be denied prior to the 11th visit.” However, under pre-certification of care, “Recurrent Therapy Visits” is listed. Is

Recurrent Therapy visits after the initial assessment considered pre-certification or concurrent review?

- A40** The review of Recurrent Therapy Visits occurs after the initial assessment and is considered by the Program to be pre-certification in the sense that future visits are being pre-certified.
- Q41** Section IV  
Page 4-69 Urgent CRL Guarantee – it states provider will call member back within 48 hours, unlike the one’s above it (12.a.8.a and 12.a.8.b) there is no option for the CRL clinician to call them back. Is that an omission? Is it an option for the CRL clinician to also recontact?
- A41** See amended Section IV.B.12 of the RFP dated March 11, 2013.
- Q42** Section IV  
Page 4-69 Please provide the following data by month:  
By business hours/ non-business hours  
By number of calls to the CRL by members  
By number of emergency calls to the CRL  
By number of urgent calls to the CRL
- A42** This information is not available.
- Q43** Section IV  
Page 4-74 Does this statement mean that there is no concurrent review required for enrollees seeking Outpatient or Inpatient Services from a Non-Network Provider or Facility: (d) The Contractor must perform concurrent review of Outpatient and Inpatient Services rendered by Non-Network Providers when requested by the Enrollee or Non-Network Provider;
- A43** No. In addition to the Contractor’s standard concurrent review procedures, the Contractor must also perform concurrent review of Outpatient and Inpatient Services rendered by Non-Network Providers when requested by the Enrollee or Non-Network Provider.
- Q44** Section IV  
Page 4-79 Is the correct understanding of this requirement that the review must be completed within 10 Business Days of receipt of complete form and the determination letter be sent within 3 Business Days of the determination, not complete form as its written?  
(1) The Contractor must establish a process to perform reviews of the PS-451 form and all additional medical information for Mental Health and Substance Abuse-related Dependent Disabilities. The review must be completed in the United States and Clinical determination must be completed within 10 Business Days of receipt of a complete form.  
(2) The Contractor must send a determination letter, approved in advance by the MHSA Program, to the Enrollee and to the Department advising of the determination within 3 Business Days of receipt of a complete form.
- A44** See amended Section IV.B.12a.(2) of the RFP dated March 11, 2013.
- Q45** Section IV  
Page 4-79 Other than letter notification, are there any other reporting requirements associated with “Disabled Dependent Determinations”?
- A45** No, the only reporting requirements for the Disabled Dependent Determinations are to send the Department the completed PS-451 form and notify the Enrollee in writing of the determination.
- Q46** Section IV  
Page 4-85 Is there an ability to data share among NYSHIP vendors, in particular Pharmacy, to create a comprehensive DM program around Depression and ADHD – with pharmaceutical data? If so, what would the frequency be of the data sharing – real time, monthly, etc? If a data sharing process is allowed, who would be financially obligated to establish?

- A46** Yes, there is the ability to share certain data between the other Empire Plan vendors and the Contractor. The frequency and content of the data would be determined by mutual agreement between the Department and the Contractor. The Department does not guarantee that an Offeror's proposed Disease Management Program which is based solely, or in part, on the receipt of specific Plan data from other Plan vendors would be acceptable to the Department.
- Q47** Section IV  
Page 4-8 Can interested bidders obtain a copy of or get access to the existing Program descriptions for the ADHD, Depression Management and Eating Disorders Programs? Is each Program required to be stand-alone or part of a larger care management program?
- A47** Links to information regarding the current Depression Management, ADHD and Eating Disorder Disease Management Programs may be found at: <https://www.liveandworkwell.com/member/>. The Programs may be stand-alone Programs or part of a larger care management Program.
- Q48** Section V  
Page 5-2 Please confirm that the Network pricing guarantee calculation will exclude BD&C charges.
- A48** Confirmed.
- Q49** Section V  
Page 5-2
1. Please confirm that the calculation of the aggregate impact of the modification of Network Provider fees combines both Inpatient and Outpatient claims/Services.
  2. Please confirm that out-of-network claims paid as in-network due to clinical or access considerations, are included in the calculation of the aggregate annual impact of Provider fees
- A49**
1. Confirmed
  2. Confirmed
- Q50** Section V  
Page 5-3 RFP states that an annual credit against the Administrative Fee for each for each 0.01 to 1% increase in the aggregate MHSA Program Network costs in excess of the annual increase in the July CPI-W for medical care will be \$250K. Does this mean that if the increase is between 0.01% and 1% the credit will be \$250K and \$500K if it is between 1.01% and 2.0% and \$750K if it is between 2.01% and 3% and so forth?
- A50** Yes.
- Q51** Section V  
Page 5-3 **Note: The question as submitted was applicable to a single Offeror. The question has been paraphrased to be more broadly applicable.**
- Network pricing guarantee. Would a Proposal that does not provide a Network pricing guarantee for those Network Providers outside of the Offeror's direct control, for example providers in a leased network, be deemed non-responsive and eliminated from consideration? Would a Proposal that does not include a guaranteed annual increase less than CPI-W for medical care for Providers outside our control be deemed non-responsive?
- A51** Yes, a Proposal in which the Offeror proposed that only a subset of claims costs be covered under the pricing guarantee would be deemed non-responsive. The Contractor is responsible for making sure that all Network Provider claims costs are within the CPI-W cap for the entire term of the Agreement.
- Q52** Section V  
Page 5-7 Please confirm that the GME expense is not part of the MH/SA vendor's Administrative Fee and will not be charged back to the MH/SA vendor.
- A52** Confirmed. Please refer to Section V page 5-7.

- Q53** Section V  
Page 5-7 Please provide an estimate of the 2014 BDC percentage. Further, please confirm this percentage is applied across all modalities of care—Inpatient, Alternative and Outpatient—and should not be included in the vendor’s Administrative Fee but will be charged back to the Department.
- A53** An estimate of the 2014 BDC percentage is not available. The 2012 BDC percentage is approximately 2%. The Contractor is required to calculate the amount of BDC based on the applicable NYS law/regulations and may charge back the Department such amount if paid directly by the Contractor. This expense should not be included in the Offeror’s Administrative Fee quote.
- Q54** Section V  
Page 5-9 Please provide more detail on the banking arrangement / imprest bank account. Will NYS be willing to use an existing banking arrangement an offeror has in place with a current vendor / institution?
- A54** No, the imprest bank account will be set up through the Office of the State Comptroller.
- Q55** Section VI  
Page 6-4 In order to exceed the Program’s service level standard, is there a minimum measurement is that considered exceeding? For example, is the measurement considered exceeding if the measurement for Call Center Availability is 99.51% instead of 99.5%?
- A55** Percentages should be rounded to the nearest 1/10<sup>th</sup>.
- Q56** Section VI  
Page 6-8 This section states that the projected cost of Network claims will be based on amounts reflected in the bidder’s exhibit V.A. In-Network rates vary by facility and the average Network rate can be influenced by utilization differences amongst those facilities. Assumedly, bidder’s will estimate facility usage based on the 2011 claims data provided. How will The Department adjust for the significant changes in facility mix and levels of care that have occurred after 12/31/2011?
- A56** No response to the question is being provided as it is not required information in order for Offerors to submit a Proposal.
- Q57** Section VI  
Page 6-8 In regards to the Department’s calculation of Non-Network claims, if a bidder’s proposed Network does not include a current Network Facility, how does the Department assume that utilization will shift? Does the Department assume the utilization will migrate to another proposed Network Facility in the same geographic area or does it assume some or all of the current utilization at the facility will convert to Non-Network cost?
- A57** No response to the question is being provided as it is not required information in order for Offerors to submit a Proposal.
- Q58** Section VII  
Page 7-10 Section VII (Draft Contract) and Section VIII (Glossary of Terms) include definitions for Certified Behavioral Analysts but Exhibit II.C2 (Empire Certificate) does not include the same language. Will the Empire Certificate be updated to more accurately reflect the contract language prior to the proposal submission date?
- A58** We are currently working on updating the certificates which will include current Certified Behavior Analyst language and various other updates. The updated certificates will not be available prior to the Proposal Due Date.
- Q59** Section VII  
Page 7-19 What is the financial arrangement for the toll-free telephone service? Will the vendor receive a charge-back from the medical vendor or will the vendor be provided with estimated line costs, etc.?



- A59** If the Contractor has a business arrangement with AT&T, they will be charged directly by AT&T for their calls and any set-up. A Contractor that does not have AT&T service will receive a charge back from the medical carrier (UHC). United Healthcare has not established an estimated cost because all current Empire Plan contractors on the consolidated toll-free line have a business arrangement with AT&T. The Contractor should include this expense component in its Administrative Fee.
- Q60** Section VII  
Page 7-22 Understanding that the Shared Communications Expense is not to be included in the Administrative Fee, please provide an estimate of the quarterly cost for these communications. Also, are the items covered in this amount related only to promotion of the Program or are operational communications such as explanations of benefits, provider and clinical letters, claims processing related communications, and mailings (checks) also included?
- A60** The 2013 Shared Communication Expense for the MHSA Program is approximately \$500,000. The Shared Communications Expense covers the Empire Plan's consolidated communication materials such as certificates and Empire Plan Reports, as well as certain marketing materials. Items such as EOBs and Provider and clinical letters are not a part of the Shared Communications Expense, nor are any expenses associated with the Contractor attending meetings, trainings or Health Benefit Fairs.
- Q61** Exhibit II.A4 Are the only tiered premium rates in the Program individual or family coverage; or are there other premium tiers such as employee plus spouse, employee plus child, etc.?
- A61** The only premium rates are for individual coverage and family coverage.  
**Note: This is a self funded program; therefore, we are not paying the Contractor premiums.**
- Q62** Exhibit II.B2 &  
Exhibit II.C Exhibit II.B2 states that the Empire Plan Outpatient visit MH/SA Copayment is \$20. Exhibit II.C indicates the same Copayment is \$0 for visits 1-3 if they are Crisis Intervention related, otherwise \$20. Please confirm that visits 1-3 that are not the result of a Crisis Intervention have a \$20 Copayment.
- A62** Confirmed.
- Q63** Exhibit II.C2  
Page 12 If available, please provide updated projected 2014 figures for the \$309 and \$1,500 maximums?
- A63** Please refer to Exhibit II.B for a listing of the Annual Deductibles and Coinsurance Maximums.
- Q64** Exhibit II.E2 Understanding that no separate membership card for MH/SA is required, is there a need for a MH/SA "sticker" to add to the medical ID card?
- A64** No, there is not any room on the benefit cards to add a MHSA Program sticker. It is our expectation that the Contractor will communicate with its Provider Network so that Providers will recognize the Empire Plan, SEHP and Excelsior benefit cards and know where to submit claims.
- Q65** Exhibit II.F2 Please provide an estimate of what percent of authorized visits materialize in actual visits .
- A65** This information is not available. Please refer to Exhibit II.G for the number of Enrollee and Dependent visits/days for 2009, 2010, 2011 and January 1-September 30, 2012.

- Q66** Section II.G & Exhibit II.G3 Do the paid claims by benefit type and incurred claims by service type in these two exhibits include bad debt and charity surcharges?
- A66** No.
- Q67** Exhibit II.G2 Please define “retention” as it is referenced in the NYS MHSA Experience chart.
- A67** Retention includes Administrative expenses, taxes, risk charge, interest credits/charges, etc.
- Q68** Exhibit V.A Please confirm the “Quoted Average Contracted Amount” should exclude BD&C.
- A68** The amounts quoted on Exhibit V.A should not include any applicable BDC amount. See amended Exhibit V.A of the RFP dated March 11, 2013.
- Q69** Exhibit V.A Will Offeror’s quoted average cost be based on the 2012 or 2013 code set?
- A69** The Offeror’s quoted average cost will be based on the 2013 code set. See amended Exhibit V.A of the RFP dated March 11, 2013.
- Q70** Exhibit V.C Can the Per Enrollee Per Month Administrative Fee differ by plan year, or does it need to be the same for the term of the Agreement?
- A70** The Administrative Fee quote must be quoted as one amount and is applicable for the five-year Contract term. See amended Exhibit V.C of the RFP dated March 11, 2013.
- Q71** General Please provide the current Administrative Fee as a per employee per month (PEPM) rate.
- A71** No response to the question is being provided as it is not required information in order for Offerors to submit a Proposal.
- Amended March 14, 2013**
- Q72** CD The membership file provided by DCS does not include dependents. However, the Network Access definition in the RFP uses “Enrollees” and the “Enrollee” definition in the RFP includes employees and dependents. Please confirm network access should be based on the file provided by DCS which excludes dependents.
- A72** Confirmed. The Geo-Coded data sent was for Enrollees only. The Prerequisite Worksheet (Exhibit I.Y.3) should be completed using the Enrollee access to Participating Providers.

[Type text]

[Type text]

Exhibit C

Mental Health and Substance Abuse Program

Contract #C000617

**Placeholder for Exhibit C:** Contractor's Proposal submitted in response to RFP entitled, Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan, dated April 16, 2013



June 6, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

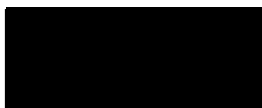
Re: Response to Questions from Management Interview  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student  
Employee Health Plan

Dear Ms. Burk:

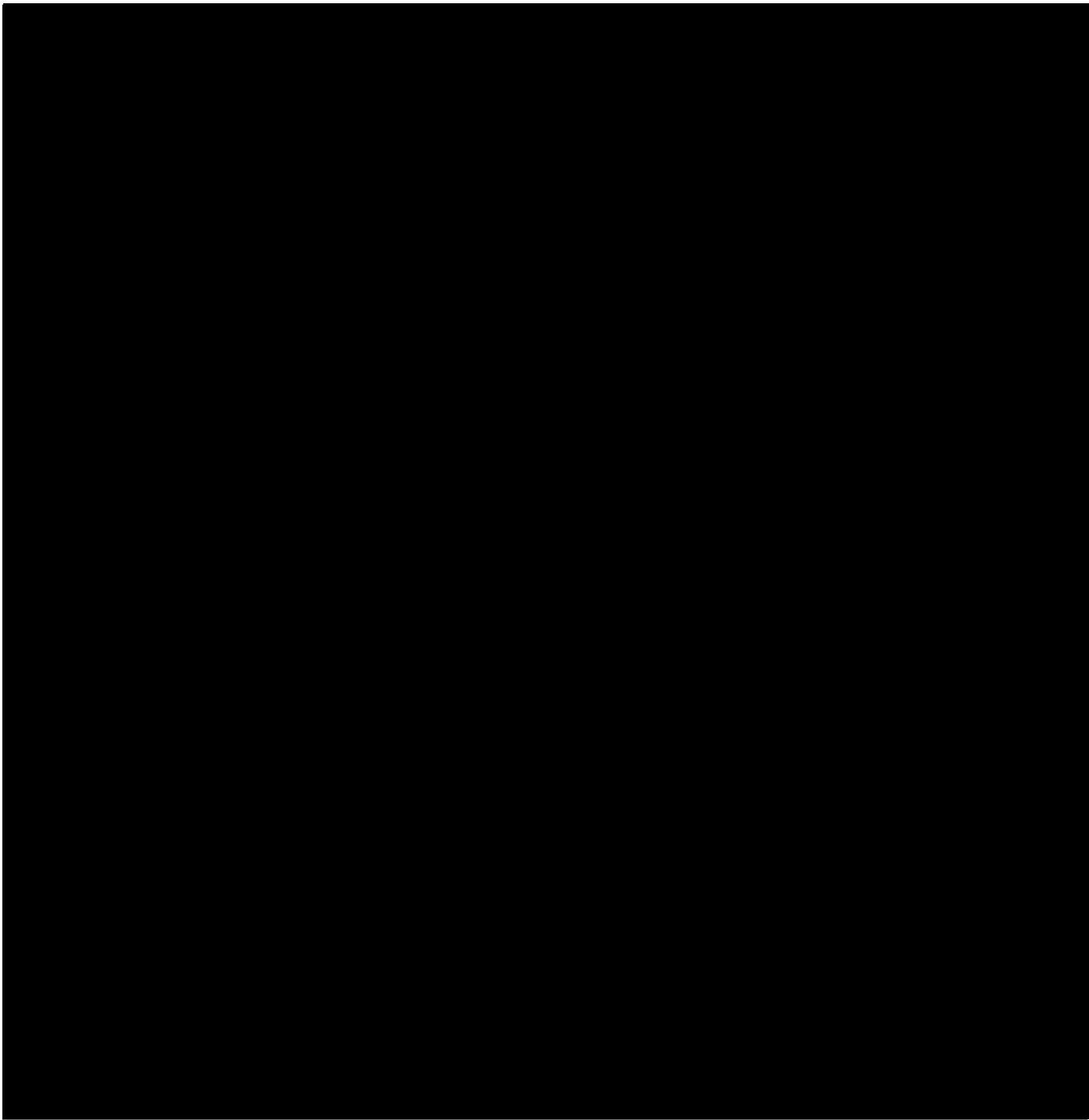
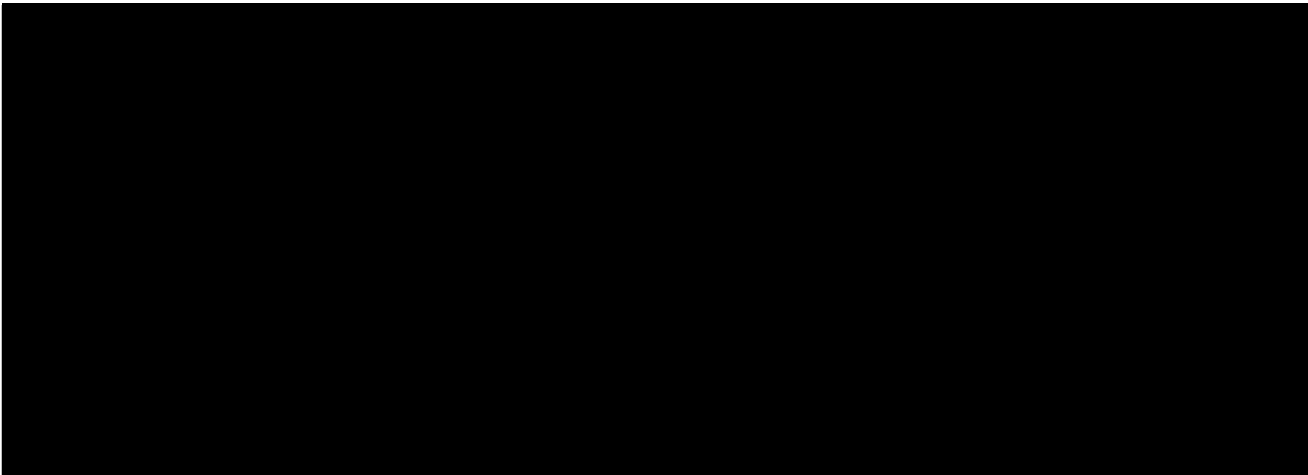
ValueOptions, Inc. is providing our response to questions from the management interview electronically today with a hard copy to follow.

