

## **ATTACHMENT E**

### **SUMMARY OF PROPOSED CONTRACT TERMS**

#### **INTRODUCTION and INSTRUCTIONS**

This is a summary of proposed key contract terms that will appear in the Prescription Benefit Management Services Agreement between the City of New York Office (“City”) acting through the Mayor’s Office of Labor Relations (“OLR”) on behalf of the Labor Management PICA Committee and the respondent pharmacy benefits manager (“PBM” or “Vendor”) selected to administer the PICA Program prescription drug benefit (“Agreement” or “Contract”).

**This summary is for your information only and does NOT need to be included with respondent’s expression of interest.**

#### **Negotiations with Vendors**

If selected by the Agency to enter into negotiations, as part of this negotiated acquisition process, the Agency will provide the selected vendors with the following:

- Proposed Contract with the City of New York Office acting through the Mayor’s Office of Labor Relations on behalf of the Labor Management PICA Committee (vendor will be provided an opportunity to provide proposed edits/comments to the Contract) Agency will not consider a substitute contract drafted by the PBM in lieu of the proposed Contract.
- PICA Program Contract & Pricing Questionnaire;
- Two years of PICA Program claims data;
- PBM Proposed Specialty Drug Minimum Guaranteed Discounts;
- PBM Proposed Formulary.

#### **A. SUMMARY OF PROPOSED CONTRACT TERMS**

##### **I. TERM OF CONTRACT and TERMINATION PROVISIONS**

A. Approximately a three-year contract, with an effective date of on or about January 1, 2021.

The proposed Contract contains a termination provision stating that OLR may terminate the Contract, with or without cause, on thirty (30) days’ notice.

##### **II. PASS-THROUGH PRICING**

Contract contains several provisions making clear that all PBM invoicing will be on a “pass-through pricing” basis.

The Definition of “Pass-Through Pricing”, and additional provisions in the body of the proposed Contract related to the PBM’s invoicing for retail, mail and specialty drugs, together make clear that the PBM is agreeing that the only profits that the PBM will derive under the Contract will be the contractually agreed upon Administrative Fee. The Parties may also agree to separate charges/fees that will be identified in the Contract that the PBM may assess OLR for specified services provided such charges/fees are fully disclosed before the Contract is executed.

Under the proposed Contract, the PBM will not be entitled to earn “spreads” between the amounts the PBM reimburses pharmacies or pays for drugs, and the amounts invoiced to OLR. The proposed Contract precludes “spreads” on retail, *mail and specialty* drugs, in contrast to most PBM/client contracts that purport to contain “pass through pricing” but allow “spreads” on mail and/or specialty drugs. Also, under the proposed Contract, the PBM will not be entitled to retain any revenues from hidden Rebates or other Financial Benefits (such as Health Management Fees and Data Sales or other undisclosed fees paid by pharmaceutical manufacturers and other third parties to the PBM related to OLR's book of business).

Where PBMs offer NADAC pricing and such pricing is the lowest available price for a covered PICA drug at the time a drug is dispensed, PBMs that agree to offer NADAC will be required to invoice OLR at the NADAC price based upon the lowest NADAC price of any NDC within the GPI and to pass through to OLR all Financial Benefits it received at any time from any manufacturer or third party related to dispensing said drug. In addition, where NADAC pricing is available, OLR will be charged the lower of the NADAC price or the U & C price for a dispensed drug. For drugs for which NADAC pricing is not available, the PBM will be permitted to invoice OLR using the pricing mechanisms described in the Contract.

### **III. PMPM ADMINISTRATIVE FEE**

OLR wishes to identify all fees that it will be paying as well as savings that will be generated by specified guarantees and payments for the specific services that will be provided in its proposed Contract. It will not allow any Proposer to negotiate any fees or other charges after OLR has awarded the Contract to the Proposer.

#### **(a) Administrative Fee**

Given that the proposed Contract eliminates all “spread” pricing and all profits that PBMs typically make by retaining certain "Financial Benefits", the proposed Contract allows each PBM to identify a flat Administrative Fee that it will collect to reimburse the PBM for all services provided under the Contract.

