



**Request for Proposal (RFP)**  
**Medicaid Administrative Services (MAS)**

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**Medicaid Administrative Services (MAS) cpf**  
**Fiscal Agent Services Project**

FAU Number 1211260917

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Schedule of Key Events

Procurement Library Release	06/25/2013
RFP Release Date	06/25/2013
Vendors' Conference	10:00 AM ET 07/08/2013
Written Questions Due	4:00 PM ET 07/18/2013
Response to Written Questions	on or about 08/16/2013
Proposal Submission Deadline	4:00 PM ET 09/25/2013

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- Debriefings
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- Submission of Written Questions
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- Procurement Library Requests

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*For further information regarding these statutory provisions, see the Lobbying Statute summary in Section IV.J Administrative Requirements Lobbying Statute of this solicitation.*

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## RFP Organization

#	RFP Section	Description
<b>I</b>	<b>PROCUREMENT OVERVIEW</b>	Provides an overview of the procurement, including a departmental overview, description of the vision for the MAS procurement purpose, project background, project goals and objectives, overall approach to the contract, term of the contract and scope of work summary.
<b>II</b>	<b>DESCRIPTION OF THE NEW YORK STATE MEDICAID PROGRAM</b>	Provides a description of the New York State Medicaid program, including a description of the Office of Health Insurance Programs (OHIP), the OHIP reform agenda, and the eMedNY MMIS environment.
<b>III</b>	<b>MEDICAID ADMINISTRATIVE SERVICES (MAS) SCOPE OF WORK</b>	Presents the project's scope of work, including: project planning phase requirements, implementation phase requirements, certification phase requirements, system and operational enhancement requirements, operations phase requirements, turnover phase requirements, technical systems architecture requirements, security privacy and confidentiality requirements, functional requirements, facilities requirements, business continuity and disaster recovery requirements, organization and staffing requirements, training requirements and contractor performance requirements.
<b>IV</b>	<b>PROPOSAL REQUIREMENTS</b>	States the general requirements covering format and content of the proposal submitted.
<b>V</b>	<b>NEW YORK STATE ADMINISTRATIVE REQUIREMENTS</b>	Presents the administrative provisions that govern this procurement.
<b>VI</b>	<b>CONTRACT REQUIREMENTS</b>	Presents the legal provisions that govern the resulting contract.
<b>A - N</b>	<b>ATTACHMENTS</b>	Provides required forms, documents and reference material

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## I. PROCUREMENT OVERVIEW

### A. INTRODUCTION

The New York State (NYS) Department of Health (the Department) is soliciting proposals for a Medicaid Administrative Services (MAS) contractor to provide fiscal agent services and other services for the NYS Medicaid Program in a manner that complies with Centers for Medicare & Medicaid Services (CMS) guidelines and certification requirements for a Medicaid Management Information System (MMIS), as identified in the CMS Medicaid Enterprise Certification Toolkit (MECT) (provided as Attachment F). The selected contractor of this procurement will administer the NYS fee-for-service (FFS) Medicaid program as well as fiscal agent functions of its managed care (MC) program, and replace the current NYS MMIS with a new mechanized claims processing and information retrieval system (as defined at 42 CFR Part 433 Subpart C and in the CMS SMM, Chapter 11) that satisfies all federal and state requirements for which NYS may be eligible for enhanced federal matching rates under 1903(a)(3) of the Social Security Administration (SSA).

In this context, the contractor will configure and supplement its existing infrastructure to provide selected health program administration services to NYS, but will not bear health insurance risk for member coverage. Health insurance risk and fiduciary responsibility for member coverage will reside with NYS. Services include, but are not limited to, the following (a full set of required services is provided in Attachment E):

1. Provider screening, enrollment, and recertification
2. Provider servicing, communication, and education
3. Member and provider call center
4. Claims adjudication, tracking of utilization thresholds and benefit limits, claims payment, and post-payment adjustment
5. Prior approval of certain services (transportation, Dental, Orthodontic, durable medical equipment, supplies, private duty nursing, high-tech radiology procedures, out of state inpatient and nursing home services, personal care services)
6. Pharmacy Benefit Management (PBM)
7. Program integrity and fraud prevention activities (in coordination with the Office of the Medicaid Inspector General (OMIG))
8. Facilitation of Electronic Health Records (EHR) incentive program
9. Specific benefit carve-outs for Medicaid members participating in the managed care population
10. Managed Care capitation payments
11. Coordination of benefits (private third-party liability, Medicare dual-eligibles)
12. Grievance and appeals processes for members and providers including fair hearings

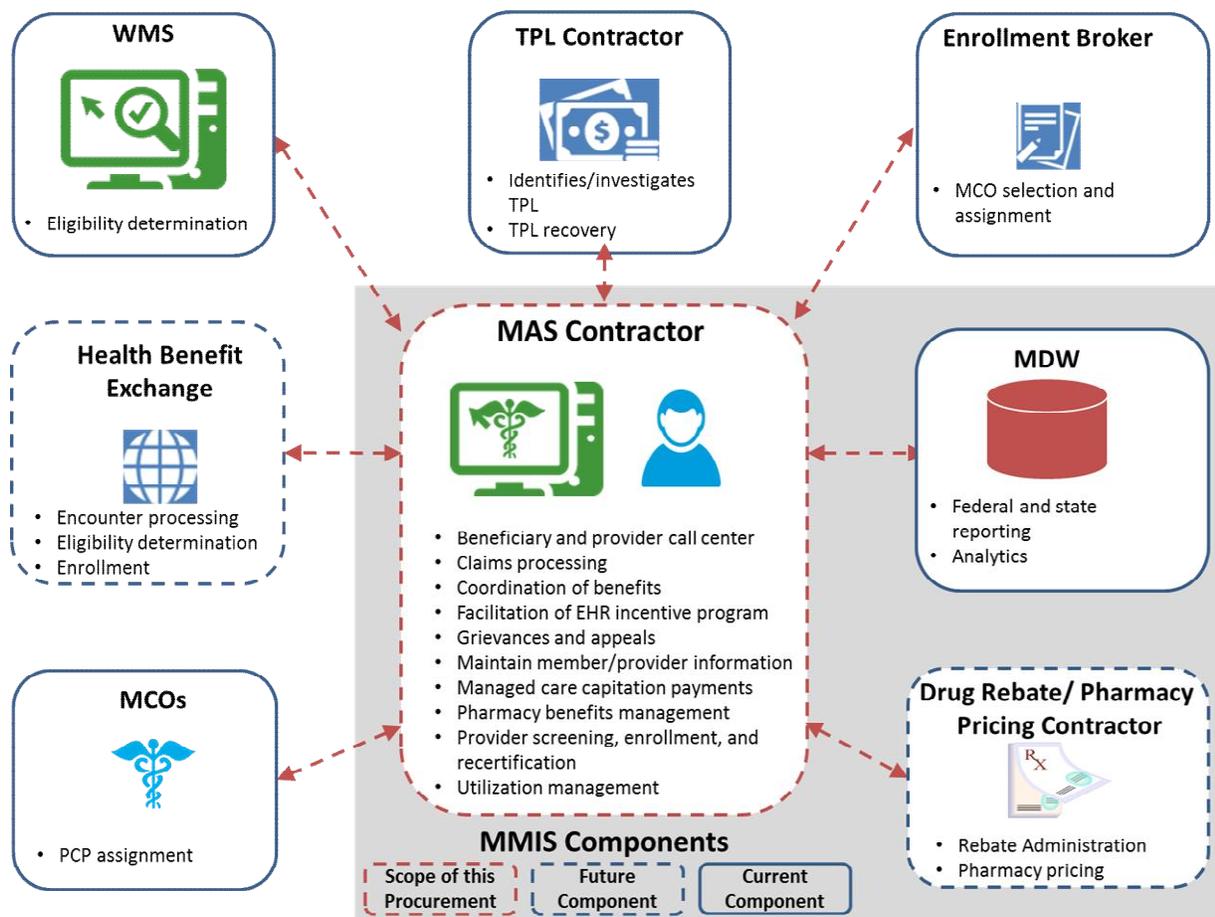
The scope of this procurement does not represent the entire MMIS enterprise. The NYS MMIS is currently comprised of the electronic Medicaid system of New York (eMedNY) and the Medicaid Data Warehouse (MDW). The MMIS interfaces with the Welfare Management System (WMS), managed

care organizations (MCO), the managed care enrollment broker, and the state's third-party liability contractor to perform the functions required of an MMIS to support the Medicaid program.

Like the current environment, the future MMIS will be primarily comprised of the core MMIS and the MDW. While this procurement may represent a change in the type of vendor, this MAS procurement will consist of services and requirements that are largely a replacement of the areas currently covered by eMedNY. It will also include some shifting (additions, and removals) of responsibilities among entities.

The graphic below provides an overview of the future MMIS environment and interactions with other NYS systems, documenting the division of high-level responsibilities for the various entities. Components boxed in grey constitute the future NYS MMIS. Interactions of systems are more complex than shown below; the graphic only depicts high-level interfaces that will be developed as part of the MMIS procurement.

**Exhibit I-1: Current and Future components of MMIS**

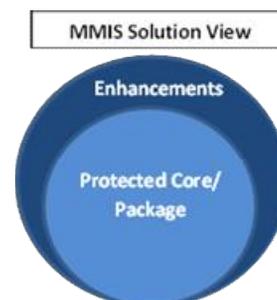


A brief description of the depicted NYS systems, their functions, and their interactions with the MMIS is provided in Section II of the RFP.

The Department seeks a solution that represents a variation on historical MMIS procurements which addresses the Medicaid FFS program, selected administrative components of its Medicaid MC program and selected non-Medicaid programs. To achieve this approach, the Department has sought to expand this procurement to include diverse vendors including but not limited to traditional MMIS vendors, Medicare Administrative Contractors (MACs), Administrative Services Organizations (ASOs), and commercial and Medicaid MCOs. An MCO that is currently providing risk-based capitated Medicaid services in NYS is not eligible to function as the fiscal agent making capitation payments under this RFP, nor can it submit a proposal as a primary vendor on this RFP because of the risk of conflicts of interest in having a vendor pay itself and in having comprehensive access to other health plans' information. The selected contractor will not be eligible to provide Medicaid managed care services in NYS while serving as the primary vendor on this contract. An MCO that is currently providing risk-based capitated Medicaid services in NYS can, however, serve as a subcontractor, so long as it is not involved with making capitation payments.<sup>1</sup>

To realize savings in both cost and speed of implementation, the Department expects the vendors to focus on configuring existing infrastructure and platforms for claims processing, customer service, care management and other services where possible, rather than building new systems from the ground up, as is the traditional MMIS approach. To support leveraging of commercial off-the-shelf (COTS) technology, the Department has increased its flexibility on technical details in order to focus on achieving the outcomes provided in the RFP.

The existing commercially distributed software product(s) delivered by the contractor under the contract will be licensed to the Department in accordance with the contractor's or other independent software vendor's (ISV) standard license agreement, amended if necessary to satisfy the requirements in Section VI: Contract Requirements, Subsection 13. The ownership rights of the contractor as well as conditions on license grant are provided in detail in Section VI: Contract Requirements. The scenarios below help to provide further guidance on ownership:



	Description	Key Points
<b>Scenario 1</b>	Traditional MMIS vendor with existing Fiscal Agent/MMIS clients that transfers their custom developed core solution to NYS	<ul style="list-style-type: none"> <li>Core solution was federally funded and NYS-specific enhancements would be federally funded</li> <li>Ownership of the system and the enhancements would remain in the public domain</li> </ul>
<b>Scenario 2</b>	Non-traditional vendor (e.g., Health Plan) with existing internally developed claims	<ul style="list-style-type: none"> <li>Vendor to define what is its proprietary core solution</li> </ul>

<sup>1</sup> An MCO operating in NYS as an insurer, which is part of a team awarded this contract, is ineligible for FFP at any level for the direct costs of the services provided under the separate risk-based contract(s).



	<p>processing solution that will be leveraged for NYS</p> <p>- or -</p> <p>Non-traditional or traditional MMIS vendor with a COTS solution for claims processing that will be configured for NYS</p>	<ul style="list-style-type: none"> <li>• Core package license is funded 75/25 Federal Financial Participation (FFP)</li> <li>• Modifications/enhancements to core/package for NYS funded at 90/10 FFP</li> <li>• Enhancements for NYS that are federally funded at any level become part of the public domain</li> <li>• The State can purchase, lease, or rent the core/package solution upon end/termination of contract for use by successor Fiscal Agent</li> </ul>
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Regardless of whether the Department owns or licenses particular components of the system, it must have access to and oversight of all systems and records procured as part of the MAS procurement to ensure its ability to determine and enforce compliance with the requirements of this RFP. A project facility must be secured by the vendor to house key project management and oversight personnel, both for the vendor and the State, and located within 10 miles of the New York State Capitol building in Albany, NY. Other facilities, such as call centers and systems facilities, may be located elsewhere, but in conformance with relevant requirements in Attachment E.

The way contracted services are delivered can vary based on the business models of the proposing organizations. The organization that submits the response to this RFP will be considered the prime vendor (prime). The prime will be the fiscal agent, and has the option to subcontract various services that are required in this RFP to qualified vendors. An MCO that provides risk-based capitated Medicaid services in NYS is not eligible to function as the fiscal agent nor can it submit a proposal as a prime vendor to this RFP, but it can serve as a subcontractor, so long as it avoids conflicts of interest. Additional details regarding specific task area restrictions on entities are provided in Section III of this RFP.

This procurement is being undertaken in accordance with NYS Finance Law, Article XI to procure a replacement MMIS and successor fiscal agent under the NYS Social Services Law, Section 367-b.

The primary system functions for the resulting contract for services in support of the NYS FFS populations will be the performance of "mechanized claims processing and information retrieval" as defined in 42 CFR Part 433 Subpart C (see 433.112 and 433.116) and in the CMS SMM, Chapter 11, in addition to the Medicaid administrative functions identified in the RFP and described in Attachment E of this RFP.

In addition to current eMedNY programs, the contractor will be expected to take over processing of Adult Cystic Fibrosis Assistance Program (ACFAP) and American Indian Health Plan (AIHP) non-clinic claims, as well as clinical review and administration functions for NYS pharmaceutical programs including the Elderly Pharmaceutical Insurance Coverage (EPIC) Program, the New York Prescription Saver Program (NYPS), and the Preferred Diabetic Supply Program (PDSP). These state programs are not part of Medicaid.

ACFAP is a program which provides reimbursement for cystic fibrosis-related medical care and/or insurance premiums for adults with cystic fibrosis in NYS. AIHP is responsible for providing access to medical care, dental care, and preventive health education for approximately 25,000 Native American participants living in reservation communities in NYS. Administration of these programs will be covered by the contractor. EPIC is a NYS program that helps approximately 300,000 income-eligible seniors aged 65 and older to supplement their out-of-pocket Medicare Part D drug plan costs. NYPS is a NYS program that lowers the cost of prescription drugs through manufacturer discount and rebate for eligible members. PDPS provides NYS Medicaid enrollees access to quality meters and strips while reducing overall program expenditures. Clinical review and administration of these program will be covered by the contractor.

With the continuing transformation of health care from a largely siloed, paper-based system to an electronic, interconnected health care system, the contractor will also be expected to exchange data with interoperable health information infrastructures such as the Statewide Health Information Network for New York (SHIN-NY). These information and technology infrastructures, when fully operational, will allow clinicians and consumers to make timely, fact-based decisions that will reduce medical errors and redundant tests, and improve care coordination and quality by mobilizing medical information.

The MAS procurement will also include:

1. Enhanced functionality for Provider Servicing and PBM, as well as dental claims and prior approval processing
2. Support for the Health Insurance Portability and Accountability Act (HIPAA) version 5010 and NCPDP D.0 Electronic Data Interchange (EDI) standards and any future versions of these HIPAA formats, as well as implementing the Patient Protection and Affordable Care Act (ACA) mandates
3. Support for the International Classification of Diseases Version 10 (ICD-10) Coding System
4. An enterprise technical and application architecture sufficiently flexible to support system enhancements that meet the changing needs of NYS' Medicaid program, based on CMS' Medicaid Information Technology Architecture (MITA) 3.0 standards
5. A system that will meet CMS certification requirements and comply with all federal regulations and policy listed in Section IV, B.7

The Department originally released an RFP for the Replacement Medicaid Management Information System (R-MMIS) procurement in 2010, but subsequently cancelled that procurement after deciding that its approach and timing were not the best fit for the rapidly-evolving Medicaid program in New York. The current procurement is driven by a number of changing factors influencing the NYS Medicaid environment, including:

1. The State is transitioning 95% of its Medicaid population to capitated managed care by 2016, leaving limited covered lives in the FFS program. By 2016, after the transition to managed care is complete, there are estimated to be approximately 300,000 Medicaid members at any given time entirely or substantially in the FFS environment. The Department is interested in procuring



a contractor to provide the administrative functions necessary to support the provision of services for the reduced FFS beneficiary population directly, and/or indirectly through subcontractors. This approach provides the opportunity for an administrative services vendor to take a more efficient approach to managing the FFS program and seeks to minimize costs, given the reduced population in this program.

2. Commercial health plans are spearheading innovative ways to administer their programs. The procurement of administrative services provides commercial health plans with the ability to submit a proposal on this opportunity as a prime contractor or serve as a subcontractor.
3. The Department desires to replace its existing MMIS in a short timeframe. This procurement increases flexibility to meet the solution with innovative approaches that are expected to take less effort and time than a traditional MMIS implementation.
4. New provisions affecting state Medicaid programs in ACA require revised requirements from those in the R-MMIS procurement.
5. CMS released its most recent version of the MITA 3.0 framework, and the Seven Conditions and Standards, which influences the requirements.
6. The Department has decided to consolidate the administration of some non-Medicaid programs under the same contract to realize efficiencies that were not part of the R-MMIS procurement.

The Department envisions multiple, overlapping phases to complete the project requirements set forth in this RFP. These phases include Planning, Design/Development/Implementation (DDI), Operations, Certification, System and Operational Enhancements, and Transition.

During the Planning Phase, the contractor must develop, in consultation with the Department, and put into practice a series of plans (e.g., project management, risk management, scope management, and configuration management plans) based on its proposed project management and systems development lifecycle (SDLC) methodologies. These plans must support all project phases and releases. It is the Department’s intent that various Medicaid system and operational components be staged into two releases. The following table illustrates major components that should be structured into two releases. Vendors should indicate their approach to address the release of all components including, but not limited to, those in the following table.

Release 1 Components*	Release 2 Components*
<ul style="list-style-type: none"> <li>• Provider screening, enrollment, and recertification</li> <li>• Provider servicing, documentation, communication, and education</li> <li>• Provider call center (partial operations until claims also serviced by contractor)</li> <li>• Program integrity and fraud prevention activities (in coordination with the Office of the Medicaid Inspector General)</li> <li>• PBM</li> <li>• EPIC</li>   <li>• MEIPASS - EHR incentive program</li> </ul>	<ul style="list-style-type: none"> <li>• Member call center</li> <li>• Claims processing (claims adjudication, tracking of utilization thresholds and benefit limits, claims payment, and post-payment adjustment)</li> <li>• Prior approval of certain services (Dental, Orthodontic, Durable Medical Equipment (DME), supplies, private duty nursing, high-tech radiology procedures, out of state inpatient and nursing home services, personal care services)</li> <li>• Specific benefit carve-outs for Medicaid members participating in the managed care population</li> <li>• Coordination of benefits (private third-party liability, Medicare dual-eligibles)</li> </ul>



	<ul style="list-style-type: none"><li>• Grievance and appeals processes for members and providers including fair hearings</li><li>• Capitation Payment</li></ul>
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\* Not exhaustive

The DDI Phase includes the tasks required for a contractor to successfully design, develop, and implement the staffing, processes, and technology that support the provision of administrative services for the Department. As part of design and development, the contractor will configure its existing infrastructure to adopt the Medicaid plan and convert the Department's data to function in the contractor's infrastructure, as well as develop any infrastructure needed to supplement existing systems. Implementation refers to the structural changes necessary for the contractor's solution to meet the requirements of the RFP and go into production. Implementation for this project will occur in a staggered approach with provider services being implemented in the first release nine months after contract start. The remaining functionality will be implemented in the second stage, twelve months after contract start.

Like implementation, operations will have a phased start, based on the completion of the implemented stages – Stage 1 Provider Services and Stage 2 Full Operations. The operational go-live in the Operational Phase begins with the cutover of services and infrastructure from the existing MMIS/fiscal agent to the new contractor. It also includes all tasks necessary to comply with the requirements in the RFP and operate a complete and certifiable system and to ensure that transactions are processed, providers are paid, and reports are produced in an accurate and timely manner, in accordance with federal and State policy.

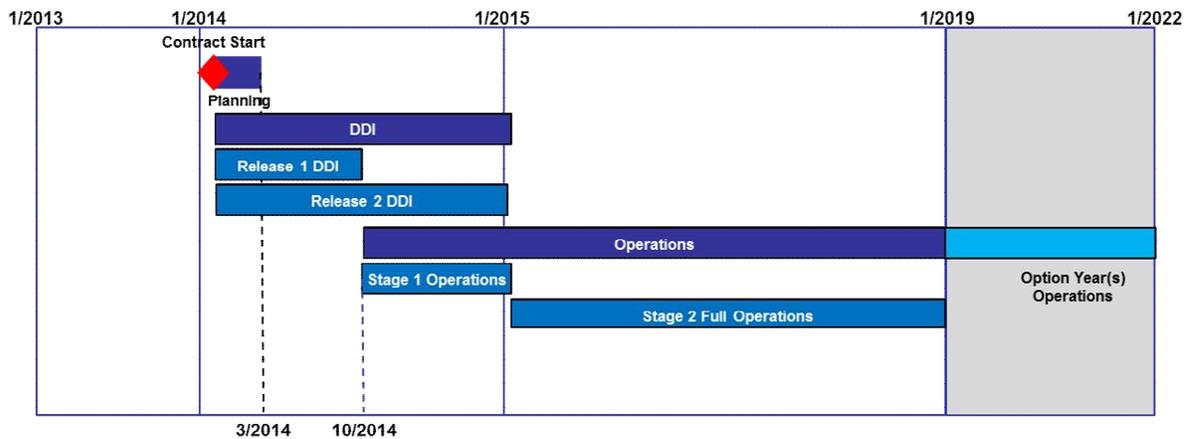
The System and Operational Enhancements Phase commences with the start of the contract and includes both maintenance and enhancement tasks that must be performed throughout the life of the contract to modify the contractor's infrastructure in accordance with new State and federal mandates, program policy changes, program growth, and emerging technologies. It is expected that any and all system and operational enhancements that are applicable to multiple customers of the contractor will be executed at no additional cost to the State. Maintenance tasks are not considered enhancements and should not be included in Attachment H:Pricing Schedule Tab E-Systems and Operational Enhancements.

The contractor must be working towards CMS certification from the start of the project, and must provide a certifiable system at the start of operations. It will also work with the Department and CMS through formal certification after a minimum of six months of successful Operations for the complete contracted solution.

At the conclusion of the contract period there exists a Transition Phase. In the Transition Phase, the contractor will work with the successor contractor(s) to successfully transition services with minimal interruption.



**Exhibit I-2: MAS Project Phases**



Phase/Activity	Duration	Start
Vendor Contract Start Date		January 2014
Planning	Two months	At contract start
DDI	Twelve months	At contract start
Stage 1 Operations: Provider Services	Three months	Nine months after contract start
Stage 2 Operations: Full Operations	Four Years	Twelve months after contract start

Existing MMIS Contract Key Dates

**B. DEPARTMENT OVERVIEW AND VISION FOR THE MAS PROCUREMENT**

The Department is the single State agency responsible for the administration of NYS’ Medicaid program. The Department administers the Medicaid program in conjunction with the fifty-eight (58) Local Departments of Social Services (LDSS) and other State agencies including the Office of Temporary and Disability Assistance (OTDA), the Office of Children and Family Services (OCFS), the Office of the Medicaid Inspector General (OMIG), the Office of the Attorney General (OAG), the Office of Mental Health (OMH), the Office for People With Developmental Disabilities (OPWDD), the Office of Alcohol and Substance Abuse Services (OASAS), and the Office of the State Comptroller (OSC).

Key aspects of the Department’s vision for NYS’ Medicaid program include providing for and protecting the health of NYS’ low-income and disabled citizens by supplying health insurance coverage and increasing health care access while improving quality and controlling costs. The Department’s vision is closely aligned with CMS and MITA goals and objectives, including the Seven Conditions and Standards. By implementing this model, the Department seeks to support the continuous improvement of NYS’ ability to:

1. Provide members with access to quality health care
2. Improve health care outcomes for members
3. Ensure efficient, effective, and economical management of the NYS Medicaid program

4. Meet the changing needs of the NYS Medicaid program, based on the CMS MITA standards
5. Meet enhanced funding requirements under CMS' Seven Conditions and Standards
6. Offer a modular, System Oriented Architecture (SOA)-based design

### **C. PROJECT BACKGROUND**

In 1998 the Department conducted a competitive procurement for an MMIS with a data warehouse component. This procurement resulted in eMedNY, which was designed and developed in two phases with Phase I implemented in November 2002 and Phase II implemented in March 2005. In a subsequent procurement, the data warehouse component of eMedNY was replaced by a new MDW in June 2012.

eMedNY and the MDW meet many of the Department's objectives. The major accomplishments of that effort included:

1. Improved integration of the Medicaid Eligibility Verification System (MEVS) with the MMIS. In previous systems the MEVS was not completely integrated with the MMIS processes. eMedNY has resolved problems associated with separate systems.
2. Improved coordination of eligibility data between source systems and eMedNY. The previous system had difficulty maintaining the consistency of data definitions between the MMIS and the eligibility systems. eMedNY has improved the consistency of data definitions and reduced inconsistencies caused by data interface schedules.
3. Achieved compliance with all requirements of HIPAA, the Balanced Budget Act of 1997 and the Deficit Reduction Act of 2005.
4. Supported claim processing volumes required by the NYS Medicaid Program. eMedNY performs all claims edits and audits required by Department policy while processing the required volume of claims timely and accurately.
5. Implemented web-based interfaces that allow users to access eMedNY. This has improved access to data that was not available through previous client-server or mainframe interfaces.
6. Improved provider and member fraud and abuse tracking using information from the eMedNY Data Warehouse.
7. Migrated technology to support a single, integrated, portal view of the data that allows functions such as data delivery, data access, data acquisition, business continuity, metadata and data modeling.
8. Enhanced security features and functionality to implement a finer-grained role-based access solution, improving compliance with HIPAA access and authorization requirements.



9. Provided more timely updates of FFS claims and encounter claims data, providing information on claims processed the previous day versus the previous week.
10. Increased data integrity features to drive consistency in content and format of data from disparate systems.
11. Expanded the historical capture of claims data to support over 10 years of claims history, more than double the previous amount of data.
12. Supported 5010 format of claims submissions.

In 2009 the Department announced its intent to solicit proposals to procure a contractor to design, build, and operate an R-MMIS that would replace eMedNY. The RFP was released in June 2010 for a contract start date targeted for March 2011. However, the R-MMIS RFP was canceled because at that time the Medicaid environment was undergoing a rapid transformation that significantly and materially changed the original underlying assumptions for procuring the new R-MMIS system.

**D. PROJECT GOALS AND OBJECTIVES**

The Department seeks to procure a contractor to provide MAS to administer its FFS Medicaid program and the fiscal agent services of its managed care program. This contractor will assume responsibilities for the activities currently performed by the State’s MMIS/fiscal agent vendor and some additional activities (e.g., prior approval/prior authorization, provider enrollment, provider re-certification, and pharmacy). In doing so, the contractor will have flexibility in providing these services, so long as its meets the requirements, outcomes, and service level agreements (SLAs) in this RFP and subsequent contract.

With this less prescriptive and more outcomes-focused approach, the Department expects that the contractor will be able to leverage its existing infrastructure and experience to reduce implementation time, decrease costs, foster innovation, and transfer best practices to the Medicaid program.

Overall, the Department’s vision for managing public health care encompasses the following goals and objectives, which the Department expects the vendor to consider as it responds to this RFP:

<p><b>Improve Care</b></p>	<p>NYS is committed to ensuring that every Medicaid member has access to high quality, cost-effective health care that is effectively managed. The Department’s goal is to eliminate uncoordinated FFS payments and achieve care management for all. The Department’s approach includes integration of patient centered medical homes, health plans, and health homes into a single system of effective care management. To effectively coordinate care and improve quality, the Department incentivizes the use of interoperable electronic health records by providers to enable delivery of clinical information at the point of care.</p>
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<p><b>Improve Health</b></p>	<p>It is the Department’s goal to obtain a flexible solution that effectively adapts to restructuring the Medicaid benefit design to ensure that all members have access to clinically effective, efficiently delivered services. To further improve health outcomes, it is imperative that the Department possesses robust data collection capabilities to support predictive modeling.</p>
<p><b>Reduce Costs</b></p>	<p>The NYS Medicaid global spending cap means all new expenditures must be analyzed to assess their impact on both cost and quality. The introduction of COTS solutions is critical to developing the capability to implement software and procedural enhancements in a timely and cost effective manner. The Department envisions the need to share clinical information at the point-of-service to better manage high need and high cost services.</p>

**E. OVERALL APPROACH TO THE CONTRACT**

The proposed technical approach must follow MITA principles, standards, and architecture configurations. The resulting contractor must meet the current needs of the NYS Medicaid program and be sufficiently flexible to meet future needs of the program, including compliance with MITA standards. The successful vendor must work to attain successively higher MITA maturity levels.

Vendors that are eligible to bid as the prime vendor on this procurement (restrictions defined in the Introduction of this Section, the Introduction of Section III, and in the Conflict of Interest of Section IV) have the option of subcontracting services to other organizations—including MCOs that are currently providing or intending to provide Medicaid services in NYS, so long as the prime vendor has, in the opinion of the Department, taken proper safeguards to insulate the subcontractor vendor from the relevant managed care components of the contract.

To provide a solution that is both cost and time efficient, the Department anticipates vendors to leverage wherever possible their existing infrastructure and platforms for facilitating services in place of developing new systems.

The State will select a contractor using the Best Value methodology of award. Best Value is defined in Article XI, Section 163(1)(j) of the NYS Finance Law as the basis for awarding contracts for services to the vendor which optimizes quality, cost and efficiency, among responsive and responsible vendors.

**F. TERM OF THE CONTRACT**

The Department intends to award a five (5) year contract with the option to renew for three (3) additional one (1) year periods at the sole option of the State. It is anticipated that the initial five (5) year period would begin in January 2014 and include all project planning, DDI, operations, certification, and operational enhancement tasks.

## **G. SCOPE OF WORK SUMMARY**

The scope of work (SOW) for the contractor is primarily organized by MITA 3.0 business area, but also includes some additional areas that do not fit within MITA. The SOW sections include: project management, technical architecture, business relationship management, care management, contractor management, eligibility and enrollment management, financial management, member management, operations management, performance management, plan management, and provider management. Additionally, the SOW includes the SLAs that will be used to govern/monitor vendor performance throughout the contract.

The contract start date is targeted for January 2014. The contractor will provide the infrastructure to support the services and outcomes identified under the term of the base contract until November 2018 with options for renewal, as described in I.5 of RFP Section V.

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## **II. DESCRIPTION OF THE NEW YORK STATE MEDICAID PROGRAM AND CURRENT MEDICAID MANAGEMENT INFORMATION SYSTEM ENVIRONMENT**

### **A. INTRODUCTION**

New York State's (NYS) Medicaid Program is one of the largest insurance programs in the nation. Along with affiliated programs, it provides health care coverage to over five (5) million New Yorkers and spends over \$52 billion annually. Approximately 4.2 million of these members receive their health care through enrollment in a managed care plan (Medicaid Mainstream Managed Care: 3.3 million, Family Health Plus: 430,000, Child Health Plus: 340,000), while the remaining population receives their health care through the traditional fee-for-service (FFS) program. However, the Department of Health (the Department), through its Medicaid Redesign Team (MRT) initiatives, intends to transition additional members into the managed care program, with a goal of managed care serving approximately 95% of New York Medicaid enrollees by 2016. There are limited benefit carve-outs for the managed care program, such as transportation and family planning that will continue to be administered by the FFS program.

The State is comprised of the Department of Health, Office of Medicaid Inspector General (OMIG), and the Office of the Attorney General (OAG) and the New York State Office of the State Comptroller (OSC). All State entities have access to and oversight of all systems and records procured as part of Medicaid Administrative Services (MAS) procurement. Additionally, all requirements in this Request for Proposals (RFP) are subject to monitoring by the State.

Within the Department, the Office of Health Insurance Programs (OHIP) is directly responsible for administering public health insurance programs. These responsibilities include the oversight of the Medicaid Management Information System (MMIS) known as eMedNY, the Medicaid Data Warehouse (MDW), as well as this procurement.

### **B. OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) AND REFORM AGENDA**

OHIP administers a variety of public health insurance programs including the following:

- Medicaid
- Family Health Plus: a public health insurance program for adults who are aged 19 to 64 who have income too high to qualify for Medicaid
- Child Health Plus: an expansion covering children through managed care programs with premiums based on family income
- Elderly Pharmaceutical Insurance Coverage Program (EPIC): provides prescription drug coverage to seniors who meet the program's income criteria and managed long-term care programs

While OHIP is responsible for the major operations of the Medicaid program, there are a variety of federal, State, and local government agencies that have key responsibilities related to the program. OHIP works in conjunction with other State agencies including the Office of Mental Health (OMH), Office of People With Developmental Disabilities (OPWDD), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office of Children and Family Services (OCFS) to ensure that the needs of the special populations that these agencies serve are addressed within the parameters of the NYS Medicaid program. OHIP works with the Office of Temporary and Disability Assistance (OTDA) and NYS' Local Departments of Social Services (LDSS) to administer and fund the Medicaid program.