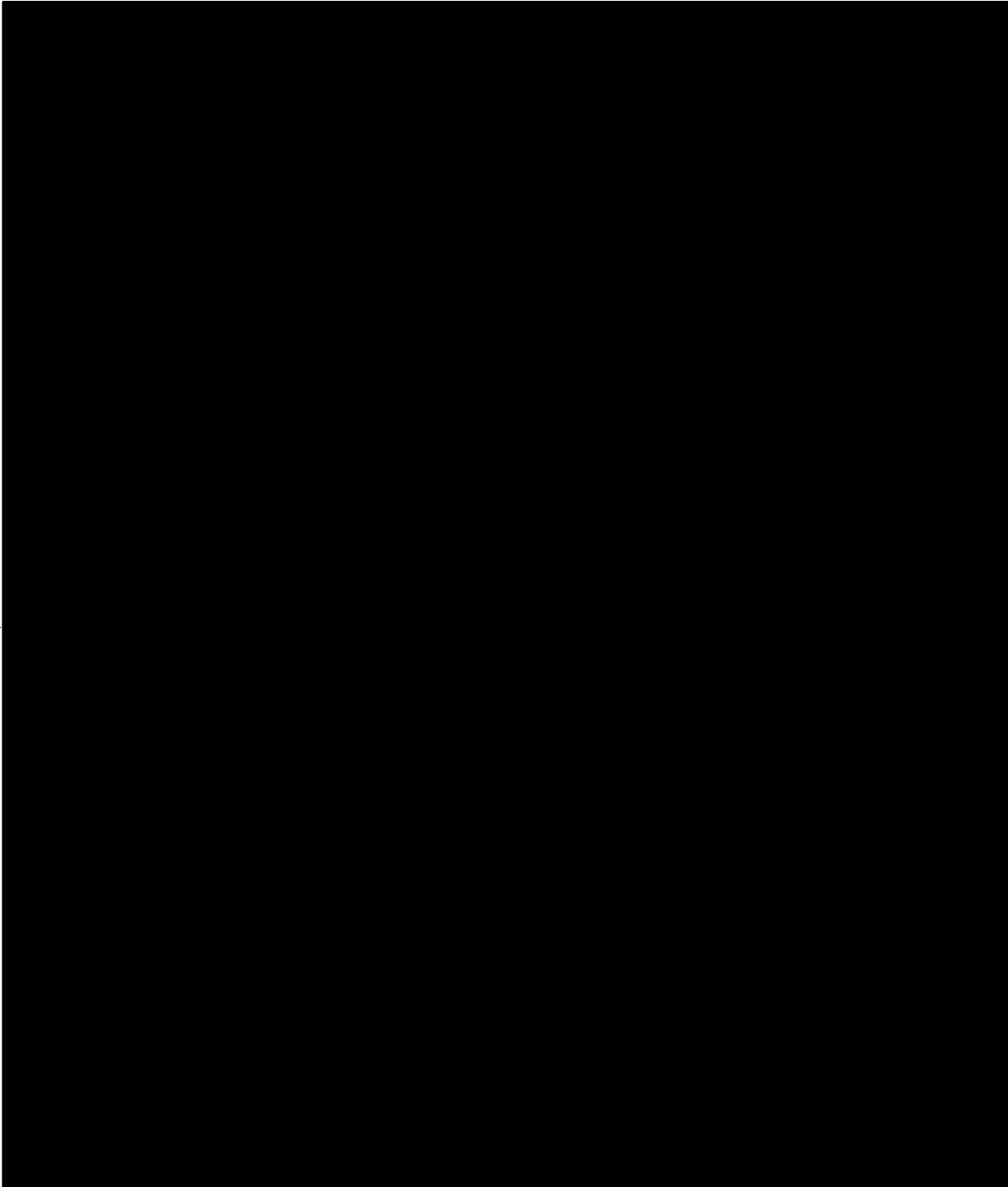
Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

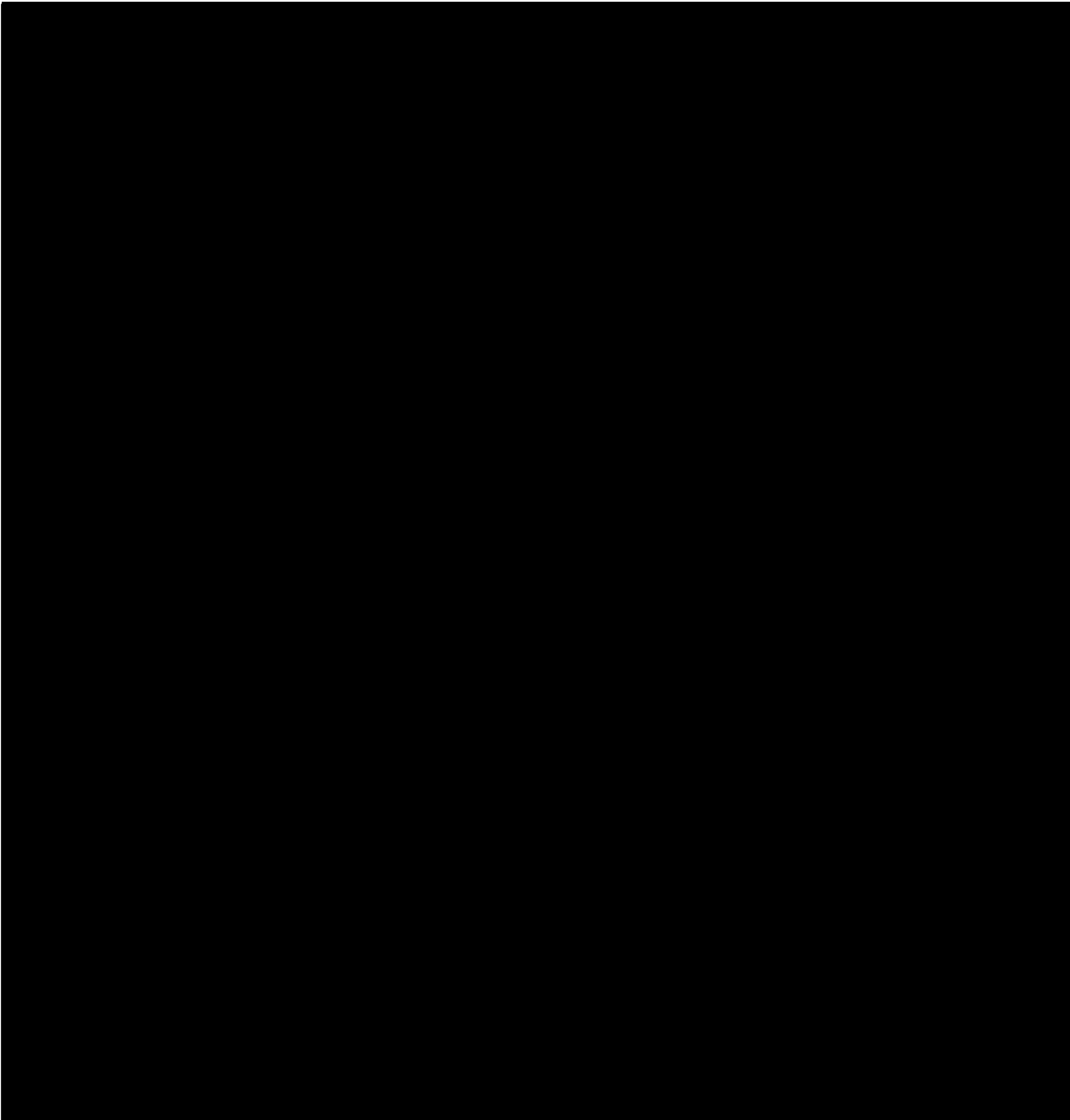
Sincerely,

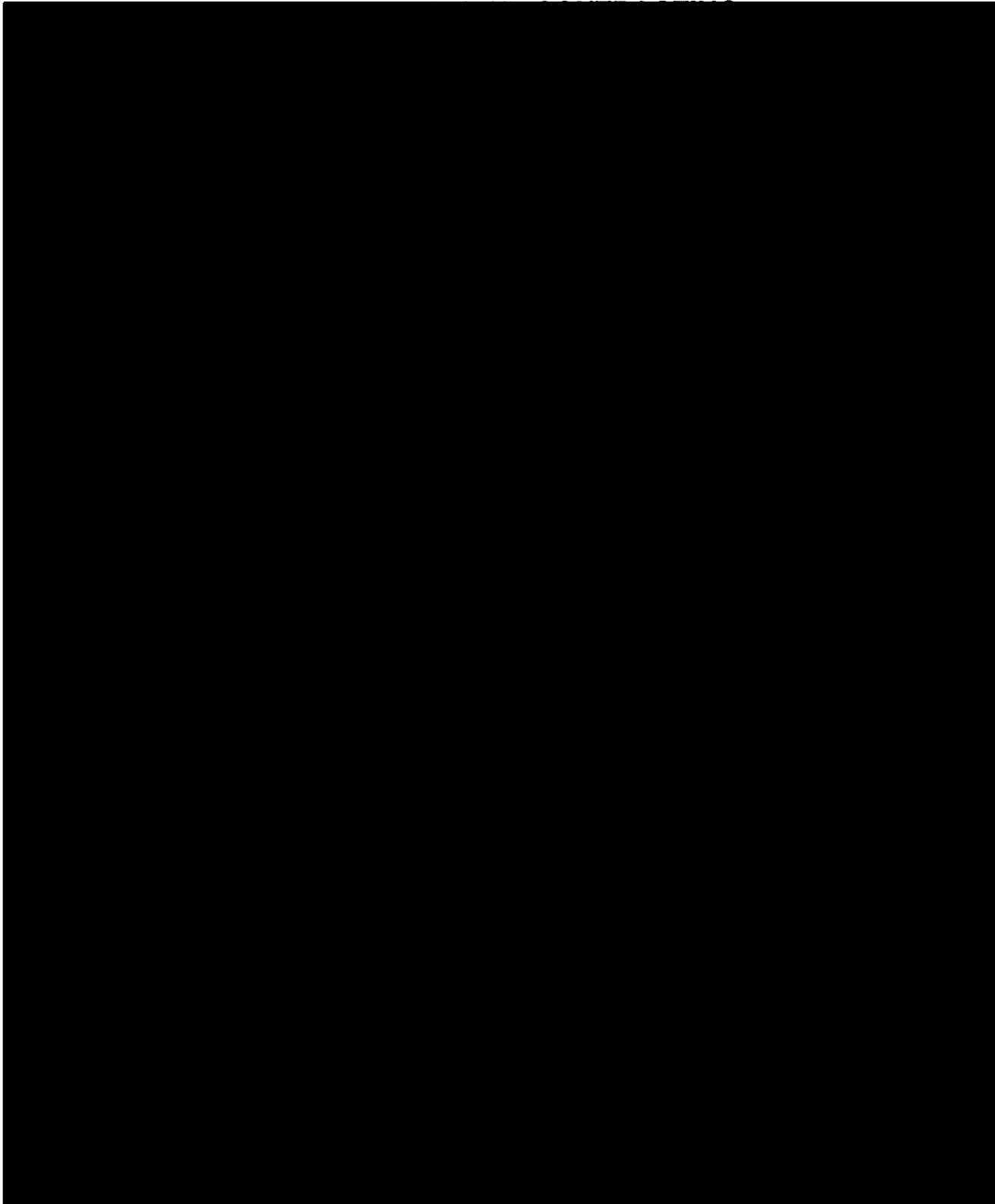


Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
lynn.mueller@valueoptions.com