Vendor will be required to submit their Administrative Fee on a “Per Member Per Month” (PMPM). Alternatively, Vendor may submit their administrative fee on a “Per Paid Claim” basis but it must be competitive with those that propose an Administrative Fee on a PMPM basis.

If selected by the Agency to enter into negotiations, as part of this Negotiated Acquisition process, each Vendor will be required to specify which type of Administrative Fee it expects to collect, and to identify the actual Administrative Fee amount.

### **IV. SPECIFIED ADDITIONAL FEES**

OLR’s proposed Contract also states that additional charges may only be invoiced by the PBM if the charges are identified during this Negotiated Acquisition process and specified in the proposed Contract. PBM will be required to fill in the blanks for any fees/rates in the proposed Contract that it would charge for the listed services as well as any additional services the Proposer wishes to offer with or without a fee.

### **V. PASS THROUGH OF ALL FINANCIAL BENEFITS FROM ALL THIRD PARTIES**

OLR’s proposed Contract alters the traditional PBM/client contract that references only “rebates”, which allows PBMs to retain other third-party payments and discounts characterized with labels other

than “rebates”. Instead, the proposed Contract contains provisions requiring the PBM to pass-through all “Financial Benefits” from all “Pharmaceutical Manufacturers”.

The definition of “Financial Benefits” includes all financial benefits of any kind, including without limitation, all rebates, discounts, administrative or other fees, chargebacks, grants, all other monies of any kind whatsoever paid by Pharmaceutical Manufacturers, all discounts or credits or reimbursements of any kind provided by Pharmaceutical Manufacturers, and all goods (or in-kind services) provided by Pharmaceutical Manufacturers. The definition of “Pharmaceutical Manufacturer” includes pharmaceutical manufacturers, drug wholesalers and distributors, repackagers, and all other third parties that provide Financial Benefits to a PBM.

Further provisions concerning the PBM’s obligation to pass-through all Financial Benefits from all third parties are also contained in the proposed Contract. In contrast to typical PBM/client contracts, the proposed Contract also requires the PBM to pass through all Financial Benefits related to Specialty Drugs.

If selected by the Agency to enter into negotiations, as part of this negotiated acquisition process, the above-described Contract provisions will be identified in the PICA Program Contract & Pricing Questionnaire as the “Financial Benefit Pass-Through Provisions” and as described in greater detail throughout the proposed Contract.

## **VI. FINANCIAL BENEFIT GUARANTEES, AND THE TIMING OF FINANCIAL BENEFIT GUARANTEE PAYMENTS AND OTHER FINANCIAL BENEFITS**

The proposed Contract contains provisions establishing the following Financial Benefit Guarantees **and** Payment Provisions, to be paid by the PBM to OLR on a “per Paid Claim” basis. (See sample below)

For each retail Paid Claim	\$ _____
For each retail 90 Paid Claim	\$ _____
For each mail Paid Claim	\$ _____
For each Specialty Drug Paid Claim	\$ _____

Each Proposer should state its best, binding contract “offer” for each of these Financial Benefit Guarantees and Payment Provisions as indicated in the above sample. If selected by the Agency to enter into negotiations, as part of this negotiated acquisition process, this information should be filled in on PICA Program Contract & Pricing Questionnaire. If Vendor wishes to suggest an alternative breakdown for passing through all “rebates” and other third party “Financial Benefits”, PBMs will be requested to provide the requested quotes, and describe its suggested alternative structure as an addendum note to the above-referenced Questionnaire.

The proposed Contract also will contain provisions requiring the PBM to pay all Financial Benefits earned during the life of the Contract, even if the Financial Benefits are collected after the Contract is terminated. The proposed Contract also will contain provisions requiring the PBM to disclose disputes it is having with Pharmaceutical Manufacturers that may be resulting in the nonpayment of Financial Benefits that are owed. And, the proposed Contract will require the PBM to renegotiate all Financial Benefit Guarantees on an annual basis, to ensure Financial Benefit Guarantees remain competitive with those available in the marketplace throughout the life of the Contract.

All of the above-described Contract provisions will together be identified in the above-referenced Questionnaire as the “Financial Benefit Guarantees and Payment Provisions”.

In responding to this Questionnaire, each PBM Proposer will be required to identify for each type of Paid Claim (retail, retail 90, mail and specialty), the per Paid Claim Financial Benefit Guarantee the PBM is willing to provide.