Program integrity is the shared responsibility of OHIP, OMIG, OSC, the OAG, the Centers for Medicare & Medicaid Services (CMS) and the Office of the Inspector General (OIG). The distribution of responsibilities across these organizations results in a diverse set of stakeholders with specific and distinct information needs that must be met by the MAS procurement.

With the establishment of the MRT in 2011, OHIP has undertaken the following major Medicaid reform initiatives:

1. Care Management for All: This initiative aims to have 95% of Medicaid population enrolled in Managed Care by 2016.
2. Managed Long-Term Care: This initiative requires Dual-Eligible members (members with Medicare and Medicaid coverage), over 21 years of age and in need of more than 120 days of home and community based long term care services to be enrolled in a managed long term care plan over the next several years.
3. Health Homes: A Health Home is a care management service model whereby all of a high-need individual's caregivers communicate with one another so that all of a patient's needs are addressed in a comprehensive manner. Individuals enrolled in Targeted Care Management (TCM) programs were converted to Health Homes in January 2012. In March 2012, the Department began to assign new members into Health Homes.
4. Global Medicaid Spending Cap: The Medicaid cap is consistent with the Governor's goal to limit total Medicaid spending growth to no greater than the ten-year average rate for the long-term medical component of the Consumer Price Index (currently estimated at 4 percent).
5. State Takeover of Medicaid Administration: The Department has the authority to assume Medicaid administrative functions from the counties over a six year period.
6. Behavioral Health Organizations (BHOs): This initiative enacted by law gives the commissioners of OMH and OASAS the authority to contract jointly with BHOs to enroll individuals for managed behavioral health care.

As OHIP continues to implement policies that advance the reform agenda, the contractor will play a critical role in supporting all stakeholders in the development and evaluation of reform initiatives.

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## **C. NEW YORK STATE MEDICAID MANAGEMENT INFORMATION SYSTEM (eMedNY)**

eMedNY is a complex system that encompasses a variety of components allowing it to process over 2 million expected transactions per day in 2012, 1.3 million of which are claims, with application access for the Department, other State agencies, LDSS, and providers. Among these transactions are institutional, professional, dental, pharmacy and transportation claims transactions; prior approvals and prior authorizations; and eligibility inquiries. Detailed transaction information is provided in the Procurement Library. These components provide the following capabilities:

1. Transaction processing (real time and batch)
2. Web-based application for the Department, other State agencies, and Local Departments of Social Services access
3. Internet application for provider access
4. External file transfer
5. Report repository and delivery
6. Imaging and document management
7. Workflow Management
8. Interactive Voice Response (IVR)
9. Pharmacy Point of Service (POS)

### **C.1 eMedNY CORE APPLICATION**

The eMedNY core application is based on the integration of several software applications that have been modified and extended to meet the requirements of the NYS Medicaid program. Over the course of the current contract, a variety of major initiatives have resulted in substantial modifications to the base software applications. This has increased the complexity of both maintenance and enhancement activities, resulting in higher costs and longer than desired development times.

The eMedNY application architecture utilizes a modular approach that separates the application into 12 subsystems. These subsystems include:

1. Claims Processing
2. Client
3. Electronic Commerce (eCommerce)
4. Financial
5. Prior Authorization
6. Provider
7. Reference
8. Third-Party Liability
9. EPSDT (Early and Periodic Screening, Diagnosis, and Treatment)
10. MARS (Management and Administrative Reporting Subsystem)

11. SURS (Surveillance and Utilization Review Subsystem)
12. MEIPASS (Medicaid EHR Incentive Program Administrative Support Service)

Each eMedNY subsystem is a collection of functional objects that encapsulates the Medicaid program functionality. These objects include the screens, reports, interfaces and services required by the subsystem. As a result of this “siloe” approach, eMedNY is limited in its ability to facilitate business processes that require functions contained in different subsystems.

The eMedNY subsystem data is maintained in relational databases. These relational models facilitate data sharing among applications and minimize data replication. In addition, a variety of commercial-off-the-shelf (COTS) and proprietary products are integrated to effectively and efficiently manage eMedNY operations. Detailed information on the eMedNY core application, database and technical architecture, including processing volumes, can be found in the Procurement Library.

## **C.2 CHALLENGES OF THE CURRENT MEDICAID SYSTEM ENVIRONMENT**

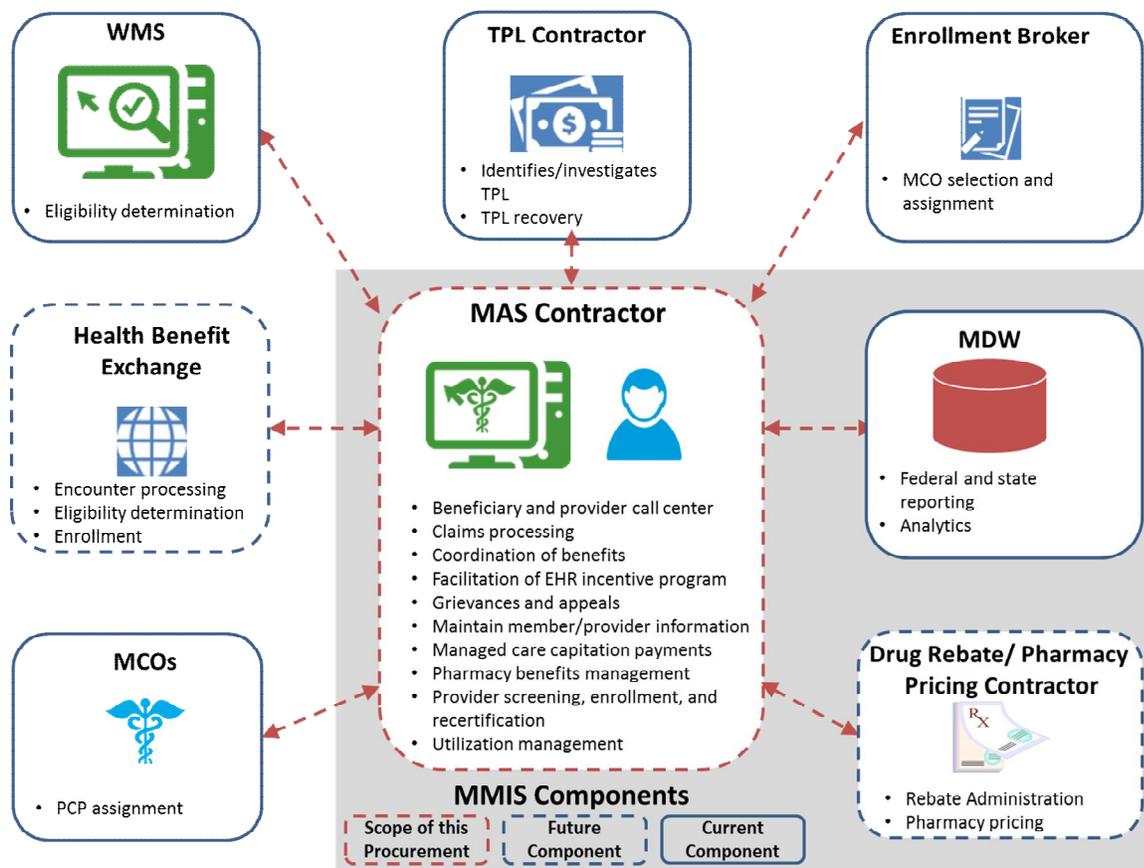
While eMedNY accurately processes claims and the Web Portal has been well received by the provider community, the Department has identified a series of challenges inherent in the current environment that must be addressed by this procurement. While these are reflected throughout the requirements set forth in this RFP, challenges of particular note include:

1. The eMedNY was designed for a predominantly FFS program and is not the optimal solution to meet the needs of a State that will become 95% managed care. This imbalance of need versus capacity creates unnecessary waste and cost in the system.
2. The eMedNY application and technical architecture lack the flexibility to support the rapid changes in functional and technical requirements that are essential for today’s Medicaid program and regulatory environment. Lengthy timelines to execute system changes do not provide an adequate level of responsiveness to business areas reliant on eMedNY.
3. The lack of flexibility limits the Department’s ability to implement MITA Maturity Level 3.0 business capabilities in the near term.
4. The eMedNY application architecture was integrated to move closer to Service Oriented Architecture (SOA) elements and design, but is not sufficient for the State’s desired goals, and it is not a COTS solution. SOA principles offer many significant benefits, including the elimination of redundant code.
5. eMedNY lacks a fully integrated, modular financial management system that processes all Medicaid financial transactions and interfaces with the State Financial System (SFS).

## D. ANCILLARY AND RELATED MMIS SYSTEMS AND COMPONENTS

As mentioned in Section I, eMedNY, the State’s MMIS, currently interfaces with the Welfare Management System (WMS), managed care organizations (MCO) operating in the State, the managed care enrolment broker, and the State's Third-Party Liability (TPL) contractor, as well as the Medicaid Data Warehouse (MDW) (which is considered part of the MMIS) as data sources to perform the functions required of an MMIS. In the future, the MAS contractor will also interface with the State’s Health Benefit Exchange, which is under development, and a new Drug Rebate/Pharmacy Pricing Contractor that procured to become a component of the MMIS.

**Exhibit II-1: Current and Future components of MMIS**



### D.2 WELFARE MANAGEMENT SYSTEM (WMS)

WMS is the eligibility determination system for NYS and is operated and maintained by the Human Services Application Systems Center. WMS is the source of record for NYS Medicaid eligibility information and provides its member registry, based on eligibility information, to the MMIS. The MMIS receives nightly extracts from WMS to update the eligibility information registry for

verifying member eligibility, claims processing, and other functions. In addition to eligibility information, the MMIS member registry also receives nightly extracts from the WMS for Principal Provider (Long-Term Care Facilities), PCP (Managed Care Prepaid Capitation Plans), RRE (member restrictions, exceptions and exemptions).

While WMS is the source of record for eligibility information, the MMIS captures and maintains additional member information including: Member Managed Care Scope of Benefits, Restricted Transportation, Service Utilization Limits/Thresholds, Co-Pay information and Third Party Liability information.

It is anticipated that the new Federal health insurance reform initiatives will alter the current eligibility determination and enrollment business processes. These changes may result in the receipt of eligibility information from Federal government and other sources that must be processed to maintain accurate and up-to-date eligibility information.

### **D.3 THIRD-PARTY LIABILITY CONTRACTOR**

TPL recovery activities are performed by a TPL contractor under the guidance of OMIG. The MMIS supports these activities by maintaining member TPL information, and generating and transmitting files with required member and claims information. The MMIS also will process files from the TPL contractor in a proprietary format as special inputs for adjustments and voids to claims.

### **D.4 ENROLLMENT BROKER**

The objectives of the broker include educating Medicaid applicants and consumers, providers and other interested parties in the community regarding Medicaid managed care, Family Health Plus, HIV Special Needs Plans, Medicare-Medicaid dual-eligible plans (Medicaid Advantage and Medicaid Advantage Plus), Managed Long Term Care Plans and other managed care programs developed by the Department. The enrollment broker is the primary body responsible to:

- Educate potential enrollees about managed care concepts, their enrollment options, and provide assistance with health plan selections;
- Process exemption and exclusion requests for Medicaid recipients;
- Process enrollments and disenrollments for all managed care programs;
- Assist enrollees with Primary Care Provider (PCP) selection if enrollees wish such assistance;
- Provide an efficient and cost-effective enrollment process; and
- Provide an effective data reporting system regarding enrollments, disenrollments, exemptions, transfers, outreach and education activities and complaints and grievances.

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## **D.5 HEALTH BENEFIT EXCHANGE**

Under the federal Affordable Care Act (ACA), an Exchange will be operating in every state, or relying on a federally-operated exchange, starting in 2014. New York has chosen to set up its own Health Benefit Exchange.

The New York Health Benefit Exchange is designed to help consumers shop for and enroll in health insurance coverage. Individuals, families and small businesses who are seeking health insurance coverage will be able to use the Exchange. Insurance coverage can be purchased through the Health Benefit Exchange beginning in October 2013 and will be effective January 1, 2014.

The Exchange will also help people to check their eligibility for health care programs like Medicaid and sign up for these programs if they are eligible. The Exchange will be able to tell what type of financial assistance is available to applicants to help them afford health insurance purchased through the Exchange.

The new Health Benefit Exchange will also be responsible for accepting and processing managed care encounters. However, determination of capitation amounts and facilitation of capitation payments for Medicaid managed care will be performed by the MAS contractor.

## **D.6 MEDICAID DATA WAREHOUSE**

The MDW, while part of the MMIS, has been designed, developed and implemented under a separate contract and is responsible for facilitating the majority of the analysis and reporting capabilities of the NYS Medicaid Program. The MDW will rely on data extracted from the MMIS to provide reporting functionality, such as Program Management (e.g., Data Warehouse, Management and Administrative Reporting Subsystem (MARS) and Federal reporting); Program Integrity (e.g., Surveillance and Utilization Review Subsystem (SURS), Retrospective Drug Utilization Review (R-DUR)); and, Care Management (e.g., Early and Periodic Screening, Diagnosis and Treatment). However, reporting on the operational performance of the MMIS shall be supported by the MAS contractor.

The MDW will work in conjunction with the Health Benefit to process encounters by storing and analyzing encounter information.

## **D.7 DRUG REBATE / PHARMACY PRICING CONTRACTOR**

A Drug Rebate / Pharmacy Pricing Contractor will be procured as part of the MMIS, but under a separate contract. It is anticipated the Drug Rebate / Pharmacy Pricing Contractor will:

- Perform financial review functions for the Preferred Drug Program
- Rebate communication functions

- Federal and State Supplemental rebate processing
- Support and monitor the rebate labeler web portal application.
- Receive and process quarterly drug pricing/product data

NYS has elected to carve these responsibilities out to a separate contractor because of the openness of the MAS contract to commercial and Medicaid health plans. Confidential drug rebate information is exchanged between NYS and drug manufacturers to facilitate certain pharmacy functions and access to this information would create a conflict of interest and potential exposure of proprietary information.

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### III. MEDICAID ADMINISTRATIVE SERVICES (MAS) SCOPE OF WORK

#### A. INTRODUCTION

This section presents the project Scope of Work (SOW) for the Medicaid Administrative Services (MAS) procurement that will replace New York State's (NYS) existing Medicaid Management Information System (MMIS), the electronic Medicaid system of New York (eMedNY), to administer its fee-for-service (FFS) Medicaid program and selected functions of its managed care (MC) program.

As outlined in Section I, Procurement Overview, the Department of Health (the Department) has structured this procurement to include a diverse set of vendors including, but not limited to, traditional MMIS vendors, commercial administrative services organizations (ASOs), Medicare Administrative Contractors (MACs) and commercial and Medicaid Managed Care Organizations (MCOs).

The prime contractor must be responsible for issuing all FFS claims and MC capitation payments as the fiscal agent, including third-party liability (TPL) and coordination of benefits (COB)/cost avoidance services.

As noted in Section I, the primary vendor on this contract can be an MCO only on the condition that it does not participate in the NYS Medicaid managed care program as a health plan/insurer. Medicaid MCOs that currently provide or intend to provide Medicaid insurance services in NYS can be included as a subcontractor as long as the managed care components of the scope of work are performed by the prime contractor in order to avoid competitive advantage risks, conflicts of interest, and the appearance of such conflicts. NYS does not intend to select multiple vendors as fiscal agents in this contract, which implies that an MCO participating in NYS Medicaid as a health plan cannot serve as the fiscal agent for FFS or MC portions of the contract. Such MCO subcontractors must be insulated from providing the following MC Fiscal Agent services or having exposure to/interaction with the following information:

- Maternity kick payment processing
- Stop-loss
- Capitation payments

#### B. GUIDING PRINCIPLES

The following guiding principles were developed for vendors in preparation of MAS Procurement responses. In order to provide a framework for effectively directing responses, these guiding principles are divided into five major categories. This categorization recognizes that the deployment of this model requires a focus on Operability, Competence, Technical Interoperability, Efficiency, and Innovation.

1. **Operability** – A good system makes even complex processes simple and seamless for the user. User operability means an easy-to-use system for State staff, providers, and members that ultimately ensures simple, timely, and appropriate access to information and services.



2. **Competence** – A competent system, organization, or service is defined by adequacy, possession of required skill, knowledge, qualification, and capacity.
3. **Technical Interoperability** – Interoperability is a property of a product or system where interfaces are completely understood to work with other products or systems, present or future, without restricted access, and is based on prevailing industry standards.
4. **Efficiency** – An efficient solution delivers services and outcomes in a streamlined, coordinated, and uniform fashion so objectives are achieved and public resources are utilized in a responsible manner. An efficient solution maximizes flexibility and minimizes expertise and time required to make system modifications.
5. **Innovation** – An innovative approach should provide solutions that enhance the business or provide unforeseen business advantages by contributing to improved performance, optimized service delivery, and/or reduced costs.

**Exhibit III-1: MAS Procurement Guiding Principles**

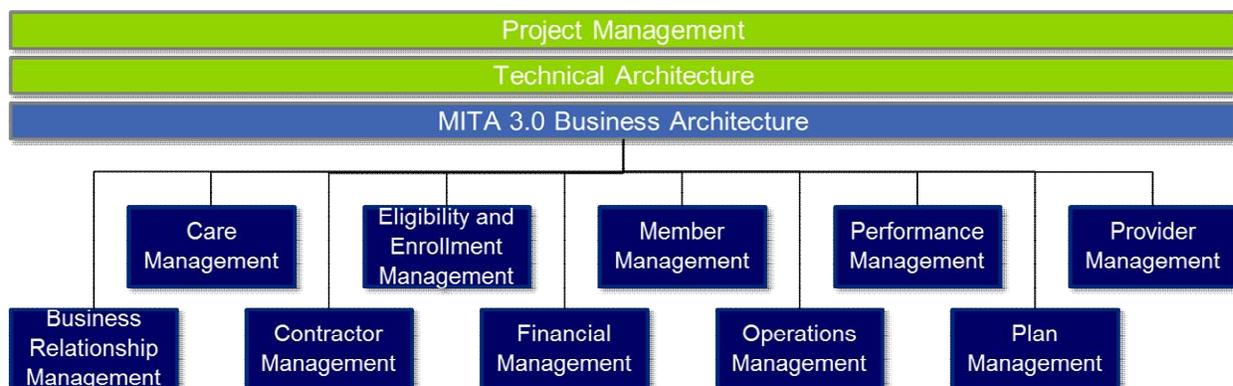
MAS Procurement Guiding Principles
<b>Operability</b>
1. Applications should meet business requirements in a way that is intuitive, promotes system use, and automates as much of the information collection and sharing process as possible
2. User interfaces for State staff, providers, and members are simple and intuitive
3. Demonstrate sufficient assistance and support levels for State staff, providers, and members when interacting with the system and the Medicaid program, and when training users on the system
<b>Competence</b>
1. Demonstrate strategies and solutions that enable good stewardship of public funds
2. Provide appropriate uniform screening and authorization completed in appropriate (defined) timeframes
3. Work effectively with on-staff clinically appropriate experts to determine prior authorizations
4. Provide clear and consistent lines of communication to business partners, clients, and stakeholders
5. Conform to all security guidelines set by the federal government and NYS
<b>Technical Interoperability</b>
1. Provide modern standards-based functionality and technology that results in increased and proactive management, staff efficiency, and enhanced administrative and clinical decision-making
2. Develop dynamic, multi-level views for the Department for performance measurement and reporting purposes
3. Align and support the Center for Medicare & Medicaid Services’ (CMS) Seven Conditions and Standards, including the Medicaid Information Technology Architecture (MITA) version 3.0, as well as future MITA advances
4. Support outcomes-based measures through applications and services

5. Implement a flexible platform with a scalable architecture capable of supporting the State’s continued transition of members and services to managed care
<b>Efficiency</b>
1. Suggest applications that can be easily modified, expanded and linked to other applications to facilitate response to changes in the Department’s business environment
2. Demonstrate efficient technology utilization and cost effective solutions through the use of Commercial-Off-the-Shelf (COTS) products and existing applications, where possible
3. Implement a solution to seamlessly identify third-party insurers and integrate members transitioning in and out of Medicaid
<b>Innovation</b>
1. Support ongoing innovation in delivery of the NYS Medicaid Program including utilization of Health Insurance Exchange and Health Information Exchange under development and support the expansion of Health Homes in NYS
2. Propose new and creative ideas for increasing the Department’s control over the expenditure of program dollars

**C. MEDICAID ADMINISTRATIVE SERVICES REQUIREMENTS**

Requirements have been developed based on the business needs of NYS, MITA 3.0 and CMS MMIS Certification Requirements (certification checklists are provided in Attachment F and available on the CMS website: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MMIS/MECT.html>). Requirements are organized by overarching project management and technical architecture areas and the MITA 3.0 Business Architecture framework. MITA is a framework established by CMS to help guide state Medicaid enterprises as they operate and work to improve their business and technical operations.

**Exhibit III-2: MAS MITA 3.0 Business Architecture to Support Functional Requirements**



MITA establishes national guidelines for technologies, information, and processes to support better Medicaid program administration to improve both health care outcomes and administrative processes. MITA is intended to foster integrated business and technology transformation across the Medicaid enterprise to improve the administration of the Medicaid program. Its common business and technology vision for state Medicaid organizations will emphasize:

1. A patient-centric view not constrained by organizational barriers
2. Common standards with, but not limited to, Medicare
3. Interoperability between state Medicaid organizations within and across states, as well as with other agencies involved in healthcare
4. Web-based access and integration

For more information on the MITA framework please visit: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/MITA/Medicaid-Information-Technology-Architecture-MITA-30.html>

A comprehensive listing of all detailed requirements for each area can be found in Attachment E Requirements Traceability Matrix. Requirements in Attachment E are organized by overarching project management and technical architecture areas and the MITA 3.0 framework:

1. Technical Architecture
2. Business Relationship Management
3. Care Management
4. Contractor Management
5. Eligibility and Enrollment Management
6. Financial Management
7. Member Management
8. Operations Management
9. Performance Management
10. Plan Management
11. Provider Management

Attachment G Deliverables List provides a comprehensive listing of required contractor documentation and deliverables for each phase outlined in the Procurement Overview.

The Procurement Library includes eMedNY As-Is Business Process Models and Documentation. These materials provide graphical business process models and their associated documentation and are designed to provide a clearer understanding of the As-Is eMedNY business processes involved in the procurement in a manner that will facilitate analysis. The models represent the Department's current understanding of the business processes and may contain errors and/or omissions that were not identified during the business process modeling project or were not updated based on

evolution projects. While the Department has made its best effort to avoid errors and/or omissions, it is not responsible for any damages arising from the use of the information contained in these models.

For purposes of this RFP, the use of the terms “shall”, “must” and “will” are used interchangeably when describing the vendor’s duties.

The contractor must ensure that the project remains within the proposed budget and resource allocations, and adheres to the development and operational schedules while maintaining the quality of the products and deliverables.

#### **D. PROJECT PERSONNEL**

The vendor shall describe its Key Personnel and other personnel, staffing approach, and resumes. The Department is not prescribing a staffing approach beyond the relevant requirements in Attachment E, but is interested in having the vendor offer a creative approach to staffing that covers each phase of the project. The vendor shall:

1. Propose a detailed Staffing and Organization Plan to address all work required in this RFP.
2. Offer a project organizational chart that visually depicts the roles that will be required to fill each phase of work. The vendor should provide a separate organizational chart for the Design, Development, and Implementation phase, as well as the Operations phase. The charts should include positions, rather than individual names.
3. Provide a name and resume for all Key Staff identified. Key Staff include:
  - a. Account Executive,
  - b. Account Manager,
  - c. DDI/Configuration Manager,
  - d. Operations Manager,
  - e. Transition Manager,
  - f. Compliance Manager,
  - g. Information Security Officer,
  - h. Data Conversion Manager,
  - i. Quality Assurance Manager,
  - j. Customer Service Manager,
  - k. Medical Director,
  - l. PBM Manager (pharmacy prior approval),
  - m. Clinical Manager (medical prior approval),
  - n. MEIPASS Operations Manager

#### **E. PERFORMANCE AND MONITORING**

The contractor must at all times comply with all system and operational performance requirements and expectations specified in this RFP, the performance levels contained in the most recent Payment Error Rate Measurement (PERM), Part 11 of the State Medicaid Manual (SMM), and

all related Action Transmittals (AT) and Information Memoranda (IM), as well as any modifications or changes thereto, and to CFR Parts 42, 45, and 95 as they refer to the MMIS and its operations and the use of fiscal agent services (detailed federal regulations and policies are provided in RFP Section IV.B.7). The Department, at its sole option, may continue to apply these requirements if federal requirements are removed.

The vendor must warrant that it will meet or exceeds all requirements of this RFP, provides services that are fully operational on the takeover date, and will provide systems that meet all CMS requirements, including certification requirements for the Department to claim the maximum allowable Federal Financial Participation (FFP) through the end of the contract term. The vendor must warrant that it shall meet all performance requirements listed in this RFP during the term of this contract.

Regardless of whether the State owns or licenses particular components of the system, it must have access to and oversight of all systems and records procured as part of the MAS procurement to ensure its ability to determine and enforce compliance with the requirements of this RFP.

The contractor must at all times provide services in conformity with the current policies and procedures of the NYS Medicaid program. All requirements described in this RFP are subject to monitoring by the State and the Office of Inspector General (OIG). The State and OIG reserve the right to monitor performance at any time and may exercise such option, at its discretion, without notice. In the event of a failure to meet the performance requirements, the contractor agrees that the State may assess and withhold from payments due to the contractor, the actual damages for the losses set forth below and as assessed at the Department's discretion.

The contractor must complete all services within scope of this RFP in accordance with the requirements and applicable federal regulations in an accurate and error-free manner. The contractor must provide a means to audit and track for accuracy and must also provide the same level of access to the State for audit and tracking purposes. When an error that results from the contractor's system and/or services is identified by the contractor or by another party, including the State, and communicated to the contractor, the contractor shall issue an error report to the Department within five (5) business days that includes:

- Description of the error
- Identification of the source of the error
- Cause of the error
- Impact of the error to all impacted stakeholders, including financial (if applicable)
- Strategy to fix the error
- Plan to prevent similar errors for happening again in the future

The contractor will bear the financial burden to fix the error and its downstream impacts, and make any modifications necessary to prevent similar errors in the future. Additionally, the contractor will be responsible for any financial damages to the Department that results from such errors.

The Department confirms that the amounts stated for each occurrence of each performance failure define the maximum damages due from the contractor and that the amount claimed shall be adjusted downward to eliminate any proportion of the damage caused by the Department's failure to meet its contractual responsibility.

Amounts due to the Department from assessment of damages may be deducted from any money payable to the contractor pursuant to this contract. The Contract Administrator shall notify the contractor, in writing, of any claim for damages pursuant to this provision at least fifteen (15) calendar days prior to the date the Department deducts such sums from money payable to the contractor.

Such amounts as they relate to federal certification requirements may be deducted during the entire period that system certification is lacking. Should federal certification subsequently be granted retroactively, the Department shall reimburse the contractor for amounts withheld back to the date of federal certification.

The Department may, at its sole discretion, return all or a portion of collected damages as an incentive payment to the contractor for prompt and lasting correction of performance deficiencies.

### ***E.1 PERFORMANCE MONITORING***

This contract represents a further trend of the Department to transition administrative services from the State to a contractor as part of its fiscal agent responsibilities. To perform this evolving role, the State's structure and focus must change; shifting from performing some of its current tasks to monitoring and overseeing such tasks. As part of the transition to this contractor, the State will transform an existing unit or establish a new unit that will be responsible for interfacing with the contractor and collaborating with the State's Quality Assurance (QA) contractor to monitor the contractor's compliance against requirements and Service Level Agreements (SLAs) and to verify performance.

### ***E.2 FINANCIAL MONITORING***

In fulfillment of fiscal agent services within scope of this RFP, the contractor must establish NYS Medicaid Program related bank accounts in accordance with the policies of the NYS Medicaid program to support accounts payable and accounts receivable activities including issuance of check-write and EFT files and remittance advices. In establishing such accounts the contractor:

- May not establish any NYS Medicaid Program related bank account unless such account and the depository bank is expressly approved by the NYS Office of the State Comptroller (OSC),
- Must utilize a State approved bank located in NYS to provide banking services,
- Provide separate banking services and fiscal accountability necessary to maintain payment and refund functions of each program (e.g. EPIC, NYPS, etc.),

- Provide the State, by the fifteenth day of each month, an accounting of all banking transactions, including payments, transfers, charges and credits, made during the previous month for each account,
  - The accounting must be in a State approved format and, at a minimum, be in accordance with generally accepted financial accounting standards,
- Maintain each NYS Medicaid Program related bank account as Zero Balance Accounts,
- Provide full, uninterrupted, and unrestricted access to OSC and Financial Management Group to all accounts established under the contract used to administer NYS payments to Medicaid providers,
- Allow role based online access to all payment cycle supporting data specified in Attachment E: Requirements Traceability Matrix, including claims reporting and provider reference information
- Run check-write payment cycles and EFT authorizations to disburse payments from NYS Medicaid Program related bank accounts on a schedule determined by the Department

### ***E.3 STANDARDS AND DAMAGES***

It is expressly agreed by the Department and the contractor that, in the event of a failure to meet the performance requirements listed below, damage shall be sustained by the State, and the contractor is liable to pay to the State its actual damages according to the following subsections. The contractor must be fully bonded and insured to cover any such loss to the State.

#### **E.3.1 Loss or Reduction in FFP - Requirement**

Section 1903(a) of Title XIX provides enhanced FFP for development and operation of mechanized claims payment and information retrieval systems approved by CMS. The contractor is responsible for all FFP penalties imposed on the State by CMS due to any action or inaction on the part of the contractor that delays or results in denial of approval by CMS of the vendor's system.

Damages shall be assessed when incurred by the State if the system is not certified by CMS retroactive to the beginning date of operations. In addition, should decertification of the vendor's system, or any component part of it, occur prior to termination of the contract or any subsequent renewal thereof, the contractor will be liable for resulting damages to the State.

The contractor is responsible for maintaining its systems as well as the contract operations to the standards required to pass the periodic PERM reviews conducted by CMS or any subsequent review process established by CMS. The contractor must provide support to the Department during the PERM review process, including selection of samples, production of hard-copy documents, and gathering of other required data. The contractor's staff shall assist Department staff in responding to CMS inquiries. This level of support shall also be provided to all other State audit agencies or their designees.

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### **E.3.1.1 Damages Related to the Loss or Reduction in FFP for the NYS MAS**

The contractor shall be liable for the total difference between the maximum allowable enhanced FFP that relate to services provided by the contractor and the amount actually received by the State for those services resulting from failure to deliver the proposed solution or misrepresentation of solution that results in a difference, including any losses due to delays in meeting the Department-approved schedule for satisfying federal MMIS certification requirements, or losses from failure to meet minimum PERM standards if attributable to the contractor. Loss or reduction in FFP received by the State resulting at no fault of the contractor shall not result in punitive damages to the contractor. Damage assessments shall not be made until CMS has notified the State of its decision in writing.

### **E.3.2 Claims and Adjustment Processing Accuracy - Requirement**

All payments, adjustments, and other financial transactions made through the proposed system for medical services, insurance premiums (e.g., Buy-In or indemnity), or other payments must be made on behalf of eligible members, to enrolled entities, for approved services, and in accordance with the payment methodology and other policies of the NYS Medicaid program. The contractor must notify the Department immediately upon discovery of any incorrect payments or duplicate payments, irrespective of cause.

#### **E.3.2.1 Claims and Adjustment, and Capitation Processing Accuracy – Damages**

The contractor shall be liable for the actual amount of all contractor caused incorrect payments, duplicate payments, or payments that should have been denied that are not recovered. Contractor caused incorrect payments may result from either the contractor's failure to utilize available information or by a failure to process the claim or transaction correctly according to rules and edits transmitted to the contractor as determined by the Department.

The contractor must provide a monthly report listing all contractor or State identified inappropriate payments. This report will describe the cause of the inappropriate payment, whether the inappropriate payment represents a payment error, and an estimate of the dollar amount of any incorrect payment. The Contract Administrator shall review the report, decide whether further research and analysis is required before correction of the problem, approve the plan for correction, and establish a correction date.

The contractor shall be liable for the actual amount of the contractor caused incorrect payments that are not recovered. Recovery from providers to whom erroneous payments were made will be performed in accordance with a Department-approved recovery program. The contractor shall be fiscally responsible for any incorrect payments or duplicate payments resulting from negligent contractor performance that cannot be recovered by the State within ninety (90) calendar days from the identification of the problem. This responsibility shall apply to all incorrect payments caused by contractor negligence, system failure or other causes resulting from negligent contractor performance

under this contract. The actual amount of the outstanding incorrect payment may be deducted from contractor payments.

### **E.3.3 INTERNAL CONTROLS**

#### **E3.3.1 Internal Audit Controls**

The Department is committed to ensuring risk management functions are an integral part of all operations and activities. In this regard, the contractor is required to describe its internal audit structure and approach. The contractor shall provide detailed information regarding how its internal audit program supports and enhances enterprise wide risk management. In particular, the contractor shall:

- 1) Describe the current internal audit function and overall governance structure, including at a high level the function's size, charter, and reporting responsibilities.
- 2) Describe the internal audit function's processes and practices for complying with the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing, including the date of the function's last Quality Assurance Review.
- 3) Describe how the internal audit function supports the development and implementation of internal controls processes, standards and criteria for solutions and approaches included in this response.
- 4) The contractor shall provide a copy of its most current SSAE16 SOC 1 report.