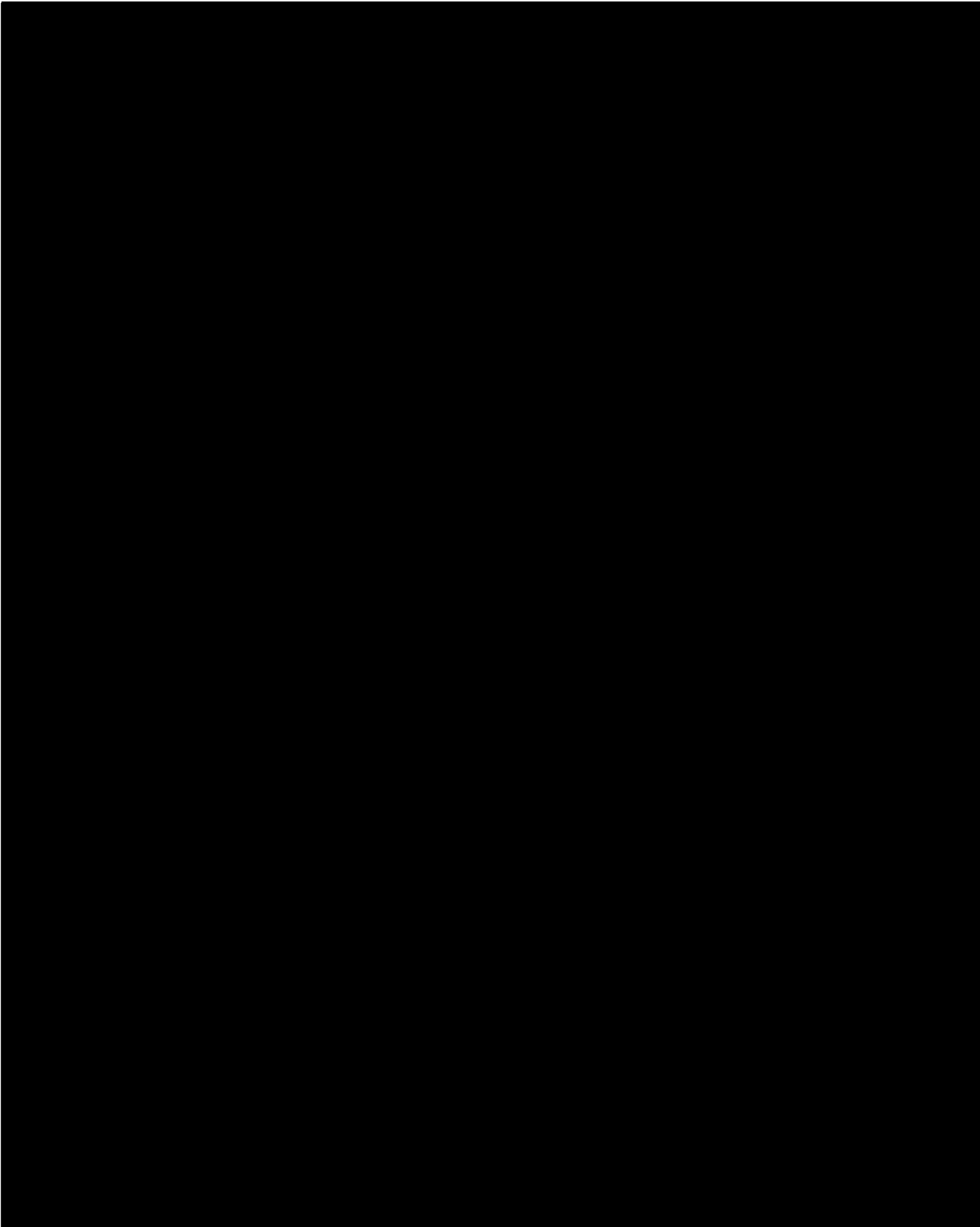


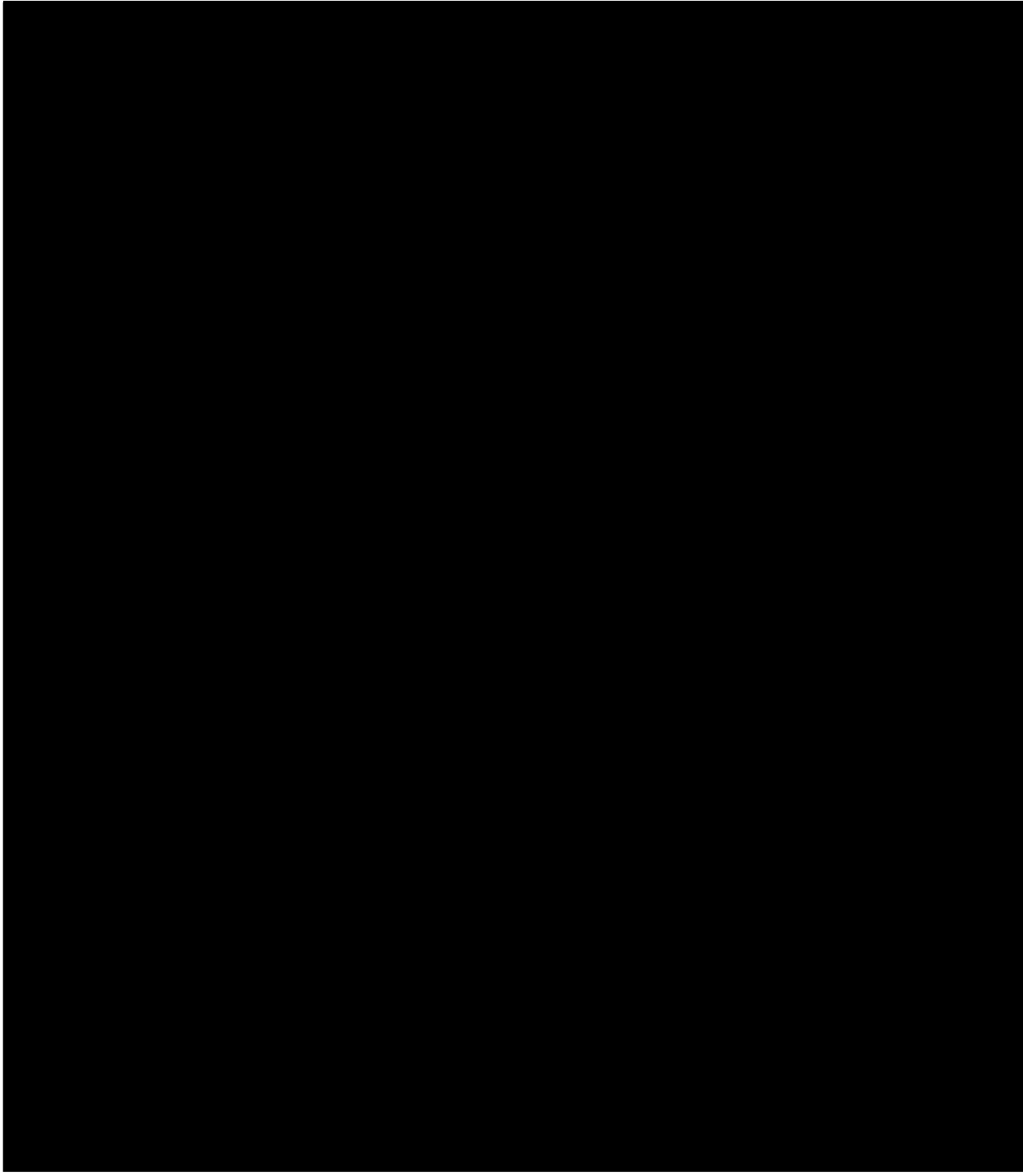


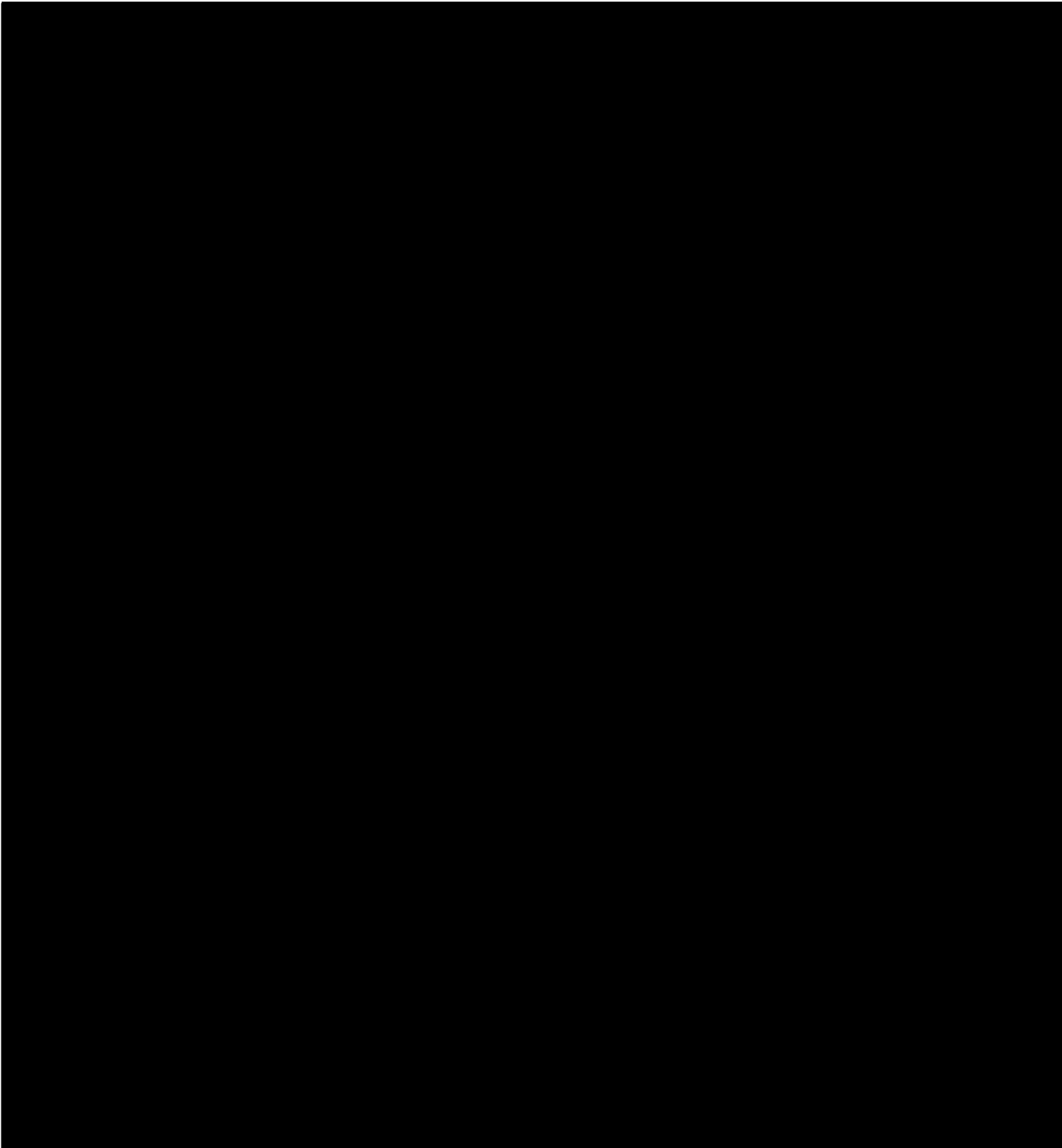


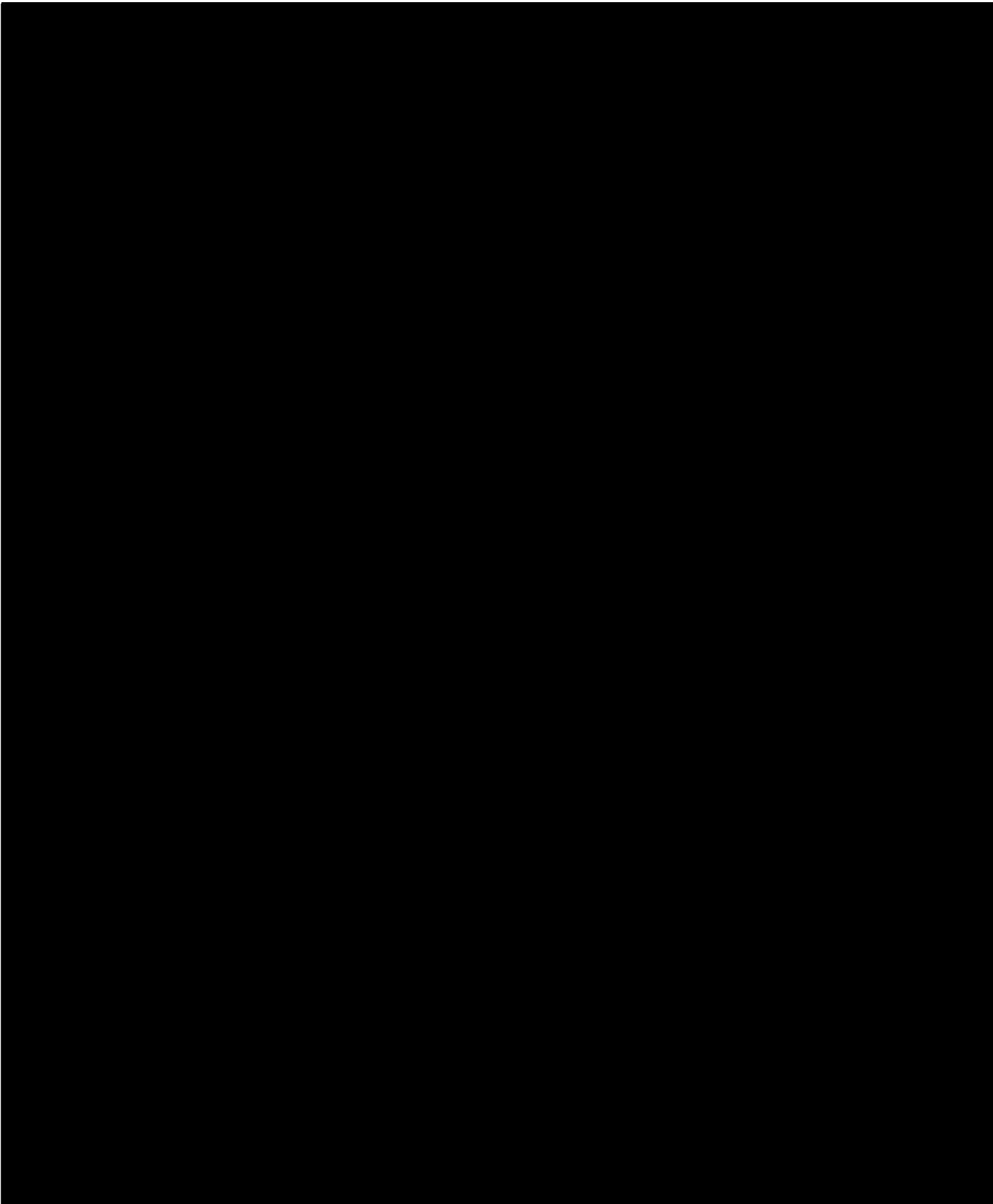


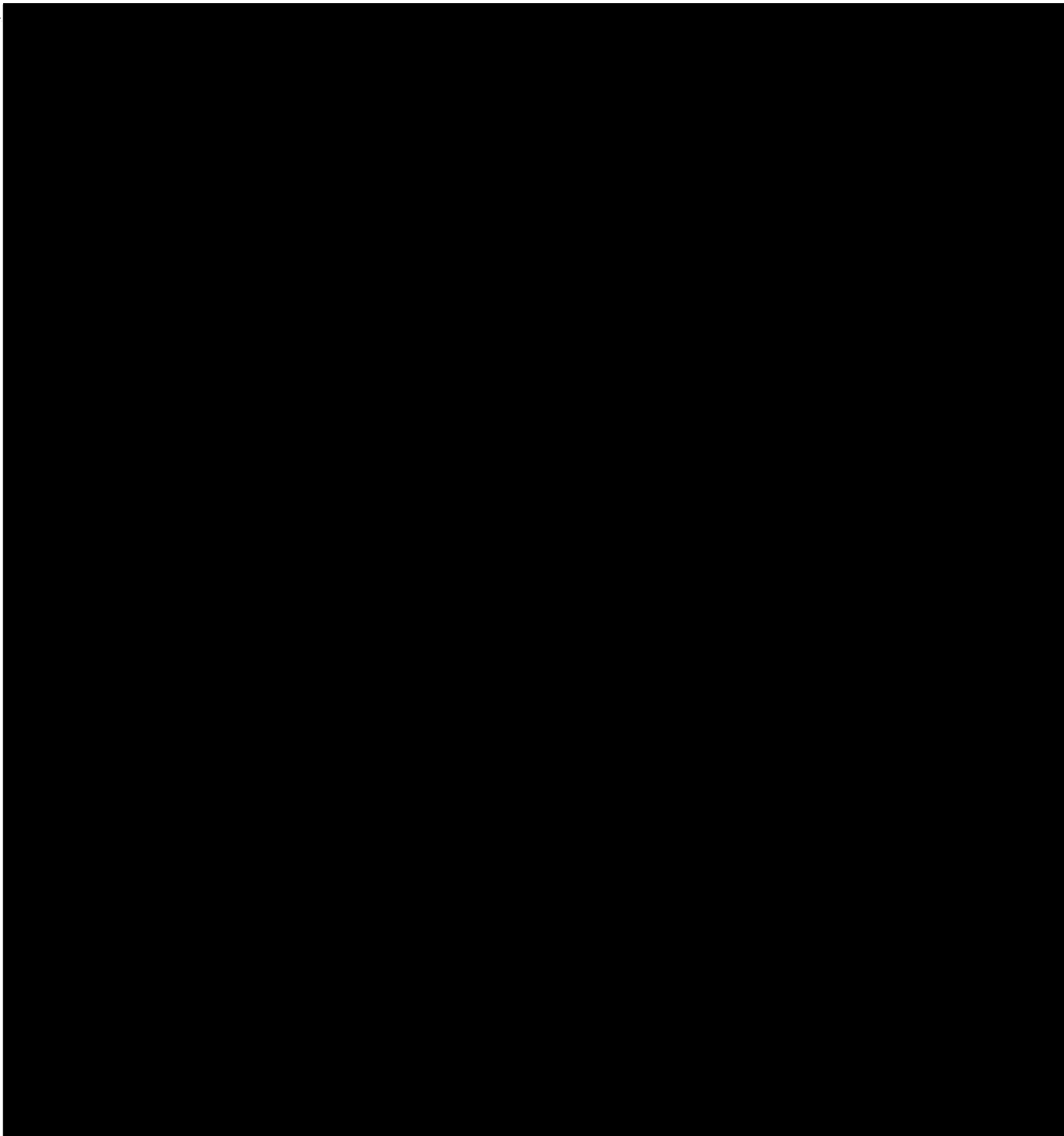


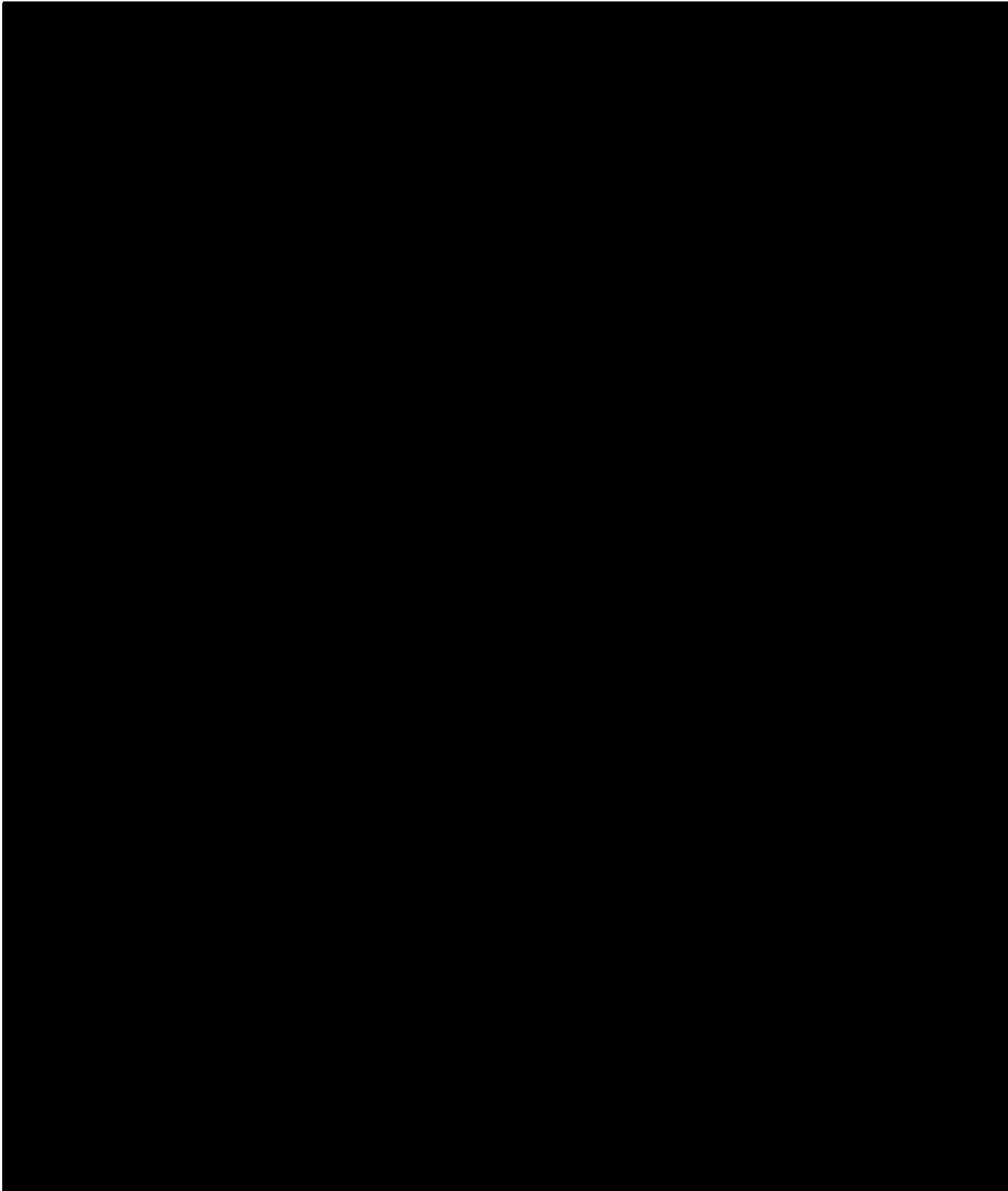


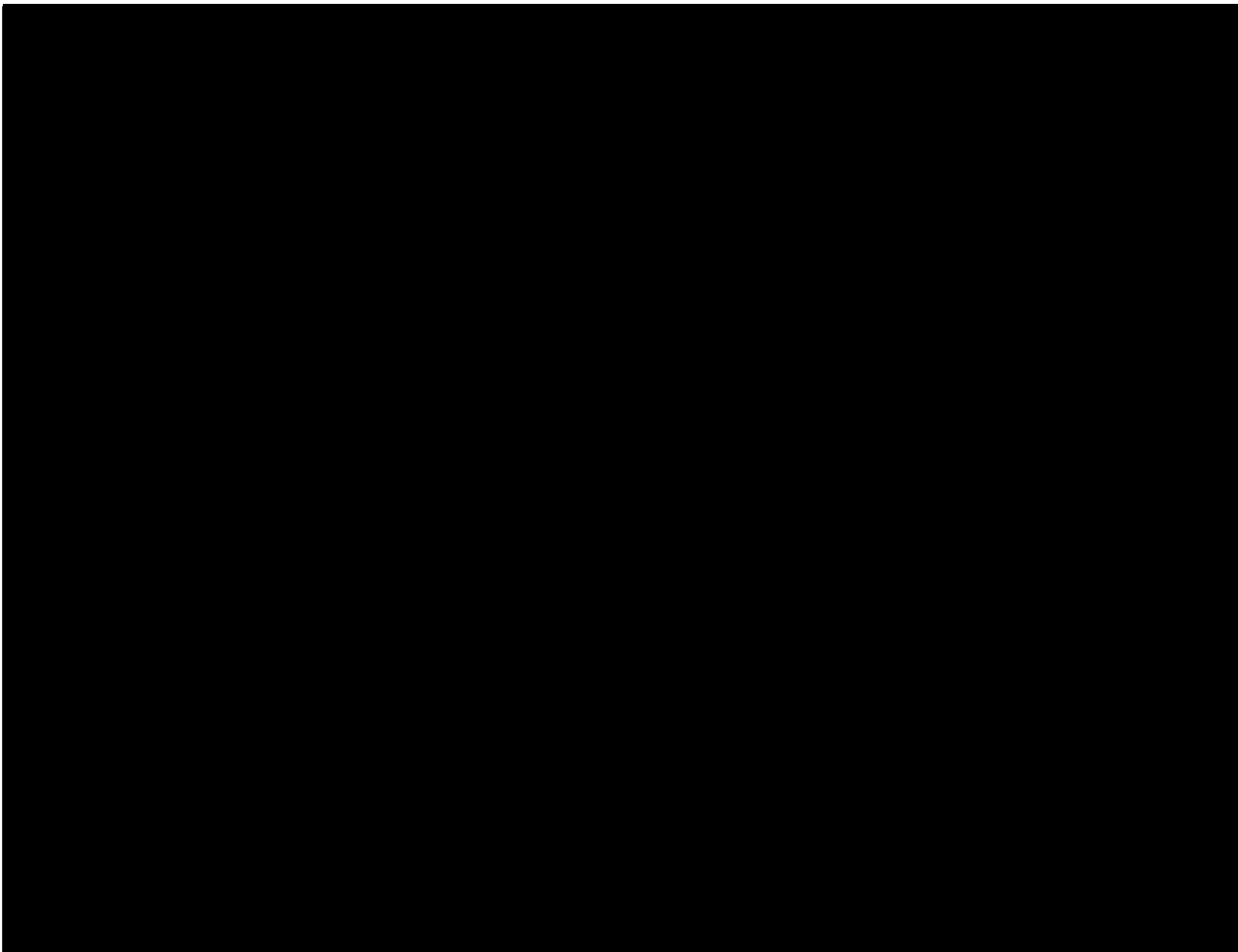












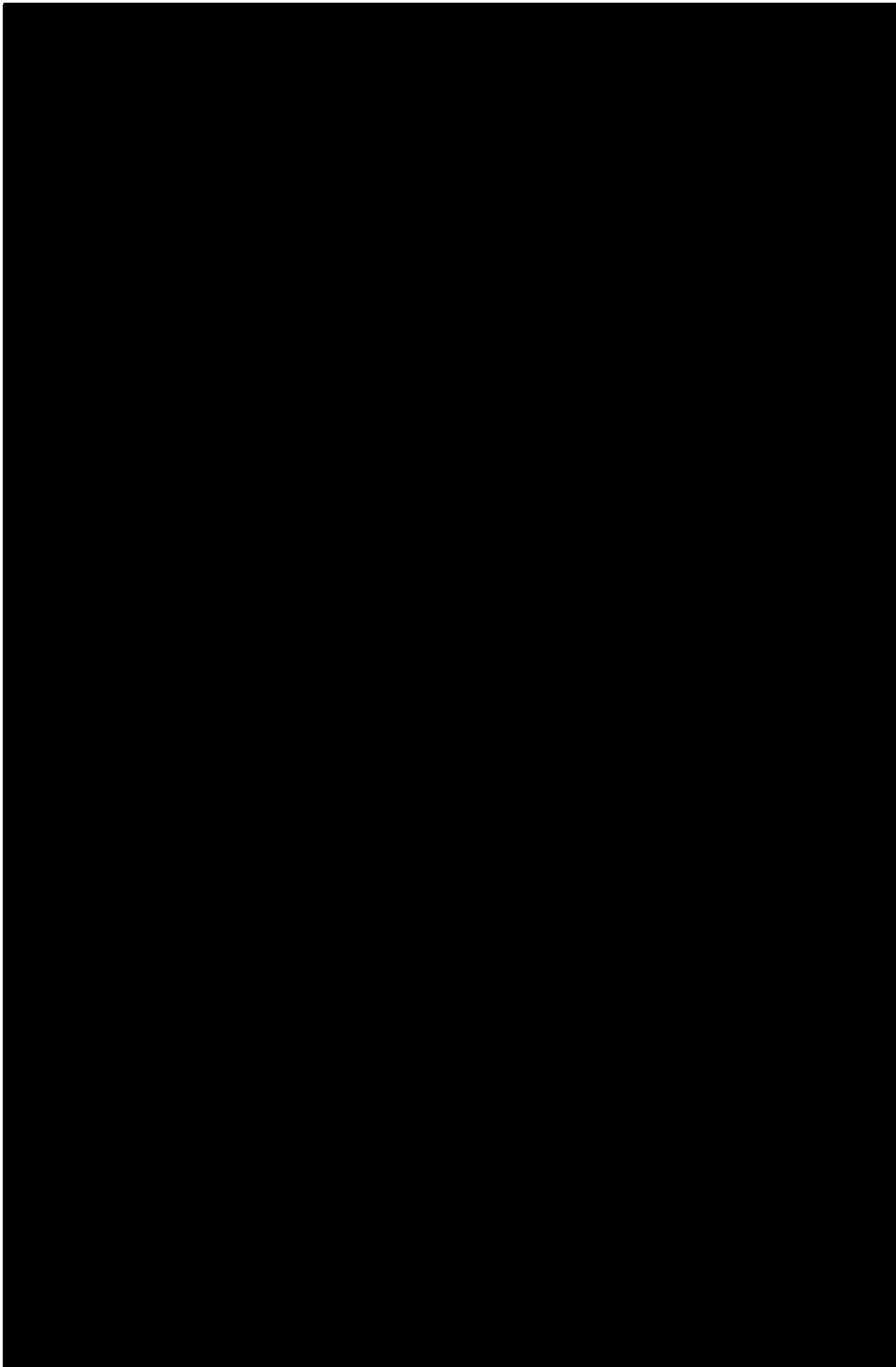
## **ATTACHMENT 1:**

### **VALUEOPTIONS' SAMPLE COMMUNICATION MATERIALS FOR EATING DISORDER MANAGEMENT PROGRAM, INCLUDING:**

- Eating Disorders Introductory Letter for Physicians
- "What's Your Eating Attitude?" Quiz
- Tip Sheets:
  - Understanding Eating Disturbances and Disorders
  - Teenagers with Eating Disorders
  - Eating Disorders: A Fact Sheet
  - Eating Disorder Treatment and Support<sup>1</sup>
  - Eating Disorder Coordination of Care

<sup>1</sup>Please note that we will update these materials during contract implementation to reflect current preferred programs.