Each PBM Proposer will also be asked to markup the Contract to provide the same information where indicated in the proposed Contract. It should be noted that each Financial Benefit Guarantee must be satisfied separately with no off-setting of one against another or aggregating of such guarantees for the purpose of satisfying any guarantees.

## **VII. TRANSPARENCY AND AUDIT PROVISIONS**

The proposed Contract contains several provisions requiring that the PBM's implementation of all Contract terms be conducted on an entirely transparent basis, and identifying with specificity all of the information that must be produced to ensure transparency.

The Contract will NOT allow the PBM to: (i) veto the plan's selection of an auditor, (ii) limit the auditor's access to documents and data; and (iii) limit the auditor's ability to disclose audit information to the plan, by requiring the auditor to sign a restrictive confidentiality agreement.

The Contract will contain explicit provisions stating OLR has a contractual right to select its own auditor. The Contract will also contain detailed provisions identifying each document, and each type of data, that must be provided by the PBM to OLR's auditor. The proposed Contract also attaches a confidentiality agreement, which will be the only confidentiality agreement before an audit is commenced. The PBM will not be allowed to create its own confidentiality agreement for the auditor to execute, and it will be required to deliver to OLR any confidentiality agreement that the PBM requires OLR's auditor to sign.

All of the above proposed Contract provisions will be referred to in the above-referenced Questionnaire as the "Transparency and Audit Provisions".

## **VIII. DEFINITIONS OF "BRAND" AND "GENERIC" DRUGS**

The proposed Contract will have definitions of "Brand Drugs" and "Generic Drugs" – with the following definitions, grounded in "fields" provided by Medi-Span:

"Brand Drugs": All drugs where the Generic Indicator (GI) field contains a: "M" (co-branded product), "N" (single source brand) or, in instances where a prescription is an "O" (multisource brand) but only where a prescription has a DAW Code 1, 2 or 7, an "O".

"Generic Drugs": All drugs where the Generic Indicator (GI) field contains a "Y" (generic), or "O" (multisource brand), except that if it contains an "O", and a DAW Code 0, 1, 2 or 7 the PBM will characterize the drug as a "Brand Drug".

If your PBM processes claims solely using First DataBank data, and you request that OLR allow such data to be used, alternative Contract definitions will be provided (in orange font) in the proposed Contract based on First DataBank fields.

All of the above-described Contract provisions will be referred to in the above-referenced Questionnaire as the "Brand/Generic Drug Definitions".

## **IX. GUARANTEES CONCERNING "DISPENSING FEES", "BRAND DRUG" and "GENERIC DRUG" PRICING**

As stated, the proposed Contract requires “Pass-Through Pricing” of all drug costs – whether drugs are brand, generic or specialty drugs, and whether drugs are dispensed through retail, mail or specialty pharmacies.

Where NADAC pricing is not the lowest available pricing at the time a NADAC-priced drug is dispensed at retail, to ensure that the PBM’s “pass through pricing” is competitive and as good as is available in the marketplace, the proposed Contract also binds the PBM to ensure that the PBM’s Pass-Through Pricing satisfies a series of “average annual guarantees”, and a set of “drug-by-drug guarantees” for newly off- patent brand drugs and their generic equivalents. Where NADAC pricing is offered by a PBM, said pricing shall not be subject to the "average annual guarantees".

If selected by the Agency to enter into negotiations, as part of this negotiated acquisition process, the Vendor should review of each of the above guarantees in the proposed Contract, in addition to the following referenced Contract provisions:

(i) Guaranteed Average Annual Retail, Retail 90 and Mail Guarantees:

In reviewing the above-described average annual Guarantees, in connection with each category of guarantee (retail, retail 90 and mail), OLR has created two Generic Drug guarantees, both of which eliminate the typical reference to “MAC” that is found in most PBM/Client contract generic guarantees. OLR has chosen to eliminate said reference, because OLR believes the MAC provisions in generic drug guarantees are allowing PBMs to exclude numerous generic drugs from any guarantee.