#### **E.3.3.2 Internal Controls to Assure Timeliness and Accuracy of all Payments for Services**

In accordance with federal and State regulations, the contractor or its subcontractors must maintain and adhere to an adequate internal control structure that ensures that the payments for services, under the state plan, are appropriate and made on a timely basis. Detailed documentation describing the internal controls structure for the monitoring, verification, and validation of the timeliness and accuracy of all payments for services, under the state plan, must be maintained current at all times. As part of this contract, and at no additional expense to NYS, the contractor and its subcontractors will provide all needed assistance, system access, documentation and material requested by OMIG, OSC, as well as to any independent auditors. The following subsections provide guidelines describing access, rights, accuracy and timeliness that must be adhered to and described by the contractor and its subcontractors in their response to the RFP.

#### **E.3.3.3 Access to Processing System and Records**

The contractor and its subcontractors shall provide OMIG, OSC, DHHS, the Office of Inspector General of the United States, and their authorized representatives with access to all records relating to contractor performance under this agreement for the purposes of examination and audit. In addition, the contractor and its subcontractors will provide the State with all requested system access, to validate and test the reliability of the contractor computer system, as well as assist the State to develop and execute computer programs (modules), on the contractor's system, to detect and prevent fraud waste and abuse.

Testing for the reliability of the system will include but not be limited to: read access to all edits and edit logic, read access to the system processing modules, examining the computer system's general and application controls and testing if those controls are being complied with and testing the data produced by the systems. All of the contractor's or its subcontractors' costs associated with the activities stated in this section shall be the responsibility of the contractor.

#### **E.3.3.4 Accuracy**

The vendor must describe its oversight activities that will be used to monitor the internal controls and adhere to federally mandated claims processing accuracy requirements. These activities include prepayment and post-payment reviews which ensure claims processing accuracy. Federal accuracy standards consider risk factors associated with member eligibility, third-party liability, policy violations, limitations, documentation, medical necessity, coding errors, data entry errors, duplication, pricing, and system logic.

Federal regulation 42 CFR 447.45 requires prepayment and post-payment claim reviews to ensure the accuracy of Medicaid payments. Prepayment reviews consist of the following:

- Verification that the recipient was included in the eligibility file and the provider was authorized to furnish the service.
- Checking that the number of visits and services delivered are logically consistent with the recipient's characteristics and circumstances, such as type of illness, age, gender, service location.
- Verification that the claim does not duplicate or conflict with one reviewed previously or currently being reviewed.
- Verification that a payment does not exceed any reimbursement rates or limits in the State plan.
- Checking for third-party liability.

Post-payment claim reviews consist of developing and reviewing recipient utilization profiles, provider service profiles, and exceptions criteria and identifying exceptions so the agency can correct inappropriate practices or "mis-utilization" of members and providers.

In addition to implementing federally-required prepayment and post-payment reviews, several controls are required to ensure effective oversight of claims processing, in particular, accuracy. This includes an annual SSAE 16 audit of the fiscal agent's controls, annual contract performance evaluations, on-going monitoring of the fiscal agent's claims processing and system test plan to detect errors in and outside the MAS, reviews of the fiscal agent's internal quality assurance audit findings and oversight of the fiscal agent's surveillance and utilization reviews of potential overpayments to providers or members.

### **E.3.3.5 Timeliness**

The vendor must describe the internal control structure that will be used by the Vendor and its subcontractors to meet and adhere to federal regulations related to claim processing timeliness. Federal regulations address timely filing requirements by providers and timely processing by the fiscal agent.

Medicaid providers are required by federal law to submit claims for services rendered in a timely manner. Federal regulation 42 CFR 447.45 directs states to require providers to submit all claims no later than 12 months from the date of service.

42 U.S.C. 1396a(a)(37) requires states to pay 90 percent of clean claims, claims requiring no further written information or substantiation, within 30 days from receipt of the claim. Non-clean claims are required to be paid within one year, with certain types of claims allowed longer processing time.

The vendor must propose procedures, processes and systems that will be used to test that the internal controls are working effectively. This may include having internal auditors test a sample of claims to calculate timeliness of claims processing and to identify aged claims, policies related to timely filing, review of the fiscal agent's timely filing business practice manual and the provider general billing manual, involvement of the fiscal agent's quality assurance staff, internal capabilities to produce and review audit reports related to claims processing timeliness, and survey samples of providers to assess their perception of the timeliness of the fiscal agent's claims processing.

### **E.3.4 Service Level Agreements**

SLAs play an important role in defining and managing the relationship between the contractor and the Department for this contract. SLAs define the Department's service requirements and expectations regarding how the vendor will meet these requirements. A successfully implemented service level management discipline ensures that information systems and administrative services function smoothly while fulfilling the business needs of stakeholders.

The contractor shall report to the Department monthly on performance against the SLAs and how they have been evaluated. The evaluation methodology shall be submitted to the Department for approval prior to the first month's SLA report.

Respondents must review each SLA and provide the State with a narrative discussion on their organizations approach to meeting each SLA as defined below. The SLAs are presented as the minimum service level. Vendors providing services levels in their response which exceed minimum performance expectations shall be viewed favorably but also held to the more stringent service level.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
<b>Technical Architecture</b>		
Production Environment Hours of System Availability	Ensure that all contractor, state, provider, member, and other stakeholder elements of the production environment are operational and available without interruption 24 hours a day, seven days a week, except for scheduled State approved downtime.	\$1,000 per minute penalty for disruption in production environment.
Access Rights	Ensure NYS and federal staff access to retrieve claims, budget, and report information including all supporting materials and correspondence through web-based application.	\$1,000 per day that the requests are not accessible as per the SLA.
User Acceptance Test Environment Hours of System Availability	Ensure that User Acceptance Test Environment is operational 7 am – 7 pm ET, 6 days/week (Monday-Saturday) and extended hours when requested by the State.	\$500/hour penalty for disruptions in the User Acceptance Test Environment.
Disaster Recovery	Demonstrate a disaster recovery capability no less than every two (2) calendar years.	If backup/recovery strategy is not executed as defined, the Department may assess a penalty of up to two percent (2%) of the annual Operations Base Fee.
Backup	Back up on a daily basis all data files that reside on the multiple environments. These backups must be executed in such a way that any data set can be restored from the backup medium within twelve (12) hours of the discovery and notification that a restoration is needed. On a weekly basis the contractor will back up all databases and other data and store the backups at a secure off-site location.	If backup/recovery strategy is not executed as defined, the Department may assess a penalty of up to one percent (1%) of the annual Operations Base Fee for each missed or incorrect restoration from backup files for each missed twelve (12) hour period and one percent (1%) of the annual Operations Base Fee for each missed or incorrect weekly off-site backup for each missed one day (24 hour) period.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Disaster Recovery Execution	In the event the primary site becomes unavailable and/or the failover procedures cannot be successfully executed, the Department shall require the contractor to convert to the backup site within twenty-four (24) hours of notification by the Department to do so. In the event the contractor cannot return to the original production site within seven (7) calendar days, the Department may at its sole discretion declare the backup site the new primary site, at which time the contractor will have thirty (30) days to secure and make operational a new backup site.	If conversion to the backup site within twenty-four (24) hours is not executed or a new backup site is not operational within thirty (30) days of declaring the backup site the new primary site, a penalty of up to one percent (1%) of the annual Operations Base Fee for every day thereafter.
Failover	Provide production failover and redundancy capabilities in the event of technical difficulties in the production environment. Failover of the production environment must occur within 5 minutes.	One percent (1%) of the annual Operations Base Fee if the failover does not successfully occur within five (5) minutes.
Real-time Transactions including but not limited to Web Portal, Web based applications, other real-time transactions (e.g., prior authorization)	Response time for users accessing real-time transactions must not be greater than two (2) seconds for at least ninety percent (90%) of the transactions and response time must not be greater than five (5) seconds for at least ninety nine percent (99%) of the transactions. One hundred percent (100%) of all real-time transactions must not be greater than thirty (30) seconds.	\$5,000 per hour or any portion thereof that response time does not meet the times designated.
Inbound Files	Process inbound files at a frequency as defined by the Department.	\$1,000 per file
Outbound Files	Process outbound files at a frequency as defined by the Department.	\$1,000 per file
Notification of errors of inbound and outbound files reconciliation	Support and monitor the processing of transaction files and notify the Department of all transactions that have not been processed successfully. This notification must take place no later than one (1) business day of the transaction processing date.	\$5,000 for each occurrence of failure to notify the Department of unsuccessful processing within one (1) business day



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Reconciliation of errors of inbound and outbound files	Reconcile errors identified during the processing of transaction files and reprocess business partner transactions within one (1) business day of receipt of process-able files.	\$5,000 for each occurrence of failure to reprocess and reconcile unsuccessful transactions within one (1) business day
IVR Connections	Provide sufficient in-bound access so that Medicaid callers are connected with the interactive voice response (IVR) system(s) within two (2) telephone rings at least ninety-nine percent (99%) of the time; transaction response shall be within ten (10) seconds at a minimum ninety-nine percent (99%) of the time.	\$1,000 per day per occurrence below the 99% standard.
Batch Transactions	Receive, process, acknowledge, and send receipt to originator of each batch transactions within 24 hours.	\$1,000 per file not responded to within the 24 hour time frame.
Data Quality Audit	<p>The data received from the contractor must be of the highest quality (i.e., accuracy and completeness). The contractor must maintain appropriate systems and mechanisms to obtain, maintain and archive information on each member's Medicaid benefits, provider information, claims history, and payment information to support claims payment and other financial processes to ensure its ability to comply with the data reporting requirements.</p> <p>First year of operation: Quarterly random data quality audits must achieve a minimum of ninety-nine percent (99%) data quality accuracy rate per quarter.</p> <p>Each successive year of operations: Quarterly random data quality audits must achieve a minimum of ninety-nine point nine percent (99.9%) data quality accuracy rate per quarter.</p>	Up to two percent (2%) of the quarterly Operations Base Fee for each quarter that the MAS fails to meet the data defect percentage quality audit requirement for the applicable contract year, as defined, and the actual amount of all contractor caused incorrect payments.
Security and Confidentiality	The contractor must use or disclose PHI only to perform functions, activities or services specified in this RFP, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA, ACA, or HITECH regulations, if done by the Department.	\$10,000 per transaction or the full fine, settlement, and litigation cost resulting the wrongful disclosure of PHI; whichever is greater



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Risks and Vulnerabilities Reporting	The contractor must notify the Department within twenty four (24) hours of discovery of any security breach or vulnerabilities identified to the system or program information utilized under the contract. The contractor shall prepare and present a remediation plan outlining the extent of the security breach or to address correction of vulnerabilities that would allow a potential breach within ten (10) days of discovery.	\$10,000 per day per incident the Department is not notified. And \$10,000 per day that remediation plans are not received as per the SLA. And \$10,000 per day per incident that the remediation plan for a breach is not executed according to the department approved plan
<b>Business Relationship Management</b>		
HIPAA requirements	The contractor must comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Health Information Technology for Economic and Clinical Health Act (HITECH) Breach Notification Rule, and must comply with any other applicable (current and future) Federal and State laws regarding privacy and confidentiality.	The vendor shall be solely responsible for any fine and settlement resulting from the contractor's violation and all litigation costs that arise from alleged violation.
<b>Care Management</b>		
Prior Approval	Process to completion one hundred percent (100%) of requests within one (1) business day of receipt of complete information.	\$10,000 per day that the requests are not processed as per the SLA.
Authorization Consistency	Provide sufficient policies and procedures that explain and ensure consistency of decisions through inter-rater reliability in approving or denying prior approvals, prior authorizations, and treatment plans. At a minimum ten percent (10%) of each reviewer's prior approvals, prior authorizations, and treatment plans shall be reviewed by another clinician to ensure consistent decisions.	Less than ten percent (10%) will result in a penalty of up to one percent (1%) of the annual Operations Base Fee.
<b>Contract Management</b>		
Key Staff	The contractor must fill a vacant key staff position identified within this RFP within thirty (30) calendar days.	\$1,000 per day the position is vacant after thirty (30) days.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Project Implementation Dates / Go-Live	The contractor guarantees Go-Live dates for Release One and Release Two as agreed upon with the initial work plan, delivered to the Department within 30 days of contract award, unless there are substantive changes to the scope of the release.	\$10,000 per day or any portion thereof past the agreed upon Go-Live date that systems and operations are not implemented and fully functional, unless modifications to Go-Live dates have been submitted and agreed upon by the Department in writing.
Full, uninterrupted, and unrestricted access	Provide full, uninterrupted and unrestricted access to the Department and other authorized State agencies and representatives to all accounts established under the contract used to administer NYS payments to Medicaid providers, to all records relating to Vendor performance under this Agreement, and to all contractor systems and records (both prior to and after certification, remote and on-site) supporting the NYS Medicaid Program in accordance with 42 CFR 433.127.	\$1,000 per day that requested accounts, vendor performance records, or contractor systems are not accessible as per the SLA.
Access Termination	Terminate system access for all terminated or transferred State employees, State Contractors, and MAS contractor employees by the end of their last business day or within one (1) workday of notification by the Department for Department staff or contractors.	\$1,000 per day or any portion thereof that account termination response time does not meet the designated timeframe.
<b>Eligibility and Enrollment</b>		
Provider Enrollment Applications	Process to completion a minimum of ninety nine percent (99%) of all clean provider applications (a provider enrollment application that is not missing information) within thirty (30) business days of receipt, except for applications sent to OMIG for further pre-enrollment review.	\$25,000 per month if standard is not met.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Provider Recertification Application	Collect and process to completion a minimum of ninety nine percent (99%) of all provider re-certifications within State approved timelines and in accordance with ACA requirements. The process will include post-enrollment site visits of providers who are designated as moderate or high categorical risks to the Medicaid program, as required by 42 CFR 455.432 (a), to be done prior to completion of recertification.	\$25,000 per month if standard is not met.
Provider File Maintenance Request	Process to completion a minimum of ninety-eight percent (98%) of all clean provider maintenance updates within two (2) business days of receipt.	\$10,000 per month if standard is not met.
Provider Termination	Disenroll one hundred percent of Medicaid providers identified/approved by the NYS within one (1) business day of notification.	\$1,000 per provider per day plus liability for the amount of any payment made and not recovered while the provider was excluded from the Medicaid Program as discussed in Claims and Adjustment Processing Accuracy – Damages.
Member Eligibility Batch Transactions	At a minimum, ninety-eight percent (98%) of the eligibility batch files must be processed within twelve (12) hours of receipt. The remaining two percent (2%) must be processed by the next business day.	\$1,000 per eligibility file not processed within the standard time.
Member Eligibility real-time Transactions	At a minimum, 98% of member enrollment files transmitted in real-time must be received in real-time.	\$1,000 per member file above the threshold not processed in real-time.
Support Verification of Member eligibility	Ensure that all contractor eligibility verification methods for receipt and response of eligibility inquiries are available without interruption 24 hours a day, seven days a week, except for scheduled State approved downtime.	\$5,000 per hour or any portion thereof that the system fails to support verification of member eligibility.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
<b>Financial Management</b>		
Payment Calculation	The contractor shall be liable for the actual amount of all contractor caused incorrect payments, duplicate payments, or payments that should have been denied that are not recovered. Contractor caused incorrect payments may result from either the contractor's failure to utilize available information or by a failure to process the claim or transaction correctly.	The contractor shall be fiscally responsible for any incorrect payments or duplicate payments resulting from negligent contractor performance that cannot be recovered by the State within ninety (90) calendar days from the identification of the problem.
Payment	Produce and provide through electronic transmission a check register, EFT register, and all shares reports to the Department within twenty-four (24) hours of completing the Department's approved payment cycle.	Up to one percent (1%) of the monthly Operations Base Fee for any month in which check register, EFT register, and all shares reports are not produced and distributed within 24 hours of completing the Department's agreed upon payment cycles or such payment cycle is not completed upon the approved schedule.
1099 Reporting	Produce and mail to providers 1099 earnings reports in accordance with federal and State regulations.	\$200,000 if 1099's are not accurate or produced and distributed in accordance with federal and State deadlines.
1099 Reporting	Produce and transmit electronically original and corrected 1099 files for the Internal Revenue Service (IRS) and NYS Department of Tax and Finance in accordance with federal and State regulations.	\$200,000 plus any penalties imposed on the Department by the IRS if 1099 files are not accurate or produced and distributed in accordance with federal and State deadlines.
Timely Payments	Disburse claims and all other payments on the Department's approved payment cycle.	Up to two percent (2%) of total amount of paid claims in payment cycle.
Account reconciliation	Provide the Department monthly reconciliation for each bank account maintained under the contract.	\$10,000 per month if standard is not met.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
<b>Member Management</b>		
Hours of Call Center Availability	The Call Center (Member Services Help Desk) must be available 8:00 AM (ET) to 5:30 PM (ET) weekdays and from 9:00 AM (ET) to 1:00 PM (ET) on the weekend and State approved designated holidays.  After hours calls and messages must be returned within one (1) business day.	\$5,000 per hour or any portion thereof that the call center is not available
Call Center Time to Answer	All calls must be answered within fifteen (15) seconds.	\$.15 for each call not serviced as per the SLA.
Call Center Hold Time	At least 98% of calls placed on hold will be answered within two (2) minutes or less. (Eligibility Help Desk)	\$.15 for each call not serviced as per the SLA.
Call Center Question/Issue Resolution	Resolve all information requests or questions via telephone within two (2) business days. Requests of an unusual nature requiring significant research must be answered as expeditiously as possible. The contractor must notify the Department within twenty-four (24) hours of any delayed requests including the estimated response date. The contractor must send the requesting party, within two (2) business days of receipt of the request, an acknowledgment, including, an estimate of how long it will take to answer the question or to provide the requested information.	\$500 per occurrence of not meeting the standard.
Blockage Rate	The contractor guarantees that no more than one percent (1%) of incoming calls will be blocked by a busy signal calculated on a monthly basis.	For each .01% to .50% of incoming calls to the telephone line that are blocked by a busy signal, in excess of the standard of one percent (1%) calculated on a monthly basis, the contractor shall reimburse the Department \$50,000.
Telephone Abandonment Rate	The percentage of incoming calls to the telephone line in which the caller disconnects after fifteen (15) seconds but prior to the call being answered by a customer service representative will not exceed three percent (3%), calculated and reported on a monthly basis.	\$.15 for each call not serviced as per the SLA
Inquiry Resolution	Resolve ninety-five percent (95%) of member inquiries received by the Customer Service Center during the initial call.	\$5,000 per month that threshold is not met



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Explanation of Benefits	Produce and distribute an explanation of benefits (EOB) within 45 days of the claims payment	\$.25 for each EOB per day after the 45 days that the EOB is not distributed.
Member Satisfaction	An annual member satisfaction survey shall be conducted by the Department or Department's designee, using a statistically valid sample of members. The survey shall assess contractor specific performance related to member services, member materials, peer specialists, and satisfaction with complaint resolution process. The contractor's staff will provide input on the design of the survey process and the questions included in the survey.	<p>A favorable average rating is &gt; 3.5 on a 5-point Likert scale resulting in a yearly bonus payment of \$500,000.</p> <p>An acceptable average rating is <math>\geq 2.5</math> and <math>\leq 3.5</math> on a 5-point Likert scale resulting in no bonus or punitive assessment to the contractor.</p> <p>An unacceptable average rating &lt; 2.5 on a 5-point Likert scale resulting in a yearly penalty of \$500,000.</p>
<b>Performance Management</b>		
DOH User Requests	Ensure that program management user requests for program data, summary data or standard management reports are successfully processed no later than one (1) business day after the submitted request. In the event that processing the request requires more than one (1) business day due to volume of NYS requests or processing time of a request, the contractor must notify the user within twelve (12) hours of the submitted request and process requests based upon the priority set by NYS.	\$500 per file not successfully processed within twenty four (24) hours or department approved timeline.
<b>Operations Management</b>		
Electronic Claims Adjudication	Adjudicate a minimum of ninety-eight percent (98%) of all claims within one (1) hour of receipt. Time during which claims are under review by the Department will not count toward the adjudication standard.	\$.25 per claim per day for each claim that was not adjudicated within one (1) hour of receipt.
Electronic Claims Adjudication	Reprocess erroneously denied claims within three (3) business days of discovery of erroneous denial.	\$.35per claim per day for each claim that was processed incorrectly.
Pricing Reference Files	Batch files containing reference data required to price claims must be processed on the date and frequency specified by the Department.	Amount of any overpayment or underpayment for claims processed using outdated files plus ten percent (10%).



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
Non-Electronic Claims Adjudication	Pay, deny, suspend, or pend paper claims within seven (7) calendar days of receipt by the contractor.	\$.75/claim for each claim that was not processed within the seven (7) calendar days.
Suspended Claims	Correct all suspended claims for those within contractor responsibility within thirty (30) business days of suspension.	\$.75/claim for each claim that was not processed within the thirty (30) calendar days.
Uphold processing standards	Process inbound files according to HIPAA standard formats based on industry standards and Department requirements.	\$1,000 per file not reprocessed correctly within twenty four (24) hours.
State & Federal Data Delivery	Extract and provide to the Department requested information for federal reporting in the requested format necessary for submission within seven (7) days of request.	\$5,000 per day past the seven day standard request time.
Reporting	Produce all daily, weekly, monthly, quarterly, and annually operational, plan management, and performance management reporting at the schedule defined per report.	\$2,000 for each report not produced within an agreed time frame.
<b>Plan Management</b>		
SLA Reporting	<p>The contractor must maintain the necessary data in appropriate log files to measure its performance and report monthly on all SLAs illustrating daily metrics against the SLAs defined in this RFP.</p> <p>If the Department notifies the contractor that damages will be assessed because of nonconformance with an SLA and the log files are not maintained or are damaged in such a way that the contractor cannot substantiate its performance against an SLA it will be construed that the contractor did not meet the SLA in question.</p>	The damages for the appropriate SLA where performance was not met or log files were not maintained to confirm performance was met will be assessed by the Department.



<b>MAS Procurement Service Level Agreements</b>		
<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
<b>Provider Management</b>		
Correspondence (both hardcopy and electronic)	Acknowledge in writing 100% of correspondence within 7 business days of receipt. Respond to at least ninety-eight percent (98%) of all written provider correspondence (inquiries/complaints) with a written response within fifteen (15) business days of receipt of the provider's correspondence by the contractor. Respond to the remaining two percent (2%) within twenty (20) business days of receipt by the contractor. Responses are not complete until response is available to Department staff in the document repository.	\$500 per correspondence that does not meet the standard per day.
Hours of Call Center Availability	The Call Center (Provider Relations Help Desk) must be available 8:00 AM (ET) to 5:30 PM (ET) weekdays and from 9:00 AM (ET) to 1:00 PM (ET) on the weekend and State approved designated holidays. For Pharmacy providers, the Call Center (Provider Relations Help Desk) must be available 7:00 AM (ET) to 10:00 PM (ET) weekdays and from 9:00 AM (ET) to 1:00 PM (ET) on the weekend and State approved designated holidays.  After hours calls and messages must be returned within one (1) business day.	\$5,000 per hour or any portion thereof that the call center is not available.
Call Center Time to Answer	All calls must be answered within three (3) rings or fifteen (15) seconds.	\$.15 for each call not serviced as per the defined standard in the SLA.
Call Center Hold Time	At least ninety-eight percent (98%) of calls placed on hold will be answered within two (2) minutes or less. (Provider Relations Help Desk)	\$.15 for each call not serviced as per the SLA.



MAS Procurement Service Level Agreements		
Service Level Agreement	Definition	Damages
Call Center Responsiveness	Resolve all information requests or questions via telephone within two (2) business days. Requests of an unusual nature requiring significant research must be answered as expeditiously as possible. The contractor must notify the Department within 24 hours of any delayed requests including the estimated response date. The contractor must send the requesting party, within two (2) business days of receipt of the request, an acknowledgment, including, an estimate of how long it will take to answer the question or to provide the requested information.	\$500 per occurrence.
Blockage Rate	The contractor guarantees that no more than one percent (1%) of incoming calls will be blocked by a busy signal calculated on a monthly basis.	For each .01% to .50% of incoming calls to the telephone line that are blocked by a busy signal, in excess of the standard of one percent (1%) calculated on a monthly basis, the contractor shall reimburse the Department \$50,000.
Telephone Abandonment Rate	The percentage of incoming calls to the telephone line in which the caller disconnects prior to the call being answered by a customer service representative will not exceed 3%, calculated and reported on a monthly basis.	\$.15 for each call not serviced as per the SLA
Provider Satisfaction	An annual provider satisfaction survey shall be conducted by the Department or Department's designee, using a statistically valid sample of providers. The survey shall assess contractor specific performance related to provider relations/call management, clinical management processes, authorization information, denials/appeals, and satisfaction with complaint resolution process. The contractor's staff will provide input on the design of the survey process and the questions included in the survey.	<p>A favorable average rating is &gt; 3.5 on a 5-point Likert scale resulting in a yearly bonus payment of \$500,000.</p> <p>An acceptable average rating is <math>\geq 2.5</math> and <math>\leq 3.5</math> on a 5-point Likert scale resulting in no bonus or punitive assessment to the contractor.</p> <p>An unacceptable average rating &lt; 2.5 on a 5-point Likert scale resulting in a yearly penalty of \$500,000.</p>

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## IV. PROPOSAL REQUIREMENTS

### A. INTRODUCTION

These instructions prescribe the format and content of the vendor's proposal and are designed to facilitate the submission of a proposal that is easy to understand and evaluate. Failure to adhere to these instructions may result in the disqualification of the proposal.

### B. PROPOSAL REQUIREMENTS OVERVIEW

The following subsections include requirements to be met by vendors in the submission of their Request for Proposal (RFP) responses. Attachment E: Vendor Requirements Traceability Matrix provides a comprehensive listing of all project requirements.

In submitting a response to this RFP, interested vendors should be aware that it is their sole responsibility to obtain any third-party financing which may be necessary for the vendor to submit a proposal and, if an award is made, to provide the services being sought by the New York State (NYS) Department of Health (the Department) under the RFP. NYS or the Department will in no manner underwrite, guarantee, act as a signatory or co-signatory or in any manner participate in the securing of third-party financing.

#### B.1 GENERAL REQUIREMENTS

1. By submitting a proposal in response to this RFP, each vendor attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:
  - a. The RFP and all associated specifications, general and specific appendices, including Appendix A Standard Clauses for NYS Contracts and all schedules and forms included with such documents, as well as subsequently issued and agreed-upon work specifications issued pursuant to this proposal, will become part of any contract entered into as a result of the RFP. Anything which is not expressly set forth in the above-referenced documents, but which is reasonable to be implied, should be furnished and provided in the same manner as if specifically expressed.
  - b. Each vendor is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work, products and services to be performed and the conditions under which the contract is to be executed.
2. The proposal price must cover all costs of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department and the performance of all work set forth in said specifications. The price must also cover any and all tax obligations that may arise in relation to the work. Work to be provided by subcontractors must be documented in the RFP response.
3. If the use of subcontractors is proposed, the Proposal should explain how the work of subcontractors will be managed and controlled.

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## **B.2 NON-COLLUSIVE BIDDING**

By submission of this proposal, each vendor and each person signing on behalf of any vendor certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its/his/her/their knowledge and belief:

1. The prices of this proposal 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 vendor or with any competitor.
2. Unless otherwise required by law, the prices that have been quoted in this proposal have not been knowingly disclosed by the vendor and will not knowingly be disclosed by the vendor prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
3. No attempt has been made or will be made by the vendor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every proposal made to the State or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the vendor and affirmed by such vendor as true under penalties of perjury.

A proposal shall not be considered for award nor shall any award be made where (1), (2) and (3) above have not been complied with; provided however, that if in any case the vendor cannot make the foregoing certification, the vendor shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefore. Where (1), (2) and (3) above have not been complied with, the proposal shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the proposal is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a vendor has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being proposed, does not by itself, constitute a disclosure within the meaning of the above quoted certification.

Any proposal made to the State or any public department, agency or official thereof by a corporate vendor for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such proposal contains the certification set forth above shall be deemed to have been authorized by the board of directors of the vendor, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or other legal entity involved in the proposal.

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### **B.3 TECHNOLOGY PURCHASES NOTIFICATION POLICY**

For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices; and

Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.

### **B.4 MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT**

Pursuant to New York State Executive Law Article 15-A, the Department recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of the Department contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that Department establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Department hereby establishes an overall goal of at least 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the contract and contractor agrees that the Department may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how the Department will determine a contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Department may withhold payment from the contractor as liquidated damages.

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.

By submitting a bid or proposal, a vendor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Vendors are required to submit a MWBE Utilization Plan in Attachment K with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department.
- B. The Department will review the submitted MWBE Utilization Plan and advise the vendor of the Department acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, vendor agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the vendor and direct the vendor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Department may disqualify a vendor as being non-responsive under the following circumstances:
  - a) If a vendor fails to submit a MWBE Utilization Plan;
  - b) If a vendor fails to submit a written remedy to a notice of deficiency;
  - c) If a vendor fails to submit a request for waiver; or
  - d) If the Department determines that the vendor has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the Department address, phone and fax information, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **B.5 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

Regulations of the Department, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and

suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect. Pursuant to the above-cited regulations, the Department (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS
2. Instructions for Certification:
  - a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below
  - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment
  - c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances
  - d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations
  - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
  - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions
  - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows

that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non procurement Programs

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment

3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department agency
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal

**B.6 CONFLICT OF INTEREST**

As part of its proposal submission, the vendor (and/or any subcontractors) must comply with the following:

- 1. Disclose any potential or actual conflict of interest, including but not limited to, any relationship or interest, financial, business, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this RFP to provide administrative services for either the fee-for-service (FFS) Medicaid program or the Medicaid managed care program. If there is no conflict(s) of interest, so indicate. In cases where such relationship(s) and/or interests exist, vendors must describe how a potential or actual conflict of interest and/or disclosure of confidential information relating to this contract will be avoided
- 2. Guarantee knowledge and full compliance with the NYS 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
- 3. Further, vendor acknowledges that State employees must not benefit from the awarding of the contract, subject to POL, Sections 73 and 74, which are referenced as the Code of Ethics and found at <http://www.jcope.ny.gov/training/JCOPE%20POL%20W%20Page%20Numbers.pdf>, and in particular, Section 74(2) entitled "Rule with respect to conflicts of interest", no officer or employee of a State agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest
- 4. State that the vendor understands and acknowledges that subject to the State Finance Law, Section 163-a, if a vendor prepares and furnishes specifications for a State agency technology procurement proposal,



to be used in a competitive acquisition, such vendor shall not be permitted to propose on such procurement either as a prime vendor or as a subcontractor

5. Any vendor that includes a subcontractor who currently provides risk-based capitated Medicaid services in NYS must submit a plan of how it intends to firewall the services within this RFP where there is a real or potential conflict of interest
6. The Department reserves the right to reject proposals, at its sole discretion, based on any potential or actual conflict of interest. Failure to comply with these provisions may result in disqualification from the procurement process, withdrawal of a proposed contract award, and criminal proceedings as may be required by law

**B.7 COMPLIANCE WITH FEDERAL REGULATIONS AND POLICIES**

Throughout its proposal submission, the vendor (and/or any subcontractor(s)) must describe how its solution complies with the following federal regulations and policies, where relevant:

Citation	Title
<b>Federal Regulations</b>	
42 CFR 431, Subpart F	Safeguarding Information on Applicants and Recipients
42 CFR 431.15	Methods of Administration
42 CFR 431.16-17	Reports and Maintenance of Records
42 CFR 432	State Personnel Administration
42 CFR 433, Subpart A	Federal Matching and General Admin Provisions
42 CFR 433 Subpart C	Mechanized Claims Processing and Information Retrieval Systems
42 CFR 433, Subpart D	Third-Party Liability
42 CFR 433.34	Cost Allocation
42 CFR 434 Subpart B	Contracts with Fiscal Agents and Private Non-medical Institutions
42 CFR 447	Payments for Services (including timely claims payment requirements at 447.45 and 447.46)
42 CFR 455	Medicaid Program Integrity
42 CFR 456	Utilization Control
42 CFR 434	Contracts
45 CFR 92	Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments
45 CFR 95, Subpart F	Automatic Data Processing Equipment and Services – Conditions for Federal Financial Participation (FFP) (as revised on October 28, 2010)
45 CFR 160	Administrative Data Standards (Transactions and Code Set Standards)
45 CFR 162	Standard Unique Identifier for Health Providers (NPI)
45 CFR 164	Security and Privacy
SSA 1903(a)(3)	Payment to States
SSA 1903(r)	Payment to States

<b>CMS Policy and Technical Guidance</b>	
Publication 45 – CMS State Medicaid Manual – Chapter 2 (aka Part 2)	
Publication 45 – CMS State Medicaid Manual – Chapter 11 (aka Part 11)	
State Medicaid Director Letters	
Medicaid Information Technology Architecture (MITA) Framework – Version 3.0	
Medicaid IT Guidance 2.0	
Medicaid Enterprise Certification Toolkit	
Tri-Agency Letter on Cost Allocation for E&E	



**C. PROPOSAL SUBMISSION INSTRUCTIONS**

A proposal consists of two distinct parts: (1) the Technical Proposal, and (2) the Price Proposal. The table below outlines the format and volume for submission of each part:

	Electronic Submission	Original	Copies
Technical Proposal	5 Secure Flash Drives or Secure CDs/DVDs with the following contents:  1 copy in Adobe PDF;  1 copy in MS Word 2007; and  1 copy of all project plans in MS Project 2007	3 Original Hard Copy	30 Hard Copies
Price Proposal	6 Secure Flash Drives or Secure CDs/DVDs with the following contents:  1 copy in Adobe PDF (complete);  1 MS Office copy consisting of: <ul style="list-style-type: none"> <li>• Narrative in MS Word 2007 as needed; and</li> <li>• Attachment H Worksheets in MS Excel 2007</li> </ul>	3 Original Hard Copy	6 Hard Copies

1. The proposal must be received by the Department in Albany, New York, no later than the time on the day specified on page ii of this RFP and at the address specified in section V.E.1 Administrative Requirements Two-part Proposals of this RFP
2. It is the vendors’ responsibility to see that proposals are delivered to the address specified in section V.E.1 Administrative Requirements Two-part Proposals of this RFP prior to the date and time of the proposal due date. Late proposals, including delay by the carrier or not being received in the Department’s mail room in time for transmission to the address specified in section V.E.1 Administrative Requirements Two-part Proposals of this RFP, will not be considered.
3. All printed proposal materials should be printed on 8.5” x 11” white paper (two-sided), be clearly page numbered on the bottom of each page with appropriate header and footer information that assist in the review of the proposal. A type size of eleven (11) points or larger and an “Arial” font should be used for all body text. For non-body text (e.g., charts, tables, etc.), the text should be no smaller than 8 point font. The Technical Proposal materials should be presented in D-ring binder(s) separate from the sealed Price Proposal. The sealed Price Proposal should be presented in a separate D-ring binder.
4. All files on the flash drives or CDs/DVDs should be individually identified by Component Name (Technical or Price Proposal), Vendor, proposal part (Technical: narrative or project plan; Price: narrative or worksheets), and version.