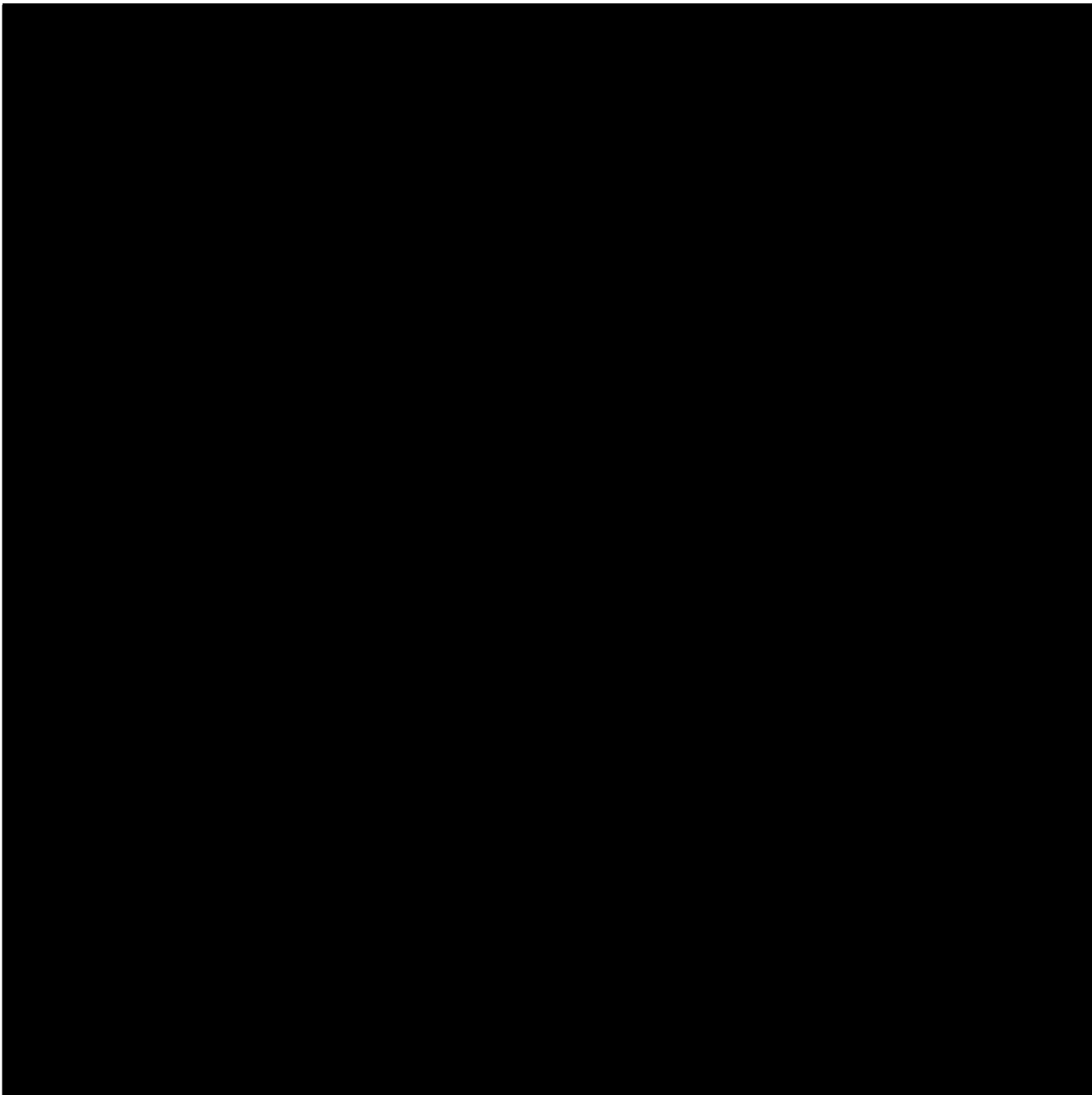


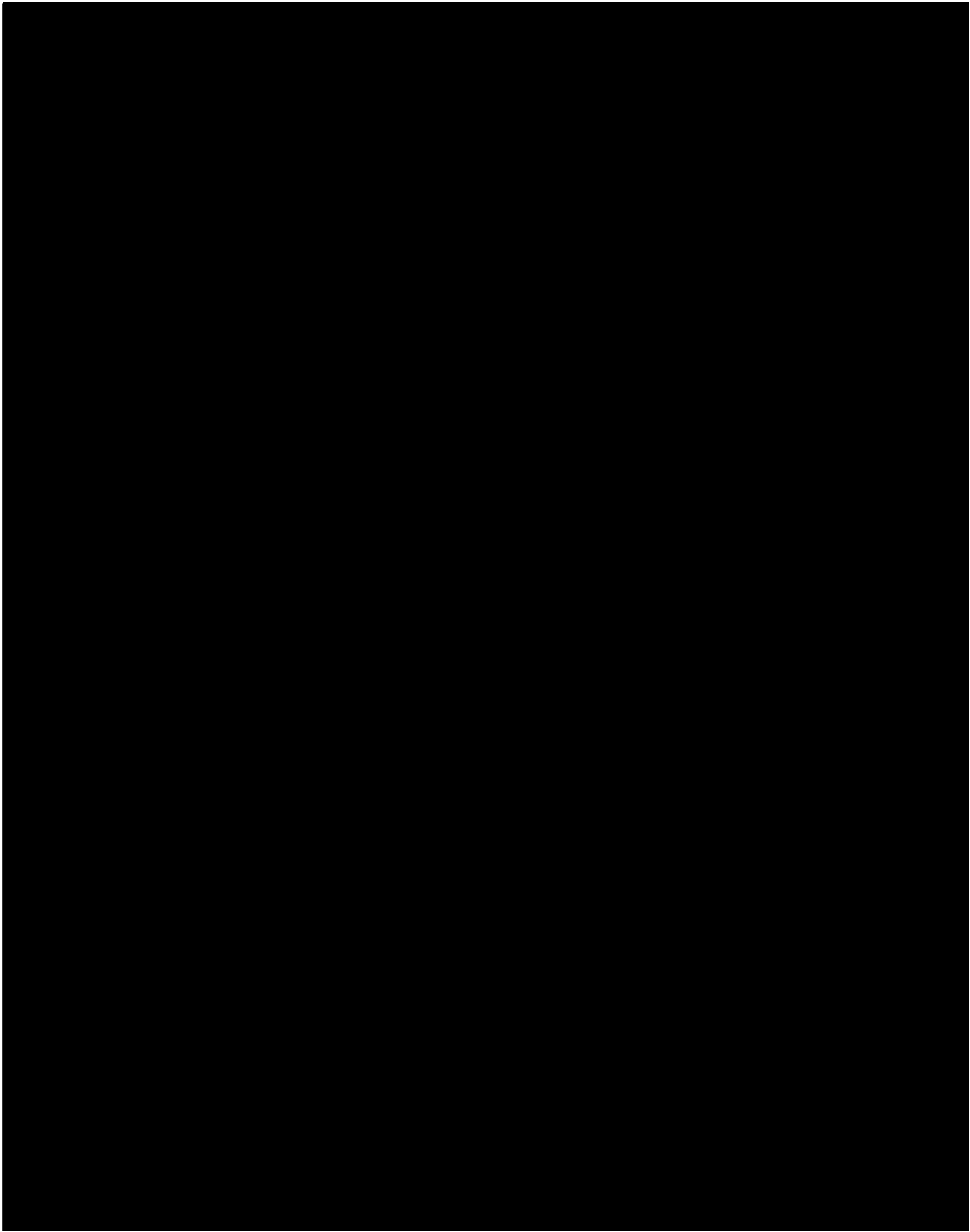


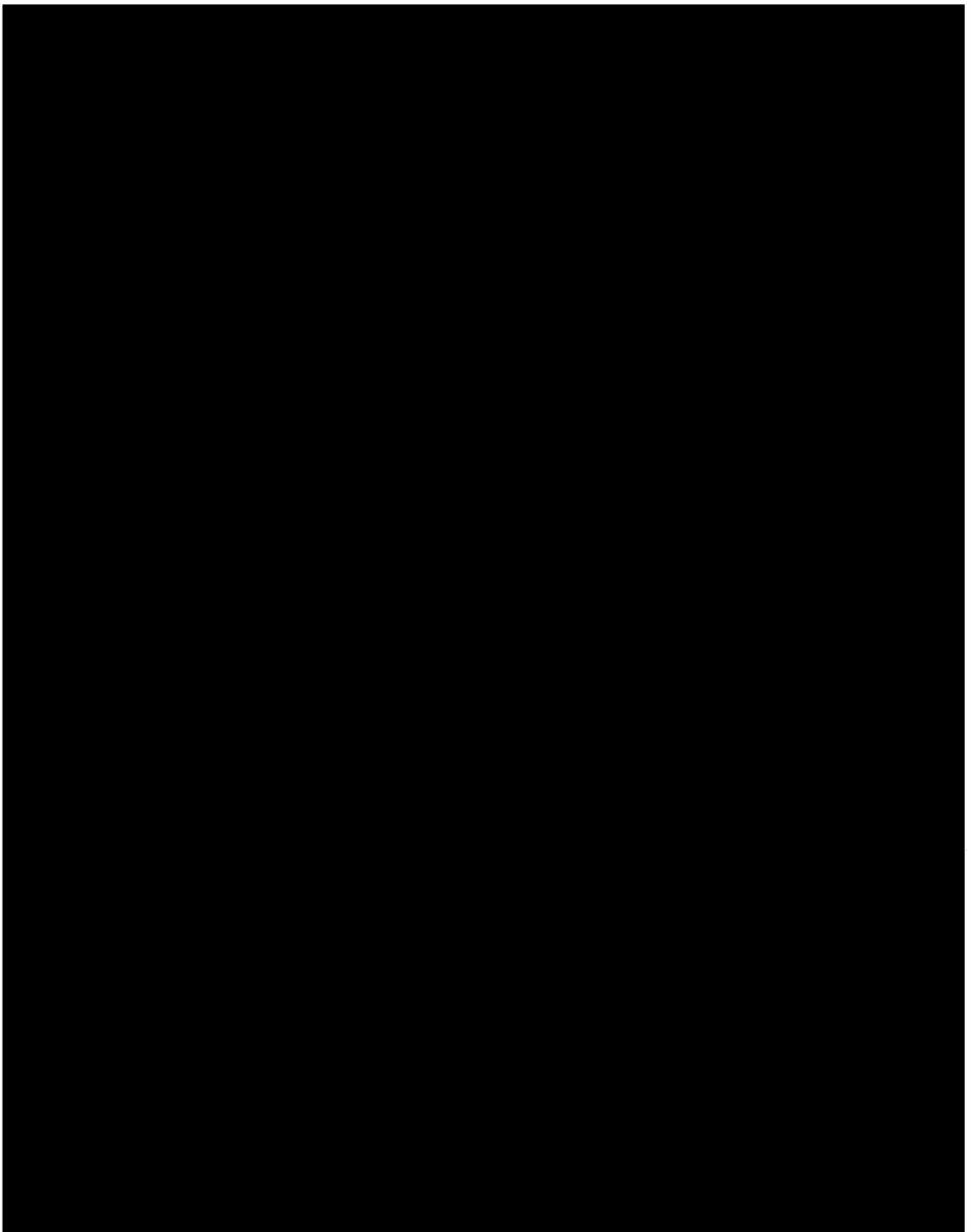
1

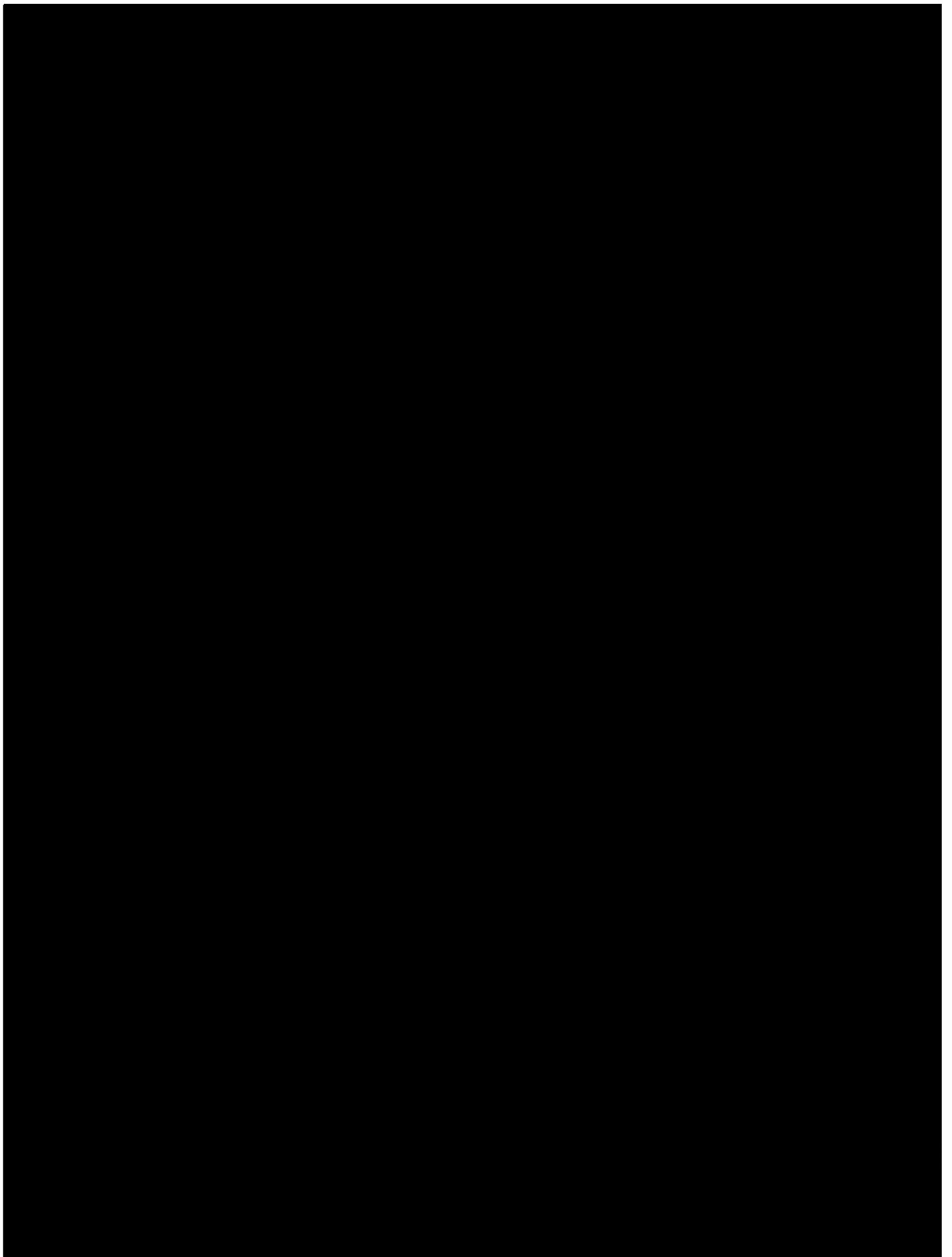
2

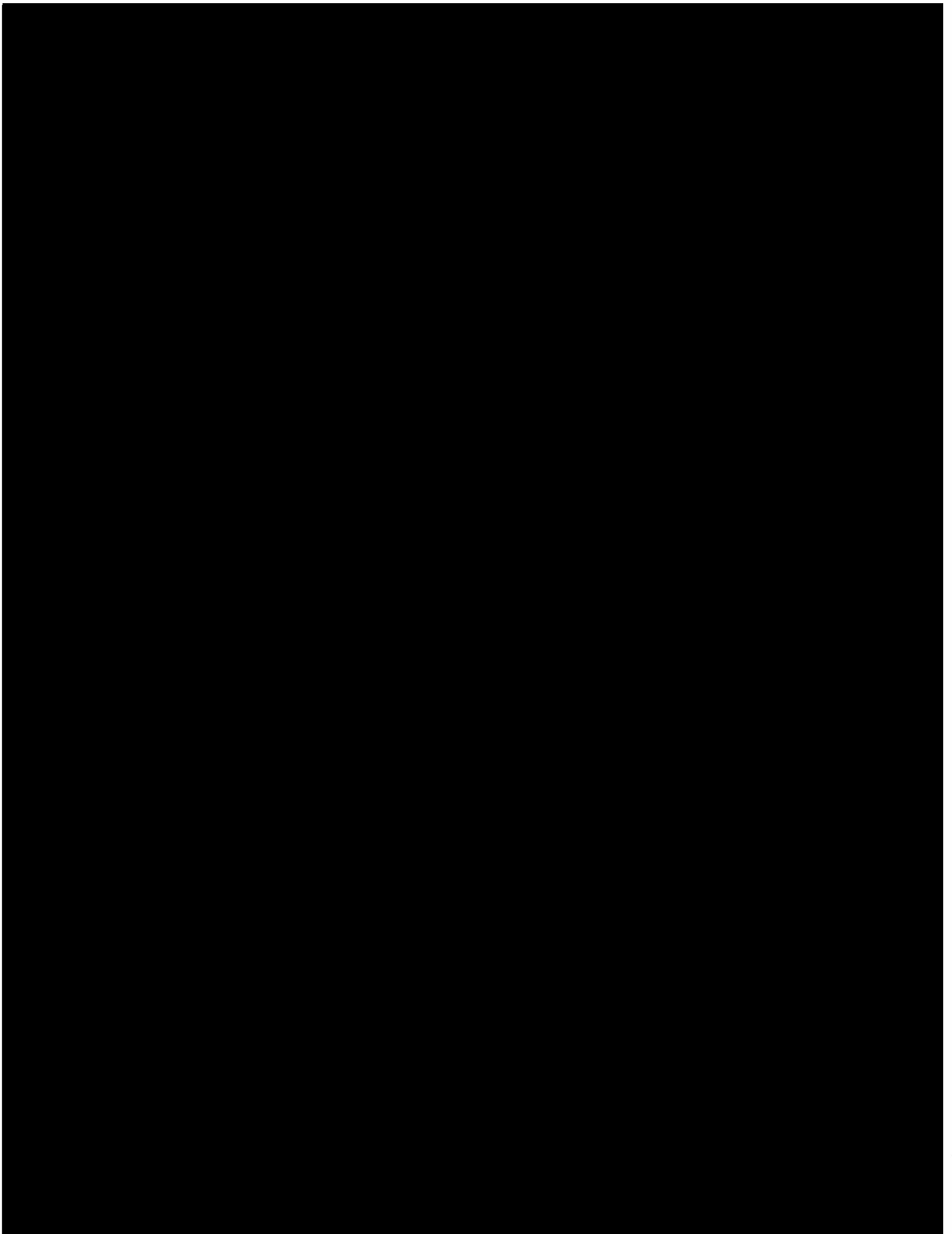
3

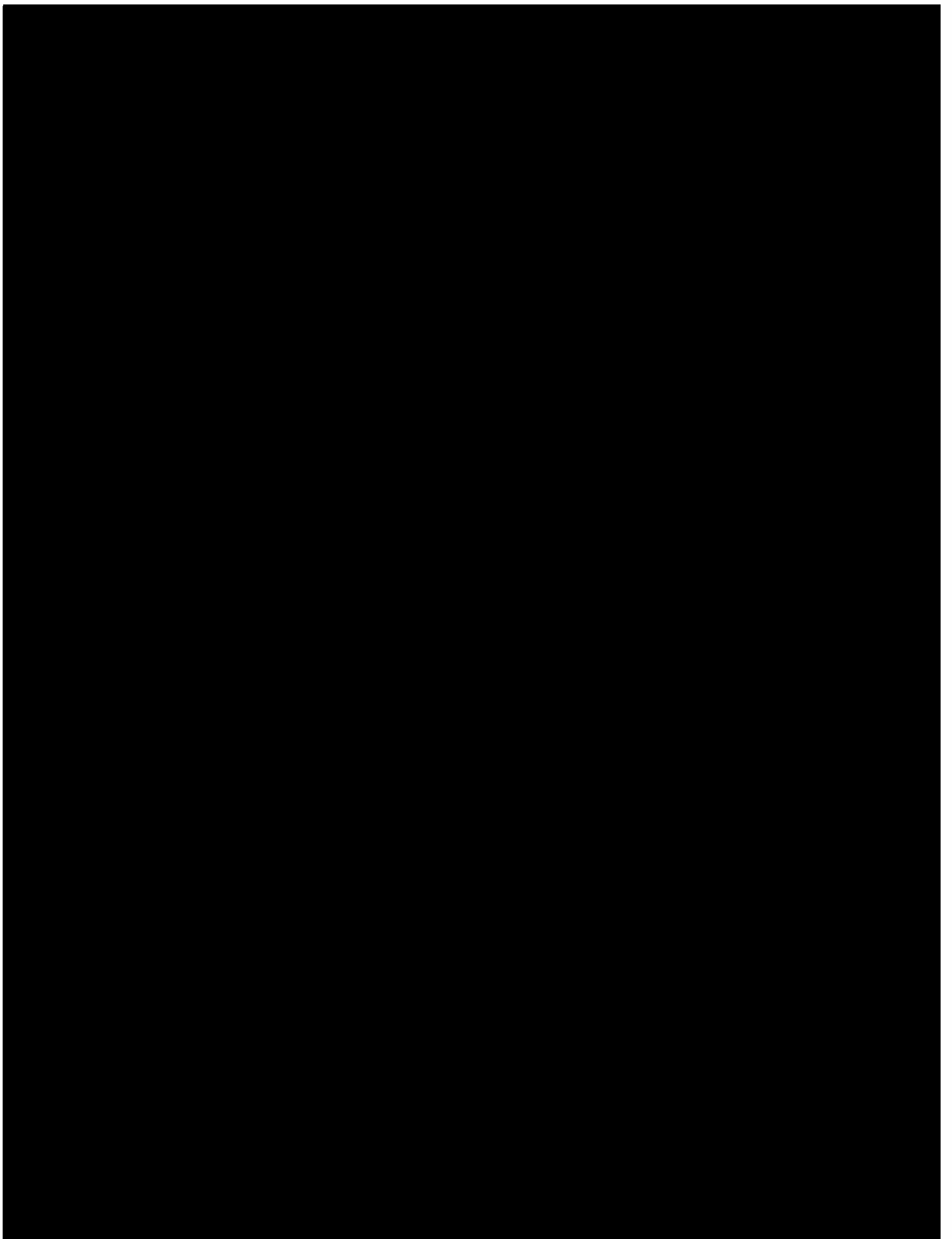


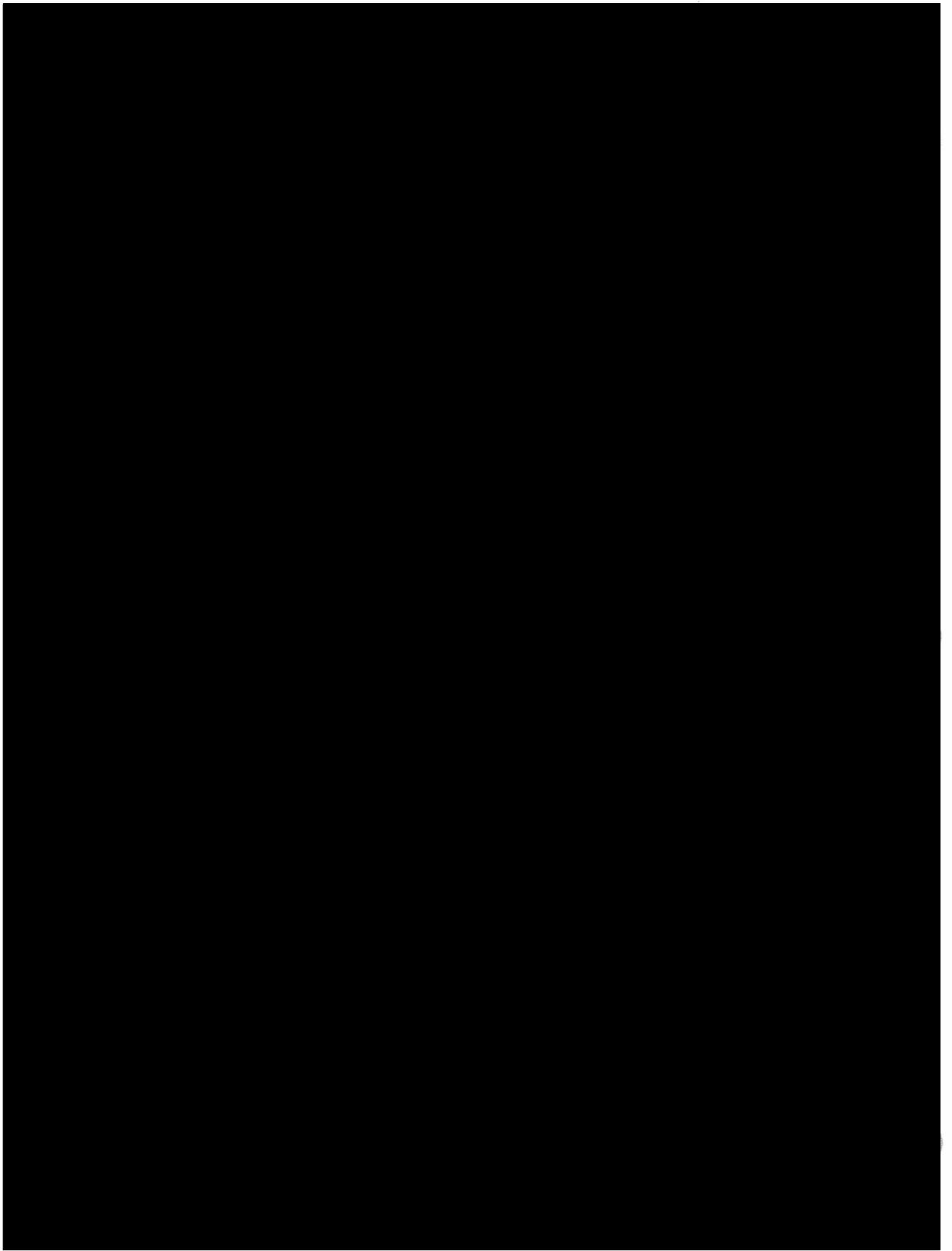




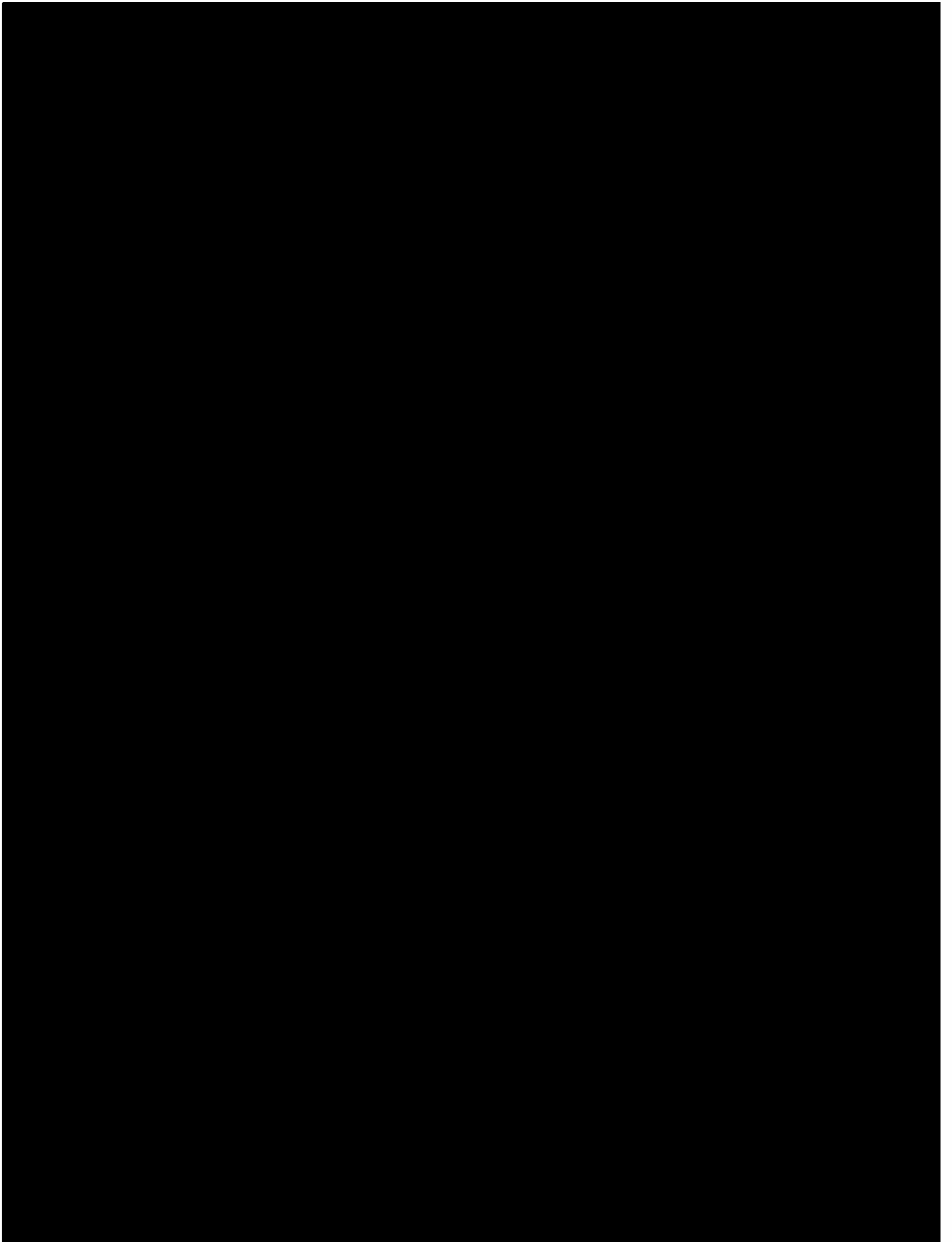


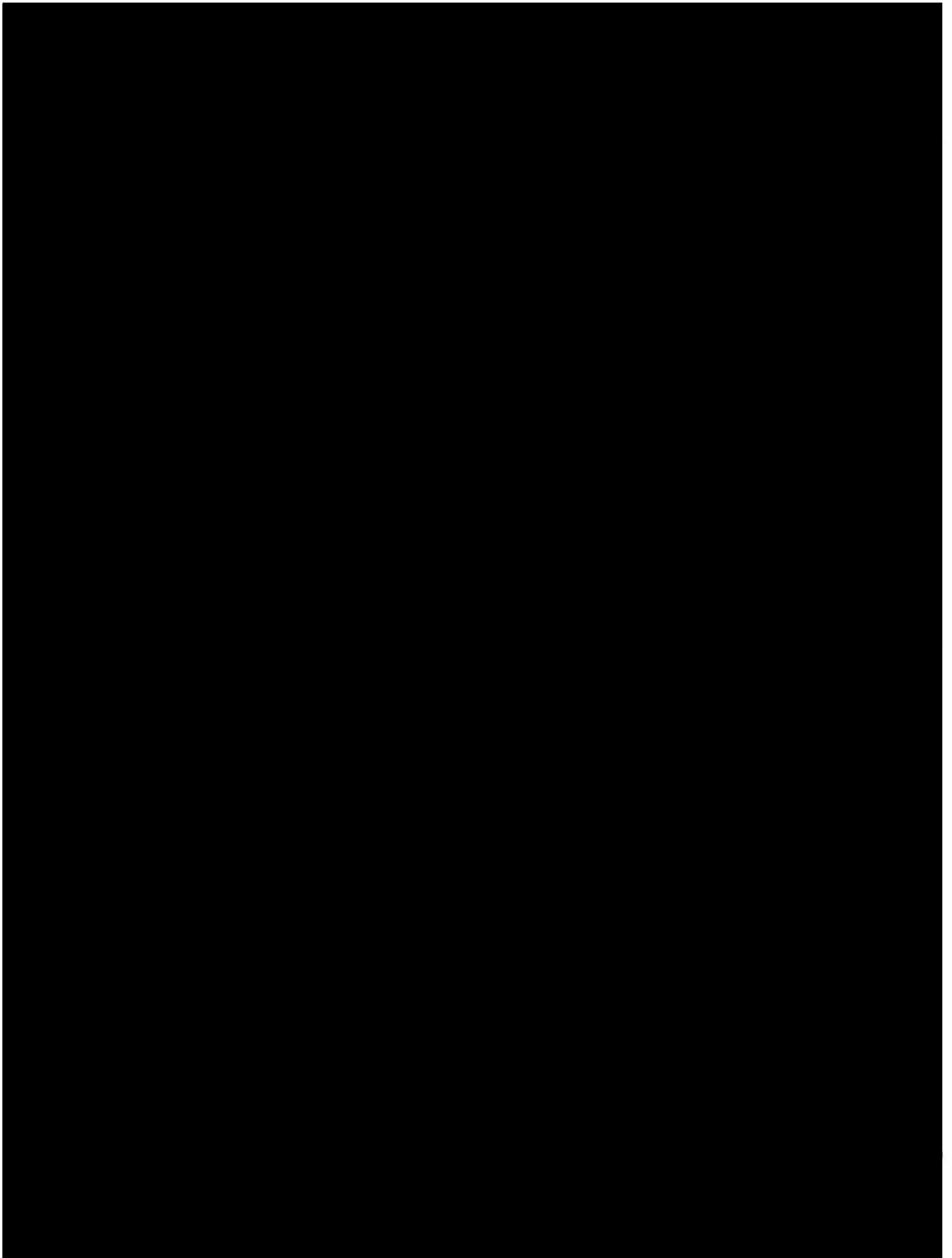


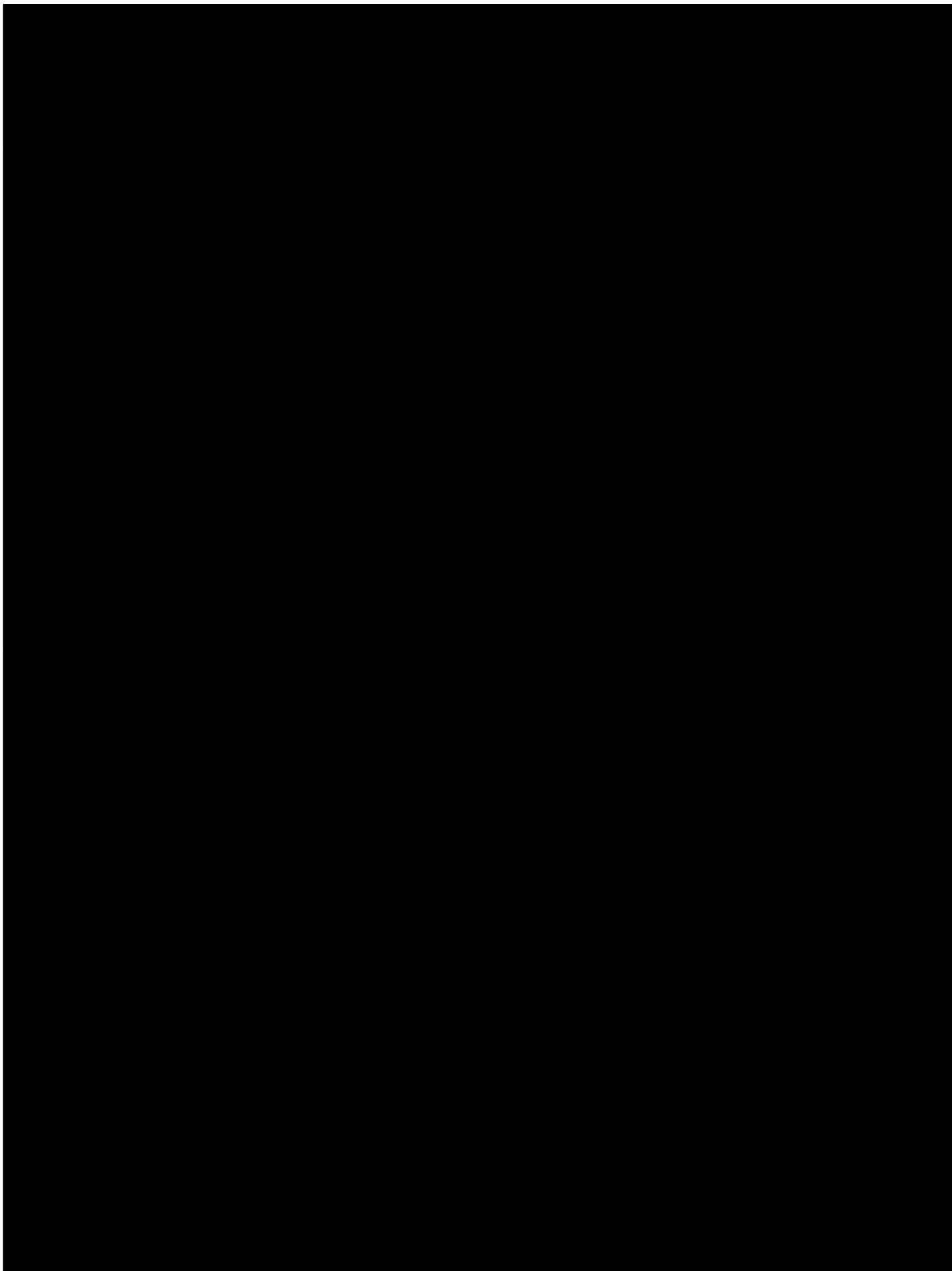














ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

April 19, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

RE: Clarification Request #1  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"

On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, we identified the following section of your proposal that requires clarification.

**Administrative Proposal:**

Enclosed is an amended Exhibit I.T- Offeror Attestations Form. Please submit two (2) originals with signature and notarization and ten (10) copies of Exhibit I.T.

**Technical Proposal:**

Administrative Proposal Requirements Section III.B.8 states "The Offeror, as of Proposal Due Date, has current URAC-case management, JCAHO, ACHC, NCQA or CARF full accreditation at the proposed primary worksite where case management will be performed for the Program services.

In response to Question IV.B.1.b.(1)(d) of the RFP, ValueOptions indicates that service locations are based in New York. Please confirm that the proposed primary New York-based service location where case management will be performed or the Program has obtained URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0.

A response to this request is due no later than Thursday April 25, 2013. If you have any questions regarding this request, don't hesitate to call me.

Sincerely,



Linda Burk  
Procurement Manager

Enclosure

cc: Laura Cook

**Exhibit I.T - Offeror Attestations Form**

An authorized representative of the Offeror who is legally authorized to certify the information requested in the name of and on behalf of the Offeror is required to complete and sign the Offeror Attestations and provide all requested information. Offeror's authorized representative must certify as to the truth of the representations made by signing where indicated, below.

**CERTIFICATION:**

The Offeror (1) recognizes that the following representations are submitted for the express purpose of assisting the State of New York in making a determination to award a contract; (2) acknowledges and agrees by submitting the Attestation, that the State may at its discretion, verify the truth and accuracy of all statements made herein; (3) certifies that the information submitted in this certification and any attached documentation is true, accurate and complete.

Name of Business Entity Submitting Bid:		
Entity's Legal Form:		<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other
<b>No.</b>	<b>RFP Ref.</b>	<b>RFP Requirement:</b>
1.	Section III.B.1	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> possesses <input type="checkbox"/> does not possess the legal capacity to enter into a contract with the Department.
2.	Section III.B.2	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest provides behavioral management and associated claims adjudication services for a minimum of five million (5,000,000) lives as specified below. The Offeror must provide a list of client organizations with the number of lives served through each client to clearly demonstrate that the Offeror meets the minimum requirement of five million (5,000,000) lives. In determining lives, the Offeror should:  <ul style="list-style-type: none"> <li>• Include both at-risk and fee-for-service business;</li> <li>• Include Medicaid business;</li> <li>• Count all lives [e.g., an employee, a spouse and two (2) eligible dependents count as four (4)];</li> <li>• Exclude any non-behavioral health management business;</li> <li>• Exclude any employee assistance program business</li> </ul>

**Exhibit I.T - Offeror Attestations Form**

<p>3.</p>	<p>Section III.B.3</p>	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <p><input type="checkbox"/> attests</p> <p><input type="checkbox"/> does not attest</p> <p>its Empire Plan MHPA Provider Network, as proposed, meets or exceeds all of the following <u>minimum</u> Network access guarantees:</p> <p style="text-align: center;"><u>URBAN AREAS</u></p> <p>a. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within five (5) miles; and,</li> <li>• one (1) Facility - ALOC within five (5) miles.</li> </ul> <p>b. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within three (3) miles; and,</li> <li>• one (1) Psychologist within three (3) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within three (3) miles.</li> </ul> <p style="text-align: center;"><u>SUBURBAN AREAS</u></p> <p>c. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within fifteen (15) miles; and,</li> <li>• one (1) Facility - ALOC within fifteen (15) miles.</li> </ul> <p>d. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within fifteen (15) miles; and,</li> <li>• one (1) Psychologist within fifteen (15) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within fifteen (15) miles.</li> </ul> <p style="text-align: center;"><u>RURAL AREAS</u></p> <p>e. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within forty (40) miles; and,</li> <li>• one (1) Facility - ALOC within forty (40) miles.</li> </ul> <p>f. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within forty (40) miles; and,</li> <li>• one (1) Psychologist within forty (40) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within forty (40) miles.</li> </ul>