In cases where NADAC pricing is not available for a drug or is not the lowest cost available drug, after accounting for the pharmacy's dispensing fee at the time the drug is dispensed, OLR has replaced the typical PBM/client contract MAC guarantee, with two Generic Drug Guarantees that will together provide a guarantee for *all* Generic Drugs: (a) a Guarantee covering all Generic Drugs other than those within a 180 Day Exclusivity Period, and (b) a Guarantee covering those Generic Drugs within a 180 Day Exclusivity Period.

In connection with each category (retail, retail 90 and mail), OLR has also created separate guarantees for: the aggregate ingredient cost, and dispensing fees.

Please note: the OLR proposed Contract also contains detailed language specifically identifying which drugs will be included under – and excluded from – the guarantees. OLR has done so to eliminate all disputes about how guarantees are to be calculated that could eviscerate the meaning and utility of the guarantees.

(ii) Guaranteed Maximum Prices, On Newly Available Off Patent Drugs:

In addition to the “average annual” Generic Drug Guarantees where NADAC pricing is not available or applicable because dispensing fees that would be passed on to OLR would result in a higher overall cost, OLR wishes to ensure that its PBM tracks the prices downward of all newly available off-patent Brand Drugs – and their Generic Drug equivalents. Accordingly, OLR has created a structure where it will meet on a quarterly basis with its PBM, and establish maximum per unit prices for all such drugs, which prices will be memorialized in the Contract.

In the PICA Program Contract & Pricing Questionnaire, each PBM will be asked to indicate whether it will “Accept” or “Require Modification” of the language of all of the above-described Guarantees. Each PBM Proposer will be required to identify its best contract “offer” concerning each of the “average annual guarantees”.

If selected by the Agency to enter into negotiations, as part of this Negotiated Acquisition process, each Vendor will be required to fill in all of the “blank lines” in the proposed Contract to provide its best possible guarantees.

## **X. SPECIALTY DRUG PROGRAMS and PERFORMANCE**

The proposed Contract requires the Vendor to deliver all Specialty Drugs in a timely, appropriate manner (e.g., with the appropriate temperature control), and if a drug is delivered incorrectly and therefore not useable by the PICA Plan member, and a replacement drug is required, to invoice OLR only once.

## **XI. GUARANTEES CONCERNING SPECIALTY DRUG PRICING**

The proposed Contract will require “Pass-Through Pricing” not only for retail and mail drugs, but also for Specialty Drugs. To ensure that the PBM’s Specialty Drug prices are competitive in the marketplace, the Contract will also require the PBM to invoice for each identified Specialty Drug, the lower of: the purchase price per pill (if the PBM owns its own Specialty Drug subsidiary), or the ingredient cost reimbursed by the PBM to its Specialty Drug vendor (if the PBM uses a third-party specialty pharmacy as a vendor); or the application of NADAC pricing; or the price that results from application of the Minimum Guaranteed Discounts which will be incorporated into the Contract. If selected by the Agency to enter into negotiations, as part of this Negotiated Acquisition process, the Agency will provide the selected vendors with the Specialty Drug Minimum Guaranteed Discounts list that may include some drugs that are not typically included by PBMs on specialty drug guarantee lists. Vendors will be required to enter their proposed Minimum Guaranteed Discounts next to each Specialty Drug on this list and each such guarantee must be met separately. This list, once agreed to, will become an exhibit in the Contract.

OLR would prefer not to pay an additional fee in connection with the dispensing of Specialty Drugs, and to have the costs of such dispensing included in its Administrative Fee, as will be reflected in the proposed Contract. However, if your PBM would prefer to separate the costs of dispensing Specialty Drugs by charging a separate dispensing fee, you will be asked to indicate that fee in the PICA Program Contract & Pricing Questionnaire and in the proposed Contract.

The above-described Contract provisions will be referred to in the above Questionnaire as the “Specialty Drug Guarantees”.

In completing this Questionnaire, each PBM should indicate whether it will “Accept” or “Require Modification” of the Specialty Drug Guarantees.

## **XII. CAPTURING PRICE DECREASES FOR NEWLY AVAILABLE GENERIC DRUGS FOR OLR**

The proposed Contract intends to ensure that *all savings* are continuously captured and passed through on a timely basis, particularly when brand drugs come off patent and newly available lower cost generic equivalents become available. Thus, OLR has written its proposed Contract to ensure that *all savings* are captured and passed through, whether the PBM dispenses a newly-off-patent brand drug, or its generic equivalent.