5. Separate electronic files should be produced for each proposal section as outlined in this RFP and clearly identified through the file name for the section the file represents
6. The proposal should be as specific as possible in its responses to provide the Department with an adequate understanding of the intent of the proposal
7. The Department discourages overly lengthy proposals. Proposals should be self-contained. No models, videotapes, brochures or Web site postings will be accepted
8. The Vendor must take every precaution to eliminate discrepancies between hardcopies and electronic copies of their proposal. In the event of any discrepancies between the original hardcopies of the Technical Proposal and Price Proposal and the copies supplied on flash drives or CDs/DVDs, the hardcopy will prevail.

Any questions concerning this RFP contract procurement must be directed to the parties listed in page ii of this document.

#### **D. TECHNICAL PROPOSAL CONTENTS**

The Technical Proposal consists of the following sections separated by tabs. Documents and responses should be presented in this order:

<b>Tab</b>	<b>Proposal Contents</b>
1	Table of Contents
2	Transmittal Letter
3	Executive Summary and Introduction
4	Scope of Work
5	Corporate Organization
6	Experience and Qualifications
7	References
8	Required Forms
9	Project Plan

##### **D.1 TABLE OF CONTENTS (TAB 1)**

A Table of Contents of the Technical Proposal should be inserted in Tab 1. The Table of Contents should identify all sections (identified here as Tabs), all subsections contained therein, all appendices, and the corresponding page numbers. The Table of Contents should include all sections and subsections present under Tabs 1 through 9.

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## **D.2 TRANSMITTAL LETTER (TAB 2)**

Vendors must submit a Transmittal Letter(s), template provided in Attachment L, signed by an individual authorized to legally bind the vendor to the provisions of the RFP and should be included in Tab 2. A photocopy of the Transmittal Letter should be included in each copy of the Technical Proposal. The Transmittal Letter(s) will be evaluated as part of the overall response and should include:

1. The complete legal name and address of the company and the name, mailing address, email address, fax number and telephone number for both the authorized signer and the person the Department should contact regarding the proposal
2. A statement that the vendor has the necessary qualifications and experience delineated in Section D.6 of this section of the RFP
3. A statement that the project facility required to be within a ten (10) mile radius of the NYS Capitol will meet the requirements in Attachment E, including standards such as location, services, space, and security. Also a statement that all other facilities that are not specifically required to be in proximity to the NYS Capitol building, as required in Attachment E, will be located within the continental United States
4. A statement indicating the legal structure of the entity submitting the proposal
5. A statement that the vendor accepts the contract terms and conditions contained in this RFP including attachments
6. A statement confirming that the vendor has received and acknowledged all Department amendments to the RFP, as may be amended
7. A statement confirming that the vendor is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and a statement that, if selected, the vendor will register to do business in NYS
8. A statement that the vendor warrants that it will meet or exceed all requirements of this RFP, provide services that are fully operational on the takeover date, and will provide systems that meet all CMS requirements, including certification requirements for the Department to claim the maximum allowable Federal Financial Participation (FFP) through the end of the contract term. The vendor must further warrant that it shall meet all performance requirements listed in this RFP during the term of this contract.
9. A statement that the vendor (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternate proposals or extraneous terms be submitted with the proposal, such alternate proposals and extraneous terms will not be evaluated by the Department

10. A statement that the proposal of the vendor will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals
11. A statement that the vendor agrees that it has the sole responsibility for obtaining any third-party financing which may be necessary for the vendor to submit a proposal, and further that the vendor understands and agrees that should an award be made, the State of New York and the Department will in no manner underwrite, act as a signatory or cosignatory, or in any manner guarantee participation in the securing of the vendor's financing
12. A statement which complies with the four conflict of interest requirements set forth in RFP Section IV.B.2, Conflict of Interest. Where any potential or actual conflict is disclosed, a description should also be included as to how a potential or actual conflict and/or disclosure of confidential information relating to the contract will be avoided. If there is no conflict of interest a statement so indicating should be included
13. If a proposal utilizes the services of one or more subcontractors, whether to meet the requirements described in RFP Section IV B.4 or for other reasons, the vendor should provide, in an appendix to the Transmittal Letter, one subcontractor summary for each listed subcontractor. Note that any M/WBE subcontractor should also be listed in Attachment K. An individual authorized to legally bind the subcontractor should sign that subcontractor's summary document and certify that the information provided is complete and accurate. The summary document should contain the following information:
  - a. Complete name of the subcontractor
  - b. Complete address of the subcontractor
  - c. A general description of the scope of work to be performed by the subcontractor
  - d. Percentage of work the subcontractor will be providing
  - e. Evidence that the subcontractor is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available
  - f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or handicap
14. A statement that the prime vendor is neither a health insurer nor a health care provider performing Medicaid business or intending to provide Medicaid business in NYS

### ***D.3 EXECUTIVE SUMMARY AND INTRODUCTION (TAB 3)***

Tab 3 should be labeled Executive Summary and Introduction and should contain a narrative prepared by the vendor that provides the Department with a collective understanding of the contents of the entire proposal. The Executive Summary and Introduction should briefly summarize the strengths of the vendor and the key features of its proposed approach to meet the requirements of the RFP.

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#### ***D.4 SCOPE OF WORK (TAB 4)***

Tab 4 should be labeled Scope of Work. In this section, the vendor should document its approach to requirements detailed in Attachment E by responding to each requirement presented. The vendor should indicate in Attachment E the location of a response to a requirement by filling in the column “Location of Response in Vendor's Proposal.”

Proposals should be fully responsive to the requirements; however vendors are given latitude in the degree of detail they offer or the extent to which they reveal plans, designs, examples, processes, and procedures. Merely repeating a requirement statement does not demonstrate that the vendor understands the requirement and will result in a lower score in the technical evaluation.

Vendors must also review each service level agreement (SLA) described in Section III of this RFP and provide the State with a narrative discussion on their organization's approach to meeting each SLA as defined below. The SLAs are presented as the minimum service level. Vendors proposing service levels in their response which exceed performance expectations may be viewed favorably in scoring, but will also be held to the more stringent service level.

#### ***D.5 CORPORATE ORGANIZATION (TAB 5)***

In this section the vendor should provide an organization chart of its company that is submitted with the proposal. If the organization is a subsidiary of a parent company, the organization chart should be that of the subsidiary company. The chart should display the organization's structure and the organizational placement of the oversight for the MAS project. The vendor should identify the level of the person who will be responsible for signing the contract and indicate the signing person's relationship with the company. The proposal should document the legal structure of the organization, including the date established and the state in which the company is registered, licensed, and incorporated, as applicable:

1. Describe the history of the organization
2. Describe the executive and management staff assigned to this project. Include the number of staff, their roles on this project, their expertise and experience in providing the services described in this RFP, and their tenure with the organization
3. Describe resource availability for this project, given other projects currently undertaken by the vendor
4. Describe the bidding organization's ability to secure and retain professional staff to meet the contract requirements

#### ***D.6 EXPERIENCE & QUALIFICATIONS (TAB 6)***

The vendor should submit documentation to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the services required including at least the following:

1. Describe the vendor's overall qualifications to carry out a project of this nature and scope
2. The vendor must have a minimum of sixty (60) months of large scale, complex health care claim processing experience with Medicaid and/or health services organizations, or within other complex



health care delivery systems such as managed care organizations. Thirty-six (36) months of this experience must be for a government program that includes Medicaid, Medicare, military health, or a federal/state employee health program

3. The vendor must have been the prime contractor for at least one (1) project comparable in scope to this project
4. The vendor should describe in detail its experience in managing a project of this size and scope, as well as describe any and all MITA experience
5. The vendor must describe the recent standup of any new lines of business and/or markets entered in the last two years, including the number of such transitions, the performance of such transitions, and measures against SLAs in the first six months of operations.
6. The vendor must describe how they can make rapid configuration changes based on business requirement changes of the State, such as changes in populations served, types of benefits, claims edits and other program changes.

**D.7 REFERENCES (TAB 7)**

The vendor should provide a list of major current and past projects within the past five (5) years where the vendor and/or its subcontractors have/has provided the following services for health care and/or public sector clients:

1. Provider screening, enrollment and recertification
2. Provider servicing and education
3. Member and provider call center
4. Claims adjudication and payment
5. Prior approval of certain services (e.g., Dental, Orthodontic, DME, supplies, private duty nursing, high tech radiology procedures, out of state inpatient and nursing home services)
6. Program integrity and fraud prevention activities
7. Pharmacy benefit management
8. Coordination of benefits (e.g., third-party liability, Medicare dual-eligibles, other private insurance)
9. Issuing capitation or premium payments

The vendor and/or its subcontractor(s) will have experience in all services identified. The vendor should complete the table below to provide this information. For each project, the vendor should provide a client name, contact person, contact title, and contact information, as indicated in the table. For each client, the vendor should indicate which of the requested services it provided to that client using the table below:

Client	Contact Person	Contact Title	Contract Email & Phone No.	Experiences
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				Provider Enrollment, Re-certification & screening	Provider Servicing & Education	Member & Provider Call Center	Claims Adjudication & Payment	Prior Approval	Program Integrity	Issuing Capitation Payments	Pharmacy Benefit Management

Insert additional table rows, as necessary

The Department reserves the right to contact any and all contacts provided to assess vendor and/or subcontractor past or current performance.

**D.8 REQUIRED FORMS (TAB 8)**

The vendor must complete and include all required forms, including:

1. New York State Department of Health Lobbying Form
2. Vendor Responsibility Attestation

The Department requests vendors submit a no-bid form, contained in Attachment D, if they have made any contact with the Department relating to this procurement, but no longer intend to bid.

**New York State Department of Health Lobbying Form**

The vendor must complete the Lobbying Form included as Attachment C: Lobbying Form. The Lobbying Form should be filled out in its entirety. The responsible corporate officer for contract negotiation, consistent with the terms and conditions of the RFP, should be listed. This document should be signed by the responsible corporate officer.

**Vendor Responsibility Attestation**

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep). For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department or the Office of the State Comptroller for a copy of the paper form. Vendors should also complete and submit Attachment M: Vendor Responsibility Attestation and if the Vendor Responsibility Questionnaire has not been filed on-line include it with the proposal.

## ***D.9 PROJECT PLAN (TAB 9)***

The vendor should develop a project work plan in Microsoft Project that includes each phase of the project that is resource loaded and includes both Contractor and Department activities. The work plan should adhere to industry best practices and standards for project management, and be broken down into Work Breakdown Structures (WBS), including key tasks, milestones, resources, deliverables, and task dependencies. This plan should be expanded upon during Planning Phase of the project.

## **E. PRICE PROPOSAL CONTENTS**

The Price Proposal must be separately bound and sealed and contain the following tabs:

1. Table of Contents (see E.1, below)
2. Pricing Schedules (see E.2 below)
3. Minority and Women Owned Business Enterprise (M/WBE) Plan (see E.3, below)
4. Letter of Credit Commitment

### ***E.1 TABLE OF CONTENTS (TAB 1)***

A Table of Contents of the Price Proposal should be inserted at Tab 1. The Table of Contents should identify all sections (identified herein by Tabs), subsections contained therein, and corresponding page numbers. The Table of Contents should include all sections and subsections present under Tabs 1 through 4. The Table of Contents found at the beginning of this RFP provides a representative example of what is expected for the Price Proposal Table of Contents.

### ***E.2 PRICING SCHEDULES (TAB 2)***

Tab 2 should contain a copy of the pricing schedules described in Attachment H: Pricing Schedules. Vendors must use the Microsoft Excel spreadsheet titled “Attachment H – Pricing Schedules MAS RFP.xls” in the form and content provided with this RFP. **Deviations from this format are not permitted.** Vendors **MUST** submit a hardcopy and the Excel spreadsheet in electronic form in accordance with Section C, Proposal Submission Instructions. **Failure to submit in this required format will result in disqualification.**

### ***E.3 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (M/WBE) PROCUREMENT FORMS (TAB 3)***

As part of its proposal, the Contractor should complete all forms in Attachment K: M/WBE Procurement forms, and certify in good-faith the efforts it will undertake to solicit the participation of such enterprises.

### ***E.4 LETTER OF CREDIT COMMITMENT (TAB 4)***

As part of its proposal, the Contractor should submit an executed Commitment Letter, in the form set forth in Attachment I: Letter of Credit Commitment, from a financial institution which is licensed to transact business in the State of New York, on the financial institution’s letterhead.

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## F. ADDITIONAL SUBMISSION REQUIREMENTS OF HIGHEST SCORING VENDOR

### Contractor Certification Form ST-220-CA and Form ST-220TD

The highest scoring vendor must complete and submit directly to the New York State Tax and Finance (DTF), Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

The highest scoring vendor must also complete and submit to the Department the form Contractor Certification to Covered Agency Form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render a vendor non-responsive and non-responsible. Vendors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

ST-220-CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

### Company Financials Content

At the discretion of the Department, the highest scoring vendor may be requested to submit the following documents to be used in the evaluation of financial viability:

1. Independently audited financial statements (annual reports) for the last three (3) years; If audited financial statements are not available, the vendor should submit its most recent financial information, which should include at a minimum:
  - Income Statement(s) or Revenue and Expense Statement(s) – Which are statement(s) of profit or loss (for not-for-profits it is the excess of revenues over expenses) during a particular period including all items of revenue income and expenditure.
  - Balance Sheet(s) – Which are statement(s) of total assets, liabilities, and net worth at a given point in time.
  - Cash Flow Statement(s) – Which are statement(s) that reflects the inflow of revenue versus the outflow of expenses resulting from operating, investing, and financing activities during a specific time period.
  - Notes to the financial statements which should include: a description of the reporting entity, major asset categories, debt, contingency liabilities, transactions with related parties, subsequent events, and a list of significant accounting policies and estimates used.

**Information provided in the documentation must be up to date within at least 12 months of proposal submission.**

2. Comprehensive Dunn & Bradstreet report (if available for your organization; if not, provide comparable alternative)

3. Certificate of Incorporation, together with any and all amendments thereto; Articles of Organization and Operating Agreement, together with any and all amendments thereto; Partnership Agreement; or equivalent business organizational documents, as applicable

## **G. EVALUATION PROCESS**

The Department will perform a fair and comprehensive evaluation of all responsive proposals received in response to this RFP in accordance with the NYS procurement law, guidelines and procedures, as well as policies and procedures approved by the Department. This subsection of the RFP describes the evaluation process that will be used to determine which Proposal provides the best value to the Department.

The evaluation process will ensure the selection of the best overall solution for the NYS Medicaid program on a “best value” basis. Scoring will be split 70% for the Technical Evaluation and 30% for the Cost Evaluation.

### **G.1 REQUIREMENTS FOR PROPOSALS**

The purpose of this phase is to determine if each Technical and Price Proposal is sufficiently responsive to the RFP to permit its complete evaluation. As part of its initial screening, a Compliance Assessment will be performed on all proposals submitted in response to this RFP to assure that the requirements for proposals have been satisfied. Any one Compliance Assessment requirement that is not met will cause a proposal to be declared nonresponsive.

The Compliance Assessment will have a pass/fail screening that includes the following requirements:

1. All vendor proposal materials were submitted to the Procurement Officer on or before the specified submission COB on the date specified in the RFP.
2. The Attachment E: Vendor Requirement Traceability Matrix and Attachment H: Pricing Schedules have been completed in the correct format using the spreadsheets provided in the MAS RFP.

By the act of submitting a proposal in response to this RFP, each vendor (including the vendor's parent organization and proposed subcontractors, agents, and employees of the vendor) agrees and consents, without reservation, substitution, or limitation, to the propriety and legality of the Department's use of outside consultant(s) and/or contractor(s) to assist the Department with this procurement.

### **G.2 SCORING OF VENDOR TECHNICAL PROPOSALS (70%)**

#### **Evaluation Criteria and Assigned Point Totals**

The evaluation of the vendor’s technical approach will be based on the responses provided in the proposal. The highest scoring proposal will receive the full percentage. Information from the Price Proposal or



the evaluation of the Price Proposal will not be available to the Technical Evaluation Committee during its evaluation.

The Technical Evaluation Committee will determine best fit of vendors’ solutions to New York’s specific business needs based in part on the detailed requirements using the weights for the MITA business areas. A total of seventy (70) weighted points will be assigned to the highest scoring technical proposal based upon the average reviewer score of each requirement multiplied by individual requirement weight, provided within Attachment E: Vendor Requirements Traceability Matrix, and further adjusted by section weight provided below.

SECTION TITLE	SECTION WEIGHT
Technical Architecture	10%
Business Relationship Management	7.5%
Care Management	5%
Contractor Management	5%
Eligibility and Enrollment Management	5%
Financial Management	10%
Member Management	7.5%
Operations Management	10%
Performance Management	5%
Plan Management	10%
Provider Management	7.5%
Service Level Agreements	7.5%
Vendor Qualification and Experience	5%
Organization and Staffing	5%
<b>Total</b>	<b>100%</b>

The Technical Evaluation follows the Technical Proposal requirements; vendors are advised to submit proposals that are comprehensive and clearly reflect the technical proposal requirements. This includes, among other proposal requirements, contractor and staff background, understanding of the scope of the project, responsiveness to specifications, a robust SDLC that includes adequate project and schedule controls, adequacy of staffing levels, etc.

The technical raw scores will be normalized as follows:

$$N = (A \div B) * 70\% \text{ where:}$$

A is the raw score of the proposal being evaluated;

B is the highest technical score; and

N is the technical score.



**G.3 SCORING OF VENDOR PRICE PROPOSALS (30%)**

A separate committee will review and score the Price Proposals from all vendors meeting the Compliance Assessment mandatory requirements.

**Calculation of Scores**

The Price Proposal Evaluation Committee will award the full percentage available to the vendor with the lowest overall total price.

$$C = (A \div B) * 30\%$$

A is the Total Price of the lowest Price Proposal;

B is the Total Price of the Price Proposal being scored; and,

C is the Price score.

The Total Price of the Price Proposal (B) is the sum of the seven (7) pricing elements. The pricing elements are defined in the table below and calculated in Attachment H.

Pricing Element	Description
Project Planning/ DDI/ Certification (Schedule B)	Includes all planning, development/configuration, implementation, User Acceptance Testing (UAT), and certification pricing for the MAS procurement expressed as a fixed price. Project Planning, DDI, and Certification price MUST be less than or equal to 30% of the proposed Total Price.
Operations Base Fee (Schedule C)	Vendors must specify a fixed monthly price to operate the solution for the first two (2) contract years and annual price for contract years 3, 4 and 5.
Operations Adjustment (Schedule D)	Vendors must supply transactional pricing to determine the fees for each type of transaction listed. Transaction pricing is used to determine the payment due for all types of transactions on a per transaction fee basis if the number of transactions goes over the baseline range specified in the RFP.
Systems and Operational Enhancement Payments Staff (Schedule E)	Vendors must propose an hourly rate to each enhancement labor category. The hourly rate must be a fully loaded rate and include all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs.
Transition (Schedule F)	Vendors should submit the fixed price for all activities required to support the transition tasks required by this RFP and as detailed in the Transition Plan approved by the Department.
Reimbursable (Postage)	The Department shall reimburse the contractor for the cost of postage directly and reasonably incurred by the contractor in carrying out the tasks required by the contract. The Department has provided an estimate of these costs.
Potential Annual Satisfaction Incentive	Annual Satisfaction Survey Incentives, as defined in the Service Level Agreements (RFP Section III), are determined based on Provider Satisfaction and Member Satisfaction survey results. Each survey may result in a \$500,000 potential award or penalty, for a total of up to \$1,000,000 per year. For total contract cost estimation and budgeting purposes, we have included \$1,000,000 in annual bonus for contract years 2, 3, 4 and 5, with the understanding that the survey results will determine the actual payment or penalty. The surveys will not be conducted in year 1.

**G.4 TECHNICAL AND PRICE PROPOSALS COMBINED**

Technical and Price Proposal scores will be combined to establish a score for each proposal. The proposals will then be ranked based on each vendor's combined score (N + C). The ranking will be in

descending order. In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

1. Lowest price
2. Minority/Women-owned Business Enterprise (MWBE) utilization
3. Past experience
4. References

#### ***G.5 NOTIFICATION OF STATUS OF PROPOSALS***

At the end of the selection process, each vendor will be notified of the status of its proposal. Any award will be contingent upon execution of a written contract, approval of the New York State Attorney General and the New York State Office of the State Comptroller, as well as federal approval.

#### ***G.6 FEDERAL APPROVALS***

The contract award is subject to federal approval in accordance with 45 CFR 95.611. The Department reserves the right to not award a contract if required external approvals are not obtained from the Centers for Medicare & Medicaid Services (CMS).

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## V. NEW YORK STATE ADMINISTRATIVE REQUIREMENTS

### A. ISSUING AGENCY

This Request for Proposal (RFP) is a solicitation issued by the New York State (NYS) Department of Health (the Department). The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

### B. LEGAL BASIS

The procurement process for this RFP will be conducted in accordance with the federal regulations contained in 42 CFR 434.10, 45 CFR 95.613, and 45 CFR 74, as amended, as well as applicable procurement policies and procedures established by the State of New York, including relevant provisions of the NYS Finance Law.

### C. INQUIRIES

All inquiries regarding this proposal must be submitted to the designated contacts listed on page ii of this document. Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department's website at <http://www.health.ny.gov/funding/>.

### D. RFP ISSUANCE AND AMENDMENTS

Prior to its release, this RFP was reviewed and approved by the Department and Region II of the Centers for Medicare & Medicaid Services (CMS). Its contents represent the best available statement of the requirements and needs of involved stakeholders.

The Department reserves the right, prior to the proposal due date, to amend the RFP specifications to correct errors or oversights or to supply additional information as it becomes available. All written addenda to the RFP, along with the RFP itself, will become part of the contract.

Both the RFP and any subsequent amendments will be posted on the Department's website. Vendors are responsible for checking for updates to information on the website. Vendors should also visit <http://www.health.ny.gov/funding> regularly to see if there are any changes.

#### D.1 QUESTIONS AND ANSWERS

Prospective vendors may submit questions concerning this RFP, in writing, to the permissible subject matter contact identified on page ii.

Questions received by the Department after the final due date specified on page i may not be answered.

All questions pertaining to this RFP should be submitted in writing in the following format using electronic mail (e-mail) to the contact person specified on page ii by the date specified on page i. Requests for materials and information not in the Procurement Library should be sent as written questions using email to the contact specified on page ii.



Section	Document Reference or Requirement Number	Page Number	Question

Following receipt of the submitted questions, Department staff will prepare written responses to all questions received. These responses will be made available on the Department’s website at <http://www.health.ny.gov/funding/>. To the extent practicable, questions will remain as written. However, the Department may consolidate and paraphrase questions received.

Vendors should clearly understand that the only official answers or positions of the Department are those stated in writing and posted on the Department’s website. Verbal responses provided during the Vendors’ Conference (or at any other time) do not represent the official answer or position of the Department and the Department shall not be bound in any way by any such verbal answer.

**D.2 PROCUREMENT LIBRARY**

The Department will provide a Procurement Library. These materials will be made available on CD/DVD, upon vendor request to the subject matter expert designated for distribution on page ii of this RFP. Library documents are intended only as a resource as vendors prepare their responses. They provide a window into current system functionality and Department operational needs. Future functionality will require validation as part of the Medicaid Administrative Services (MAS) implementation effort that will result from this procurement.

If any materials, documentation, information, or data are discovered to be inaccurate or incomplete, such inaccuracy or incompleteness shall not constitute a basis for challenging the contract award, contract rejection, or renegotiation of any payment amount or rate either prior to or after contract award. All statistical information contained in the Procurement Library represents the best information available to the Department with regard to the current functioning at the time of RFP preparation.

Requirements specified in this RFP shall take precedence over any documentation in the Procurement Library if a conflict exists.

**D.3 VENDORS’ CONFERENCE**

A Vendors’ Conference will be held by the Department via web conference on the date and time specified on page i of the RFP. While participation at the Vendors’ Conference is not required, it is strongly encouraged. To register for the Vendor’s Conference, go to <https://www1.gotomeeting.com/register/235285129> and follow the instructions. Any changes regarding the Vendor’s Conference will be posted to the procurement website <http://www.health.ny.gov/funding/>. Registration for the Vendor’s Conference will be available up until the start time of the web conference.

The Vendors’ Conference is intended to be an interactive exchange of information, and appropriate Department staff will attend to clarify RFP content.

*Vendors are reminded that the official answers and positions of the Department will be those stated in writing and posted to the procurement website.* Any verbal responses given at the Vendors' Conference are not binding on the Department.

Vendors are responsible for checking for updates to information on the procurement website as the Vendors' Conference date, time, and location are subject to change.

#### **D.4 USE OF ELECTRONIC MAIL**

The Department will use the procurement website as the primary means of communication with vendors. However, where appropriate, the Department may use e-mail to transmit information (e.g., questions, RFP addenda) to prospective vendors and may also use the U.S. Postal Service to send originals.

Prospective vendors assume sole responsibility for ensuring that the Department actually receives (complete and in a timely manner) written questions, proposals, requests for copies of the RFP, and other inquiries from the prospective vendor in the delivery manner specified.

#### **D.5 AGREEMENT TO ACCEPT AND ABIDE BY THE REQUEST FOR PROPOSAL AND REQUEST FOR PROPOSAL PROCESS**

By submitting a proposal in response to this RFP, each vendor (including the vendor's parent organization and proposed subcontractors, agents, and employees of the vendor) agrees and consents, without reservation, substitution, or limitation, to the terms of the RFP, including the requirements and procedures established accordingly. Alternate proposals or extraneous terms will not be evaluated.

### **E. SUBMISSION OF PROPOSALS**

The detailed requirements for submission of proposals are described in the following subsections. Deviations from these requirements may render a proposal non-responsive.

Due to the anticipated size of proposals, bidders must contact Mr. Allen a minimum of two (2) business days in advance of the anticipated delivery date. A delivery window of four (4) hours ending no later than 4:00 PM ET must be provided at that time. The name of the proposed delivery company should also be provided at that time. The bidder will be responsible for transporting the proposals to the evaluation room within the building.

#### **E.1 TWO-PART PROPOSALS**

Proposals should be submitted in two (2) separate, clearly labeled packages: a Technical Proposal and a Price Proposal, prepared in accordance with the requirements stated in this RFP.

Sealed proposals shall be delivered to the following address:

**Patrick Allen**  
**New York State DOH/DOS/Administration and Contracts**  
**Room 1202**  
**One Commerce Plaza**  
**99 Washington Avenue,**  
**Albany, NY 12260**

Proposals must be physically received at this location on or before the time and date specified on Page i of this document. Late proposals will not be evaluated.

Proposals should conform to the proposal submission requirements specified in section IV Proposal Requirements.

The outside cover of the separate, sealed package containing the Technical Proposal should be clearly marked:

New York State Department of Health  
FAU #: 1211260917  
*Medicaid Administrative Services (MAS) Procurement* – Technical Proposal  
(Vendor Name)

The outside cover of the separate, sealed package containing the Price Proposal should be clearly marked:

New York State Department of Health  
FAU #: 1211260917  
*Medicaid Administrative Services (MAS) Procurement* – Price Proposal  
(Vendor Name)

All proposals should clearly indicate the name, title, mailing address, daytime telephone number, and fax number of the vendor's authorized agent with the authority to bind the vendor to the provisions of the proposal and to answer official questions concerning the proposal.

## **E.2 PROPOSAL LIFE**

All proposals should be fully responsive to this RFP in order to be considered for contract award. The proposal must remain valid for 365 calendar days from the proposal due date.

## **E.3 THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:**

1. Reject any or all proposals received in response to the RFP
2. Withdraw the RFP at any time, at the agency's sole discretion
3. Make an award under the RFP in whole or in part
4. Disqualify any vendor whose conduct and/or proposal fails to conform to the requirements of the RFP
5. Seek clarifications of proposals
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a vendor's qualifications, experience, ability or financial standing, and any

material or information submitted by the vendor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP

7. Prior to the proposal due date, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available
8. Prior to the proposal due date, direct vendors to submit proposal modifications addressing subsequent RFP amendments
9. Change any of the scheduled dates
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective vendors
11. Waive any requirements that are not material
12. Negotiate with the successful vendor within the scope of the RFP in the best interests of the State
13. Conduct contract negotiations with the next responsible vendor, should the agency be unsuccessful in negotiating with the selected vendor
14. Utilize any and all ideas submitted in the proposals received
15. Unless otherwise specified in the solicitation, every proposal is firm and not revocable for a period of 365 calendar days from the proposal due date
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a vendor's proposal and/or to determine a vendor's compliance with the requirements of the solicitation

#### ***E.4 DEBRIEFING AND VENDOR PROTESTS***

Once an award has been made, vendors may request a debriefing of their proposals in accordance with State Finance Law. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

In the event unsuccessful vendors wish to protest the award resulting from this RFP, vendors should follow the protest procedures established by OSC. These procedures can be found on the OSC website, Guide to Financial Operations, Section XI.17, at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### **F. DEPARTMENT RESPONSIBILITIES**

The following subsections detail Department responsibilities, including:

1. Review and approval of all work products
2. Providing direction and setting policy for all work accomplished

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## **F.1 REVIEW AND APPROVAL OF ALL WORK PRODUCTS**

1. The Department reserves the right to review and approve all aspects of the contractor's work as it relates to this RFP
2. The Department will determine that the contractor has addressed each requirement and will notify the contractor when it has been determined that an RFP requirement has been satisfied in each deliverable and project phase. The Department will use the requirements traceability matrix created and maintained by the contractor to assist in this process
3. The Department reserves the right, at its sole discretion, to determine if the contractor has successfully met or completed all requirements for a project milestone or project phase; and the Department reserves the right, at its sole discretion, to withhold payments based on a deliverable, milestone or phase completion when the contractor has failed to meet all of the requirements
4. The Department has sole responsibility of approving the addition of new System and Operational Enhancement projects and setting the priority of System and Operational Enhancement projects. When the Department submits a Change System Request (CSR), the contractor shall open the CSR in the tracking tool and assign a CSR number. The contractor shall begin work after receiving the Department's approval in writing
5. The Department will conduct a timely review of all materials submitted to the Department by the contractor, returning comments within ten (10) business days unless otherwise agreed upon by the Department and the contractor

## **F.2 PROVIDING DIRECTION AND SETTING POLICY FOR ALL WORK ACCOMPLISHED**

1. The Department will provide policy and contract clarification as requested by the contractor
2. The Department will notify the contractor regarding changes in federal, State, and Department requirements that affect the contractor's performance with regard to the requirements in this RFP
3. The Department will establish policies and make administrative decisions concerning the requirements in this RFP
4. The Department will identify all federal and State mandated reports for the contractor's production and distribution including format, content, frequency of production, media, and distribution

## **G. CONTRACTOR RESPONSIBILITIES**

1. All deliverables, materials or other submissions provided by the contractor must meet the form and content requirements specified by the Department. Such deliverables or other materials shall be subject to Department approval
2. The contractor work plan also must provide sufficient time (a minimum of ten (10) business days) for Department review and approval of each deliverable based on the scope of the deliverable
3. The contractor must deliver to the Department an electronic copy of all document deliverables and up to five (5) paper copies (as determined by the Department) on the date specified in Department-approved plans. The electronic copy must be in Department-approved format and medium
4. The contractor shall be responsible for full, current and detailed knowledge of, and compliance with, the requirements of New York State and federal law and the pertinent regulations and guidelines promulgated thereunder. The contractor also shall be responsible for ascertaining all relevant requirements for MAS operations and bring same to the attention of the Department

## H. VENDOR-TO-VENDOR RELATIONSHIPS

1. The contractor must participate in scheduled contract coordination meetings between the Department and the electronic Medicaid system of New York (eMedNY) contractor, the Medicaid Data Warehouse (MDW) contractor, The New York Health Benefit Exchange (NY HBE), WMS, the Quality Assurance (QA) contractor and any other applicable contractors throughout the life of the MAS contract
2. The contractor must cooperate with the successor contractor while providing all required transition services. This will include meeting with the successor and devising work schedules that are agreeable for both the Department and the successor contractor
3. The contractor must participate in joint development sessions with the Department and the eMedNY contractor during development tasks and activities to establish specific areas that require contract coordination efforts to be established
4. The contractor must participate in joint development sessions with the Department the MDW, NY HBE, and WMS contractor during development tasks and activities to establish specific areas that require contract coordination efforts to be established

## I. PAYMENT

If awarded a contract, the contractor shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at:  
[DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:

Subject: **Unit ID: 3450420 <<Contract #>>**

(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health  
Unit ID 3450420  
PO Box 2093  
Albany, NY 12220-0093**

Payment for invoices and/or vouchers submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, at 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 email at [epayments@osc.state.ny](mailto:epayments@osc.state.ny) or by telephone at 518-457-7717 or 1-855-233-8363. The contractor acknowledges that it will not receive payment on any invoices and/or vouchers



submitted under this contract 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.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with OSC, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller Bureau of  
Accounting Operations Warrant & Payment  
Control Unit  
110 State Street, 9<sup>th</sup> Floor  
Albany, NY 12236

Payment of such invoices by the State shall be made in accordance with Article XI-A of the NYS Finance Law and in accordance with the schedules and methods defined in this section and Attachment H Pricing Schedules. Payment of such invoices by the State are exempt from late payment interest pursuant to the statutory exception for a contractor of third party payment agreements in accordance with NYS Finance Law Section 179-p.