<p>4.</p>	<p>Section III.B.4</p>	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <p><input type="checkbox"/> attests</p> <p><input type="checkbox"/> does not attest</p> <p>understands and agrees to comply with all specific duties and responsibilities set forth in Section IV.B.3. of this RFP, entitled "Implementation," including Section IV.B.3.b.(2) requiring the Offeror to propose a financial guarantee supporting its commitment to satisfy all implementation requirements.</p>
<p>5.</p>	<p>Section III.B.5</p>	<p><u>As of the Proposal Due Date</u>, Offeror represents and warrants that it:</p> <p><input type="checkbox"/> attests</p> <p><input type="checkbox"/> does not attest</p> <p>will maintain and make available as required by the Department a complete and accurate set of records related to the Agreement resulting from this RFP as required by Appendices A and B and the draft Agreement set forth in Section VII of this RFP. This includes, but is not limited to, provider contracts, detailed claim records, and any and all other financial records as deemed necessary by the Department to perform its fiduciary responsibilities to the Empire Plan MHPA Program's participants and to ensure that public dollars are spent appropriately.</p>

**Exhibit I.T - Offeror Attestations Form**

6.	Section III.B.6	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest has submitted as part of its Proposal, if so required by the RFP, or will submit all Transmittal letters, Statements, Formal Certifications and Exhibits as required in Section II of this RFP related to the Offeror's compliance with all rules, laws, regulations and executive orders.
7.	Section III.B.7	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest will execute the duties and responsibilities set forth in Section IV of this RFP in strict conformance to the requirements described in that section of the RFP.
8.	Section III.B.8	<b>Amended 4-18-13</b> At time of <del>bid submission</del> Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest has current URAC-case management, JCAHO, ACHC, NCQA or CARF full accreditation at the proposed primary worksite where case management will be performed for the Program services.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**[INSERT OFFEROR NAME]**  
**[INSERT TITLE]**  
**[INSERT COMPANY NAME]**

**CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) : SS.:  
 COUNTY OF \_\_\_\_\_ )  
 On the \_\_\_\_ day of \_\_\_\_\_ in the year 2013, before me personally appeared:  
 \_\_\_\_\_, known to me to be the person who executed the  
 foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at  
 \_\_\_\_\_, Town of \_\_\_\_\_  
 County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**  
 ( \_\_\_ If a corporation): \_he is the \_\_\_\_\_ of  
 \_\_\_\_\_, the corporation described in said instrument; that,  
 by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing  
 instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that  
 authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as  
 the act and deed of said corporation.  
 ( \_\_\_ If a partnership): \_he is the \_\_\_\_\_ of  
 \_\_\_\_\_, the partnership described in said instrument; that,  
 by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of  
 the partnership for the purposes set forth therein; and that, pursuant to that authority, \_he  
 executed the foregoing instrument in the name and on behalf of said partnership as the act and deed  
 of said partnership.

\_\_\_\_\_  
Notary Public





April 25, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

Re: Clarification Request #1  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student  
Employee Health Plan  
Request for Clarification Dated April 19, 2013

Dear Ms. Burk:

ValueOptions, Inc. received your Request for Clarification dated April 19, 2013. Our responses to each of the following requests are included within this binder:

**Administrative Proposal:**

Enclosed is an amended Exhibit I.T-Offorer Attestations Form. Please submit two (2) originals with signature and notarization and ten (10) copies of Exhibit I.T.

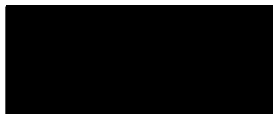
**Technical Proposal:**

Administrative Proposal Requirements Section III.B.8 states "The Offeror, as of Proposal Due Date, has current URAC-case management, JCAHO, ACHC, NCQA or CARF full accreditation at the proposed primary worksite where case management will be performed for the Program services.