All of the above-described Contract provisions will be referred to in the PICA Program Contract & Pricing Questionnaire as the “Newly Available Generic Drug” Provisions.

### **XIII. REQUIRED QUARTERLY AND ANNUAL NEGOTIATIONS**

OLR's proposed Contract will contain terms requiring the PBM to negotiate in good faith with OLR at the following points in time, to adjust the following Contract terms, should OLR seek to have such renegotiations to ensure Contract guarantees remain competitive throughout the term of the Contract:

Quarterly:

- Renegotiation of Specialty Drugs Minimum Guaranteed Discounts that will be identified and subsequently be incorporated as an exhibit in the executed Contract.
- Renegotiation of generic pricing for Newly Available Generic Drugs.

Annually:

- Renegotiation of the Average Annual Guarantees (for Retail, Retail 90 and Mail)
- Renegotiation of the Financial Benefit Guarantees
- Renegotiation of the PMPM Administrative Fee

All of the above-described Contract provisions will be in PICA Program Contract & Pricing Questionnaire and the proposed Contract as the "Contract Renegotiation Requirements".

### **XIV. NET DRUG COST REPORT**

OLR is aware that most health plans are unable to track the "net cost" of the drugs the plans purchase, since a drug's "net cost" consists of a drug's AWP, the contractually agreed upon discount, *and* the "rebates" passed through to the plan for that drug, and PBMs are typically unwilling to provide drug-by-drug "rebate" information. Since OLR wants to obtain better control over evaluating and influencing its members' drug usage, OLR wants to know on an ongoing basis the "Net Drug Cost" of all drugs purchased.

Accordingly, OLR's proposed Contract will include a requirement that its PBM provide a "Net Drug Cost Report", identifying by therapeutic category, each drug in the category, and the "net cost" of the drug factoring in all Financial Benefits passed through to OLR.

The above-described Contract provision will be referred to in the PICA Program Contract & Pricing Questionnaire as the "Net Drug Cost Report".

### **XV. "AWP" DEFINITION**

Where NADAC pricing is not available or offered by a PBM, OLR's proposed Contract alters the typical AWP Definition in several ways. It requires the PBM to use the AWP of the package size from which the drug was dispensed, not the package size of the drug dispensed, thus ensuring that OLR will obtain the benefit of all "bulk purchase discounts". It precludes the PBM from cherry picking the AWP of any National Reporting Service, and instead requires the PBM to identify which National Reporting Service's AWP it will implement. And it requires the PBM to use the actual manufacturer or repackager's AWP that is dispensed, precluding the PBM from substituting one for the other and thereby hiding discounts that have been received.

The above-described Contract provision is referred to in the PICA Program Contract & Pricing Questionnaire as the "AWP Definition".

### **XVI. "PAID CLAIM" PROVISIONS**

OLR's proposed Contract alters the typical structure of a PBM/Client contract that allows a PBM to invoice its client for denied or rejected or reversed claims. The Contract contains a definition for "Claim" and a definition for "Paid Claim". The latter makes clear that the PBM can invoice OLR only once for each dispensed drug, and may not invoice OLR for denied, rejected or reversed Claims. The remainder of the Contract contains numerous references to Claims and Paid Claims, making clear that invoicing and guarantees are to be based on Paid Claims only.

The above-described Contract provisions will be referred to in the PICA Program Contract & Pricing Questionnaire as the "Paid Claim Provisions".

## **XVII. PERFORMANCE GUARANTEES**

OLR's proposed Contract replaces the typical Performance Guarantees found in PBM/client contracts, which establish extremely high performance standards for various service issues, but contain three weaknesses: (i) The Guarantees do not establish any means for clients to audit the PBM's satisfaction of the performance standards; (ii) the guarantees allow the PBM to conduct its own audit of its satisfaction of the guarantees, thereby having the "fox guard the chicken coop"; and (iii) the guarantees set extremely weak penalties for the PBM's failure to honor the guarantees.