No payment will be made until the Contract has received all required approvals. The Department is not responsible for and will not pay local, State, or federal taxes. All costs associated with the contract must be stated in U. S. currency.

Contractor payments will be reduced by the amount of any actual or liquidated damages as determined by the Project Director in accordance with the provisions of the RFP. The allowed payment by phases is described below.

### ***1.1 PROJECT PLANNING, CONFIGURATION/CONVERSION/IMPLEMENTATION, CERTIFICATION PAYMENTS***

The contractor shall be paid the fixed price upon the Department's acceptance and approval of the completion of milestones as defined in this RFP. The distribution of payment is as follows:

<b>Milestone</b>	<b>Payment Percentage</b>
Submission of Project Planning Documents	10%
Completion of Development/Configuration	30%
Completion of Implementation/User Acceptance Testing (UAT)	40%
Certification	20%

Reimbursement for the Certification Task shall be paid upon notification by CMS that the vendor's system is certified. **Vendors should note that the total price proposed for the Project Planning, DDI, and Certification must not exceed twenty-five percent (25%) of the proposed total price for the contract over five (5) years.**

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## ***1.2 OPERATIONS PHASE PAYMENTS***

The contractor shall be paid a monthly base fee to provide the specified administrative services for the FFS and managed care population. . To guide their Price Proposals, Vendors should reference the projected monthly transaction volume provided in the Procurement Library “Transaction Volume”.

The Department has created boundaries above and below the projected transactions volumes in the Procurement Library for which the planned payment schedule applies. Should transaction monthly volumes deviate above or below this boundary, contractor reimbursement shall be adjusted higher or lower based on the contractor’s proposed per transaction rates.

Monthly payments will be adjusted per the following formula should the volume extend outside the specified boundaries:

$$\text{Monthly Fee} + ((\text{New Monthly Transaction A Volume} - \text{Projected Monthly Transaction A Volume}) \times \text{Transaction A Rate}) + ((\text{New Monthly Transaction B Volume} - \text{Projected Monthly Transaction B Volume}) \times \text{Transaction B Rate}) + \dots$$

The Department shall reimburse the contractor for the cost of postage directly and reasonably incurred by the contractor in carrying out the tasks required by the contract. Postage costs shall be reported separately and in a level of detail satisfactory to the Department. The contractor shall maintain as accounting records, subject to Department examination and audit, substantiating invoices, receipts and other evidence of expenses incurred. Postage costs shall not be subject to corporate allocation or markup. It is the responsibility of the contractor to perform in the most cost efficient manner, utilizing all discounts offered by the Postal Service for all mailings (e.g., zip+four, barcode, presort).

## ***1.3 SYSTEMS AND OPERATIONAL ENHANCEMENT PAYMENTS***

It is expected that any and all system and operational enhancements that are applicable to multiple customers of the contractor will be executed at no additional cost the State. System and operational enhancements that are unique to the State will be paid according to the following methodology:

- Vendor will provide a total and monthly resource estimate based on a rate card (submitted with this proposal) and hour estimate for configuration and testing changes.
- Vendor will submit the estimate to the Department for review and approval.

The System and Operational Enhancements Phase commences with the start of the contract and includes both maintenance and enhancement tasks that must be performed throughout the life of the contract to modify the contractor’s infrastructure in accordance with new State and federal mandates, program policy changes, program growth, and emerging technologies.

## ***1.4 TRANSITION***

The Department will pay the contractor, in one lump sum, the amount contained in Pricing Schedule M upon completion, to the Department’s satisfaction, of all tasks and deliverables required in the contractor’s Department approved transition plan. The Department, in its sole discretion, may also withhold a percentage of the Operations fee for the final month of the contract. This amount, minus any amounts owed the Department

pursuant to Section III.E.3.4 Service Level Agreements, will be paid upon completion, to the Department's satisfaction, of all tasks and deliverables required in the contractor's Department approved transition plan.

### ***1.5 CONTRACT RENEWAL PRICING***

Should the Department elect to extend the term of the contract, as set forth in this RFP, for one or more of the three additional one year renewals, the base rate pricing for each optional contract renewal year will be subject to an annual price increase of the lesser of three percent (3%) or the percent increase in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D. C. , 2012 for the twelve (12) month period ending three (3) calendar months prior to the end date of the last year of the contract, as may be amended.

### **J. LOBBYING STATUTE**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- a. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. Directs the Office of General Services to disclose and maintain a list of non-responsible vendors pursuant to this new law and those who have been debarred and publish such list on its website;
- f. Requires the timely disclosure of accurate and complete information from vendors with respect to determinations of non-responsibility and debarment;
- g. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;
- h. Modifies the governance of the New York State Commission on Public Integrity
- i. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;

- j. Increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. Establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as "new State Finance Law."

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the Joint Commission on Public Ethics regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the Joint Commission on Public Ethics.

## **K. ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS**

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, "Accessibility Web-based Information and Applications", and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

## **L. INFORMATION SECURITY BREACH AND NOTIFICATION ACT**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was,

or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security Home and the Division of Consumer Protection. Information relative to the law and the notification process is available at: <http://www.dhSES.ny.gov/ocs/breach-notification/>.

## **M. PUBLIC INFORMATION**

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the contractor upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

## **N. NEW YORK STATE TAX LAW SECTION 5-A**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Tax and Finance (DTF), Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must also complete and submit to the Department the form Contractor Certification to Covered Agency Form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with

DTF. Failure to make either of these filings may render a vendor non-responsive and non-responsible. Vendors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

ST-220-CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

## O. PIGGYBACKING

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/purchase/snt/sflxi.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the contractor's consent.

## P. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

1. APPENDIX A - Standard Clauses for All New York State Contracts
2. APPENDIX B - Request for Proposal
3. APPENDIX C - Proposal

The vendor's proposal (if selected for award), including any Bid Forms and all proposal requirements.

4. APPENDIX I – Contract Requirements
5. APPENDIX E

Unless the vendor is a political sub-division of New York State, the vendor shall provide proof, completed by the vendor's insurance carrier and/or the Workers' Compensation Board, of coverage for:

Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage Is Not Required; OR
- C-105. 2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26. 3; OR
- SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105. 2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage Is Not Required; OR
- DB-120. 1 – Certificate of Disability Benefits Insurance
- DB-155 – Certificate of Disability Benefits Self-Insurance

6. Appendix G - Notices

7. Appendix H - Health Insurance Portability and Accountability Act (HIPAA)

8. Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

9. Appendix M - Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

## **Q. ATTACHMENTS**

- A. Glossary of Terms
- B. Procurement Library Contents
- C. Lobbying Form
- D. No-Bid Form
- E. Bidder Requirements Traceability Matrix
- F. MMIS Certification Checklists
- G. Deliverables List
- H. Pricing Schedules
- I. Letter of Credit Commitment Letter
- J. Staffing Requirements
- K. M/WBE Procurement Forms
- L. Transmittal Letter Template
- M. Vendor Responsibility Attestation
- N. Sample Standard NYS Contract Language and Appendices

## VI. CONTRACT REQUIREMENTS<sup>2</sup>

This Contract constitutes a fiscal agent agreement pursuant to Social Services Law Section 367-b (8) which authorizes the state to enter into agreements with fiscal agent for the design, development, implementation, operation, processing, auditing and making payments for medical assistance claims.

### 1. CONTRACT TERM

The term of this contract is set forth in Section I.F. Term of Contract of the RFP. With respect to extending this Contract, if the Department elects to exercise any of the one (1) year option periods, notice shall be sent to the Contractor prior to the end of the current Contract period. If the Department does not intend to exercise such option, it shall so notify the Contractor and direct it to complete all remaining Transition Task responsibilities specified in Attachment E: Bidder Requirements Traceability Matrix. All Contract extensions shall be subject to approval by the Office of the State Comptroller (OSC) and by the Centers for Medicare & Medicaid Services (CMS).

### 2. TIME OF PERFORMANCE/SUSPENSION OF WORK

1. The work shall be commenced and shall be actually undertaken within such time as the Department may direct by notice, whether by mail, email, or other writing. The contractor shall give continuous attention to the work and shall complete the work within such reasonable time or times, as the case may be, as the Department may prescribe.
2. The Department reserves the right to stop the work covered by the Contract at any time that the Department deems the Contractor to be unable or incapable of performing the work to the satisfaction of the Department. In the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable. If the cost thereof exceeds the amount of the proposal, the Contractor and its surety shall be liable to the State of New York for any excess cost on account thereof.
3. The Department, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of performance under the Contract.

### 3. ON-GOING RESPONSIBILITY

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health 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.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor.

<sup>2</sup> Section VI: Contract Requirements is provided as a replication of Appendix I: Contract Requirements within Attachment N

In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

#### **4. SUFFICIENCY OF PERSONNEL AND EQUIPMENT**

1. The Contractor and its subcontractors will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Contractor and subcontractor staff to be employed in the performance of this Contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
2. All employees, subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the RFP or Proposal, whichever is more restrictive, and must comply with all federal, State and Department security and administrative requirements. The Department reserves the right to conduct a security background check or otherwise approve any employee, subcontractor or agent furnished by the Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the State's or the Department's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Department reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.
3. If the Department is of the opinion that the services required cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, and to take steps to ensure satisfactory performance of services at no additional cost to the Department.
4. The Department has the right to approve or reject original and replacement project team members assigned by the Contractor to this project. The Contractor will not be allowed extra time or money to replace personnel. The replacement project team member must possess the same or a higher level of technical expertise and/or experience as the original staff person leaving the project. The Contractor must notify the Department Project Manager or designee of personnel vacancies among designated key staff and provide resumes of replacement staff as support for the Contractor's compliance with this provision.
5. The Department also reserves the right to require the Contractor to remove specified employees from performance of any or all duties associated with the performance of this Contract. The Department will not exercise this right unreasonably. The Contractor agrees to replace any employees so removed with an employee of equal or better qualifications and acceptable to the Department. The Contractor will not be allowed extra time or money to replace personnel. The Department's exercise of this right shall be upon written notice to the Contractor setting forth the reasons for the requested action.

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## 5. CONTRACTOR ROLE/INTERACTION WITH THIRD-PARTIES

1. The Contractor will remain solely responsible for compliance with all requirements set forth in the RFP, even if the contractor delegates requirements to any subcontractors. All Department policies, guidelines, and requirements apply to subcontractors.
2. The Contractor shall be the sole point of contact with regard to contractual matters, payment of any and all charges resulting from the outsource or purchase of the equipment and maintenance of the equipment for the term of the Contract.
3. The Contractor must serve as system integrator and must coordinate services with other entities, if necessary, for hardware and software testing, and the resolution of communications problems.
4. No subcontract or termination of any subcontract shall release the contractor of its legal responsibility to the Department to ensure that all activities under the contract are carried out timely.
5. The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department. The Department when so requested from the Contractor will give a confirmation in writing of such orders or directions.
6. It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment.
7. The Contractor agrees, during the term of this Contract, 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 workers' compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance. The Contractor remains responsible for all applicable federal, State and local taxes, and all FICA contributions.
8. The Contractor shall be responsible for fully cooperating with any third-party, including but not limited to other contractors or subcontractors of the Department, as necessary to ensure delivery of product or coordination of performance of services. Additionally, the Contractor shall provide support to the Department during any federal or other external audit reviews of the system, including selection of samples, production of hard-copy documents, and gathering of other required data. The Contractor's staff shall assist Department staff in responding to CMS inquiries. This level of support shall also be provided to all other State audit agencies or their designees.

## 6. SUBCONTRACTORS

1. All subcontracts must be in writing.
2. Subcontracting or substitution of any subcontractor by the Contractor shall not be permitted except by prior written approval and knowledge of the Department. For any proposed replacement or substitution before or after the award, the Contractor must provide the Department with references, resumes, and financial documentation, in addition to meeting all other applicable requirements, and submission of all applicable forms, in this RFP.

3. The Contractor shall be fully liable for the actions of subcontractors and shall hold harmless the State and the Department from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the subcontractors.
4. All subcontracts shall contain provisions which include but are not limited to the following:
  - a. That the work performed by the subcontractor must be in accordance with the terms of the Contract, and
  - b. That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Contract between the Department and the Contractor.
5. The Department shall have access to documentation and records of the subcontractor relevant to the performance of this Contract, consistent with Attachment N, section 10 of Appendix A attached hereto.
6. In the event of contract termination, the Department reserves the right to have the subcontract assigned to it on the same terms as between the Contractor and the subcontractor, to the extent consistent with New York law. The Department shall not be directly liable for payment to a subcontractor for products provided or services rendered under this Agreement unless the subcontract has been assigned as provided above.

## **7. CONTRACTOR RESPONSIBILITIES/CONFLICTS**

1. The Contractor is responsible for the successful performance of this Contract, including the design, development, testing, implementation, and operation of all systems proposed, as well as services proposed, or otherwise required under the Contract. Such work must be completed to the satisfaction of the Department in strict accordance with the specifications. The Contractor is also responsible for the successful performance of all subcontractors.
2. Consistent with the NYS Vendor Responsibility Questionnaire, the Contractor may be required to update information at the request of the Department or OSC prior to the award and/or approval of a contract, or during the term of the contract.
3. The Contractor, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this Contract, as confidential information to the extent required by State and federal law.
4. The Contractor, and any of its subcontractors, shall use reasonable efforts to cooperate with all persons engaged in performing services for the Department, whether or not related to this Contract, including, without limitation, the Department officers and employees and third-party vendors engaged by the Department.
5. The Contractor shall ensure that its officers, employees, agents, consultants and/or subcontractors 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.
6. Further, Contractor acknowledges that, subject to the Public Officers’ Law, Section 74 (2) entitled “Rule with respect to conflicts of interest”, no officer or employee of a state agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the employees’ duties in the public interest.
7. If, during the term of the Contract, the Contractor becomes aware of a relationship or interest, 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. Failure to comply

with these provisions may result in termination or cancellation of the contract and criminal proceedings as may be required by law.

8. In the event that a Contractor uses third-party financing to finance any or all of the RFP services to be provided under the terms of the RFP, the Contractor understands and agrees that it has the sole responsibility for obtaining such financing and remains responsible to provide the services set forth in the RFP. Further, the Contractor understands and agrees that the State and the Department will in no manner underwrite, act as signatory, co-sign, guarantee or in any way secure the Contractor's financing. Failure of the Contractor to secure necessary financing within fifteen (15) business days of OSC approval of the contract in order to provide the services may result in disqualification of the proposal or termination of the resulting contract.

## **8. CONTRACT INSURANCE REQUIREMENTS**

1. The Contractor must, without expense to the State, procure and maintain, until final acceptance by the Department of the work covered by this proposal and the Contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State covering all operations under the Contract, whether performed by it or by subcontractors. Such insurance must be primary and non-contributing to any insurance or self insurance maintained by the Department or the State.
2. Before commencing the work, the Contractor shall furnish to the Department a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with all contract insurance requirements, which certificate or certificates shall state that the insurance policies shall not be changed or canceled until thirty (30) calendar days written notice has been given to the Department. The kinds and amounts of required insurance are:
  - a. A policy covering the obligations of the Contractor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the Contract shall be void and of no effect unless the Contractor procures such policy and maintains it until acceptance of the work. Certificates of such coverage, with regards to Workers' Compensation and Disability Insurance, must be provided and attached to the Contract as Appendices E-1 and E-2, respectively.
  - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two (2) or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
    - i. Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the Contract.
    - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.

- iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.
  3. A fidelity bond or other security shall be maintained by the Contractor in a form satisfactory to the Department and in the amount of five million (\$5,000,000.00) dollars. The Contractor shall provide to the Department proof of the fidelity bond within ten (10) business days of notice from the Department of contract approval.

## 9. LETTER OF CREDIT

Without additional cost to the department, and as a material condition of the Contract, the Contractor must furnish, for the initial period of one year to be automatically extended, without amendment, for additional one year periods from the expiration date, for the duration of the contract term (including any extensions), unless notice to not extend is sent by the financial institution at least ninety (90) days prior to the expiration date, an irrevocable Standby Letter of Credit (SLOC) for the benefit of the Department in the amount of 3% of the bid total in the Price Proposal. In the event of notice of non-extension, the Department may draw up to the full amount. The SLOC shall be issued by a financial institution ("Issuer") licensed to do business under the laws of the State of New York. The Issuer shall be subject to the approval of the Department. The form for the SLOC shall be subject to the approval of the Department. The Contractor must provide a draft SLOC to the Department within ten (10) business days of notice from the Department of contract approval. Failure to provide the draft SLOC to the Department within ten (10) business days of such notice will constitute grounds for termination for cause. The executed SLOC must be provided to the Department within ten (10) business days of the Department's approval of the draft SLOC. The Department reserves the right to extend the due date for the executed SLOC based on circumstances the Department determines to be reasonable. Failure to provide the final SLOC to the Department within the date set will constitute grounds for termination for cause. The SLOC must contain a provision that satisfies the following requirement:

1. No Contingent Obligations: The obligations of Issuer under the SLOC shall in no way be contingent upon reimbursement by the Contractor.

The SLOC must provide funds to the Department for any liability, loss, damage, or expense as a result of the Contractor's failure to perform fully and completely all requirements of the Contract. Such requirements include, but are not limited to, the Contractor's obligation to pay liquidated damages, indemnify the Department under circumstances described in the Contract and the Contractor's obligation to perform the services required by the Contract throughout the entire term of the Contract. The SLOC shall also provide that the bank where the drafts are drawn must be located within New York State or provide for drawings to be by telefacsimile.

## 10. DEPARTMENT OVERSIGHT

1. The Department shall designate a Contract Administrator or designee who shall be responsible for all matters related to this Contract.
2. Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on the State or the State agency, said right, power, or duty so imposed shall be possessed and exercised by the Contract Administrator. The Contract Administrator is authorized to delegate certain rights, powers, or duties. Notice of such delegation of authority will be conveyed to the Contractor in writing.

3. The Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary to clarify to the Contractor its scope of work and performance obligations. The Contract Administrator may periodically conduct evaluations, or request independent evaluations be conducted, of the Contractor's performance and deliverables. The Contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems or deficiencies identified in the periodic evaluations.
4. The Contract Administrator will designate a Project Manager who will be the Contractor's primary contact for working with other Department staff. The Project Manager will initially receive all Contractor progress reports and deliverables, oversee scheduling of meetings with Department staff, and maintain first-line administrative responsibility for the Contract.
5. The Project Manager or designee shall determine successful completion of all Implementation Phase milestones. The Project Manager will also track overall progress, formally review and approve all deliverables, authorize Contractor reimbursement, and confirm final readiness for start of operations and acceptance of the system.
6. The Project Manager or designee will chair weekly status meetings during the Implementation Phase and attend all formal project walk-throughs.
7. The Project Manager shall have direct oversight of the entire project and may request periodic presentations by the Contractor that demonstrate progress achieved during the project.
8. In no instance shall Contractor staff refer any matter to the Contract Administrator or any other official in New York State unless initial contact, both verbal and in writing, regarding the matter has been first presented to the Project Manager.

## **11. INSTALLATION**

1. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the product in the proper location.
2. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc., is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Department and with proper consideration for the rights of other contractors or workers.
3. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

## **12. TOXIC SUBSTANCES**

1. Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide the Department with not less than two (2) copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.
2. Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Department.

3. All products supplied pursuant to this agreement shall meet local, State and Federal regulations, guidelines and action levels for lead, as they exist at the time of the State's acceptance of this contract.

### **13. OWNERSHIP RIGHTS**

1. Title and ownership to existing software product(s) delivered by the Contractor under the Contract that 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 the proprietary owner or other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor's or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a royalty-free, non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt and distribute Existing Licensed Product to the Department with all license rights necessary to fully effect the purpose(s) stated in the RFP and (b) recognize the State as the Licensee where the Department is a state agency. Where these rights are not otherwise covered by the ISV owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.
2. Consistent with 45 CFR Part 95.617 and State Medicaid Manual Part 11, Sections 11266-76, effective upon creation of software, modifications to software, and documentation that is designed, developed, installed, or enhanced with FFP, the Contractor hereby conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest therein, whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that such software and modifications 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 related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this project in the course of the Contractor's business.
3. Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is secured from the State. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
4. No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the Contractor or any of its employees, nor shall any notice of copyright be registered by the Contractor or any of its employees in connection with any report, document or other data developed pursuant to this Contract.
5. All reports, data sheets, documents, etc., generated under this Contract shall be the sole and exclusive property of the Department. Upon completion or termination of this Contract the Contractor shall deliver to the Department upon its demand all copies of materials relating to or pertaining to this Contract. The Contractor shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department or its authorized agents.
6. All press releases, regarding this Contract, must be approved by the Department before being put on the Contractor's or the subcontractor's website or disseminated to the news media and the public.

## 14. SOFTWARE LICENSES

Where software and/or documentation is acquired on a licensed basis the following shall constitute the license grant:

1. The Contractor must pay all associated license, maintenance, and support fees throughout the Contract term for software (also referred to below as “product” or included in “Materials”) proposed by the Contractor. The obligation to pay maintenance and support fees, as applicable, applies even where software or documentation is not acquired on a licensed basis.
2. The Existing Licensed Product of the Contractor and all subcontractors and suppliers proposed for installation must be available to the Department for its use for the entire Contract period, for any extensions the Department may choose to exercise and for any extended license terms the Department may choose to exercise after termination of the Contract.
3. The Department shall have a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use software, modifications to software, and documentation that is designed, developed, installed or enhanced as a part of this RFP for purposes described in this RFP. No right or interest in any trademark, trade name, or service mark is granted hereunder.
4. As the Department’s business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies (“permitted license transfers”). The Department does not have to obtain the approval of the Contractor for permitted license transfers, but must give thirty (30) calendar days prior written notice to the Contractor of such move(s).
5. Outsourcers, facilities management or service bureaus retained by the Department shall have the right to use the product to maintain the Department’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) the Department gives notice to the Contractor of such party, site of intended use of the product, and means of access; (ii) such party has executed, or agrees to execute, the product manufacturer’s standard non-disclosure or restricted use agreement which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third-party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for the Department. In no event shall the Department assume any liability for third-party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Department.
6. Any third-party with whom the Department has a relationship for a State function or business operation, shall have the temporary right to use the product (e.g., JAVA applets), provided that such use shall be limited to the time period during which the third-party is using the product for the function or business activity.
7. If commercially available, the Department shall have the option to require the Contractor to deliver, at the Contractor’s expense: (i) one (1) hard copy and one (1) master electronic copy of the software documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the software documentation by type of license in the following amounts, unless otherwise mutually agreed:
  - a. Individual/Named User License - one (1) copy per License;
  - b. Concurrent Users - 10 copies per site; and

- c. Processing Capacity - 10 copies per site.
8. Software media must be in a format specified by the Department, without requiring any type of conversion.
9. The Department shall have a perpetual license right to make, reproduce (including downloading electronic copies of the documentation) and distribute, either electronically or otherwise, copies of the documentation as necessary to enjoy future use of the software in accordance with the terms of license;
10. The Department may, in perpetuity, use and copy the software and related documentation (collectively “product”) in connection with: (i) reproducing a reasonable number of copies of the product for archival back-up and disaster recovery procedures in the event of destruction or corruption of the product or disasters or emergencies which require the Department to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the product and related documentation for cold site storage. “Cold Site” storage shall be defined as a restorable back-up copy of the product not to be installed until and after the declaration by the Department of a disaster; and (iii) reproducing a back-up copy of the product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. “Disaster Recovery” shall be defined as the installation and storage of the product in ready-to-execute, back-up computer systems prior to disaster or breakdown, which is not used for active production or development.
11. Except as expressly authorized by the terms of license, or otherwise authorized by the terms of this Contract or other expanded license rights granted to the State, the Department shall not:
  1. Copy the Product;
  2. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or
  3. Export the licensed software in violation of any U.S. Department of Commerce export administration regulations.
12. For all licenses and custom developed software, including any and all custom or modified transfer code, the Contractor must assign them per licensing agreement or place them in the public domain.

## 15. ESCROW

1. The Contractor shall either: (i) provide the Department with the source code for the product; or (ii) place the source code in a third-party escrow arrangement with a designated escrow agent who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable and approved by the Department. That agreement must, at minimum, provide for release of the source code to the Department a) when the owner of the software notifies the Department that support or maintenance of the Product are no longer available or b) if the Contractor fails to provide services pursuant to this Contract for a continuous period; or (iii) will certify to the Department that the product manufacturer/developer has named the Department as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

2. The Department may release the source code to those who have a) licensed the product or obtained services or b) who are otherwise authorized to use the product or related Materials, pursuant to this Contract or otherwise. Such individuals or entities may use such copy of the source code to maintain the product.
3. Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the Department or the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the Department or the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
4. The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of all systems and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software. All such materials must be provided to the Department or the escrow agent within five (5) business days of its use or applicability to the use of the MMIS.
5. Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third-party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of subsection 14, Paragraph 1 of Section VI.
6. In the event that this Contract expires and is not renewed or extended, the Department has the option to continue the escrow agreement until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

## **16. GENERAL WARRANTIES**

1. The Services rendered by the Contractor shall be performed in accordance with all the terms, conditions, covenants, statements, and representations contained in the Contract, including all appendices and attachments.
2. All warranties contained in this Contract shall survive the termination of this Contract, unless otherwise provided herein.
3. The Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State, as well as those of the Department in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.
4. The Contractor warrants that all components or deliverables, products or services specified and furnished by or through the Contractor under the Contract meet the completion criteria set forth in the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
5. The Contractor represents and warrants that it shall comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to

award and during the Contract term and any renewals thereof, the Contractor must establish to the satisfaction of the Department that it meets or exceeds all requirements of the RFP, the Proposal, the Contract, and any related specifications associated with those documents or subsequently established, and with any applicable laws, including but not limited to those related to permit and licensing requirements, and shall provide such proof as required by the Department. Failure to comply or failure to provide proof may constitute grounds for the Department to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Department.

6. All warranties set forth in this Contract and any subsequent amendments shall apply to any services performed by the Contractor and any Subcontractor unless otherwise expressly disclaimed by the parties therein or such warranty is clearly inapplicable given the type of product or service provided.
7. The warranties set forth in this contract are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Misuse, accident, unsuitable physical or operating environment, modification, or operation inconsistent with standard industry practice, or failure caused by a product for which the Contractor is not responsible may void the warranties.
8. 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 products transferred to the Department under this Contract. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Contractor fully indemnifies the Department for any loss, damages or actions arising from a breach of said warranty without limitation.
9. Where the Contractor, the independent software vendor (ISV), or other third-party manufacturer provides any project deliverable by or through the Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the project warranty or extended warranty period(s), the Contractor shall be responsible for the coordination during the project warranty or extended warranty period(s) with the ISV or other third-party manufacturer(s) for warranty repair or replacement of the ISV's or other third-party manufacturer's product.
10. The Contractor must notify the Department in writing immediately upon the discovery of any breach of any of the warranties provided under this Contract.
11. Notwithstanding prior acceptance of deliverables by the Department, the Contractor will expressly warrant all delivered programs and documentation as properly functioning and compliant with the terms of the Contract. The Contractor must correct, at no additional cost or expense to the Department, errors and design deficiencies in the system and replace incorrect or defective programs and documentation within one (1) week of notification from the Department of such deficiencies, or within such period as may be necessary to make correction(s) using due diligence and dispatch as agreed upon between the Department and the Contractor.
12. If the Contractor fails to repair an identified error, deficiency or defect within such period, the Department may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Department for incurred costs. This warranty will be in effect throughout the term of the Contract and for one (1) year thereafter. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period also will be covered by this warranty. This provision shall not be construed as limiting rights or remedies provided for elsewhere in this Contract.

## **16.1 HARDWARE & SOFTWARE WARRANTIES**

1. In accordance with the RFP, the Contractor shall be required to refresh the PCs and network printers that were supplied to all staff assigned to the State and contract staff every three (3) years. The Contractor hereby warrants and represents that the software and all upgrades do not and will not contain any computer code that would disable the software or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit the Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device).
2. The Contractor warrants and represents that hardware and software components or deliverables specified and furnished by or through the Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, the remaining term of the Contract, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“project warranty period”). During the project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through the Contractor shall be repaired or replaced by the Contractor at no cost or expense to the Department. The Contractor shall extend the project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees (“extended warranty”).
3. Hardware and other equipment offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.
4. Repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired product or parts and components of such product shall be new and shall, if available, be replaced by the original manufacturer’s component or part. Remanufactured parts or components meeting new product standards may be permitted by the Department. Before installation, all proposed substitutes for the original manufacturer-installed parts or components must be approved by the Department. The part or component shall be equal to or of better quality than the original part or component being replaced.
5. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected so as to cause the equipment to perform as required. All costs for labor and material and transportation incurred to repair or replace defective product during the warranty period shall be borne solely by the Contractor, and the State or the Department shall in no event be liable or responsible.
6. The Contractor represents and warrants that no anti-use devices have been or will be installed in the software supplied pursuant to this Contract.
7. The Contractor warrants that the software will, at the time of its delivery under this Contract, be free of viruses, worms or other devices (collectively “Device”) capable of halting or inappropriately altering operations or erasing or altering data or programs. Further, the Contractor shall employ industry standard measures to prevent incorporation of such a Device. If it is discovered that a Deliverable does contain such a Device, then the Contractor shall take appropriate measures to remove such Device, assist the Department with restoration of data and replace such program with a Device-free version of the same program. The Contractor is not responsible for Devices introduced at the Department’s site by the Department or its employees, agents or contractors not associated with the Contractor, or the Department’s failure to employ industry standard measures to prevent incorporation of known Devices.

8. The Contractor warrants that all media on which the software is delivered to the Department will be free from defects.
9. During the warranty period, as well as any optional maintenance periods that the Department exercises, the Contractor must correct any material programming or other errors that are attributable to the Contractor within a reasonable period of time. However, when the Department becomes aware of a defect, the Department must notify the Contractor, either orally or in writing, of such defect and provide sufficient information for the Contractor to identify the problem.
10. Without lessening any warranty rights granted elsewhere in this Contract, with regard to any deliverable that includes or consists of software, the Contractor warrants as to all such software that on acceptance, and for the software manufacturer's warranty period, the software distributor's warranty period, the remaining term of the Contract, or for a minimum of one (1) year, whichever is greater, that:
  - a. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's proposal, and the RFP;
  - b. The Contractor will deliver and maintain relevant and complete software documentation, commentary and source code;
  - c. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
  - d. The software and all maintenance will be provided in a professional, timely and efficient manner.

## 16.2 DATE/TIME WARRANTY

1. Date/Time Warranty Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, 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 must perform as a package or system, this warranty shall apply to the Products as a system.

Where 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), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of 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. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract 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 this Contract for breach of warranty.

## **17 AUDIT AND ACCESS TO PREMISES AND RECORDS**

1. The Contractor shall be required to have an independent auditor perform an annual SAS 70 audit of its internal controls, including the policies and procedures placed into operation. The audit firm will conduct tests and render an independent opinion on the operating effectiveness of the controls and procedures. The audit firm will submit a final report on controls placed in operation for the project and include a detailed description of the audit firm's tests of the operating effectiveness of controls. The Contractor shall supply the Department with an exact copy of the report within thirty (30) calendar days of completion.
2. The Contractor shall provide, at no cost, access to the premises and/or records associated with this Contract when requested by the Department or other federal and/or State oversight entities including, but not limited to, CMS, the Comptroller General of the United States and third parties acting on their behalf, including the Independent Verification and Validation (IV&V) Consultant, and third parties acting on behalf of such entities, to evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed under this Contract. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.
3. The Contractor, in accordance with 45 CFR Part 95, shall maintain accounting books, accounting records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues; all net costs, direct and apportioned; and other costs and expenses, of whatever nature, that relate to performance of contractual duties under the provisions of this Contract. The Contractor's accounting procedures and practices shall conform to generally accepted accounting principles, and the costs properly applicable to this Contract shall be readily ascertainable therefrom. If, during the term of the Contract, work is performed on a cost-reimbursement basis, the allowability of direct and indirect costs shall be governed by 45 CFR Part 95.
4. The Contractor must ensure the cooperation of any subcontractor with the requirements of this subsection.