In response to Question IV.B.1.b.(1)(d) of the RFP, ValueOptions indicates that service locations are based in New York. Please confirm that the proposed primary New York-based service location where case management will be performed or the Program has obtained URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0.

Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

Sincerely,



Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
lynn.mueller@valueoptions.com

**Administrative Proposal:**

Enclosed is an amended Exhibit I.T-Offorer Attestations Form. Please submit two (2) originals with signature and notarization and ten (10) copies of Exhibit I.T.

Please see tab titled "Amended Exhibit I.T. Offeror Attestations Form" for two originals and ten copies of our completed amended attestation, with signature and notarization.

**Technical Proposal:**

Administrative Proposal Requirements Section III.B.8 states "The Offeror, as of Proposal Due Date, has current URAC-case management, JCAHO, ACHC, NCQA or CARF full accreditation at the proposed primary worksite where case management will be performed for the Program services.

In response to Question IV.B.1.b.(1)(d) of the RFP, ValueOptions indicates that service locations are based in New York. Please confirm that the proposed primary New York-based service location where case management will be performed or the Program has obtained URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0.

ValueOptions confirms that the primary New York-based service location from which we will perform case management has URAC Full Accreditation under the Health Utilization Management Standards, Version 7.0, as well as National Committee for Quality Assurance (NCQA) Full Accreditation – MBHO.

**Exhibit I.T - Offeror Attestations Form**

An authorized representative of the Offeror who is legally authorized to certify the information requested in the name of and on behalf of the Offeror is required to complete and sign the Offeror Attestations and provide all requested information. Offeror's authorized representative must certify as to the truth of the representations made by signing where indicated, below.

**CERTIFICATION:**

The Offeror (1) recognizes that the following representations are submitted for the express purpose of assisting the State of New York in making a determination to award a contract; (2) acknowledges and agrees by submitting the Attestation, that the State may at its discretion, verify the truth and accuracy of all statements made herein; (3) certifies that the information submitted in this certification and any attached documentation is true, accurate and complete.

Name of Business Entity Submitting Bid:		ValueOptions, Inc.
Entity's Legal Form:		<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other
No.	RFP Ref.	RFP Requirement:
1.	Section III.B.1	At time of Proposal Due Date, Offeror represents and warrants that it: <input checked="" type="checkbox"/> possesses <input type="checkbox"/> does not possess the legal capacity to enter into a contract with the Department.
2.	Section III.B.2	At time of Proposal Due Date, Offeror represents and warrants that it: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest provides behavioral management and associated claims adjudication services for a minimum of five million (5,000,000) lives as specified below. The Offeror must provide a list of client organizations with the number of lives served through each client to clearly demonstrate that the Offeror meets the minimum requirement of five million (5,000,000) lives. In determining lives, the Offeror should: <ul style="list-style-type: none"> <li>• Include both at-risk and fee-for-service business;</li> <li>• Include Medicaid business;</li> <li>• Count all lives [e.g., an employee, a spouse and two (2) eligible dependents count as four (4)];</li> <li>• Exclude any non-behavioral health management business;</li> <li>• Exclude any employee assistance program business</li> </ul>

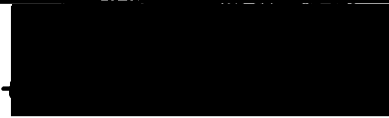
**Exhibit I.T - Offeror Attestations Form**

3.	Section III.B.3	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <p><input checked="" type="checkbox"/> attests  <input type="checkbox"/> does not attest</p> <p>its Empire Plan MHPA Provider Network, as proposed, meets or exceeds all of the following <u>minimum</u> Network access guarantees:</p> <p style="text-align: center;"><b>URBAN AREAS</b></p> <p>a. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within five (5) miles; and,</li> <li>• one (1) Facility - ALOC within five (5) miles.</li> </ul> <p>b. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within three (3) miles; and,</li> <li>• one (1) Psychologist within three (3) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within three (3) miles.</li> </ul> <p style="text-align: center;"><b>SUBURBAN AREAS</b></p> <p>c. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within fifteen (15) miles; and,</li> <li>• one (1) Facility - ALOC within fifteen (15) miles.</li> </ul> <p>d. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within fifteen (15) miles; and,</li> <li>• one (1) Psychologist within fifteen (15) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within fifteen (15) miles.</li> </ul> <p style="text-align: center;"><b>RURAL AREAS</b></p> <p>e. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Facility - Inpatient within forty (40) miles; and,</li> <li>• one (1) Facility - ALOC within forty (40) miles.</li> </ul> <p>f. Seventy-five percent (75%) of Enrollees will have at least:</p> <ul style="list-style-type: none"> <li>• one (1) Psychiatrist within forty (40) miles; and,</li> <li>• one (1) Psychologist within forty (40) miles; and,</li> <li>• one (1) Licensed Clinical Social Worker (with R designation in NYS) within forty (40) miles.</li> </ul>
4.	Section III.B.4	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <p><input checked="" type="checkbox"/> attests  <input type="checkbox"/> does not attest</p> <p>understands and agrees to comply with all specific duties and responsibilities set forth in Section IV.B.3. of this RFP, entitled "Implementation," including Section IV.B.3.b.(2) requiring the Offeror to propose a financial guarantee supporting its commitment to satisfy all implementation requirements.</p>
5.	Section III.B.5	<p><u>As of the Proposal Due Date</u>, Offeror represents and warrants that it:</p> <p><input checked="" type="checkbox"/> attests  <input type="checkbox"/> does not attest</p> <p>will maintain and make available as required by the Department a complete and accurate set of records related to the Agreement resulting from this RFP as required by Appendices A and B and the draft Agreement set forth in Section VII of this RFP. This includes, but is not limited to, provider contracts, detailed claim records, and any and all other financial records as deemed necessary by the Department to perform its fiduciary responsibilities to the Empire Plan MHPA Program's participants and to ensure that public dollars are spent appropriately.</p>

**Exhibit I.T - Offeror Attestations Form**

6.	Section III.B.6	At time of Proposal Due Date, Offeror represents and warrants that it: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest has submitted as part of its Proposal, if so required by the RFP, or will submit all Transmittal letters, Statements, Formal Certifications and Exhibits as required in Section II of this RFP related to the Offeror's compliance with all rules, laws, regulations and executive orders.
7.	Section III.B.7	At time of Proposal Due Date, Offeror represents and warrants that it: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest will execute the duties and responsibilities set forth in Section IV of this RFP in strict conformance to the requirements described in that section of the RFP.
8.	Section III.B.8	<del>Amended 4-18-13</del> At time of <del>bid-submission</del> Proposal Due Date, Offeror represents and warrants that it: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest has current URAC-case management, JCAHO, ACHC, NCQA or CARF full accreditation at the proposed primary worksite where case management will be performed for the Program services.

Date: 04/22/13



Signature

**SCOTT TABAKIN**  
 CHIEF FINANCIAL OFFICER  
 VALUEOPTIONS

**CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF Virginia )  
 City ) : SS.:  
~~COUNTY OF~~ Norfolk )

On the 22<sup>nd</sup> day of April in the year 2013, before me personally appeared: Scott M. Tabakin, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at 240 Corporate Blvd, City/Town of Norfolk, County of \_\_\_\_\_, State of Virginia; and further that:

[Check One]  
 (  If a corporation): he is the CFO of ValueOptions, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.  
 ( \_\_\_ If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

\_\_\_\_\_  
 Notary Public

**KAREN J. LESTER**  
 NOTARY PUBLIC  
 COMMONWEALTH OF VIRGINIA  
 NOTARY REGISTRATION NUMBER: 311922  
 MY COMMISSION EXPIRES: 9/19/17



ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

June 3, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

**RE: Clarification Request #5  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"**

On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, we identified the following section of your proposal that requires clarification.

**Administrative Proposal:**

For all references to LCSW-R listed in the Offeror's Exhibit I.Y.2 -Proposed MHSA Provider Network File excel spreadsheet, please provide the corresponding LCSW-R license numbers. The license numbers should be formatted as text in Column 9 of the spreadsheet.

**Technical Proposal:**

Under the heading Program Administration Question A.1.a.(4) states in part "If the proposed organizational structure has been used in administering the program of another client, provide the client's name and include the client as a reference as required in Exhibit I.V." ValueOptions cites the [REDACTED] as clients for which ValueOptions has administered similar services.

We are requesting ValueOptions submit an Exhibit I.V for each of the above named clients.

A response to this request is due no later than Monday June 10, 2013. If you have any questions regarding this request, don't hesitate to call me.

Sincerely,

[REDACTED]

Linda Burk  
Procurement Manager

cc: Laura Cook



June 10, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

Re: Clarification Request #5  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student  
Employee Health Plan  
Request for Clarification Dated June 3, 2013

Dear Ms. Burk:

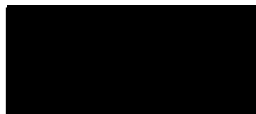
ValueOptions, Inc. received your Request for Clarification dated June 3, 2013. Our response includes license numbers for the LCSW-R providers (updated Exhibit I.Y.2 Proposed MHSA provider Network File) as well as the two requested additional references.

Please note that in our original response, we defaulted to LCSW-R to designate the highest licensure level within a state for social workers across the country. We recognize that LCSW-R is specific to NY and apologize for any confusion this may have caused. We have corrected this in our submission today.

We are providing our response via email today (June 10, 2013), with hard copies of our response to follow via mail. Our mail submission will include 12 copies of the updated Exhibit I.Y.2 on CD, as well as one CD with the redacted version. It will also include 12 hard copies of the requested additional references, as well as one copy of the redacted version in hard copy and on CD.

Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

Sincerely,



Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
lynn.mueller@valueoptions.com

Submitted by:

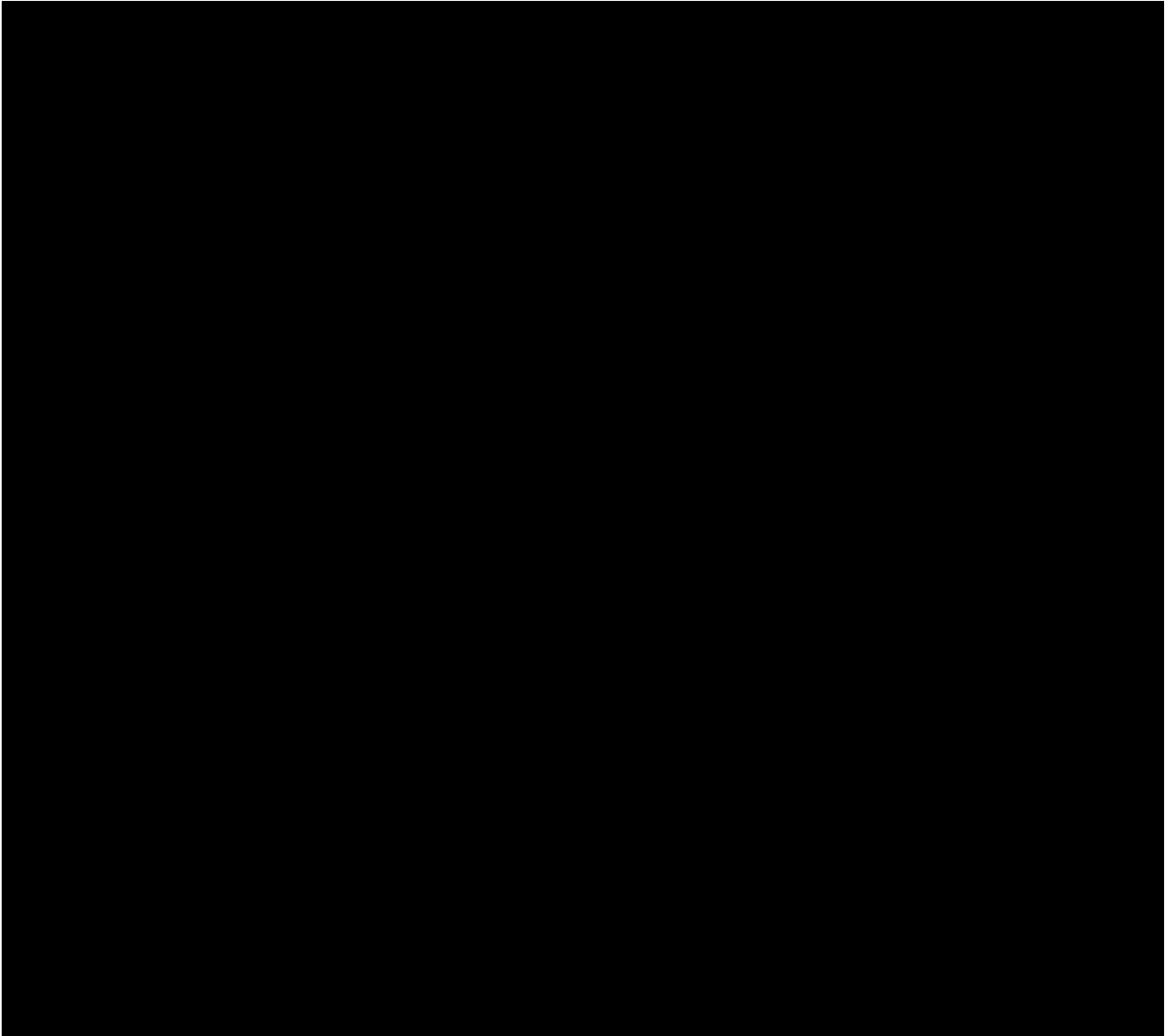


**Response to Clarification  
Request #5  
Exhibit I.Y.2. Updated  
Proposed MHSA Network  
June 10, 2013**



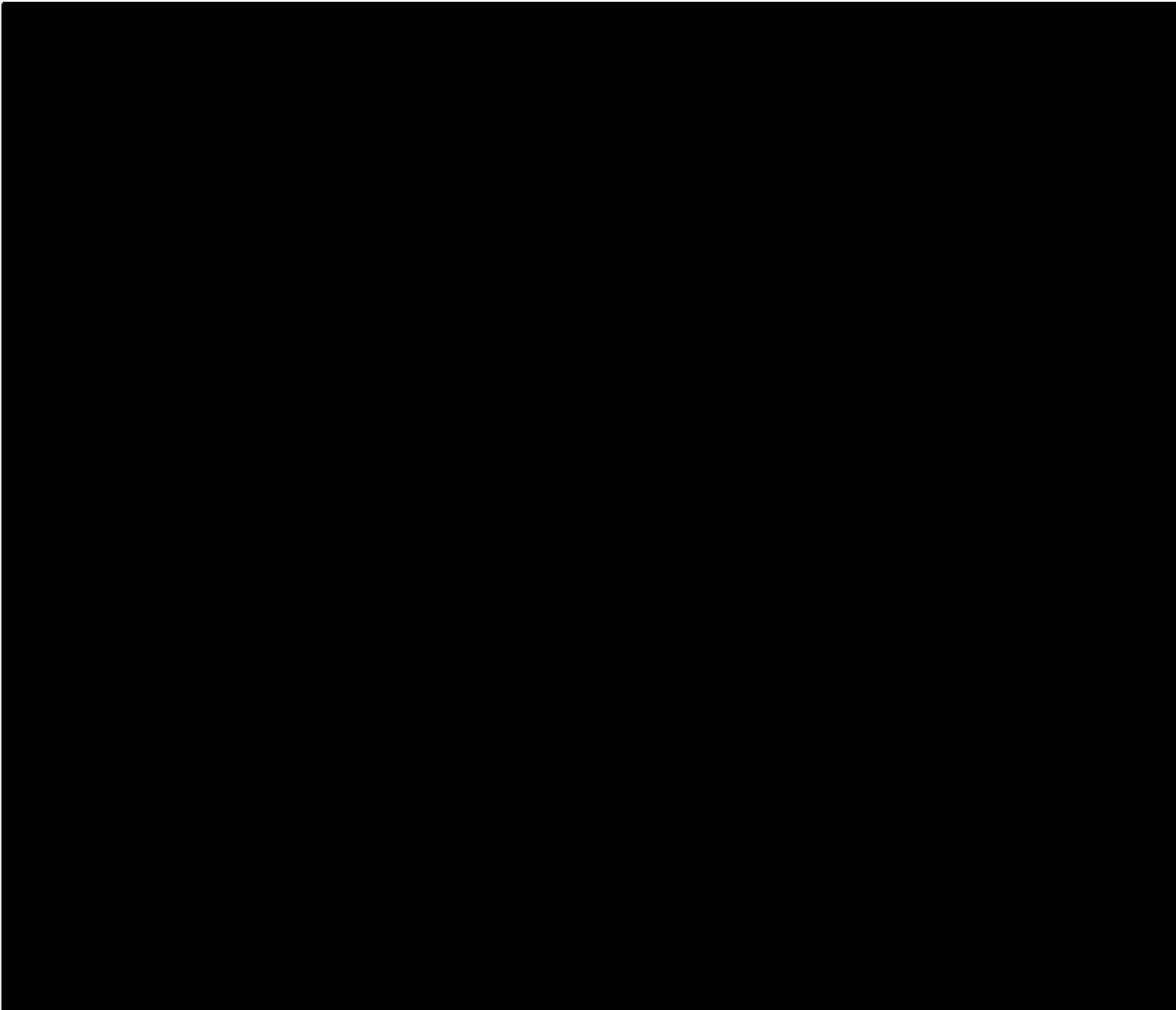
Below please find ValueOptions' reference information for our current clients the [REDACTED]  
[REDACTED] This is in response to Clarification Request #5, Technical Proposal,  
"...requesting ValueOptions submit an Exhibit I.V. for each of the above named clients."

**Current or Former Customer?: Current Customer**



---

**Current or Former Customer?: Current Customer**





ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

June 10, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

RE: Clarification Request #6  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"

On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, we identified the following section of your proposal that requires clarification.

**Technical Proposal:**

**Network Provider Access Guarantees** – On Page B.10-2, ValueOptions confirmed they agreed to the minimum Network Provider Access Guarantee of [REDACTED] to a Network Practitioner within [REDACTED] for Urban areas. On Page B.10-6, ValueOptions states a Network Provider Access Guarantee of [REDACTED] to a Network Practitioner within [REDACTED] for Urban areas. Please confirm the level of Network Provider Access ValueOptions is proposing to guarantee for the Mental Health & Substance Abuse Program.

**Non-Financial Accuracy Guarantee** – Please confirm ValueOptions' Non-Financial Accuracy Guarantee on Page B.11-19 is [REDACTED] for years 2 through 5 of the contract.

A response to this request is due no later than Monday, June 17, 2013. If you have any questions regarding this request don't hesitate to call me.

Sincerely,

[REDACTED]

Linda Burk  
Procurement Manager

cc: Laura Cook



June 13, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

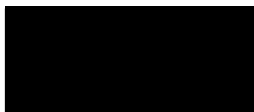
Re: Clarification Request #6  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan, and Student  
Employee Health Plan  
Request for Clarification Dated June 10, 2013

Dear Ms. Burk:

ValueOptions, Inc. received your Request for Clarification dated June 10, 2013. Our responses to the two clarifying questions are being sent to you via email today (June 13, 2013), with a hard copy to follow via mail.

Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

Sincerely,



Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
lynn.mueller@valueoptions.com

Below we provide our response to the two clarifying questions received on June 10, 2013.

**Network Provider Access Guarantees**

On page B.10-2, ValueOptions confirmed they agreed to the minimum Network Provider Access Guarantee of [REDACTED] access to a Network Practitioner within [REDACTED] miles for Urban areas. On Page B.10-6, ValueOptions states a Network Provider Access Guarantee of [REDACTED] access to a Network Practitioner within [REDACTED] miles for Urban areas. Please confirm the level of Network Provider Access ValueOptions is proposing to guarantee for the Mental Health & Substance Abuse Program.

ValueOptions confirms our access guarantee that [REDACTED] of enrollees in urban areas will have at least one network practitioner within [REDACTED] miles.

**Non-Financial Accuracy Guarantee**

Please confirm ValueOptions' Non-Financial Accuracy Guarantee on Page B.11-19 is [REDACTED] for years 2 through 5 of the contract.

ValueOptions confirms that our non-financial accuracy guarantee is [REDACTED] for years 2 through 5 of the contract.



ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

June 17, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

RE: Clarification Request #7  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"

On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, we identified the following section of your proposal that requires clarification.

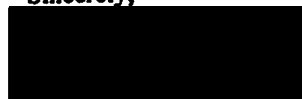
**Technical Proposal:**

For the Offeror's Exhibit I.Y.4 --Comparison of Current MHSA Program Providers and the Offeror's Proposed Provider Network File the Department identified a number of instances where you indicated a provider as both participating and not participating when listed more than once due to different zip codes.

Please confirm whether the providers on the attached listing are participating or not participating in the proposed Provider Network.

A response to this request is due no later than Monday, June 24, 2013. If you have any questions regarding this request don't hesitate to contact me.