OLR's proposed Performance Guarantees are designed to retain extremely high performance standards, but to correct each of the above weaknesses. The proposed Contract assumes OLR's auditor will audit the Performance Guarantees, and the Contract therefore sets forth an agreed upon audit methodology for each Guarantee. The Contract also establishes an increasing set of penalties if any Guarantee is repeatedly violated by the PBM. The increasing penalties are designed to incentivize the PBM to meet its obligations, and promptly correct its failure to do so if it does not. Accordingly, if the PBM is found to have breached a performance guarantee in an initial audit, the PBM will not pay significant penalties. However, the PBM will pay increasing penalties if subsequent audits continue to identify violations. Moreover, the PBM will pay for OLR's audit costs, if two or more audits are needed to correct violations. OLR's Performance Guarantees are referred to in the . PICA Program Contract & Pricing Questionnaire as "Performance Guarantee Provisions".

## **XVIII. TREBLE DAMAGES For CONTRACT BREACHES**

OLR has long been troubled by PBMs' lack of incentives to satisfy contract pricing guarantees, and to pay health plans when PBMs have breached those contract guarantees. OLR is aware that PBM/Client contracts create those lack of incentives, because PBMs that are belatedly discovered in an audit to have breached contract pricing guarantees are only obligated to pay compensation for the amount of the breach.

Accordingly, the proposed Contract attempts to correct the above problem by including a requirement that treble damages be paid, if the PBM is discovered to have breached certain listed guarantees (including administrative fees or Financial Benefit Guarantees). Of course, treble damages will not be assessed if the PBM satisfies all pricing terms and guarantees.

The above-described provisions will be referred to in the PICA Program Contract & Pricing Questionnaire as the "Additional Damages Provisions".

## **XIX. VARIOUS PROGRAMS**

The proposed Contract, OLR wishes to explore numerous programs during the implementation period, and will probably implement most of those programs, including: Prior Authorization, Step Therapy, Mandatory Generic, Drug Switching, and a Mandatory Specialty Drug Pharmacy Program. Each of



these programs is described in detail in the Contract, including with terms that (a) preclude OLR's PBM from implementing any program in a way that undermines savings that should be obtainable by OLR; and (b) identify how damages will be calculated if each program is not implemented as directed.

If the Vendor will require OLR to pay any additional amounts to implement any of the above programs should OLR decide to do so, you will identify all such costs in the Contract. Similarly, if the Vendor would require OLR to pay additional amounts to alter any of these programs after they are implemented, you should identify those costs as well. If no costs are identified, OLR will be entitled to ask Vendor to implement – or alter – all such programs at no additional charge, as reflected in the Contract.

## **B. ADDITIONAL CONTRACT TERMS REQUIRED BY THE CITY OF NEW YORK**

1. General Provisions Governing Contracts for Consultants, Professional and Technical Services, annexed hereto as Appendix A (document is located on the RFP Page under Additional downloads on the OLR website) and the McBride Principles are made a part of this Prescription Benefit Management Services Agreement between New York City Office of Labor Relations ("Agreement") as if fully set forth herein. In addition, the Vendor and the City agree that this Agreement shall be subject to the City's Negotiated Acquisition process for Pharmacy Benefits Manager Services for the PICA Program for City of New York Employees and Non-Medicare Retirees, and their Dependents dated June 8, 2020. In the event of any express or implied conflict between the provisions of this Agreement, the following order of priority shall govern: (1) first, the body and exhibits of this Agreement shall govern; (2) thereafter, the General Provisions Governing Contracts for Consultants, Professional and Technical Services; (3) thereafter, the Negotiated Acquisition process document and (4) thereafter, the Expression of Interest shall govern.
2. **Authorization to do business in the State New York:** Vendor represents and warrants that it is duly authorized to or qualified to conduct business of the nature contemplated by the Contract, and is in good standing, in the State of New York and has the power and authority to enter into this Contract and to carry out the transactions contemplated hereby. Vendor further represents and warrants: (i) that it is not in arrears to the City of New York upon any debt or contract; (ii) that Vendor has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York and (iii) that there are no proceedings pending relating to the responsibility or qualification of the Vendor to receive public contracts.
3. **Termination of Agreement:**
  - a. In addition to the termination provisions provided in Appendix A herein, if the Vendor fails to fulfill any of the terms of this Agreement in a timely and satisfactory manner, the City may terminate this Agreement upon thirty (30) days written notice to the Vendor, or immediately upon the happening of any of the following events: (i) Vendor has made any misrepresentation in or with respect to, or has breached any provision of the Agreement; (ii) the filing by or against the Vendor of request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, relief as a debtor or other relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction, now or hereafter in effect; (iii) the making of any general assignment by the Vendor for the benefit of creditors; (iv) the appointment of a receiver or trustee for Vendor or for any asset of Vendor including without limitation, the appointment or taking possession by a "custodian," as defined in the Federal Bankruptcy Code; or (v) the Vendor engages in negligence, recklessness, fraud or other willful or intentional misconduct in its performance of any service required herein. If the City terminates the Agreement, it shall have the right to award a new agreement to another contractor and the Vendor shall be responsible for all damages arising from its breach as well as all costs incurred in re-letting the agreement, including actual attorneys' fees and expenses.