## **18 DISPUTES**

1. If it becomes apparent that: (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based its proposal upon performing the work and furnishing materials or equipment in

the most effective and efficient manner as determined by the Department. If such conflicts and/or ambiguities arise, the Department will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

2. In the event such conflict cannot be resolved, the Contractor and the Department agree to meet in good faith and use every reasonable effort to resolve such dispute and shall not resort to any formal proceedings to resolve such dispute until they have reasonably determined that a negotiated resolution is not possible. A designee of the Commissioner of the New York State Department of Health shall decide any dispute or controversy between the Department and the Contractor, which cannot be disposed of through negotiation. Both the Department and the Contractor shall present written statements of issues and facts in dispute. The designee of the Commissioner shall make a determination and issue a written decision within fifteen (15) calendar days. Upon issuance of such decision, the parties shall proceed diligently with the performance of this Contract and shall comply with the provisions of such decision.
3. The decision of the designee of the Commissioner shall be final and conclusive unless the Contractor submits a written appeal to the Commissioner of the New York State Department of Health. Such appeal must be submitted within fifteen (15) calendar days of the date of the decision by the designee of the Commissioner. In the event of an appeal, the Commissioner shall promptly review the dispute resolution decision and shall confirm, annul, or modify it. The Contractor shall be afforded the opportunity to be heard de novo and offer evidence in support of its appeal. The decision of the Commissioner shall be final and conclusive.
4. During the time that the parties hereto are attempting to resolve any dispute in accordance with the provisions of the Contract, each of them shall diligently perform its duties hereunder.

## **19 LITIGATION/CLAIMS**

The Contractor shall promptly notify the Department in the event that the Contractor learns of any actual litigation in which it is a party defendant in any case which involves or impacts services provided under this Contract. The Contractor, within fifteen (15) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency, shall deliver copies of such document(s) to the Contract Administrator. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

## **20 CONTRACT AMENDMENT**

1. This Contract may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This Contract may not be amended orally. The Contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department and, where appropriate, approval of the Attorney General, OSC, and CMS, and without prior approval in writing of the amount of compensation for such changes. An approved contract amendment is required whenever a change affects the payment provisions, the scope of work, or the term of the Contract.
2. If any change in the scope of work affects costs or the time required to perform other work, an equitable adjustment may be made in the payment provisions or delivery schedule, or both. Failure of the Contractor to agree to an equitable adjustment shall be considered a dispute and resolved under the provisions described in subsection 18 above. Notwithstanding the previous language in this subsection, changes requiring system modifications shall be performed as part of the Evolution Process and shall not require a contract amendment or additional funding.
3. If the Contractor is required by the Department to perform additional work based on new requirements, including changes in State or federal laws and regulations, the Contractor may submit a formal proposal.

Enhanced federal funding support may be required to implement these changes. The proposal will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget. The Contractor's proposal/response shall be submitted in writing by the date requested by the Department. The Department will either approve or reject the estimate or request more information. The price proposal submitted by the Contractor shall be prepared in the same format as the Pricing Schedules provided in Attachment H – Pricing Schedules, of the RFP. For example, if the Contractor is proposing a change in the Fixed Annual Operations Fee as a result of the contract amendment, the proposal format shall be the same as Attachment H, Pricing Schedule C - Operations Base Fee. Such proposal shall illustrate the proposed incremental price using the same rates, the same corporate allocation, and the same markup as was used in the Contractor's Proposal submitted in response to the RFP. The incremental prices shall be accompanied by sufficient documentation demonstrating, to the Department's satisfaction, that changes in the Contractor's cost due to the change in the scope of work justifies the incremental price proposal.

## **21 ASSIGNMENT OF CONTRACT**

1. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation without the prior written consent of the Department and OSC. Failure to obtain consent to assignment from the Department shall be grounds for the Department to revoke and annul such Contract and the Contractor shall be liable for all damages resulting therefrom. Notwithstanding the foregoing, the Department shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with OSC. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assign to the Department and seek written agreement from the Department, which will be filed with OSC. The Department reserves the right to reject any proposed assignee at its discretion.
2. Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions to another Agency that assumes the Department's responsibilities for the Contract.

## **22 ASSIGNMENT OF CONTRACTOR CLAIMS**

The Contractor hereby assigns to the State any and all of its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, including 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, including General Business Law Section 340, et. seq.

## **23 PROVISIONS RELATED TO NEW YORK STATE PROCUREMENT LOBBYING LAW**

The State and the Department reserve the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law section 139-k was intentionally false or intentionally incomplete. Upon such finding, the State or the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

## **24 TERMINATION**

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this Contract, the Department acting for and on behalf of the State, shall thereupon have the

right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor.

2. If, in the judgment of the Department, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation based on a proportion of the work completed, including but not limited to the design, development and implementation of the integrated system. In conjunction with OSC, the Department would review any services which had been satisfactorily performed by the Contractor and useable by the Department up to the date of the termination of the Contract. Such compensation cannot exceed the total cost incurred for the work which the Contractor was engaged in at the time of termination and is subject to audit by OSC.
3. By written notice, this Contract may be terminated at any time by the Department for convenience upon thirty (30) calendar days' written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or purchase order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Department shall remain liable for all accrued but unpaid charges incurred through the date of the termination. The Contractor shall use due diligence and provide any outstanding deliverables.
4. The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor.
5. Upon termination of the Contract, the following shall occur:
  - a. The Contractor shall make available to the State for examination all data, records and reports relating to this Contract including computer programs, user and operation manuals, system and program documentation, training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system and all information necessary for the reimbursement of any outstanding Medicaid claims; and
  - b. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

## **25 REMEDIES**

1. It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law.
2. In the event of the Contractor's material breach, the Department may, with or without formally bidding: (i) purchase from other sources; or (ii) when the Department is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Department may acquire acceptable replacement product of lesser or greater quality. Such purchases may, at the discretion of the Department, be deducted from the Contract quantity and payments due the Contractor.
3. The Contractor shall be liable for the difference between the maximum allowable enhanced Federal Financial Participation (FFP) and the amount actually received by the State, including any losses due to delays in meeting the Department-approved schedule, in meeting CMS certification (retroactive to the beginning date of operations) or re-certification requirements. Damage assessments shall not be made until CMS has notified the State of its decision in writing.

4. In any case where a question of non-performance by the Contractor arises, payment may be withheld in whole or in part at the discretion of the Department. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred. Such amounts as they relate to CMS certification requirements may be deducted during the entire period that CMS certification is lacking for the MMIS system. Should CMS certification and the associated federal funds subsequently be granted and provided retroactively, the Department will reimburse the Contractor for amounts withheld back to the date of certification.
5. The Department may, at its sole discretion, return all or a portion of collected damages as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.
6. In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Department the amounts owed by the Contractor arising out of the same transactions.
7. The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement product. Should the cost and expenses incurred be less than the Contract price, the Contractor shall have no claim to the difference.
8. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.
9. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Department promptly by the Contractor or deducted by the Department from payments due or to become due the Contractor on the same or another transaction.
10. Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. The Department reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

## **26 NO WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent to breach 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 Contract shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

## **27 CHOICE OF LAW**

Except where the Federal Supremacy Clause requires otherwise, this Contract shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict or choice of laws principles. All disputes, controversies or claims arising out of or in connection with, this Contract shall be litigated in a court of competent jurisdiction within New York State. The parties agree to waive any right to a trial by jury.

## 28 SEVERABILITY

If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

## 29 FORCE MAJEURE

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the State or the Contractor, its subcontractors, or others under the Contractor's or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.
2. Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.
3. Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may:
  - a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Department with respect to product, materials, or services; and/or
  - b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the product, materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department; or
  - c. Terminate the Contract or the portion thereof, which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relevant part thereof.
4. In addition, the Department reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of the Contractor; (ii) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects the Contractor's performance that continued performance of the Contract would result in a substantial loss.

## 30 CAPTIONS

Captions and headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract. The singular includes the plural and vice versa. Any reference to gender shall be deemed to include the masculine or feminine. Font size, italics, underlining,

holding, etc., shall not be construed to increase the importance of that particular text beyond that of any other text.

### **31 ENTIRE AGREEMENT**

This Agreement, including the appendices listed on the cover page, constitutes the entire Agreement between the parties with respect to the subject matter. All prior agreements, representations, statements, negotiations and undertakings are superseded. The terms, provisions, representations and warranties contained in this Contract shall survive performance hereunder.

### **32 IRAN DIVESTMENT ACT**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers 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 such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health 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 activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health 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 of Health reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## ATTACHMENT A: GLOSSARY OF TERMS

Term	Description
<b>ACA (Affordable Care Act)</b>	A shortened reference to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, enacted March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 enacted March 30, 2010, (together referred to as the Affordable Care Act). The ACA contains multiple provisions that take effect over a matter of years prior to and concurrent with the MAS contract. These include expansion of Medicaid eligibility, the establishment of health insurance exchanges and prohibiting health insurers from denying coverage due to pre-existing conditions.
<b>Adjudicated Claim</b>	A submitted claim that has been processed with a resulting status of either paid or denied.
<b>APD (Advance Planning Document)</b>	A written plan of action which requests Federal Financial Participation for the cost of determining the feasibility and cost factors, as well as the acquisition, of automated data processing equipment and services to support a state's Medicaid program.
<b>APG (Ambulatory Patient Groups)</b>	A classification system for outpatient services reimbursement developed for the American Medicare service by the Health Care Financing Administration.
<b>ASO (Administrative Services Organization)</b>	An organization that provides administrative services for health plans or programs without assuming insurance risk for the programs. These services may include claims processing, benefit management, provider and member support, ecommerce portals, utilization management, provider and member enrollment, etc.
<b>BHOs (Behavioral Health Organizations)</b>	An organization that provides mental health services for a client that is usual for a set fee per month (a managed care payment). New York's Medicaid Redesign Team (MRT) initiatives bring significant changes in the role of these organizations in Medicaid.
<b>BPM (Business Process Model)</b>	The activity of representing business processes of an enterprise, so that the current process may be analyzed and improved.
<b>Buy-In</b>	A procedure whereby the State pays a monthly premium to the Social Security Administration on behalf of eligible Medical Assistance recipients, enrolling them in the Medicare Part A and/or Part B program.
<b>Capitation</b>	A payment arrangement for health care service providers, such as managed care entities, that pays an entity a set amount for each enrolled person assigned to them, per period of time, whether or not that person seeks care.
<b>CBT (Computer-Based Training)</b>	A type of education in which the individual learns by executing special training programs on a computer. CBT is an effective training method because it enables students to practice using the application as they learn.
<b>CFR (Code of Federal Regulations)</b>	The codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the Federal government of the United States. The CFR is divided into 50 titles that represent broad areas subject to Federal regulation.
<b>Child Health Plus</b>	The State of New York's health insurance plan for children is part of the national Children's Health Insurance Program (CHIP) for children under



	the age of 19 who do not qualify for Medicaid.
<b>Claim</b>	A bill for services that is appropriate for the provider type and type of service(s), whether submitted as a paper claim or electronically, and identified by a unique Claim Control Number (CCN). A single claim is defined as a billing comprised of a single beneficiary with the same date of service (or range of dates for service), submitted by a single billing provider which may include one or more service(s) or document(s).
<b>CMS (Centers for Medicare &amp; Medicaid Services)</b>	A federal agency within the United States Department of Health and Human Services (DHHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, the State Children's Health Insurance Program (SCHIP), and health insurance portability standards.
<b>COB (Coordination of Benefits)</b>	A provision establishing an order in which health care plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.
<b>Configuration</b>	Modification of system functionality, which does not require development changes to the software. Configurable software is typically rules-based or parameter driven, and can be modified by non-technical staff.
<b>Contract Amendment</b>	Any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
<b>Contractor</b>	The Vendor selected as a result of this procurement to complete the work contained in the Contract.
<b>COTS (Commercial-off-the-Shelf)</b>	A product that is sold in substantial quantities in the commercial marketplace that does not require additional technical (software or hardware) development or customization for general use.
<b>Covered Service</b>	Mandatory medical services required by CMS and optional medical services approved by the State for which enrolled providers will be reimbursed for services provided to eligible Medicaid recipients.
<b>DDI (Design, development and Implementation)</b>	Phase of the project that includes the tasks required for a contractor to successfully design, develop, and implement the staffing, processes, and technology that support the provision of administrative services for the Department. As part of design and development, the contractor will configure its existing infrastructure to adopt the Medicaid plan and convert the Department's data to function in the contractor's infrastructure, as well as develop any infrastructure needed to supplement existing systems. Implementation refers to the structural changes necessary for the contractor's solution to meet the requirements of the RFP and go into production.
<b>Deliverables</b>	Items identified in the Contract to be delivered by the contractor to the Department, including project work products throughout the term of the project/contract that may or may not be tied to a payment.
<b>DME (Durable Medical Equipment)</b>	Medicaid equipment used in the home to aid in a better quality of living (e.g., wheelchairs, hospital beds, and other non-disposable medically necessary equipment).
<b>DOH (Department of</b>	The Department responsible for the administration of the Medicaid



<b>Health)</b>	program at the New York State level.
<b>DQM (Data Quality Management)</b>	Involves instituting inspection and control processes to monitor conformance with defined data quality rules, as well as instituting data parsing, standardization, cleansing, and consolidation.
<b>Dual-eligible</b>	Individuals who are entitled to Medicare Part A and/or Part B and are eligible for some form of Medicaid benefit.
<b>EFT (Electronic Funds Transfer)</b>	Also known as direct deposit.
<b>EHR (Electronic Health Records)</b>	Systems used by health care providers to enter, store and share clinical and administrative health data, as well as inform clinical decision-making.
<b>Encounter</b>	A claim submitted by a Managed Care Entity for reporting purposes only. Encounters are not Billable Claims, but may create a financial transaction for the managed care plan.
<b>Encounter Data</b>	Data collected to track use of provider services by managed care health plan enrollees that are used to develop cost profiles of a particular group of enrollees and then to guide decisions about or provide justification for the maintenance or adjustment of premiums.
<b>Enrolled Provider</b>	A provider whose enrollment status is active and has billed a claim within the past twelve calendar months.
<b>EPIC (Elderly Pharmaceutical Insurance Coverage)</b>	A New York State-funded program to cover prescriptions for the elderly population with limited income.
<b>EPSDT (Early and Periodic Screening and Diagnostic Treatment)</b>	A program for Medicaid-eligible recipients under the age of twenty-one (21); EPSDT offers free preventive health care services such as screenings, well-child visits, and immunizations; if medical problems are discovered, the recipient is referred for further treatment.
<b>EVS (Eligibility Verification System)</b>	A system used by providers to verify recipient eligibility using a point-of-service device, online PC access, or an automated voice response system.
<b>Family Health Plus</b>	A Medicaid expansion program for adults 19 to 64 who have income too high to qualify for traditional Medicaid. Family Health Plus is available to single adults, couples without children, and parents who are residents of New York State and are United States citizens or fall under one of many immigration categories.
<b>FDA (Food and Drug Administration)</b>	Organization within the United States Department of Health and Human Services responsible for regulating food, dietary supplements, drugs, biological medical products, blood products, medical devices, radiation-emitting devices, veterinary products, and cosmetics in the United States.
<b>FEIN (Federal employer identification number)</b>	A unique nine-digit number assigned by the Internal Revenue Service (IRS) to business entities operating in the United States for the purposes of identification.
<b>FFP (Federal Financial Participation)</b>	Federal matching funds for State expenditures for assistance payments for certain social services, and State medical and medical insurance expenditures.
<b>FFS (Fee-for-service)</b>	A payment model where health care services are unbundled and paid for separately.
<b>Fiscal Agent</b>	An entity that acts on behalf of the State Medicaid agency in respect to claims processing, provider enrollment and relations, utilization review, and other functions.

<b>Fiscal Year- Federal</b>	October 1- September 30
<b>Fiscal Year- State</b>	April 1- March 31
<b>Health Home</b>	A care management service model whereby all of a high-need individual's caregivers communicate with one another so that a patient's needs are addressed in a comprehensive manner
<b>HIE (Health Information Exchange)</b>	The mobilization of healthcare information electronically across organizations within a region, community or hospital system that provides the capability to electronically move clinical information among disparate health care information systems while maintaining the meaning of the information being exchanged. The goal of HIE is to facilitate access to and retrieval of clinical data to provide safer and more timely, efficient, effective, and equitable patient-centered care.
<b>HIPAA (Health Insurance Portability and Accountability Act )</b>	Enacted in 1996, Title I of HIPAA protects health insurance coverage for workers and their families when they change or lose their jobs. Title II of HIPAA, known as the Administrative Simplification (AS) provisions, requires the establishment of national standards for electronic health care transactions and national identifiers for providers, health insurance plans, and employers to address the security and privacy of health data. The standards are meant to improve the efficiency and effectiveness of the nation's health care system by encouraging the widespread use of electronic data interchange in the U.S. health care system.
<b>HIT (Health Information Technology)</b>	Provides the umbrella framework to describe the comprehensive management of health information across computerized systems and its secure exchange between consumers, providers, government and quality entities, and insurers.
<b>HMO (Health Maintenance Organization)</b>	A health care system that assumes both the financial risk associated with providing comprehensive medical services (insurance and service risk) and the responsibility for health care delivery in a particular geographic area to HMO members, in return for a fixed, prepaid fee. Financial risk may be shared with the providers participating in the HMO. See also MCO.
<b>ICD-10-CM (International Classification of Diseases, 10th Revision, Clinical Modification)</b>	ICD-10-CM codes are standardized diagnosis codes used on claims submitted by providers. ICD-10 CM will replace ICD-9 CM in the United States on October 1, 2014.
<b>ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical modification)</b>	Standardized nomenclature to describe medical diagnoses that are required for billing.
<b>Interoperability</b>	The ability to exchange and use information (usually in a large heterogeneous network made up of several local area networks). Interoperable systems reflect the ability of software and hardware on multiple machines from multiple vendors to communicate.
<b>Inter-rater Reliability</b>	A performance-measurement comparing the prior approval and prior authorization determinations responses among reviewers to determine how well two or more reviewers agree and identify areas of irregularity.
<b>ISV (Independent Software Vendor)</b>	A company specializing in making or selling software, designed for mass or niche markets.
<b>IVR (Interactive Voice Response)</b>	A technology that allows a computer to interact with humans through the use of voice and Dual-tone multi-frequency (DTMF) tones input via keypad.



<b>Key Personnel</b>	The position or positions that are specifically designated as such in the contract.
<b>Labor Category</b>	A grouping of similar skills, knowledge, ability, experience and education of the labor to be provided.
<b>LDSS (Local Departments of Social Services)</b>	Local district entities responsible for Medicaid eligibility determination and for performing a number of Medicaid functions. New York State local entities include fifty-seven (57) Upstate local districts, corresponding to the Upstate counties; one (1) local district comprising New York City and environs. The local districts are responsible for one-half of the State share of Title XIX expenditures.
<b>LTC (Long-term care)</b>	A variety of services that help meet both the medical and non-medical needs of people with a chronic illness or disability who cannot care for themselves for long periods of time.
<b>MARS (Management and Administrative Reporting Subsystem)</b>	A federally-mandated comprehensive reporting module of MMIS, including data and reports as specified by Federal requirements.
<b>MAS Contractor</b>	The Medicaid Administrative Services (MAS) Contractor will provide fiscal agent services and other services for the NYS Medicaid Program in a manner that complies with Centers for Medicare & Medicaid Services (CMS) guidelines and certification requirements for a Medicaid Management Information System (MMIS), as identified in the CMS Medicaid Enterprise Certification Toolkit (MECT).
<b>MCO (Managed Care Organization)</b>	An organization that provides health insurance, and manages risk and health care costs for those insured. HMO, PPO, EPO and other types of plans may be provided by an MCO. An MCO may also provide non-insurance administrative services to clients.
<b>MECT (Medicaid Enterprise Certification Toolkit)</b>	Created by CMS to assist states in all phases of the MMIS life cycle. The main component of the MECT is the 20 checklists across the 6 business areas.
<b>Medicare Part D</b>	Also called the Medicare prescription drug benefit, Medicare Part D is a federal program to subsidize the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted as part of the Medicare Modernization Act of 2003 (MMA) and went into effect on January 1, 2006.
<b>Member</b>	A Medicaid beneficiary or recipient
<b>Milestone</b>	A significant point, event, or achievement that reflects progress toward completion of a process, phase, or project.
<b>MITA (Medicaid Information Technology Architecture)</b>	Medicaid Information Technology Architecture; A CMS framework intended to foster integrated business and IT transformation across the Medicaid enterprise to improve the administration of the Medicaid program
<b>MMIS (Medicaid Management Information System)</b>	A claims processing and information retrieval system that has been certified under Section 1902(b) of the Social Security Act as meeting the requirements of the Secretary of HHS for enhanced funding; in this RFP.
<b>MRT (Medicaid Redesign Team)</b>	New York Governor Cuomo established the MRT by Executive Order upon taking office in January 2011, bringing together stakeholders and experts from throughout the state to work cooperatively to reform the system and reduce costs. 78 MRT initiatives have been approved by the Legislature.



<b>NDC (National Drug Code)</b>	A generally accepted system for the identification of prescription and non-prescription drugs available in the United States, including all subsequent editions, revisions, additions, and periodic updates.
<b>NYPS (New York Prescription Saver Program)</b>	A pharmacy discount card for NYS residents who are not receiving Medicaid and are either age 50 to 65, or persons with a disability who have been determined disabled by the Social Security Administration; AND have annual household income less than \$35,000 (single) or \$50,000 (married). This discount card can lower cost of prescriptions by as much as 60 percent on generics and 30 percent on brand name drugs.
<b>OBRA (Omnibus Budget Reconciliation Act)</b>	Federal legislation that defines Medicaid drug coverage requirements and drug rebate rules.
<b>PA (Prior Authorization/Approval)</b>	A requirement mandating that a provider must obtain approval to perform a service(s) or prescribe a specific medication. Without prior approval, Medicaid may not provide coverage or pay for a medication.
<b>PERM (Payment Error Rate Measurement)</b>	The PERM program measures improper payments in Medicaid and produces error rates for each program.
<b>PHI (Protected Health Information)</b>	Under HIPAA, PHI includes any individually identifiable health information. Identifiable refers not only to data that is explicitly linked to a particular individual (that's identified information). It also includes health information with data items, which reasonably could be expected to allow individual identification. PHI also included electronic PHI (ePHI)
<b>POS</b>	Point-of-service or place of service
<b>Prime Contractor</b>	The individual or entity solely responsible for completion of all work to be performed as a result of this procurement, regardless of whether Subcontractors are used.
<b>Procurement</b>	The act of procuring a service and the process (RFP planning, development or evaluation) or planning activities for an upcoming solicitation.
<b>Procurement Library</b>	The materials in Procurement Library provide a window into current system functionality and Department operational needs and are intended only as a resource as vendors prepare their responses to the RFP.
<b>Provider</b>	Individual or entity furnishing medical, mental health, dental or pharmacy services.
<b>Provider Enrollment</b>	A completed capture and verification of provider demographic, licensure, disclosure information, and an executed provider participation agreement. This includes a Billable Provider Revalidation.
<b>Provider Screening</b>	An evaluation that verifies that a provider meets the legal requirements in order to be reimbursed for services provided under the Medicaid or Children's Health Insurance Program, without limitations.
<b>QA (Quality Assurance)</b>	The planned and systematic activities implemented in a quality system so that quality requirements for a product or service will be fulfilled.
<b>QMB (Qualified Medicare Beneficiary)</b>	A Federal category of Medicaid eligibility for aged, blind, or disabled individuals who are entitled to Medicare Part A and who have income less than one hundred percent (100%) of the Federal poverty level and assets less than twice the SSI asset limit; Medicaid benefits include payment of Medicare premiums, coinsurance, and deductibles.
<b>Response Time</b>	The elapsed time from when a real-time transaction enters the network demarcation point until the time the response leaves the network demarcation point.



<b>R-MMIS (Replacement Medicaid Management Information System)</b>	The Department originally released an RFP for the Replacement Medicaid Management Information System (R-MMIS) procurement in 2010, but subsequently cancelled this procurement in 2011 after deciding that this approach and its timing were not the best fit for the evolving Medicaid program in New York
<b>Services</b>	Services to be delivered by Contractor pursuant to the official Contract Documents.
<b>Seven Conditions and Standards</b>	Under sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Social Security Act, the Centers for Medicare & Medicaid Services (CMS) has issued seven new standards and conditions that must be met by the states in order for Medicaid technology investments (including traditional claims processing systems, as well as eligibility systems) to be eligible for the enhanced match funding. The Seven Conditions and Standards include the following: Modularity Standard MITA Condition Industry Standards Condition Leverage Condition Business Results Condition Reporting Condition Interoperability Condition
<b>SOA (Service-oriented architecture)</b>	A set of principles and methodologies for designing and developing software in the form of interoperable services to improve modularity and flexibility.
<b>Software</b>	A set of programs, procedures, algorithms and its documentation concerned with the operation of a data processing system. Program software performs the function of the program it implements, either by directly providing instructions to the computer hardware or by serving as input to another piece of software.
<b>State</b>	The State is comprised of the Department of Health, Office of Medicaid Inspector General (OMIG), the Office of the Attorney General (OAG) and the New York State Office of the State Comptroller (OSC). All State entities have access to and oversight of all systems and records procured as part of Medicaid Administrative Services (MAS) procurement. Additionally, all requirements in this Request for Proposals (RFP) are subject to monitoring by the State
<b>Stop-Loss</b>	A type of reinsurance, or risk protection, offered by a state to Medicaid managed care plans, which is intended to limit the plan's liability for individual enrollees. The state agrees to pay for costs incurred by the plan that exceed a certain threshold amount. Stop-Loss payments are in addition to the monthly capitation payment made by the state for each enrollee
<b>Subcontractor</b>	Any person or firm undertaking part of the work under the terms of a contract, by virtue of an agreement with the prime contractor, who, prior to such undertaking, receives in writing, the consent and approval of the State.
<b>SURS (Surveillance and Utilization Review Subsystem)</b>	Utilization review for Medicaid Programs to identify program policy inconsistencies and potential fraud or provider abuse by identifying aberrant billing patterns.
<b>Technical Proposal</b>	The competitive bid document in which a Vendor proposes how its system will meet the processing requirements for New York State



	programs and agencies.
<b>TPL (Third-Party Liability)</b>	A coordination of benefits function performed by the Medicaid program when members have coverage from both Medicaid and a third party (Medicare or private commercial insurance)
<b>UAT (User Acceptance Testing)</b>	Testing performed when the completed project is released from the Testing Unit to the Department. The purpose of UAT is for users to test the system in a non-production environment to verify that the system is performing to specifications.
<b>Vendor</b>	Any individual or entity that submits a proposal, or intends to submit a proposal, in response to this procurement.
<b>WMS (Welfare Management System)</b>	The Welfare Management System (WMS) is the eligibility determination system for the State of New York and is operated and maintained by the Human Services Application Systems Center.

## ATTACHMENT B: PROCUREMENT LIBRARY CONTENTS

Folder #	Description / File
<b>01</b>	<b>Mapping of MECT to MAS Requirements</b>
	MECT Map to MAS Requirements
<b>02</b>	<b>eMedNY As Is Business Process Models</b>
	Claims, Client, eCommerce, ePaces Authorization, Financial, Manage Drug Rebate, MARS, PA, Paper Process, PBM, Provider, Reference, SURS, TPL, User Security
	eMedNY Business Process Models Instructions
<b>03</b>	<b>eMedNY Technical Design Documents (TDDs)</b>
	Claims Data Element Dictionary
	Claims, Client, eCommerce, Financial, Provider, Reference SUR, TPL, PA, MAR, eMedNY eCommerce Pre-Adjudication edits TDDs
	Data Warehouse Detailed System Design Documents
<b>04</b>	<b>eMedNY Reports</b>
	eMedNY Reports
	Mobius 2012 Hits
<b>05</b>	<b>Inbound/Outbound Interfaces</b>
	Procurement Library Interfaces List
<b>06</b>	<b>Logical Data Models</b>
	Claims, Client, eCommerce, ePaces Authorization, Financial, Manage Drug Rebate, MARS, PA, Paper Process, PBM, Provider, Reference, SURS, TPL, User Security
	Logical Data Models
<b>07</b>	<b>Transaction Volumes</b>
	Transaction History & Projections
<b>08</b>	<b>MITA</b>
	MITA Initial Roadmap
<b>09</b>	<b>Operations Manuals</b>
	Claims Processing Manual
	Claims Pricing exhibit
	Claims Edit Manual
	Claim Mapping
	Claim Mapping 5010
	Encounter Mapping
	Claim Type Assignment - Dental
	Claim Type Assignment – Institutional
	Claim Type Assignment - Medical
	Claim Type Assignment – Summary of Medical Logic
	CP TDD Appendices Most Current
<b>10</b>	<b>eMedNY User Manuals</b>
	Claims, Client, eCommerce, Financial, MAR, PA, Provider, Reference, SUR, TPL
	Manuals
	Mobius
	Mobius Manual
	Mobius Quick Reference Guide
<b>11</b>	<b>Pharmacy Program Overview</b>
	Medicaid Pharmacy Program
<b>12</b>	<b>Pharmacy Sample Reports</b>
	Annual Report: Preferred drugs 2010-11



	2010 DUR Annual Report
	2011 DUR Annual Report
<b>13</b>	<b>Data Governance Framework</b>
	EMedNY Data Governance Organizational Model
	Data Governance Framework slide
<b>14</b>	<b>eMedNY Glossary</b>
	eMedNY Glossary
<b>15</b>	<b>eMedNY Quick Reference Guide</b>
	eMedNY Quick Reference Guide
<b>16</b>	<b>NYS Security &amp; Privacy Standards and Requirements</b>
	Cyber-Security-Policy-P03-002-V3.4
	Cyber-Security-Standard-S10-005-V1.1-Monitor-System-Access
	Security Requirements Deliverable V1.0 1-15-10
	Security Requirements V4.1 2-9-2010
<b>17</b>	<b>MEIPASS</b>
	Project Status 06-07-13 - MEIPASS
	MEIPASS Data Element Dictionary v1.1
	MEIPASS Technical Design Document
<b>18</b>	<b>State Medicaid Director Letters</b>
	SMD-13-001 - Health Home Core Quality Measures
	SMD102298 - Facilitating Collaborations for Data Sharing between State Medicaid and Health Agencies

**ATTACHMENT C**  
**NEW YORK STATE**  
**DEPARTMENT OF HEALTH**  
**LOBBYING FORM**

PROCUREMENT TITLE: \_\_\_\_\_

RFP # \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Vendor Address: \_\_\_\_\_

\_\_\_\_\_

Vendor NYS Vendor ID No: \_\_\_\_\_

Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Vendor affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law § 139-j and 139-k, this *Invitation for Bid or Request for Proposals* includes and imposes certain restrictions on communications between the Department of Health (DOH) and a vendor during the procurement process. A vendor is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this Request for Proposal. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.ny.gov/ACPL/>.

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No                      Yes

If yes, please answer questions 1.a through 1.c. If no, proceed to question 2.a:

1 a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No                      Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No                      Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No                      Yes

2b. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add Additional Pages as Necessary)

C. Vendor certifies that all information provided to the Department of Health with respect to State Finance Law § 139-k is complete, true and accurate.

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(E-mail Address)

**ATTACHMENT D**  
**NEW YORK STATE**  
**DEPARTMENT OF HEALTH**  
**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Vendors choosing not to bid are requested to complete the portion of the form below:

- We do not provide the requested services. Please remove our firm from your mailing list
- We are unable to bid at this time because:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Please retain our firm on your mailing list.