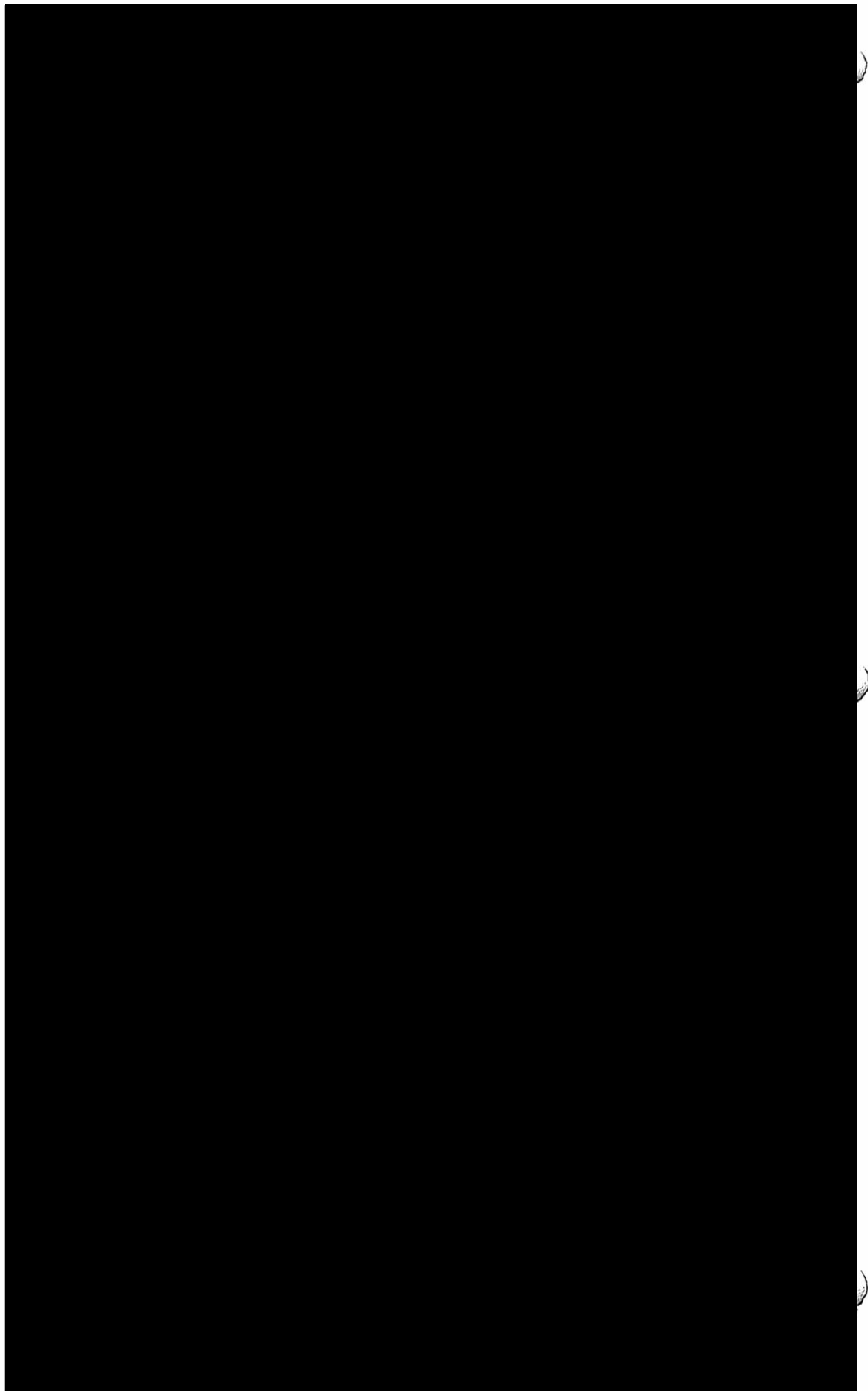
Sincerely,

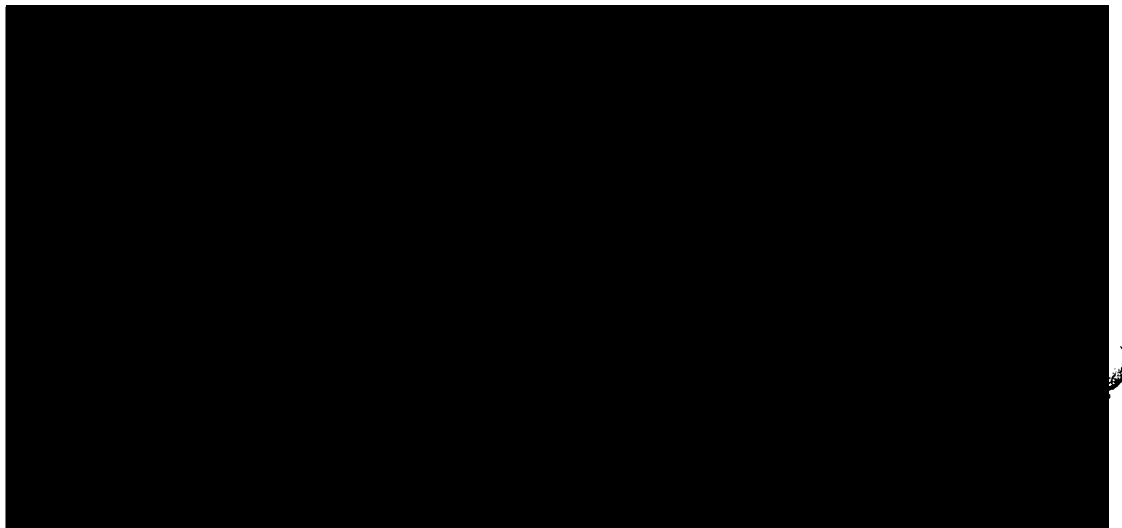


Linda Burk  
Procurement Manager

Attachment

cc: Laura Cook









June 21, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

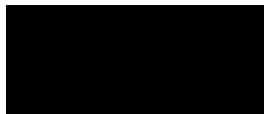
Re: Clarification Request #7  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan, and Student  
Employee Health Plan  
Request for Clarification Dated June 17, 2013

Dear Ms. Burk:

ValueOptions, Inc. received your Request for Clarification dated June 17, 2013. Our responses to the clarifying question is being sent to you via email today (June 21, 2013), with a hard copy to follow via mail.

Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

Sincerely,



Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
lynn.mueller@valueoptions.com

---

Below we provide our response to the clarifying question received on June 17, 2013.

**Technical Proposal**

For the Offeror's Exhibit I.Y.4—Comparison of Current MHSA Program Providers and the Offeror's Proposed Provider Network File the Department identified a number of instances where you indicated a provider as both participating and not participating when listed more than once due to different zip codes.

Please confirm whether the providers on the attached listing are participating or not participating in the proposed Provider Network.

We have confirmed that all providers listed here are participating in our proposed Provider Network. We apologize for any confusion. Due to a data anomaly, a small percentage of providers with multiple locations were not captured as "in network" in our original report. This was an error. Thank you for the opportunity to correct our response.



ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

July 26, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

RE: Clarification Request #9  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"

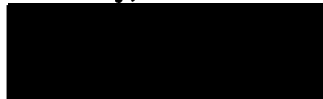
On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, we identified the following section of ValueOptions' proposal that requires clarification.

**Administrative Proposal – Exhibit I.Y.3:**

Please provide GeoAccess Network reports in the attached format to support ValueOption's access percentages reported on Exhibit I.Y.3 Offeror's Proposed MHSA Provider Network Access Prerequisite Worksheet.

A response to this request is due no later than Thursday, August 1, 2013. If you have any questions regarding this request don't hesitate to contact me.

Sincerely,



Linda Burk  
Procurement Manager

Attachment

cc: Laura Cook

**GeoNetworks Report Pages**

<b>Page Name</b>	<b>Employee Grp</b>	<b>Provider Grp</b>	<b>Access Standard</b>	<b>Access Filter</b>
<b>Accessibility Summary</b>	All enrollees tested for access by class (Urban, Suburban, Rural) as per the access standards below.	ALOC	Facility - ALOC	All
		ALOC	Facility - ALOC	With
		ALOC	Facility - ALOC	Without
		Inpatient Facility	Facility – Inpatient	All
		Inpatient Facility	Facility – Inpatient	With
		Inpatient Facility	Facility – Inpatient	Without
		Psychiatrist	Psychiatrist	All
		Psychiatrist	Psychiatrist	With
		Psychiatrist	Psychiatrist	Without
		Psychologist	Psychologist	All
		Psychologist	Psychologist	With
		Psychologist	Psychologist	Without
		Social Workers	Social Workers	All
Social Workers	Social Workers	With		
Social Workers	Social Workers	Without		

**Access Standards:**

<b>Provider Type</b>	<b>Enrollee Location</b>	<b>1 Provider Every</b>
<b>Facility – ALOC</b>	<b>Urban</b>	<b>5 miles</b>
	<b>Suburban</b>	<b>15 miles</b>
	<b>Rural</b>	<b>40 miles</b>
<b>Facility – Inpatient</b>	<b>Urban</b>	<b>5 miles</b>
	<b>Suburban</b>	<b>15 miles</b>
	<b>Rural</b>	<b>40 miles</b>
<b>Psychiatrist</b>	<b>Urban</b>	<b>3 miles</b>
	<b>Suburban</b>	<b>15 miles</b>
	<b>Rural</b>	<b>40 miles</b>
<b>Psychologist</b>	<b>Urban</b>	<b>3 miles</b>
	<b>Suburban</b>	<b>15 miles</b>
	<b>Rural</b>	<b>40 miles</b>
<b>Social Workers</b>	<b>Urban</b>	<b>3 miles</b>
	<b>Suburban</b>	<b>15 miles</b>
	<b>Rural</b>	<b>40 miles</b>



ANDREW M. CUOMO  
GOVERNOR

STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
ALBANY, NEW YORK 12239  
www.cs.ny.gov

JERRY BOONE  
COMMISSIONER

August 12, 2013

**VIA ELECTRONIC MAIL & US POSTAL MAIL**

Mr. Scott Tabakin  
Chief Financial Officer  
ValueOptions  
240 Corporate Boulevard  
Norfolk, VA 23502

[Scott.Tabakin@valueoptions.com](mailto:Scott.Tabakin@valueoptions.com)

Dear Mr. Tabakin,

RE: Clarification Request #10  
RFP #2013MH-1 entitled "Mental Health and Substance  
Abuse Program For The Empire Plan, Excelsior Plan and  
Student Employee Health Plan"

On April 16, 2013, ValueOptions submitted a proposal in response to the Department of Civil Service's above Request for Proposal (RFP). Upon review, the Department identified the following section of ValueOptions' proposal that requires clarification.

**Administrative Proposal – Exhibit I.Y.2 and I.Y.3:**

During the review of the Offeror's submitted Exhibit I.Y.2 – Offeror's Proposed MHSA Participating Provider Network File and Exhibit I.Y.3 - Offeror's Proposed MHSA Provider Network Access Prerequisite Worksheet, a number of inconsistencies have been identified which require clarification.

In reviewing the submissions, the Department noted the following:

1. Exhibit I.Y.3, as well as the GEO Access Report, was submitted based on [REDACTED] members. The GEO coded enrollment report provided to Offerors by the Department as well as the minimum access requirements were based on the number of enrollees [REDACTED] not members.
2. Exhibit I.Y.3, as well as the GEO Access Report, contained a category labeled other Master's Level Clinicians. This categorization was not specified in the GeoAccess requirements and it is unclear whether these providers were included in the Exhibit I.Y.2 and whether they are covered providers under this Program.
3. The following represents a comparison of provider counts, locations and records as submitted by ValueOptions in Exhibit I.Y.2 and Exhibit I.Y.3 (as well as the supporting GEO Access Reports)

		# of Providers	# of Locations	Number of Records
Total Counts	I.Y.2	[REDACTED]	[REDACTED]	[REDACTED]
	I.Y.3	[REDACTED]	[REDACTED]	[REDACTED]
ALOC Counts	I.Y.2	[REDACTED]	[REDACTED]	[REDACTED]
	I.Y.3	[REDACTED]	[REDACTED]	[REDACTED]

The Department recognizes that the Certified Behavioral Analysts [REDACTED] included in I.Y.2 are not subject to the Access guarantees and may be one of the reasons for the variances in location/record counts between I.Y.2 and I.Y.3. However, the Department requires full clarification of the discrepancy between the location/record counts reported by ValueOption in I.Y.2 and the number of locations/records reported in the GEO Access Reports which support I.Y.3.

Please clarify these inconsistencies and provide complete Exhibits I.Y.2 and I.Y.3, including the GEO Access Reports, as necessary, to comply with the requirements of the RFP. The data provided in these complete Exhibits I.Y.2 and I.Y.3, including the GEO Access Reports, must contain only providers in the ValueOptions Provider Network as of the submission date of your proposal. For the New York State-based Licensed Clinical Social Workers (with "R" designation), please be sure to include their license number in response to this clarification request.

A response to this request is due no later than Friday, August 16, 2013. If you have any questions regarding this request don't hesitate to contact me.

Sincerely,

[REDACTED]  
Linda Burk  
Procurement Manager

cc: Laura Cook



August 15, 2013

Ms. Linda A. Burk  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, New York 12239

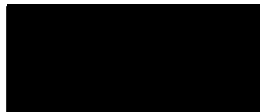
Re: Clarification Request #10  
RFP #2013MH-1  
Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan, and Student  
Employee Health Plan  
Request for Clarification Dated August 12, 2013

Dear Ms. Burk:

ValueOptions, Inc. received your Request for Clarification dated August 12, 2013. Our written explanation to each of the clarification areas can be found on the following pages. In addition, we have provided two CDs, each containing a copy of this letter and explanation as well as copies of our updated GeoAccess Report, Exhibit I.Y.2 ValueOptions Proposed MHSA Network and Exhibit I.Y.3 ValueOptions Proposed MHSA Provider Network Access Prerequisite Worksheet. We are providing a third CD that contains the redacted version of Exhibit I.Y.2, along with an updated Exhibit I.C.

Thank you for the opportunity to provide clarification to our proposal submission. Please let us know if we can be of further assistance.

Sincerely,



Lynn Mueller  
Vice President, Commercial Sales  
ValueOptions, Inc.  
Phone: (978) 409-1357 Mobile: (978) 806-6712  
[lynn.mueller@valueoptions.com](mailto:lynn.mueller@valueoptions.com)

Below we provide our response to the clarifying question received on August 12, 2013.

1. Exhibit I.Y.3, as well as the GEO Access Report, was submitted based on [REDACTED] The GEO coded enrollment report provided to Offerors by the Department as well as the minimum access requirements were based on the number of enrollees [REDACTED] not members.

Please see our updated **Exhibit I.Y.3** and **GeoAccess Report**, provided on the accompanying CDs. These updated documents are based upon the number of enrollees identified in the GeoAccess software [REDACTED] rather than on members.

2. Exhibit I.Y.3, as well as the GEO Access Report, contained a category labeled other Master's Level Clinicians. This categorization was not specified in the GeoAccess requirements and it is unclear whether these providers were included in Exhibit I.Y.2 and whether they are covered providers under this program.

Other Master's Level Clinicians were not included in **Exhibit I.Y.2** and are not included in the updated **Exhibit I.Y.2** provided on the accompanying CDs, including a redacted version as well. These clinicians typically participate in our MHSA network. The State can decide whether or not to include them in this program.

3. The following represents a comparison of provider counts, locations and records as submitted by ValueOptions in Exhibit I.Y.2 and Exhibit I.Y.3 (as well as the supporting GEO Access Reports). The Department requires full clarification of the discrepancy between the location/record counts reported by ValueOptions in I.Y.2 and the number of locations/records reported in the GEO Access Reports which support I.Y.3.

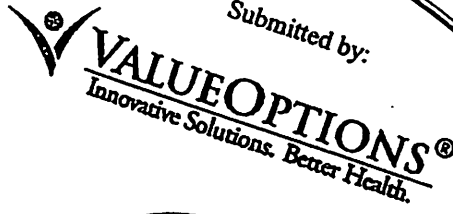
		# of Providers	# of Locations	# of Records			
<b>Total Counts</b>	I.Y.2	[REDACTED]	[REDACTED]	[REDACTED]			
	I.Y.3						
<b>ALOC Counts</b>	I.Y.2						
	I.Y.3						



Please clarify these inconsistencies and provide complete Exhibits I.Y.2 and I.Y.3, including the GEO Access Reports as necessary, to comply with the requirements of the RFP. These data provided in these complete Exhibits I.Y.2 and I.Y.3, including the GEO Access Reports, must contain only providers in the ValueOptions Provider Network as of the submission date of your proposal. For the New York State-based Licensed Clinical Social Workers (with "R" designation), please be sure to include their license number in responses to this clarification request.

Please also see the accompanying CD's for an updated **Exhibit I.Y.2**, **Exhibit I.Y.3**, and our **GeoAccess Report**. We confirm that the data provided in these documents contains only providers in the ValueOptions Provider Network as of the submission date of our proposal, April 16, 2013. Further, for the New York State-based Licensed Clinical Social Workers (with "R" designation), we have ensured that corollary license numbers have been provided in **Exhibit I.Y.2**.

The discrepancies you identified resulted from the application of inconsistent provider identification logic in the report creation process. We have corrected these inconsistencies in the creation of the enclosed exhibits.



Submitted by:

ValueOptions Response to  
Clarification Request #10  
RFP #2013MH-1

August 16, 2013



December 17, 2013

**BY EMAIL AND REGULAR MAIL**

Robert W. DuBois, CEBS  
Director, Employee Benefits Division  
New York State Department of Civil Service  
Albany, NY 12239

**Re: EMERGENCY CONTRACT – Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan**

Mr. DuBois:

This letter is in response to a verbal request from the New York State Department of Civil Service (DCS) on a conference call on Tuesday, December 17, 2013 that ValueOptions provide an updated Table V and confirmation of our per employee per month (PEPM) administrative rate for an emergency contract for the Empire Plan Mental Health and Substance Abuse (MHSA) services. This follows on our letter dated December 13, 2013 in which we presented our perspective on the emergency contract.

In response to your request for proposal updates in light of a planned emergency contract:

1. ValueOptions will reduce its administrative fee for the one-year contract to [REDACTED] for the bifurcated contract or [REDACTED] for a sole source contract. Given the uncertainty of the claims costs associated with the financial analysis, administration fees should be more heavily weighted for an interim, a one-year contract than the broader RFP.
2. Attached is an updated Table V exhibit in which we have notated specific codes from which the State can expect to recognize lower average unit costs as a result of a single year agreement. This is a separate Table V from the original offer based on the compression of the contract and would not apply to the multi-year agreement.
3. ValueOptions will honor the performance guarantees outlined in our original RFP response. We remain committed to being operational on January 1, 2013 and meeting the needs of your members. Depending on the revised award date combined with the suspension of implementation we reserve the right to revisit treatment of January metrics if necessary.

This request specifically is for adjustments under a scenario in which the services requested under RFP would be provided for the 2014 contract year only. As you had indicated in our call there are a number of cost calculation issues that caused you to vacate the award. [REDACTED]

Please be advised that ValueOptions is submitting a Final and Best Offer proposal for an emergency contract, as has been requested by the Department of Civil Service, while reserving its right to continue to contest the revocation of the bid awarded to ValueOptions, which remains the subject of review by the Office of the State Comptroller. By submitting this proposal, ValueOptions is not waiving any rights it may have regarding the underlying RFP and bid award and reserves its right to pursue the current appeal and any other legal remedies it may have with respect to the bid that had been awarded ValueOptions by the Department of Civil Service.

In addition, please note that the proposal submitted by ValueOptions contains information (including, but without by way of limitation, in Table V thereof) which is exempt from disclosure pursuant to the Freedom of Information Law (Public Officers Law §87), because disclosure thereof would impair a present or imminent contract award and the submission includes trade secret material, which if disclosed would cause substantial injury to ValueOptions. We hereby request the agency provide ValueOptions with the appropriate notice and opportunity to except from disclosure any such information in accordance with procedures set forth in Articles 6 and 6-A of the Public Officers Law in the event any request for disclosure of such information is made.



We await your determination regarding the emergency contract so that we can determine our next actions. We would appreciate a prompt response.

Sincerely

[REDACTED]

**Dave Busch**  
SVP & President, Commercial Sales & Employer Division  
ValueOptions®


**Mental Health and Substance Abuse Program  
Administrative Fee Evaluation**

<u>Administrative Fee Calculation</u>	<u>Fee Quote</u>	<u>Basis</u>
Monthly Administrative Fee Quote Sole Source		<u>Per Contract Per Month (1)</u>
Shared Contract (Bifurcated Agreement)		<u>Per Contract Per Month (1)</u>

(1) A contract is defined as either a contract for Individual coverage or Family coverage.


Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
	0001	
	0002	
	0100	
	0101	
	0114	
	0116	
	0120	
	0121	
	0124	
	0126	
	0128	
	0129	
	0130	
	0134	
	0136	
	0138	
	0144	
	0150	
	0151	
	0153	
	0154	
	0158	
	0164	
	0183	
	0190	
	0193	
	0204	
	0220	
	0221	
	0230	
	0250	
	0251	
	0252	
	0257	
	0258	
	0259	
	0260	
	0269	
	0270	
	0271	
	0272	
	0300	
	0301	
	0302	
	0305	

Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

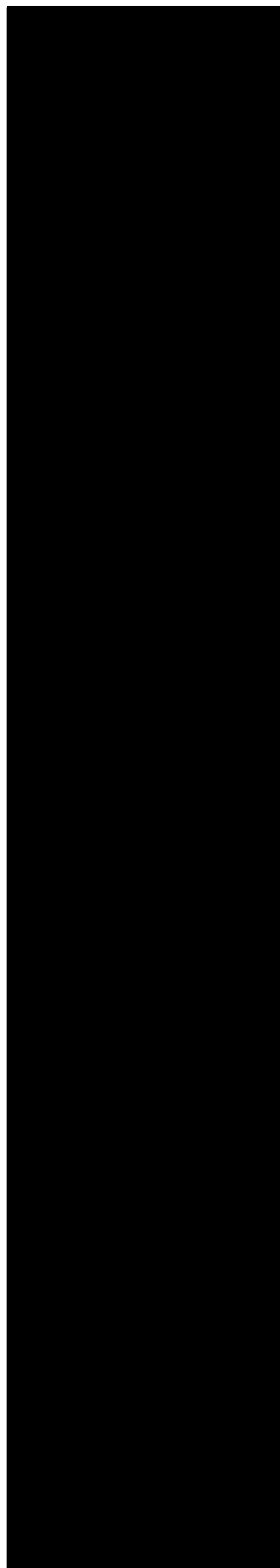
CPT Code	Revenue Code	Quoted Average Contracted
	0306	
	0307	
	0309	
	0320	
	0324	
	0350	
	0351	
	0370	
	0379	
	0402	
	0412	
	0450	
	0451	
	0456	
	0459	
	0460	
	0510	
	0513	
	0540	
	0611	
	0636	
	0637	
	0657	
	0710	
	0730	
	0762	
	0771	
	0888	
	0900	
	0901	
	0902	
	0905	
	0906	
	0910	
	0911	
	0912	
	0913	
	0914	
	0915	
	0918	
	0919	
	0920	
	0939	
	0941	
	0942	

Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
----------	--------------	---------------------------

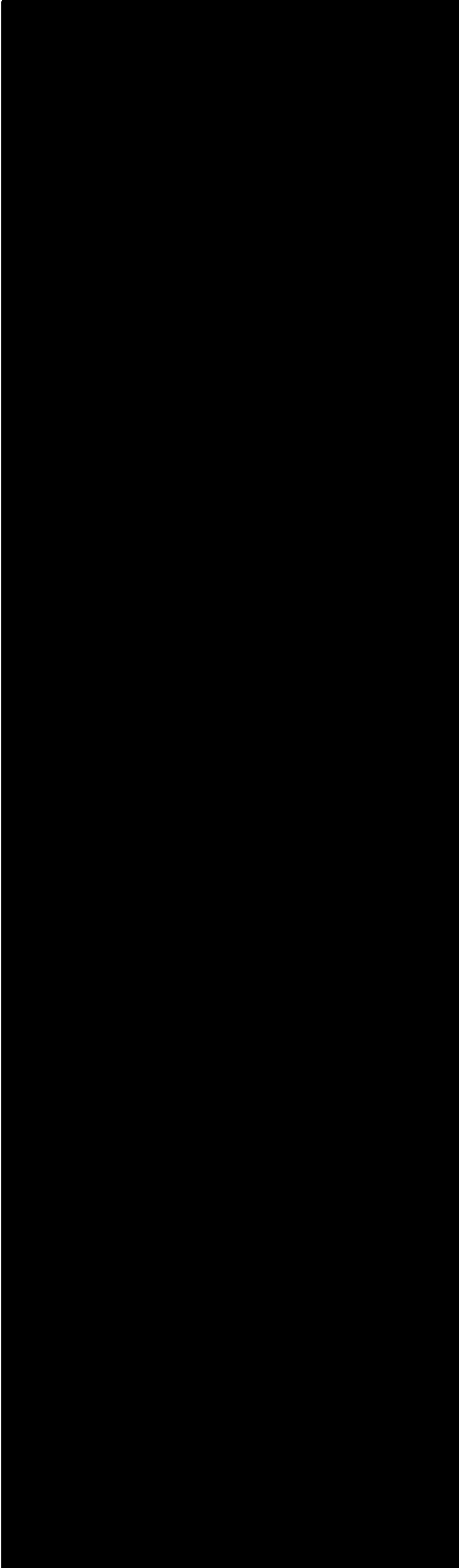
	0944	
	0945	
	0949	
	0961	
	0969	
	0981	
	0982	
	0987	
	0988	
	1000	
	1001	
	1002	
90785		
90791		
90792		
90832		
90833		
90834		
90836		
90837		
90838		
90839		
90840		
90845		
90846		
90847		
90849		
90853		
90856		
90863		
90865		
90867		
90868		
90870		
90876		
90887		
90889		
90899		
90901		
93000		
93010		
93042		
94760		
95819		
96101		





Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
96102		
96103		
96116		
96118		
96119		
96120		
96150		
96151		
96152		
96360		
96372		
98968		
99050		
99051		
99053		
99201		
99202		
99203		
99204		
99205		
99211		
99212		
99213		
99214		
99215		
99217		
99218		
99220		
99221		
99222		
99223		
99224		
99225		
99231		
99232		
99233		
99234		
99236		
99238		
99239		
99241		
99242		
99243		
99244		
99245		

Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
----------	--------------	---------------------------

99251		
99252		
99253		
99254		
99255		
99281		
99282		
99283		
99284		
99285		
99304		
99305		
99306		
99307		
99308		
99309		
99310		
99406		
99408		
99409		
99443		
99999		
A0382		
A0384		
A0392		
A0394		
A0398		
A0422		
A0425		
A0426		
A0427		
A0428		
A0429		
A0432		
A0999		
G0454		
H0001		
H0002		
H0004		
H0005		
H0014		
H0015		
H0016		
H0020		
J2426		



**Quoted Average Cost Per Each CPT/Revenue Code**

**Amended 12-17-13**

<b>CPT Code</b>	<b>Revenue Code</b>	<b>Quoted Average Contracted</b>
M0064		
S9480		
S9485		
T1016		

(1) Amount quoted per CPT is per service; Amount quoted per Revenue code is per day.

**Mental Health and Substance Abuse Program  
Applied Behavioral Analysis Fee Quote**

<b>Type of Service</b>	<b>Fee Quote</b>	<b>Basis</b>
Behavioral Assessment by BCBA (professional) BCBA (professional) ABA Services BCBA (paraprofessional) ABA Services		Per Service Per Hour of Service Per Hour of Service
Total		

[Type text]

[Type text]

Exhibit D

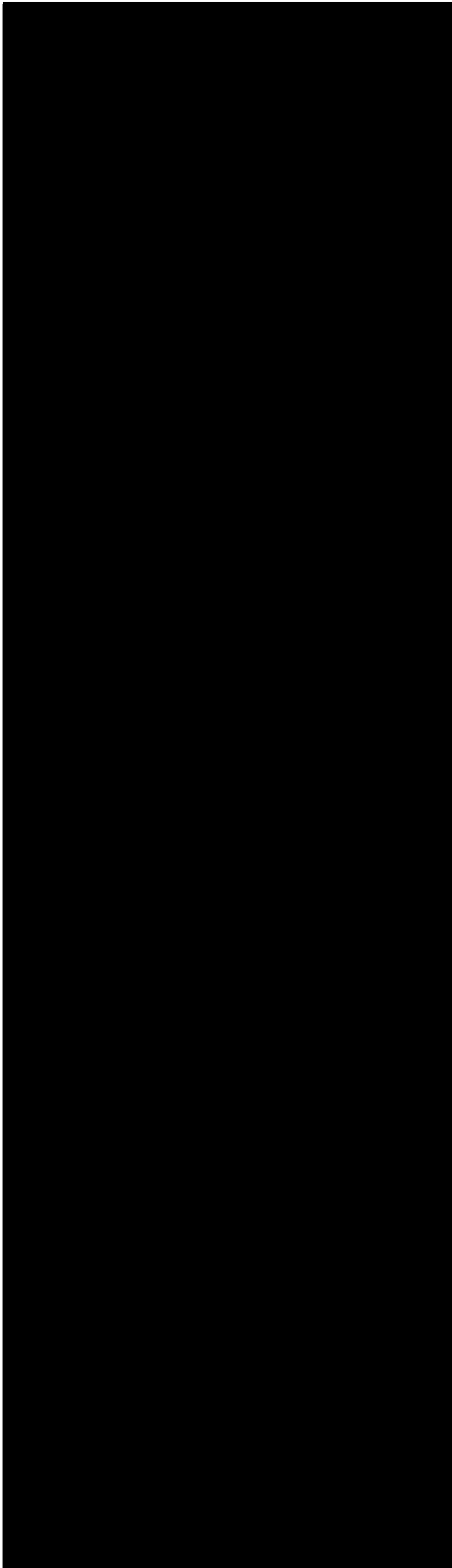
**Mental Health and Substance Abuse Program**

**Contract #C000617**

**Placeholder for Exhibit D: Summary Plan Descriptions and Benefit Summaries for the Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan**

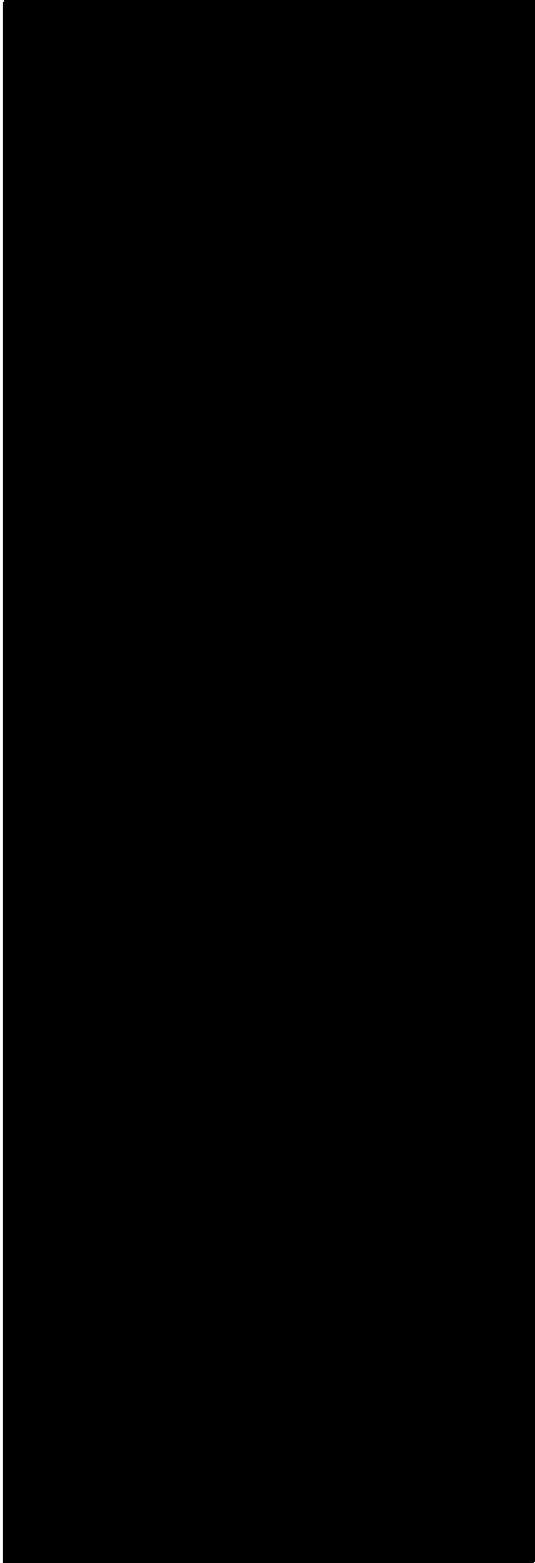
Quoted Average Cost Per Each CPT/Revenue Code

Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
	0001	
	0002	
	0100	
	0101	
	0114	
	0116	
	0120	
	0121	
	0124	
	0126	
	0128	
	0129	
	0130	
	0134	
	0136	
	0138	
	0144	
	0150	
	0151	
	0153	
	0154	
	0158	
	0164	
	0183	
	0190	
	0193	
	0204	
	0220	
	0221	
	0230	
	0250	
	0251	
	0252	
	0257	
	0258	
	0259	
	0260	
	0269	
	0270	
	0271	
	0272	
	0300	
	0301	
	0302	
	0305	

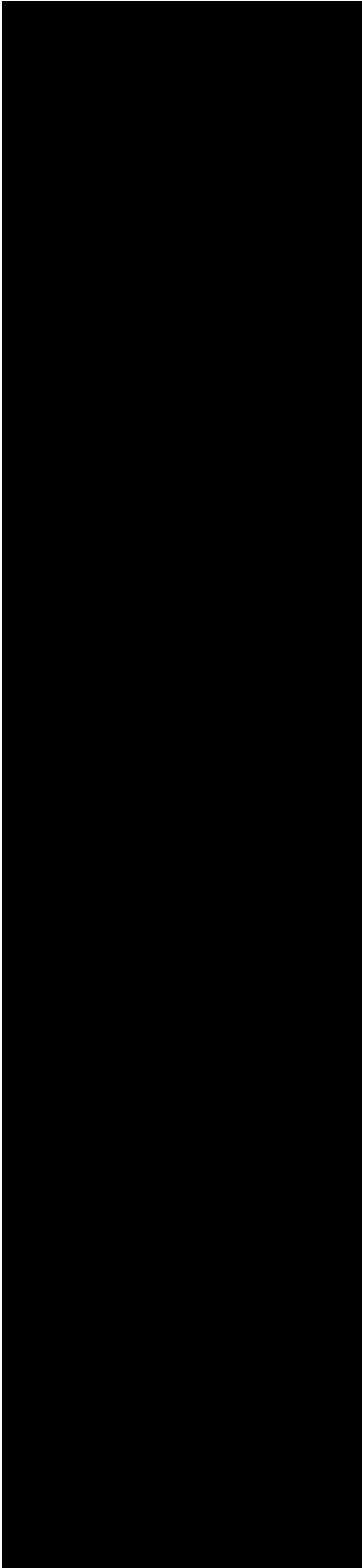
**Quoted Average Cost Per Each CPT/Revenue Code**

**Amended 12-17-13**

<b>CPT Code</b>	<b>Revenue Code</b>	<b>Quoted Average Contracted</b>
	0306	
	0307	
	0309	
	0320	
	0324	
	0350	
	0351	
	0370	
	0379	
	0402	
	0412	
	0450	
	0451	
	0456	
	0459	
	0460	
	0510	
	0513	
	0540	
	0611	
	0636	
	0637	
	0657	
	0710	
	0730	
	0762	
	0771	
	0888	
	0900	
	0901	
	0902	
	0905	
	0906	
	0910	
	0911	
	0912	
	0913	
	0914	
	0915	
	0918	
	0919	
	0920	
	0939	
	0941	
	0942	

Quoted Average Cost Per Each CPT/Revenue Code

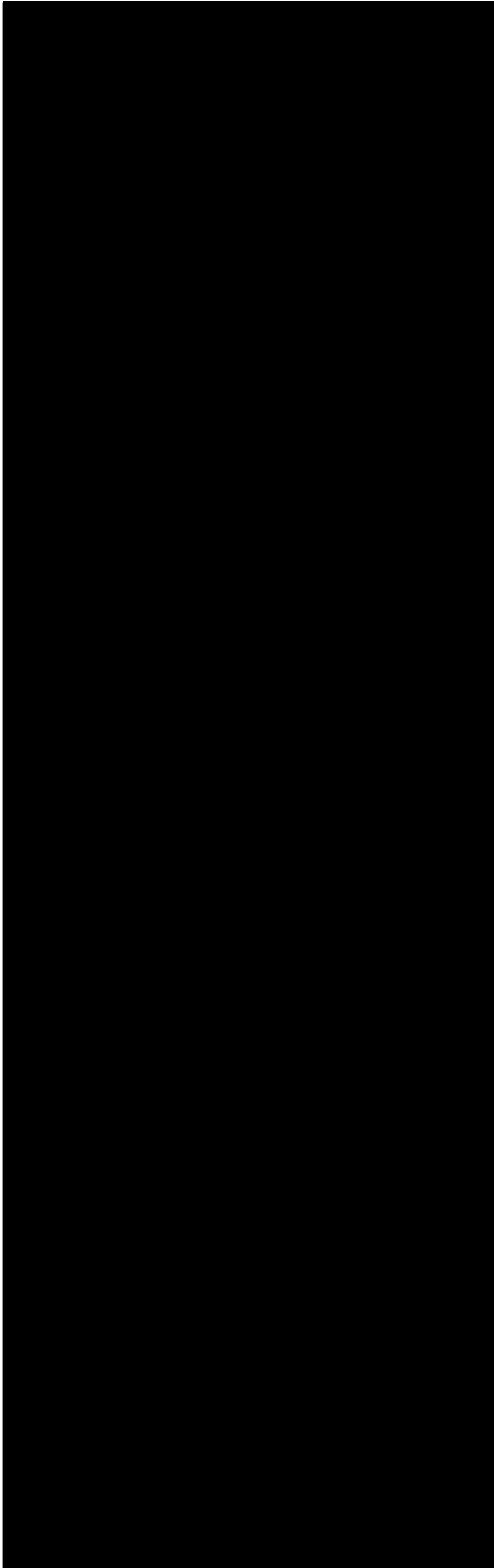
Amended 12-17-13

CPT Code	Revenue Code	Quoted Average Contracted
	0944	
	0945	
	0949	
	0961	
	0969	
	0981	
	0982	
	0987	
	0988	
	1000	
	1001	
	1002	
90785		
90791		
90792		
90832		
90833		
90834		
90836		
90837		
90838		
90839		
90840		
90845		
90846		
90847		
90849		
90853		
90856		
90863		
90865		
90867		
90868		
90870		
90876		
90887		
90889		
90899		
90901		
93000		
93010		
93042		
94760		
95819		
96101		



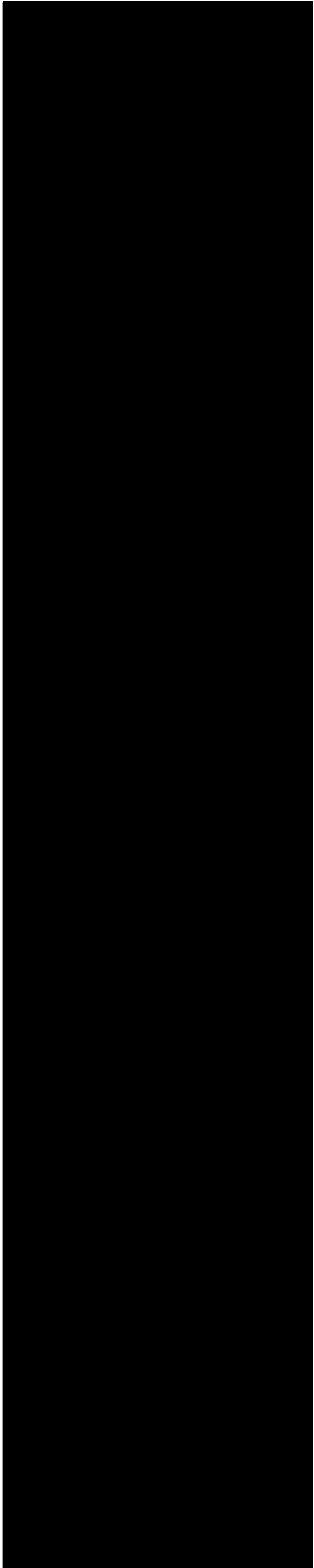
**Quoted Average Cost Per Each CPT/Revenue Code**

**Amended 12-17-13**

<b>CPT Code</b>	<b>Revenue Code</b>	<b>Quoted Average Contracted</b>
96102		
96103		
96116		
96118		
96119		
96120		
96150		
96151		
96152		
96360		
96372		
98968		
99050		
99051		
99053		
99201		
99202		
99203		
99204		
99205		
99211		
99212		
99213		
99214		
99215		
99217		
99218		
99220		
99221		
99222		
99223		
99224		
99225		
99231		
99232		
99233		
99234		
99236		
99238		
99239		
99241		
99242		
99243		
99244		
99245		

**Quoted Average Cost Per Each CPT/Revenue Code**

**Amended 12-17-13**

<b>CPT Code</b>	<b>Revenue Code</b>	<b>Quoted Average Contracted</b>
99251		
99252		
99253		
99254		
99255		
99281		
99282		
99283		
99284		
99285		
99304		
99305		
99306		
99307		
99308		
99309		
99310		
99406		
99408		
99409		
99443		
99999		
A0382		
A0384		
A0392		
A0394		
A0398		
A0422		
A0425		
A0426		
A0427		
A0428		
A0429		
A0432		
A0999		
G0454		
H0001		
H0002		
H0004		
H0005		
H0014		
H0015		
H0016		
H0020		
J2426		

**Quoted Average Cost Per Each CPT/Revenue Code**

**Amended 12-17-13**

<b>CPT Code</b>	<b>Revenue Code</b>	<b>Quoted Average Contracted</b>
M0064		
S9480		
S9485		
T1016		

(I) Amount quoted per CPT is per service; Amount quoted per Revenue code is per day.

**Mental Health and Substance Abuse Program  
Applied Behavioral Analysis Fee Quote**

Type of Service	Fee Quote	Basis
Behavioral Assessment by BCBA (professional) BCBA (professional) ABA Services BCBA (paraprofessional) ABA Services		Per Service Per Hour of Service Per Hour of Service
Total		