\_\_\_\_\_ (Firm Name)

\_\_\_\_\_ (Officer Signature) \_\_\_\_\_ (Date)

\_\_\_\_\_ (Officer Title) \_\_\_\_\_ (Telephone)

\_\_\_\_\_ (E-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

**ATTACHMENT E**

**Attachment E is provided separately as document: Attachment E\_Requirements Traceability Matrix**

**ATTACHMENT F**

**Attachment F is provided separately as a zip file: NYS MAS RFP\_Attachment F\_MECT Checklists**

## ATTACHMENT G: DELIVERABLES LIST

<b>Attachment G: Deliverables List for the Contractor</b> (Post-Contract signing responsibilities)			
Phase	Task Deliverable	Requirement Reference	Notes
All	Weekly, Monthly and Quarterly Status Reports and Meetings	PLN072, CON022	Set by project schedule
Project Planning	Project kickoff meeting materials	CON012	Two (2) weeks prior to date of the kickoff meeting
Project Planning	Project Management Plan	CON018	Within thirty (30) days of contract award
Project Planning	Project Work Plan in Microsoft Project	CON017	Within thirty (30) days of contract award for review and approval. Work plan must be continually updated/maintained on at least a weekly basis throughout the duration of the contract.
Project Planning	Recommended Training Course List	CON053	Set by project schedule
Project Planning	Detailed Staffing and Organization Plan – Planning, DDI and Certification Phase	CON047	Within thirty (30) days of contract award and set by project schedule
Project Planning	Quality Management Plan	PLN063	Within thirty (30) days of contract award
Project Planning	Requirements Management and Traceability Plan	CON025, CON169	Set by project schedule
Project Planning	Requirements Validation Plan	CON164, CON168	Set by project schedule
Project Planning	Security, Privacy and Confidentiality Plan	CON157	Initial plan within thirty (30) calendar days of the project start
Project Planning	System Architecture and Infrastructure Plan	CON171	Set by project schedule
Project Planning	Comprehensive Test Plan	CON175	Set by project schedule
Project Planning	Configuration Plan	CON029	Set by project schedule
DDI	Requirements Repository	CON025	Within thirty (30) days of contract award; updates set by project schedule
DDI	Data Conversion Plan	CON192	Set by project schedule
DDI	Data Conversion Specifications and Detailed Data Mapping	CON193	Set by project schedule
DDI	Data Conversion Test Plans and Test Results	CON194	Set by project schedule
DDI	Certification Plan	CON031	Set by project schedule
DDI	Certification Checklists	CON033	Set by project schedule
DDI	Initial Training Plan	CON054	Set by project schedule
DDI	Initial Transition Plan	CON249	Thirty (30) calendar days prior to the start of Operations

DDI	Policy and Business Rules Validation Report	CON166, CON164	Set by project schedule
DDI	Requirements Traceability Matrix	CON169	Set by project schedule
DDI	Accounts Receivable Management Plan	FIN019	Set by project schedule
DDI	Business Design Document	CON162	Set by project schedule
DDI	Business Operating Procedures	CON174	Set by project schedule
DDI	Business Process Analysis	CON163	Set by project schedule
DDI	System Integration Test Plan	CON175	Set by project schedule
DDI	System Integration Test Results	CON180	Set by project schedule
DDI	User Acceptance Test Support Plan	CON181	Set by project schedule
DDI	Stress and Performance Test Plan	CON175	Set by project schedule
DDI	Stress and Performance Test Results	CON183, CON188	Set by project schedule
DDI	Regression Test Plan	CON175	Set by project schedule
DDI	Regression Test Results	CON175	Set by project schedule
DDI	Provider Test Case Development Support Plan	CON181	Set by project schedule
DDI	Operational Policy & Procedure Manuals for all MAS Operations	CON107	Sixty (60) calendar days prior to the start of Operations
DDI	Disaster Recovery Back Up site review	CON131	Within thirty (30) calendar days of review
DDI	Disaster Recovery Plan	CON124	Thirty (30) calendar days after contract signing
DDI	Business Continuity Plan	CON108	Thirty (30) calendar days after contract signing
DDI	Disaster Recovery Plan Test Results and Report	CON129, CON130, CON131	Included as a part of Acceptance Testing and be executed annually, at the anniversary date of the contract, after the implementation of the Operations Phase. Report within thirty (30) calendar days of completion of the tests
DDI	Online Course Materials	CON063, CON064	Set by project schedule
DDI	Instructor Training Materials	CON057, CON058	Set by project schedule
DDI	Instruction and Trainee Guides	CON058	Set by project schedule
DDI	Logical Data Model	CON170	Set by project schedule
DDI	Logical Design Document	CON170	Set by project schedule
DDI	Operational Readiness Review Plan	CON195	Set by project schedule
DDI	Operational Readiness Review Checklist	CON198	Set by project schedule
DDI	Final Operational Readiness Review Report	CON197	Thirty (30) calendar days prior to the start of Operations
DDI	Go-Live Contingency Plan	CON199, CON201	Thirty (30) calendar days prior to the start of Operations

DDI	Implementation Contingency Plan	CON201	Set by project schedule
DDI	System Implementation Strategy Deliverable	CON199	Set by project schedule
Operations	Annual Training Plan	CON053	Sixty (60) days prior to beginning of the contract year
Operations	Operations Quality reviews	PLN064	Monthly
Operations	Annual Transition Plan	CON249	Sixty (60) days prior to beginning of the contract year
Operations	Detailed Staffing and Organization Plan – Operations Phase	CON046	Sixty (60) days prior to beginning of the contract year
Operations	Security, Privacy and Confidentiality Plan Revisions	CON150	Sixty (60) days prior to beginning of the contract year
Operations	Training Evaluation Forms	CON082	Set by project schedule
Operations	Updates and/or validation reports of authorized users and authorized level of system access	BUS047	Set by project schedule
Operations	Updated Online Course Materials	CON059	Set by project schedule
Operations	Updated User and Instructor Training Materials	CON060	Set by project schedule
Operations	Updated User Manuals	CON173	Set by project schedule
Operations	Weekly, Monthly, Quarterly, Semi-Annual and Annual Operations Reports	PLN091	Existing reports presented in procurement library. Final reports to be determined in requirement.
Operations	Continuous Improvement Plan	PRV129	Set by project schedule
Operations	Performance Management Plan	CON016	Set by project schedule
Operations	Operational Policy and Procedure Manuals	CON107	Set by project schedule
System and Operational Enhancements	Detailed Staffing and Organization Plan – System and Operational Enhancements Phase	CON046	Set by project schedule
System and Operational Enhancements	Enhancements to Support Attaining Target MITA Maturity Levels	PLN014	Set by project schedule
System and Operational Enhancements	Enhancement Estimation Methodology	PLN013	Set by project schedule
Certification	Updated Certification Plan	CON031	Set by project schedule
Certification	Updated Certification Checklists	PLN005	Set by project schedule
Certification	Certification Checklist Traceability Deliverable	CON033	Set by project schedule
Certification	Certification Review Package	CON034	Set by project schedule
Certification	Correction Action Plan (if necessary)	PLN066	Set by project schedule
Transition	Detailed Staffing and Organization Plan – Transition Phase	CON046	Set by project schedule
Transition	Updated Transition Plan	CON249	Set by project schedule
Transition	Joint Contractor & Successor Work Plan	CON251	Set by project schedule

**ATTACHMENT H**

**Attachment H is provided separately as document: NYS MAS RFP\_Attachment H\_Pricing Schedule**

## ATTACHMENT I: LETTER OF CREDIT COMMITMENT

When the Vendor submits a proposal to this RFP, the Vendor should submit an executed Commitment Letter, in the form set forth below, from a financial institution which is licensed to transact business in the State of New York, on the financial institution's letterhead. The executed commitment letter should be included as part of the Vendor's Proposal.

---

Date

Mr. Patrick Allen  
NYS Department of Health  
Office of Health Insurance Programs  
Division of Systems  
Phone: 518-649-4267

Mr. Allen,

RE: [MAS RFP]  
RFP No. 1211260917

Irrevocable Standby Letter of Credit Commitment Letter

[Name of Financial Institution] is licensed to transact business in the State of New York.

Please accept this communication as a letter of commitment to issue an irrevocable Standby Letter of Credit (SLOC) in the amount equivalent to [3% of the bid total in the Price Proposal] in the event [Vendor] is awarded a contract in connection with the above-referenced RFP.

[Name of Financial Institution] and [Vendor] understand and acknowledge that in the event [Vendor] is awarded a contract in connection with the above referenced RFP, the proposed SLOC is subject to review and approval by the Department of Health prior to issuance.

The subject SLOC will be furnished for the initial contract period through the term of the Contract and all extensions thereof, plus one hundred and eighty (180) calendar days thereafter.

Sincerely,

[Name and Title]  
[Address, Telephone and email]

# ATTACHMENT J: STAFFING REQUIREMENTS

**This Attachment defines the key staff as defined in Section III.D Project Personnel**

**For Key Staff:** The contractor must name individuals and provide resumes in its proposal that will fill the thirteen (13) key staff positions that are identified by the Department. The contractor must also complete thirteen (13) Qualifications and Experience Charts provided at the end of this attachment. The contractor may also supply any other supporting documentation it feels necessary to show that key staff possesses the demonstrated knowledge, skills and abilities detailed, below. Key staff must be available at the contract start date.

The Department must approve all key staff positions in advance. Should any turnover among key staff take place during the life of this contract, all replacement staff must meet the requirements of this RFP and be approved by the Department. The following organization chart defines the reporting structure for the key staff positions that are required to satisfy the requirements in this RFP.

## Key Staffing Requirements

Key Staff	General Responsibility	Qualifications / Experience
Account Executive	<ul style="list-style-type: none"> <li>• Undertake responsibility of the entire project</li> <li>• Acquire adequate resources</li> <li>• Communicate and correspond with the Department</li> <li>• Foster cooperative relationship among State and Contractor staff</li> <li>• Ensure compliance with all SLAs</li> <li>• Ensure compliance with the approved Quality Management Plan</li> <li>• Perform contract administration</li> <li>• Schedule and provide resources</li> <li>• Be the focal point of contact for the Department regarding financial and administrative issues and concerns</li> </ul>	<p>At least five (5) years previous account executive experience on a large-scale health care services project.</p> <p>At least two (2) years previous experience with an MMIS or with major operations-related components of an MMIS or other large healthcare systems and an ongoing relationship management with a large client.</p> <p>At least three (3) years implementing quality improvement and customer satisfaction monitoring programs.</p> <p>Demonstrated ability to effectively communicate with customer’s senior management; and</p> <p>Demonstrated strong analytical, organizational and problem solving abilities</p>

Key Staff	General Responsibility	Qualifications / Experience
Account Manager	<ul style="list-style-type: none"> <li>• Manage the day to day activities of the project</li> <li>• Develop and manage work plans to achieve program goals</li> <li>• Engage in coordination, strategic planning, relationship management and negotiation development of opportunities</li> <li>• Schedule projects</li> <li>• Resolve resource contention</li> <li>• Be the focal point of contact for the Department regarding project status, meetings, reporting requirements, scope changes</li> <li>• Create and execute project work plans and revise as appropriate to meet changing needs and requirements</li> <li>• Define resources and schedule for project/program implementation</li> <li>• Create strategies for risk mitigation and contingency planning</li> <li>• Identify and solve project issues</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum of four (4) years of account management or senior supervisory experience for a government or private sector health care payor, including a minimum of three years of experience with a program of equivalent scope to New York</li> <li>• At least two (2) years previous experience with a large-scale integrated healthcare claims processing system Should be a certified Project Management Professional (PMP) or have a comparable project management certification</li> <li>• Bachelor's degree is required</li> <li>• Demonstrated strong analytical, organizational and problem solving abilities</li> </ul>
DDI/ Configuration Manager	<ul style="list-style-type: none"> <li>• Manage planning, design, testing and implementation of the MAS</li> <li>• Ensure that all System Design and Development is performed in accordance with the proposed SDLC</li> <li>• Initiate recommendations to the Department for system application improvements</li> <li>• Implement and oversee processes that accurately estimate design and development efforts</li> <li>• Report system design and development activities to the Department weekly</li> <li>• Manage the system operational enhancement team</li> <li>• Manage the overall change control over the MAS</li> </ul>	<ul style="list-style-type: none"> <li>• At least four (4) years experience in design, development, implementation, operations, maintenance, and modifications for a large-scale integrated healthcare claims processing system</li> <li>• Demonstrated comprehensive experience managing the planning, developing, testing, and implementing of software application changes</li> <li>• Demonstrated comprehensive experience using the proposed software development lifecycle methodologies and COTS products</li> <li>• At least four (4) years experience managing a staff of over 20 in a complex IT environment</li> <li>• Bachelor's degree in Information Technology or related field is required</li> </ul>

Key Staff	General Responsibility	Qualifications / Experience
Operations Manager	<ul style="list-style-type: none"> <li>Responsible for the functional operation of the solution</li> <li>Manage the day-to-day operation of inbound and outbound claims processing functions in accordance with this RFP</li> <li>Ensure all operational components are performed in accordance with this RFP</li> <li>Manage the day-to-day financial processing of the MAS</li> <li>Ensure all jobs are run and reports are produced in a timely manner</li> <li>Manage claims processing staff to meet the requirements and SLAs in this RFP</li> <li>Report operational metrics to the Department at a minimum monthly</li> </ul>	<ul style="list-style-type: none"> <li>At least five (5) years experience in managing the claims processing component of a large-scale integrated healthcare claims processing system</li> <li>At least three (3) years significant business operational experience in Medicaid or another healthcare production environment</li> <li>Demonstrated experience developing and leading process improvement programs</li> <li>Demonstrated experience planning, implementing, and administering complex operational processes and procedures</li> <li>Demonstrated ability to identify and promulgate diverse and complex operational issues orally and in writing with all levels of management</li> <li>Demonstrated strong analytical, organizational and problem solving abilities</li> <li>Bachelor's degree is required</li> </ul>
Transition Manager	<ul style="list-style-type: none"> <li>Undertake all activities associated with transition to the Department or a subsequent contractor</li> </ul>	<ul style="list-style-type: none"> <li>Minimum of four (4) years of experience in managing and overseeing large scale projects</li> <li>Minimum of three (3) years experience transitioning/turning over operations similar in size and scope to New York State</li> <li>A Bachelor's degree is required</li> </ul>
Compliance Manager	<ul style="list-style-type: none"> <li>Track requirements</li> <li>Track compliance of system against current federal and State rules and regulations</li> <li>Provides analysis and options for system and operations changes to implement the MMIS</li> <li>Responsible for contacting the Department when new CMS rules are released, organizing meetings to present the rules, helping to provide comment to CMS, and proposing solutions to implement the rules in the Systems</li> <li>Produce a monthly report to the Department that includes results on performance measures and SLAs defined in this RFP</li> <li>Responsible for coordinating MMIS Certification activities</li> <li>Review system change orders and enhancements against</li> </ul>	<ul style="list-style-type: none"> <li>At least five (5) years experience with compliance management in health care</li> <li>At least three (3) years health care claims processing environment, preferably with the architecture and interfaces related to the proposed MAS solution</li> <li>Demonstrated strong analytical, organizational and problem solving abilities</li> <li>Demonstrated knowledge of relevant federal and State rules and regulations</li> <li>A Bachelor's Degree is required</li> </ul>

Key Staff	General Responsibility	Qualifications / Experience
	<p>MMIS Certification requirements</p> <ul style="list-style-type: none"> <li>• Help to provide comment for CMS around rule changes</li> <li>• Focus on any rule that impacts the MMIS and FA operations</li> </ul>	
Information Security Officer	<ul style="list-style-type: none"> <li>• Provide oversight of the Contractor’s Information Security Program and conducts reviews of the Contractor’s operations (to include internal financial controls and contractor employee system access and rights) on an ongoing basis to prevent and detect fraud</li> <li>• Develop security policies, procedures, and criteria for the collection, storage, access, and destruction of information assets</li> <li>• Provide technical assistance to Contractor personnel to determine the need and appropriateness of proposed security provisions and review proposed modifications to new and existing electronic information processing systems as part of the project security risk assessment process determined by the Department</li> <li>• Develop policies and procedures for reporting incidents involving the intentional, unintentional or unauthorized use, modification, access, dissemination or destruction of Contractor’s information assets</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum of three (3) years a large-scale integrated healthcare claims processing system</li> <li>• Should be certified in CISSP, CISA and SANS</li> <li>• A Bachelor’s degree in Information Technology or related field is required</li> </ul>
Data Conversion Manger	<ul style="list-style-type: none"> <li>• Manage all automated and manual data conversion</li> <li>• Develop and implement a Data Conversion Plan to convert data files from the prior MMIS to the contractor’s data system</li> <li>• Plan and execute conversion testing methodology and approach to ensure the accuracy of the converted data</li> <li>• Document the mapping of all current system source data to the new system</li> <li>• Document any elements that do not exist in the new system and the justification for not including</li> <li>• Document any new elements. These new elements must be incorporated into the system design and be reflected in the logical and physical data model</li> </ul>	<ul style="list-style-type: none"> <li>• At least five (5) years’ experience managing data conversion for a MMIS, POS, or health care information systems implementation.</li> <li>• Must possess a broad knowledge of conversion tools</li> </ul>

Key Staff	General Responsibility	Qualifications / Experience
	<ul style="list-style-type: none"> <li>Document rules for populating data not found in the current system</li> </ul>	
Quality Assurance Manager	<ul style="list-style-type: none"> <li>Conduct quality reviews for all aspects of the project</li> <li>Monitor performance to ensure compliance with the contract</li> <li>Implement continuous improvements</li> <li>Ensure all services provided meet or exceed contract requirements</li> <li>Ensure the quality of all deliverables including but not limited to reports, documentation, testing, and responses to telephone inquiries and correspondence</li> </ul>	<ul style="list-style-type: none"> <li>At least three (3) years experience in managing the Quality Assurance component of a large-scale integrated healthcare claims processing system</li> <li>At least five (5) years experience in managing technical and business quality programs in a complex IT environment</li> <li>Demonstrated ability to communicate effectively, orally and in writing with all levels of management</li> <li>At least two (2) years experience analyzing performance metrics and identifying corrective actions needed to comply with contract requirements;</li> <li>Demonstrated ability to manage independent testing of software quality</li> </ul>
Customer Service Manager	<ul style="list-style-type: none"> <li>Manage all provider service activities in accordance with the requirements in this RFP</li> <li>Be the primary point of contact with the Department for activities related to provider activities</li> <li>Report and resolve production issues timely and accurately</li> <li>Oversee all Call Center activities</li> </ul>	<ul style="list-style-type: none"> <li>At least five (5) years experience in managing the Provider and/or Member Services for a health care organization</li> <li>At least two (2) years experience managing a call center</li> <li>Bachelor's is required</li> </ul>
Medical Director	<ul style="list-style-type: none"> <li>Provide guidance, opinions, oversight and quality assurance for the prior approval, prior authorization, utilization management, PBM, and claims processing</li> </ul>	<ul style="list-style-type: none"> <li>Licensed physician</li> <li>At least five (5) years experience in medical review and other utilization programs</li> <li>Must possess a broad knowledge of clinical medicine, basic medical sciences and clinical laboratory science</li> <li>No sanctions by Medicare or Medicaid</li> </ul>
PBM Manager (pharmacy prior approval)	<ul style="list-style-type: none"> <li>Be the primary liaison/point of contact with the Department's pharmacy staff</li> <li>Oversee all aspects of the pharmacy program during implementation and operation</li> <li>Manage the day to day activities of the PBM program. Oversees and evaluates operational and clinical aspects of the</li> </ul>	<ul style="list-style-type: none"> <li>Five (5) or more years experience in direct PBM Management role</li> <li>Demonstrated ability to effectively communicate with customer's senior management</li> <li>Demonstrated strong analytical, organizational and problem solving abilities related to pharmacy best practice.</li> </ul>

Key Staff	General Responsibility	Qualifications / Experience
	<p>pharmacy program.</p> <ul style="list-style-type: none"> <li>• Develop and manage work plans to achieve program goals</li> <li>• Provide advice and recommendations that are related to the clinical quality and cost management of the Program</li> <li>• Keep the Department up to date regarding cost containment new drugs, conversion from brand name drugs to generic drugs and how it will impact cost, Preferred Drug List configuration, technological improvements, e-prescribing, pharmacy innovations, litigation and State/Federal legislation (i.e., Medicare, prescription drug mandates, etc.) that may affect the Program.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrated ability to proactively address issues that could potentially affect the pharmacy program</li> <li>• Strong leadership experience and the ability to demonstrate the authority and integrity to command and coordinate the appropriate resources necessary to implement and manage the pharmacy program</li> </ul>
<p>Clinical Manager (medical prior approval)</p>	<ul style="list-style-type: none"> <li>• Be the primary liaison/point of contact with the Department’s prior authorization and prior approval staff</li> <li>• Provide advice and recommendations that are related to the clinical quality and cost management of the program</li> <li>• Provide advice and recommendations to clinical claims editing capabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Five (5) or more years experience in direct clinical management role</li> <li>• Demonstrated ability to effectively communicate with customer’s senior management</li> <li>• Demonstrated strong analytical, organizational and problem solving abilities related to clinical best practice</li> </ul>
<p>MEIPASS Operations Manager</p>	<ul style="list-style-type: none"> <li>• Oversee all aspects of the Medicaid EHR Incentive Program during implementation and operation</li> <li>• Develop and manage work plans to achieve program goals</li> <li>• Provide advice and recommendations that are related to the program participation, meaningful use, and financial management of the Program</li> <li>• Keep the Department up to date regarding Federal legislation (i.e., Meaningful Use Stage 3, rule changes, and audit strategies,) that may affect the Program.</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrated strong analytical, organizational and problem solving abilities.</li> <li>• At least three (3) years significant business operational experience in Medicaid or another healthcare production environment</li> <li>• Demonstrated understanding of Meaningful use final rules and objectives.</li> <li>• Demonstrated experience planning, implementing, and administering complex operational processes and procedures</li> <li>• Demonstrated ability to identify and promulgate diverse and complex operational issues orally and in writing with all levels of management</li> <li>• Bachelor’s degree is required</li> </ul>

## MAS Core Staffing Requirements

For each of the Key Staff being proposed the contractor must submit a resume and the Qualifications and Experience Chart below.

### *Qualifications and Experience Chart*

Title	Proposed Candidate's Name	Department's Qualification/Experience Requirement	Years and percentage of time when Qualification/Experience was obtained	Company in which Qualification/Experience was obtained	Description of Tasks that were performed

The following example is provided for illustration only.

Title	Proposed Candidate's Name	Department's Qualification/Experience Requirement	Years and percentage of time when Qualification/Experience was obtained	Company in which Qualification/Experience was obtained	Description of Tasks that were performed
Account Executive	Mr. John Jones	At least five (5) years previous account executive experience on a large-scale Information Technology project.	1999-2003 – 50%  2003- Present - 100%	XYZ Company  ABC Company	Was the Account Executive for the YZK Project which had a budget of \$20M and a staff size of 95 Reported to the Vice President of Northeastern Operations Responsibilities included  1. xxx

Title	Proposed Candidate's Name	Department's Qualification/Experience Requirement	Years and percentage of time when Qualification/Experience was obtained	Company in which Qualification/Experience was obtained	Description of Tasks that were performed
					2. xxx 3. xxx  Account Executive for etc.
		At least two (2) years previous experience with an MMIS or with major operations-related components of an MMIS or other large healthcare systems and an ongoing relationship management with a large client.			
		At least three (3) years implementing quality improvement and customer satisfaction monitoring programs.			
		Demonstrated ability to effectively communicate with customer's senior management; and			
		Demonstrated strong analytical, organizational and problem solving abilities			
		At least five (5) years previous account executive experience on a large-scale Information Technology project.			

Fill in columns 4, 5 and 6 (column 4: years and percentage of time when qualification/experience was obtained; column 5: company in which qualification/experience was obtained; and column 6: description of tasks that were performed) for every entry in column 3 (Department's qualification/experience requirement). ***The contractor must be specific when delineating tasks in column 6. Simply restating the statements in column 3 will be considered non-responsive***

## **ATTACHMENT K: M/WBE PROCUREMENT FORMS**

### **New York State Department of Health M/WBE Procurement Forms**

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

M/WBE Form#1: Vendor's M/WBE Utilization Plan

M/WBE Form#2: M/WBE Waiver Request

M/WBE Form#3: QUARTERLY UPDATE - M/WBE CONTRACTOR COMPLIANCE &  
PAYMENT Report

M/WBE Form#4: M/WBE Staffing Plan

M/WBE Form#5: Equal Employment Policy Statement - Sample

M/WBE Form#6: M/WBE Workforce Employment Utilization Report

**New York State Department of Health**

**VENDOR M/WBE UTILIZATION PLAN**

<b>Vendor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title:</b>	<b>RFP/Contract No.</b>

**Description of Plan to Meet M/WBE Goals**

--

**PROJECTED M/WBE USAGE**

	<b>%</b>	<b>Amount</b>
<b>1. Total Dollar Value of Proposal Bid</b>	<b>100</b>	<b>\$</b>
<b>2. MBE Goal Applied to the Contract</b>		<b>\$</b>
<b>3. WBE Goal Applied to the Contract</b>		<b>\$</b>
<b>4. M/WBE Combined Totals</b>		<b>\$</b>

**New York State Department of Health  
 VENDOR PROPOSED M/WBE UTILIZATION PLAN  
 MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION**

In order to achieve the MBE Goals, vendor expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____

**New York State Department of Health  
 VENDOR PROPOSED M/WBE UTILIZATION PLAN  
 WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION**

In order to achieve the WBE Goals, vendor expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

<b>WBE Firm (Exactly as Registered)</b>	<b>Description of Work (Products/Services) [WBE]</b>	<b>Projected WBE Dollar Amount</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		\$ _____

New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

Vendor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

Explanation why Vendor/Contractor is unable to meet M/WBE goals for this project:

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Include attachments below to evidence good faith efforts:

- Attachment A. List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- Attachment B. List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- Attachment C. Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- Attachment D. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- Attachment E. Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract.
- Attachment F. Other information deemed relevant to the request.
- Section 4: Signature and Contact Information  
By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

**New York State Department of Health  
QUARTERLY UPDATE  
M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT**

<b>Contractor Name:</b>	
<b>Contract Title:</b>	<b>Contract No.</b>

**TOTAL PROJECTED M/WBE USAGE (from original M/WBE Utilization Plan)**

	%	Amount
1. Total Dollar Value Contract	100	\$
2. Planned MBE Goal Applied to the Contract		\$
3. Planned WBE Goal Applied to the Contract		\$
4. M/WBE Combined Totals		\$

**ACTUAL M/WBE USAGE\* AS OF \_\_\_\_\_ (insert date)**

	%	Amount
1. Total Dollar Value Completed to date	100	\$
2. MBE Utilization to date		\$
3. WBE Utilization to date		\$
4. M/WBE Combined Utilization to date		\$

\* Report usage from contract start date to quarterly end-date inserted above.

**Explain any deficiencies in attaining M/WBE goals in the space below:**

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

**New York State Department of Health  
M/WBE STAFFING PLAN**

Check applicable categories:  Project Staff  Consultants  
 Subcontractors

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
<b>TOTAL</b>							

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

or continue existing programs of affirmative action to ensure that minority group members 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 on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) 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.

(e) This organization will include the provisions of sections (a) through (d) of this agreement 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 State contract.

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature & Date

(a) This organization 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

New York State Department of Health  
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories:  Project Staff  Consultants  
 Subcontractors

Contractor Name \_\_\_\_\_ Contract # \_\_\_\_\_

Staff Used on Contract for the quarter / / to / /

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

Explain variances from original staffing plan submitted in the space below:

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

# ATTACHMENT L: TRANSMITTAL LETTER TEMPLATE

[TO BE COMPLETED ON VENDOR'S LETTERHEAD]

Mr. Patrick Allen  
New York State Department of Health/DOS/Administration and Contracts  
Room 322  
800 North Pearl Street  
Albany, New York 12204

[Insert Current Date]  
Re: NYS Department of Health (Department)  
Medicaid Administrative Services Project

Dear Mr. Allen:

[Insert Vendor's Name] submits this firm and binding offer to the Department in response to the above-referenced RFP and agrees as follows:

1. Vendor has the necessary qualifications and experience delineated in RFP Section 1V.D.6.
2. Vendor's project facility required to be in proximity to the NYS Capitol meets the requirements in Appendix J, including standards such as location, services, space, and security. Also all other facilities that are not specifically required to be in proximity to the NYS Capitol building, as required in Appendix J, will be located within the continental United States.
3. Vendor provides the following statement which describes the legal structure of the entity submitting the proposal \_\_\_\_\_ [Insert Vendor's Response].
4. Vendor accepts the contract terms and conditions contained in this RFP, including any exhibits and attachments.
5. Vendor acknowledges receipt of all Department amendments to this RFP, as may be amended.
6. Vendor provides a statement confirming that the vendor is either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and a statement that, if selected, the vendor will register to do business in NYS. \_\_\_\_\_ [Insert Vendor's Response].
7. Vendor provides a statement confirming it will meet or exceeds all requirements of this RFP, provides services that are fully operational on the takeover date, and will provide systems that meet all CMS requirements, including certification requirements for the Department to claim the maximum allowable Federal Financial Participation (FFP) through the end of the contract term. The vendor must warrant that it shall meet all performance requirements listed in this RFP during the term of this contract. \_\_\_\_\_ [Insert Vendor's Response].

8. Vendor (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternate proposals or extraneous terms be submitted with the proposal, such alternate proposals and extraneous terms will not be evaluated by the Department.
9. Vendor agrees that the proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals.
10. Vendor agrees that it has the sole responsibility for obtaining any third party financing which may be necessary for the vendor to submit a proposal, and further that the vendor understands and agrees that should an award be made, the State of New York and the Department of Health will in no manner underwrite, act as a signatory or co-signatory or in any manner guarantee participation in the securing of the vendor's financing.
11. Vendor (and/or any subcontractor(s)) provides a statement which complies with the four conflict of interest requirements set forth in RFP Section IV.B.6., Conflict of Interest. Where any potential or actual conflict is disclosed, a description shall also be included as to how a potential or actual conflict and/or disclosure of confidential information relating to the contract will be avoided. If there is no conflict of interest a statement so indicating should be included.
12. Vendor is/is not [indicate one] providing an Appendix to this letter identifying use of any subcontractor(s). If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the vendor must provide, in an Appendix to this Transmittal Letter, one subcontractor summary for each listed subcontractor's summary document and certify that the information provided is complete and accurate.
13. The summary document for each listed subcontractor should contain the following information:
  - a. Complete name of the subcontractor;
  - b. Complete address of the subcontractor;
  - c. Type of work the subcontractor will be performing;
  - d. Percentage of work the subcontractor will be providing;
  - e. Evidence that the subcontractor is (i) either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available;
  - f. A general description of the scope of work to be performed by the subcontractor;
  - g. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law) sex, marital status, political affiliation, national origin, or handicap.
14. By the act of submitting a proposal in response to this RFP, each vendor (including the vendor's parent organization and proposed subcontractors, agents, and employees of the vendor) agrees and consents, without reservation, substitution, or limitation, to the propriety and legality of the Department's use of outside consultant(s) and/or contractor(s) to assist the Department with this procurement.
15. Vendor is neither a health insurer nor a health care provider performing Medicaid business or intending to provide Medicaid business in NYS

16. The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this offer on behalf of **[Insert Vendor's Name]** as well as to execute a contract with the Department.

---

Signature

---

Print Name

**Insert: [Vendor's Full Name]**

**[Vendor's Mailing Address]**

**[Title of Signatory]**

**[E-mail of Signatory]**

**[Telephone Number of Signatory]**

**[Fax Number of Signatory]**

**[Name of Proposal Contact]  
(if different from Signatory)**

**[Mailing Address for Proposal Contact]**

**[Title of Proposal Contact]**

**[E-mail of Proposal Contact]**

**[Telephone Number of Proposal Contact]**

**[Fax Number of Proposal Contact]**

## ATTACHMENT M: VENDOR RESPONSIBILITY ATTESTATION

To comply with the Vendor Responsibility Requirements outlined in Section IV, Administrative Requirements, D.8 Vendor Responsibility Questionnaire, I hereby certify:

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this application and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Signed: \_\_\_\_\_

ATTACHMENT N: SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):
Department of Health
Corning Tower
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#
ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 3450420

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:
TO:

CONTRACTOR HAS ( ) HAS NOT ( ) TIMELY
FILED WITH THE ATTORNEY GENERAL'S
CHARITIES BUREAU ALL REQUIRED
PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:
CONTRACTOR IS ( ) IS NOT ( ) A
SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

CONTRACTOR IS ( ) IS NOT ( ) A
NOT-FOR-PROFIT ORGANIZATION

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS ( ) IS NOT ( ) A
N Y STATE BUSINESS ENTERPRISE

( ) IF MARKED HERE, THIS CONTRACT'S RENEWABLE FOR \_\_\_ ADDITIONAL ONE-YEAR PERIOD(S) AT
THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE
COMPTROLLER.

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
X APPENDIX X Modification Agreement Form (to accompany modified appendices for
changes in term or consideration on an existing period or for renewal periods)
APPENDIX Q Modification of Standard Department of Health Contract Language
X STATE OF NEW YORK AGREEMENT
X APPENDIX I Contract Requirements
X APPENDIX B Request For Proposal (RFP)
X APPENDIX C Proposal
X APPENDIX E-1 Proof of Workers' Compensation Coverage
X APPENDIX E-2 Proof of Disability Insurance Coverage
X APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate
Agreement
X APPENDIX G Notices
X APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts:
Requirements and Procedures

**ATTACHMENT N**

Contract No.: C#

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
STATE AGENCY

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

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

\_\_\_\_\_  
STATE OF NEW YORK     )  
  )SS.:  
County of \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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**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, licenser, 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 issues 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.

GLBU: DOH01  
APPENDIX X

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number X-\_\_\_\_\_

This is an **AGREEMENT** between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

**This amendment makes the following changes to the contract (check all that apply):**

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

This amendment *is*\_\_ *is not*\_\_ a contract renewal as allowed for in the existing contract.

**All other provisions of said AGREEMENT shall remain in full force and effect.**

**Prior to this amendment, the contract value and period were:**

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Value before amendment) (Initial start date) (Initial end date)

This amendment provides the following modification (complete only items being modified):

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

This will result in new contract terms of:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_  
(All years thus far combined) (Initial start date) (Amendment end date)



STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request For Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:
  - 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: **3450420 <<Contract #>>**  
(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health  
Unit ID 3450420  
PO Box 2093  
Albany, NY 12220-0093**

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers 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 email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract 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.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/vendors/vendorguide/guide.htm>.

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

## ATTACHMENT N

### IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
  
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

### V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
  
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

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This Contract constitutes a fiscal agent agreement pursuant to Social Services Law Section 367-b (8) which authorizes the state to enter into agreements with fiscal agent for the design, development, implementation, operation, processing, auditing and making payments for medical assistance claims.

**1. CONTRACT TERM**

The term of this contract is set forth in Section I.F of the RFP. With respect to extending this Contract, if the Department elects to exercise any of the one (1) year option periods, notice shall be sent to the Contractor prior to the end of the current Contract period. If the Department does not intend to exercise such option, it shall so notify the Contractor and direct it to complete all remaining Transition Task responsibilities specified in Attachment J. All Contract extensions shall be subject to approval by the Office of the State Comptroller (OSC) and by the Centers for Medicare & Medicaid Services (CMS).

**2. TIME OF PERFORMANCE/SUSPENSION OF WORK**

1. The work shall be commenced and shall be actually undertaken within such time as the Department may direct by notice, whether by mail, email, or other writing. The contractor shall give continuous attention to the work and shall complete the work within such reasonable time or times, as the case may be, as the Department may prescribe.
2. The Department reserves the right to stop the work covered by the Contract at any time that the Department deems the Contractor to be unable or incapable of performing the work to the satisfaction of the Department. In the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable. If the cost thereof exceeds the amount of the proposal, the Contractor and its surety shall be liable to the State of New York for any excess cost on account thereof.
3. The Department, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of performance under the Contract.

**3. ON-GOING RESPONSIBILITY**

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health 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.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume

at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

#### **4. SUFFICIENCY OF PERSONNEL AND EQUIPMENT**

1. The Contractor and its subcontractors will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Contractor and subcontractor staff to be employed in the performance of this Contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
2. All employees, subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the RFP or Proposal, whichever is more restrictive, and must comply with all federal, State and Department security and administrative requirements. The Department reserves the right to conduct a security background check or otherwise approve any employee, subcontractor or agent furnished by the Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the State's or the Department's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Department reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.
3. If the Department is of the opinion that the services required cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, and to take steps to ensure satisfactory performance of services at no additional cost to the Department.
4. The Department has the right to approve or reject original and replacement project team members assigned by the Contractor to this project. The Contractor will not be allowed extra time or money to replace personnel. The replacement project team member must possess the same or a higher level of technical expertise and/or experience as the original staff person leaving the project. The Contractor must notify the Department Project Manager or designee of personnel vacancies among designated key staff and provide resumes of replacement staff as support for the Contractor's compliance with this provision.
5. The Department also reserves the right to require the Contractor to remove specified employees from performance of any or all duties associated with the performance of this Contract. The Department will not exercise this right unreasonably. The Contractor agrees to replace any employees so removed with an employee of equal or better qualifications and acceptable to the Department. The Contractor will not be allowed extra time or money to replace personnel. The Department's exercise of this right shall be upon written notice to the Contractor setting forth the reasons for the requested action.

## **5. CONTRACTOR ROLE/INTERACTION WITH THIRD-PARTIES**

1. The Contractor will remain solely responsible for compliance with all requirements set forth in the RFP, even if the contractor delegates requirements to any subcontractors. All Department policies, guidelines, and requirements apply to subcontractors.
2. The Contractor shall be the sole point of contact with regard to contractual matters, payment of any and all charges resulting from the outsource or purchase of the equipment and maintenance of the equipment for the term of the Contract.
3. The Contractor must serve as system integrator and must coordinate services with other entities, if necessary, for hardware and software testing, and the resolution of communications problems.
4. No subcontract or termination of any subcontract shall release the contractor of its legal responsibility to the Department to ensure that all activities under the contract are carried out timely.
5. The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department. The Department when so requested from the Contractor will give a confirmation in writing of such orders or directions.
6. It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment.
7. The Contractor agrees, during the term of this Contract, 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 workers' compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance. The Contractor remains responsible for all applicable federal, State and local taxes, and all FICA contributions.
8. The Contractor shall be responsible for fully cooperating with any third-party, including but not limited to other contractors or subcontractors of the Department, as necessary to ensure delivery of product or coordination of performance of services. Additionally, the Contractor shall provide support to the Department during any federal or other external audit reviews of the system, including selection of samples, production of hard-copy documents, and gathering of other required data. The Contractor's staff shall assist Department staff in responding to CMS inquiries. This level of support shall also be provided to all other State audit agencies or their designees.

## **6. SUBCONTRACTORS**

1. All subcontracts must be in writing.
2. Subcontracting or substitution of any subcontractor by the Contractor shall not be permitted except by prior written approval and knowledge of the Department. For any proposed

replacement or substitution before or after the award, the Contractor must provide the Department with references, resumes, and financial documentation, in addition to meeting all other applicable requirements, and submission of all applicable forms, in this RFP.

3. The Contractor shall be fully liable for the actions of subcontractors and shall hold harmless the State and the Department from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the subcontractors.
4. All subcontracts shall contain provisions which include but are not limited to the following:
  - a. That the work performed by the subcontractor must be in accordance with the terms of the Contract, and
  - b. That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Contract between the Department and the Contractor.
5. The Department shall have access to documentation and records of the subcontractor relevant to the performance of this Contract, consistent with section 10 of Appendix A attached hereto.
6. In the event of contract termination, the Department reserves the right to have the subcontract assigned to it on the same terms as between the Contractor and the subcontractor, to the extent consistent with New York law. The Department shall not be directly liable for payment to a subcontractor for products provided or services rendered under this Agreement unless the subcontract has been assigned as provided above.

## **7. CONTRACTOR RESPONSIBILITIES/CONFLICTS**

1. The Contractor is responsible for the successful performance of this Contract, including the design, development, testing, implementation, and operation of all systems proposed, as well as services proposed, or otherwise required under the Contract. Such work must be completed to the satisfaction of the Department in strict accordance with the specifications. The Contractor is also responsible for the successful performance of all subcontractors.
2. Consistent with the NYS Vendor Responsibility Questionnaire, the Contractor may be required to update information at the request of the Department or OSC prior to the award and/or approval of a contract, or during the term of the contract.
3. The Contractor, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this Contract, as confidential information to the extent required by State and federal law.
4. The Contractor, and any of its subcontractors, shall use reasonable efforts to cooperate with all persons engaged in performing services for the Department, whether or not related to this Contract, including, without limitation, the Department officers and employees and third-party vendors engaged by the Department.
5. The Contractor shall ensure that its officers, employees, agents, consultants and/or subcontractors 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.
6. Further, Contractor acknowledges that, subject to the Public Officers’ Law, Section 74 (2) entitled “Rule with respect to conflicts of interest”, no officer or employee of a state agency

should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the employees' duties in the public interest.

7. If, during the term of the Contract, the Contractor becomes aware of a relationship or interest, 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. Failure to comply with these provisions may result in termination or cancellation of the contract and criminal proceedings as may be required by law.
8. In the event that a Contractor uses third-party financing to finance any or all of the RFP services to be provided under the terms of the RFP, the Contractor understands and agrees that it has the sole responsibility for obtaining such financing and remains responsible to provide the services set forth in the RFP. Further, the Contractor understands and agrees that the State and the Department will in no manner underwrite, act as signatory, co-sign, guarantee or in any way secure the Contractor's financing. Failure of the Contractor to secure necessary financing within fifteen (15) business days of OSC approval of the contract in order to provide the services may result in disqualification of the proposal or termination of the resulting contract.

## **8. CONTRACT INSURANCE REQUIREMENTS**

1. The Contractor must, without expense to the State, procure and maintain, until final acceptance by the Department of the work covered by this proposal and the Contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State covering all operations under the Contract, whether performed by it or by subcontractors. Such insurance must be primary and non-contributing to any insurance or self insurance maintained by the Department or the State.
2. Before commencing the work, the Contractor shall furnish to the Department a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with all contract insurance requirements, which certificate or certificates shall state that the insurance policies shall not be changed or canceled until thirty (30) calendar days written notice has been given to the Department. The kinds and amounts of required insurance are:
  - a. A policy covering the obligations of the Contractor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the Contract shall be void and of no effect unless the Contractor procures such policy and maintains it until acceptance of the work. Certificates of such coverage, with regards to Workers' Compensation and Disability Insurance, must be provided and attached to the Contract as Appendices E-1 and E-2, respectively.
  - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two (2) or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

- i. Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the Contract.
  - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.
  - iv. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.
3. A fidelity bond or other security shall be maintained by the Contractor in a form satisfactory to the Department and in the amount of five million (\$5,000,000.00) dollars. The Contractor shall provide to the Department proof of the fidelity bond within ten (10) business days of notice from the Department of contract approval.

## **9. LETTER OF CREDIT**

Without additional cost to the department, and as a material condition of the Contract, the Contractor must furnish, for the initial period of one year to be automatically extended, without amendment, for additional one year periods from the expiration date, for the duration of the contract term (including any extensions), unless notice to not extend is sent by the financial institution at least ninety (90) days prior to the expiration date, an irrevocable Standby Letter of Credit (SLOC) for the benefit of the Department in the amount of 3% of the bid total in the Price Proposal. In the event of notice of non-extension, the Department may draw up to the full amount. The SLOC shall be issued by a financial institution ("Issuer") licensed to do business under the laws of the State of New York. The Issuer shall be subject to the approval of the Department. The form for the SLOC shall be subject to the approval of the Department. The Contractor must provide a draft SLOC to the Department within ten (10) business days of notice from the Department of contract approval. Failure to provide the draft SLOC to the Department within ten (10) business days of such notice will constitute grounds for termination for cause. The executed SLOC must be provided to the Department within ten (10) business days of the Department's approval of the draft SLOC. The Department reserves the right to extend the due date for the executed SLOC based on circumstances the Department determines to be reasonable. Failure to provide the final SLOC to the Department within the date set will constitute grounds for termination for cause. The SLOC must contain a provision that satisfies the following requirement:

1. No Contingent Obligations: The obligations of Issuer under the SLOC shall in no way be contingent upon reimbursement by the Contractor.

The SLOC must provide funds to the Department for any liability, loss, damage, or expense as a result of the Contractor's failure to perform fully and completely all requirements of the Contract. Such requirements include, but are not limited to, the

Contractor's obligation to pay liquidated damages, indemnify the Department under circumstances described in the Contract and the Contractor's obligation to perform the services required by the Contract throughout the entire term of the Contract. The SLOC shall also provide that the bank where the drafts are drawn must be located within New York State or provide for drawings to be by telefacsimile.

## **10. DEPARTMENT OVERSIGHT**

1. The Department shall designate a Contract Administrator or designee who shall be responsible for all matters related to this Contract.
2. Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on the State or the State agency, said right, power, or duty so imposed shall be possessed and exercised by the Contract Administrator. The Contract Administrator is authorized to delegate certain rights, powers, or duties. Notice of such delegation of authority will be conveyed to the Contractor in writing.
3. The Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary to clarify to the Contractor its scope of work and performance obligations. The Contract Administrator may periodically conduct evaluations, or request independent evaluations be conducted, of the Contractor's performance and deliverables. The Contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems or deficiencies identified in the periodic evaluations.
4. The Contract Administrator will designate a Project Manager who will be the Contractor's primary contact for working with other Department staff. The Project Manager will initially receive all Contractor progress reports and deliverables, oversee scheduling of meetings with Department staff, and maintain first-line administrative responsibility for the Contract.
5. The Project Manager or designee shall determine successful completion of all Implementation Phase milestones. The Project Manager will also track overall progress, formally review and approve all deliverables, authorize Contractor reimbursement, and confirm final readiness for start of operations and acceptance of the system.
6. The Project Manager or designee will chair weekly status meetings during the Implementation Phase and attend all formal project walk-throughs.
7. The Project Manager shall have direct oversight of the entire project and may request periodic presentations by the Contractor that demonstrate progress achieved during the project.
8. In no instance shall Contractor staff refer any matter to the Contract Administrator or any other official in New York State unless initial contact, both verbal and in writing, regarding the matter has been first presented to the Project Manager.

## **11. INSTALLATION**

1. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the product or render it structurally unsound. Installation includes the furnishing of any

equipment, rigging and materials required to install or place the product in the proper location.

2. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc., is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Department and with proper consideration for the rights of other contractors or workers.
3. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

## **12. TOXIC SUBSTANCES**

1. Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide the Department with not less than two (2) copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.
2. Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Department.
3. All products supplied pursuant to this agreement shall meet local, State and Federal regulations, guidelines and action levels for lead, as they exist at the time of the State's acceptance of this contract.

## **13. OWNERSHIP RIGHTS**

1. Title and ownership to existing software product(s) delivered by the Contractor under the Contract that 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 the proprietary owner or other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor's or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a royalty-free, non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt and distribute Existing Licensed Product to the Department with all license rights necessary to fully effect the purpose(s) stated in the RFP and (b) recognize the State as the Licensee where the Department is a state agency. Where these rights are not otherwise covered by the ISV owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.
2. Consistent with 45 CFR Part 95.617 and State Medicaid Manual Part 11, Sections 11266-76, effective upon creation of software, modifications to software, and documentation that is designed, developed, installed, or enhanced with FFP, the Contractor hereby conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest therein, whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that such

software and modifications 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 related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this project in the course of the Contractor's business.

3. Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is secured from the State. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
4. No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the Contractor or any of its employees, nor shall any notice of copyright be registered by the Contractor or any of its employees in connection with any report, document or other data developed pursuant to this Contract.
5. All reports, data sheets, documents, etc., generated under this Contract shall be the sole and exclusive property of the Department. Upon completion or termination of this Contract the Contractor shall deliver to the Department upon its demand all copies of materials relating to or pertaining to this Contract. The Contractor shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department or its authorized agents.
6. All press releases, regarding this Contract, must be approved by the Department before being put on the Contractor's or the subcontractor's website or disseminated to the news media and the public.

#### **14. SOFTWARE LICENSES**

Where software and/or documentation is acquired on a licensed basis the following shall constitute the license grant:

1. The Contractor must pay all associated license, maintenance, and support fees throughout the Contract term for software (also referred to below as "product" or included in "Materials") proposed by the Contractor. The obligation to pay maintenance and support fees, as applicable, applies even where software or documentation is not acquired on a licensed basis.
2. The Existing Licensed Product of the Contractor and all subcontractors and suppliers proposed for installation must be available to the Department for its use for the entire Contract period, for any extensions the Department may choose to exercise and for any extended license terms the Department may choose to exercise after termination of the Contract.
3. The Department shall have a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use software, modifications to software, and documentation that is designed, developed, installed or enhanced as a part of this RFP for purposes described in this RFP. No right or interest in any trademark, trade name, or service mark is granted hereunder.

4. As the Department’s business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies (“permitted license transfers”). The Department does not have to obtain the approval of the Contractor for permitted license transfers, but must give thirty (30) calendar days prior written notice to the Contractor of such move(s).
5. Outsourcers, facilities management or service bureaus retained by the Department shall have the right to use the product to maintain the Department’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) the Department gives notice to the Contractor of such party, site of intended use of the product, and means of access; (ii) such party has executed, or agrees to execute, the product manufacturer’s standard non-disclosure or restricted use agreement which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third-party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for the Department. In no event shall the Department assume any liability for third-party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Department.
6. Any third-party with whom the Department has a relationship for a State function or business operation, shall have the temporary right to use the product (e.g., JAVA applets), provided that such use shall be limited to the time period during which the third-party is using the product for the function or business activity.
7. If commercially available, the Department shall have the option to require the Contractor to deliver, at the Contractor’s expense: (i) one (1) hard copy and one (1) master electronic copy of the software documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the software documentation by type of license in the following amounts, unless otherwise mutually agreed:
  - a. Individual/Named User License - one (1) copy per License;
  - b. Concurrent Users - 10 copies per site; and
  - c. Processing Capacity - 10 copies per site.
8. Software media must be in a format specified by the Department, without requiring any type of conversion.
9. The Department shall have a perpetual license right to make, reproduce (including downloading electronic copies of the documentation) and distribute, either electronically or otherwise, copies of the documentation as necessary to enjoy future use of the software in accordance with the terms of license;
10. The Department may, in perpetuity, use and copy the software and related documentation (collectively “product”) in connection with: (i) reproducing a reasonable number of copies of the product for archival back-up and disaster recovery procedures in the event of destruction or corruption of the product or disasters or emergencies which require the Department to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the product and related documentation for cold site storage. “Cold Site” storage shall be defined as a restorable back-

up copy of the product not to be installed until and after the declaration by the Department of a disaster; and (iii) reproducing a back-up copy of the product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. “Disaster Recovery” shall be defined as the installation and storage of the product in ready-to-execute, back-up computer systems prior to disaster or breakdown, which is not used for active production or development.

11. Except as expressly authorized by the terms of license, or otherwise authorized by the terms of this Contract or other expanded license rights granted to the State, the Department shall not:
  4. Copy the Product;
  5. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or
  6. Export the licensed software in violation of any U.S. Department of Commerce export administration regulations.
12. For all licenses and custom developed software, including any and all custom or modified transfer code, the Contractor must assign them per licensing agreement or place them in the public domain.

## **15. ESCROW**

1. The Contractor shall either: (i) provide the Department with the source code for the product; or (ii) place the source code in a third-party escrow arrangement with a designated escrow agent who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable and approved by the Department. That agreement must, at minimum, provide for release of the source code to the Department a) when the owner of the software notifies the Department that support or maintenance of the Product are no longer available or b) if the Contractor fails to provide services pursuant to this Contract for a continuous period; or (iii) will certify to the Department that the product manufacturer/developer has named the Department as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.
2. The Department may release the source code to those who have a) licensed the product or obtained services or b) who are otherwise authorized to use the product or related Materials, pursuant to this Contract or otherwise. Such individuals or entities may use such copy of the source code to maintain the product.
3. Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the Department or the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the Department or the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.

4. The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of all systems and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software. All such materials must be provided to the Department or the escrow agent within five (5) business days of its use or applicability to the use of the MMIS.
5. Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third-party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of Section 14, Paragraph 1 of this attachment.
6. In the event that this Contract expires and is not renewed or extended, the Department has the option to continue the escrow agreement until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

## **16. GENERAL WARRANTIES**

1. The Services rendered by the Contractor shall be performed in accordance with all the terms, conditions, covenants, statements, and representations contained in the Contract, including all appendices and attachments.
2. All warranties contained in this Contract shall survive the termination of this Contract, unless otherwise provided herein.
3. The Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State, as well as those of the Department in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.
4. The Contractor warrants that all components or deliverables, products or services specified and furnished by or through the Contractor under the Contract meet the completion criteria set forth in the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
5. The Contractor represents and warrants that it shall comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, the Contractor must establish to the satisfaction of the Department that it meets or exceeds all requirements of the RFP, the Proposal, the Contract, and any related specifications associated with those documents or subsequently established, and with any applicable laws, including but not limited to those related to permit and licensing requirements, and shall provide such proof as

required by the Department. Failure to comply or failure to provide proof may constitute grounds for the Department to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Department.

6. All warranties set forth in this Contract and any subsequent amendments shall apply to any services performed by the Contractor and any Subcontractor unless otherwise expressly disclaimed by the parties therein or such warranty is clearly inapplicable given the type of product or service provided.
7. The warranties set forth in this contract are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Misuse, accident, unsuitable physical or operating environment, modification, or operation inconsistent with standard industry practice, or failure caused by a product for which the Contractor is not responsible may void the warranties.
8. 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 products transferred to the Department under this Contract. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Contractor fully indemnifies the Department for any loss, damages or actions arising from a breach of said warranty without limitation.
9. Where the Contractor, the independent software vendor (ISV), or other third-party manufacturer provides any project deliverable by or through the Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the project warranty or extended warranty period(s), the Contractor shall be responsible for the coordination during the project warranty or extended warranty period(s) with the ISV or other third-party manufacturer(s) for warranty repair or replacement of the ISV's or other third-party manufacturer's product.
10. The Contractor must notify the Department in writing immediately upon the discovery of any breach of any of the warranties provided under this Contract.
11. Notwithstanding prior acceptance of deliverables by the Department, the Contractor will expressly warrant all delivered programs and documentation as properly functioning and compliant with the terms of the Contract. The Contractor must correct, at no additional cost or expense to the Department, errors and design deficiencies in the system and replace incorrect or defective programs and documentation within one (1) week of notification from the Department of such deficiencies, or within such period as may be necessary to make correction(s) using due diligence and dispatch as agreed upon between the Department and the Contractor.
12. If the Contractor fails to repair an identified error, deficiency or defect within such period, the Department may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Department for incurred costs. This warranty will be in effect throughout the term of the Contract and for one (1) year thereafter. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period also will be covered by this warranty. This provision shall not be construed as limiting rights or remedies provided for elsewhere in this Contract.

## 16.1 HARDWARE & SOFTWARE WARRANTIES

1. In accordance with the RFP, the Contractor shall be required to refresh the PCs and network printers that were supplied to all staff assigned to the State and contract staff every three (3) years. The Contractor hereby warrants and represents that the software and all upgrades do not and will not contain any computer code that would disable the software or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit the Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device).
2. The Contractor warrants and represents that hardware and software components or deliverables specified and furnished by or through the Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, the remaining term of the Contract, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“project warranty period”). During the project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through the Contractor shall be repaired or replaced by the Contractor at no cost or expense to the Department. The Contractor shall extend the project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees (“extended warranty”).
3. Hardware and other equipment offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.
4. Repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired product or parts and components of such product shall be new and shall, if available, be replaced by the original manufacturer’s component or part. Remanufactured parts or components meeting new product standards may be permitted by the Department. Before installation, all proposed substitutes for the original manufacturer-installed parts or components must be approved by the Department. The part or component shall be equal to or of better quality than the original part or component being replaced.
5. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected so as to cause the equipment to perform as required. All costs for labor and material and transportation incurred to repair or replace defective product during the warranty period shall be borne solely by the Contractor, and the State or the Department shall in no event be liable or responsible.
6. The Contractor represents and warrants that no anti-use devices have been or will be installed in the software supplied pursuant to this Contract.
7. The Contractor warrants that the software will, at the time of its delivery under this Contract, be free of viruses, worms or other devices (collectively “Device”) capable of halting or inappropriately altering operations or erasing or altering data or programs. Further, the

Contractor shall employ industry standard measures to prevent incorporation of such a Device. If it is discovered that a Deliverable does contain such a Device, then the Contractor shall take appropriate measures to remove such Device, assist the Department with restoration of data and replace such program with a Device-free version of the same program. The Contractor is not responsible for Devices introduced at the Department's site by the Department or its employees, agents or contractors not associated with the Contractor, or the Department's failure to employ industry standard measures to prevent incorporation of known Devices.

8. The Contractor warrants that all media on which the software is delivered to the Department will be free from defects.
9. During the warranty period, as well as any optional maintenance periods that the Department exercises, the Contractor must correct any material programming or other errors that are attributable to the Contractor within a reasonable period of time. However, when the Department becomes aware of a defect, the Department must notify the Contractor, either orally or in writing, of such defect and provide sufficient information for the Contractor to identify the problem.
10. Without lessening any warranty rights granted elsewhere in this Contract, with regard to any deliverable that includes or consists of software, the Contractor warrants as to all such software that on acceptance, and for the software manufacturer's warranty period, the software distributor's warranty period, the remaining term of the Contract, or for a minimum of one (1) year, whichever is greater, that:
  - a. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's proposal, and the RFP;
  - b. The Contractor will deliver and maintain relevant and complete software documentation, commentary and source code;
  - c. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
  - d. The software and all maintenance will be provided in a professional, timely and efficient manner.

## **16.2 DATE/TIME WARRANTY**

1. Date/Time Warranty Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity

independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

## 2. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, 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 must perform as a package or system, this warranty shall apply to the Products as a system. Where 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), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of 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. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract 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 this Contract for breach of warranty.

## **17 AUDIT AND ACCESS TO PREMISES AND RECORDS**

1. The Contractor shall be required to have an independent auditor perform an annual SAS 70 audit of its internal controls, including the policies and procedures placed into operation. The audit firm will conduct tests and render an independent opinion on the operating effectiveness of the controls and procedures. The audit firm will submit a final report on controls placed in operation for the project and include a detailed description of the audit firm's tests of the operating effectiveness of controls. The Contractor shall supply the Department with an exact copy of the report within thirty (30) calendar days of completion.
2. The Contractor shall provide, at no cost, access to the premises and/or records associated with this Contract when requested by the Department or other federal and/or State oversight entities including, but not limited to, CMS, the Comptroller General of the United States and third parties acting on their behalf, including the Independent Verification and Validation (IV&V) Consultant, and third parties acting on behalf of such entities, to evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed

under this Contract. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.

3. The Contractor, in accordance with 45 CFR Part 95, shall maintain accounting books, accounting records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues; all net costs, direct and apportioned; and other costs and expenses, of whatever nature, that relate to performance of contractual duties under the provisions of this Contract. The Contractor's accounting procedures and practices shall conform to generally accepted accounting principles, and the costs properly applicable to this Contract shall be readily ascertainable therefrom. If, during the term of the Contract, work is performed on a cost-reimbursement basis, the allowability of direct and indirect costs shall be governed by 45 CFR Part 95.
4. The Contractor must ensure the cooperation of any subcontractor with the requirements of this subsection.

## **18 DISPUTES**

1. If it becomes apparent that: (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based its proposal upon performing the work and furnishing materials or equipment in the most effective and efficient manner as determined by the Department. If such conflicts and/or ambiguities arise, the Department will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.
2. In the event such conflict cannot be resolved, the Contractor and the Department agree to meet in good faith and use every reasonable effort to resolve such dispute and shall not resort to any formal proceedings to resolve such dispute until they have reasonably determined that a negotiated resolution is not possible. A designee of the Commissioner of the New York State Department of Health shall decide any dispute or controversy between the Department and the Contractor, which cannot be disposed of through negotiation. Both the Department and the Contractor shall present written statements of issues and facts in dispute. The designee of the Commissioner shall make a determination and issue a written decision within fifteen (15) calendar days. Upon issuance of such decision, the parties shall proceed diligently with the performance of this Contract and shall comply with the provisions of such decision.
3. The decision of the designee of the Commissioner shall be final and conclusive unless the Contractor submits a written appeal to the Commissioner of the New York State Department of Health. Such appeal must be submitted within fifteen (15) calendar days of the date of the decision by the designee of the Commissioner. In the event of an appeal, the Commissioner shall promptly review the dispute resolution decision and shall confirm, annul, or modify it. The Contractor shall be afforded the opportunity to be heard de novo and offer evidence in support of its appeal. The decision of the Commissioner shall be final and conclusive.
4. During the time that the parties hereto are attempting to resolve any dispute in accordance with the provisions of the Contract, each of them shall diligently perform its duties hereunder.

## 19 LITIGATION/CLAIMS

The Contractor shall promptly notify the Department in the event that the Contractor learns of any actual litigation in which it is a party defendant in any case which involves or impacts services provided under this Contract. The Contractor, within fifteen (15) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency, shall deliver copies of such document(s) to the Contract Administrator. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

## 20 CONTRACT AMENDMENT

1. This Contract may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This Contract may not be amended orally. The Contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department and, where appropriate, approval of the Attorney General, OSC, and CMS, and without prior approval in writing of the amount of compensation for such changes. An approved contract amendment is required whenever a change affects the payment provisions, the scope of work, or the term of the Contract.
2. If any change in the scope of work affects costs or the time required to perform other work, an equitable adjustment may be made in the payment provisions or delivery schedule, or both. Failure of the Contractor to agree to an equitable adjustment shall be considered a dispute and resolved under the provisions described in Section 18 above. Notwithstanding the previous language in this subsection, changes requiring system modifications shall be performed as part of the Evolution Process and shall not require a contract amendment or additional funding.
3. If the Contractor is required by the Department to perform additional work based on new requirements, including changes in State or federal laws and regulations, the Contractor may submit a formal proposal. Enhanced federal funding support may be required to implement these changes. The proposal will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget. The Contractor's proposal/response shall be submitted in writing by the date requested by the Department. The Department will either approve or reject the estimate or request more information. The price proposal submitted by the Contractor shall be prepared in the same format as the Pricing Schedules provided in Attachment M – Pricing Schedules, of the RFP. For example, if the Contractor is proposing a change in the Fixed Annual Operations Fee as a result of the contract amendment, the proposal format shall be the same as Attachment M, Pricing Schedule C - Operations Base Fee. Such proposal shall illustrate the proposed incremental price using the same rates, the same corporate allocation, and the same markup as was used in the Contractor's Proposal submitted in response to the RFP. The incremental prices shall be accompanied by sufficient documentation demonstrating, to the Department's satisfaction, that changes in the Contractor's cost due to the change in the scope of work justifies the incremental price proposal.

## **21 ASSIGNMENT OF CONTRACT**

1. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation without the prior written consent of the Department and OSC. Failure to obtain consent to assignment from the Department shall be grounds for the Department to revoke and annul such Contract and the Contractor shall be liable for all damages resulting therefrom. Notwithstanding the foregoing, the Department shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with OSC. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assign to the Department and seek written agreement from the Department, which will be filed with OSC. The Department reserves the right to reject any proposed assignee at its discretion.
2. Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions to another Agency that assumes the Department's responsibilities for the Contract.

## **22 ASSIGNMENT OF CONTRACTOR CLAIMS**

The Contractor hereby assigns to the State any and all of its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, including 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, including General Business Law Section 340, et. seq.

## **23 PROVISIONS RELATED TO NEW YORK STATE PROCUREMENT LOBBYING LAW**

The State and the Department reserve the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law section 139-k was intentionally false or intentionally incomplete. Upon such finding, the State or the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

## **24 TERMINATION**

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this Contract, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor.
2. If, in the judgment of the Department, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation based on a proportion of the work completed, including but not limited to the design, development and implementation of the integrated system. In conjunction with OSC, the Department would review any services which had been

satisfactorily performed by the Contractor and useable by the Department up to the date of the termination of the Contract. Such compensation cannot exceed the total cost incurred for the work which the Contractor was engaged in at the time of termination and is subject to audit by OSC.

3. By written notice, this Contract may be terminated at any time by the Department for convenience upon thirty (30) calendar days' written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or purchase order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Department shall remain liable for all accrued but unpaid charges incurred through the date of the termination. The Contractor shall use due diligence and provide any outstanding deliverables.
4. The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor.
5. Upon termination of the Contract, the following shall occur:
  - a. The Contractor shall make available to the State for examination all data, records and reports relating to this Contract including computer programs, user and operation manuals, system and program documentation, training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system and all information necessary for the reimbursement of any outstanding Medicaid claims; and
  - b. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

## **25 REMEDIES**

1. It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law.
2. In the event of the Contractor's material breach, the Department may, with or without formally bidding: (i) purchase from other sources; or (ii) when the Department is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Department may acquire acceptable replacement product of lesser or greater quality. Such purchases may, at the discretion of the Department, be deducted from the Contract quantity and payments due the Contractor.
3. The Contractor shall be liable for the difference between the maximum allowable enhanced Federal Financial Participation (FFP) and the amount actually received by the State, including any losses due to delays in meeting the Department-approved schedule, in meeting CMS certification (retroactive to the beginning date of operations) or re-certification requirements. Damage assessments shall not be made until CMS has notified the State of its decision in writing.
4. In any case where a question of non-performance by the Contractor arises, payment may be withheld in whole or in part at the discretion of the Department. Should the amount withheld

be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred. Such amounts as they relate to CMS certification requirements may be deducted during the entire period that CMS certification is lacking for the MMIS system. Should CMS certification and the associated federal funds subsequently be granted and provided retroactively, the Department will reimburse the Contractor for amounts withheld back to the date of certification.

5. The Department may, at its sole discretion, return all or a portion of collected damages as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.
6. In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Department the amounts owed by the Contractor arising out of the same transactions.
7. The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement product. Should the cost and expenses incurred be less than the Contract price, the Contractor shall have no claim to the difference.
8. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.
9. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Department promptly by the Contractor or deducted by the Department from payments due or to become due the Contractor on the same or another transaction.
10. Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. The Department reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

## **26 NO WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent to breach 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 Contract shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

## **27 CHOICE OF LAW**

Except where the Federal Supremacy Clause requires otherwise, this Contract shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict or choice of laws principles. All disputes, controversies or claims

arising out of or in connection with, this Contract shall be litigated in a court of competent jurisdiction within New York State. The parties agree to waive any right to a trial by jury.

## **28 SEVERABILITY**

If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

## **29 FORCE MAJEURE**

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the State or the Contractor, its subcontractors, or others under the Contractor's or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.
2. Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.
3. Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may:
  - a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Department with respect to product, materials, or services; and/or
  - b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the product, materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department; or
  - c. Terminate the Contract or the portion thereof, which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relevant part thereof.
4. In addition, the Department reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of the Contractor; (ii) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects the Contractor's performance that continued performance of the Contract would result in a substantial loss.

### 30 CAPTIONS

Captions and headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract. The singular includes the plural and vice versa. Any reference to gender shall be deemed to include the masculine or feminine. Font size, italics, underlining, bolding, etc., shall not be construed to increase the importance of that particular text beyond that of any other text.

### 31 ENTIRE AGREEMENT

This Agreement, including the appendices listed on the cover page, constitutes the entire Agreement between the parties with respect to the subject matter. All prior agreements, representations, statements, negotiations and undertakings are superseded. The terms, provisions, representations and warranties contained in this Contract shall survive performance hereunder.

### 32 IRAN DIVESTMENT ACT

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers 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 such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health 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 activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health 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 of Health reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

\* \* \* \* \*

## Appendix H

for CONTRACTOR that creates, receives, maintains or transmits individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
  - A. "Business Associate" shall mean CONTRACTOR.
  - B. "Covered Program" shall mean the STATE.
  - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
  - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
  - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
  - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
    1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
    4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
    5. Contact procedures for Covered Program to ask questions or learn additional information.
  - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.

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- E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
  - F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
  - G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
  - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
  - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
  - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
  - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.
  - B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
  - C. Effect of Termination.

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1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

### V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

### VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 2

## Appendix G

### NOTICES

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

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) 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 Health**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

#### **[Insert Contractor Name]**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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.

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 representative 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.

## APPENDIX M

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO  
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The New York State Department of Health 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. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health 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 this procurement, the New York State Department of Health hereby establishes an overall goal of 10% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

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

<http://www.esd.ny.gov/mwbe.html>

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 the 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 New York State Department of Health 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 New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

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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 Subdivisions (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 #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a 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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

### D. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted 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

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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**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- 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, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waivers**

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- 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

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complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE 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 New York State Department of Health 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 MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10<sup>th</sup> 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 New York State Department of Health 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 New York State Department of Health 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 New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health 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

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which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.