- b. Notwithstanding any other termination provision of this Agreement, the City may terminate this Agreement upon providing thirty (30) days' written notice, if it is determined by the City that termination of the contract is in the best interest of the City.
- c. In the event that funds are not appropriated or made available to the City for the continuation of the services described herein in any of the years succeeding the first, this contract shall terminate automatically. Such termination, however, shall not affect either the City's rights or the Vendor's rights under this termination clause.

**Please note that OLR does not intend for the above termination rights to be reciprocal.**

- 4. **No Penalties upon Expiration of Contract:** Vendor shall impose no penalties or surrender charges whatsoever for the transfer of assets or responsibilities upon expiration or termination of the Contract.
- 5. **Assignment:** Rights or obligations under this Agreement may not be assigned or delegated by Vender without the prior written consent of OLR. Any permissible assignment or delegation under this Agreement shall accrue to the benefit of and shall be enforceable against successors and assigns.
- 6. **Waiver:** No waiver of any of the provisions of this Agreement shall be binding upon any party hereto unless in writing and signed by said party or its duly authorized representative. No failure on the part of the OLR to exercise any right or remedy hereunder, whether before or after the happening of a default, shall constitute a waiver of such default, any future default or any other default.
- 7. **Entire Agreement:** The Contract represents the entire understanding of the parties with respect to the subject matter hereof. No representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by any party that are not set forth expressly in this Agreement. This Agreement may not be amended, modified or supplemented at any time whatsoever unless such amendment, modification of supplementation is reduced to writing executed by all parties hereto.
- 8. **New York Law:** The validity, performance, construction and effect of this Agreement shall be governed by the laws of the State of New York applicable to contracts entered into to be fully performed entirely therein.
- 9. **Venue:** The Vendor hereby submits to the jurisdiction of the Supreme Court of the State of New York and agrees with City that personal jurisdiction over this Agreement shall rest with the Supreme Court of the State of New York for purposes of any action related to this Agreement or the enforcement of same. The Contractor hereby waives personal service by personal delivery and agrees that service of process may be made by post-paid certified mail directed to Vendor at Vendor's address set forth at the address recited in the preamble hereto or at such address as may be designated in writing by the Vendor to be effective with the same effect as though personally served.
- 10. **Severability:** In the event that any provision of this Agreement is illegal, invalid against public policy or unenforceable for any reason, the remainder of this Agreement shall nonetheless remain in full force and effect.
- 11. **Receipt of Data:** All records and supporting documentation are the property of, and will be made available to OLR as needed. OLR shall have the right to determine which records or facts are needed and the Vendor agrees to provide this information within twenty (20) days after OLR's request of such information.
- 12. **Right to Recovery:** The Vendor will be financially responsible for any overpayment due to its own error. If the amount of claim payment reimbursed exceeds the proper amount allowed in the plan, OLR requires the vendor to recover the excess.

13. **Right to Audit:** OLR reserves the right to have an auditor of its own choosing review and audit, from time-to-time, all enrollment and claim files, claim data, plan eligibility data, related financial accounting, claims systems and procedures and all terms of this Contract to assure compliance with the terms thereof. Audits may be performed by authorized OLR personnel or by outside consultants. Vendor has no right to deny OLR's personnel or its outside consultant access to records required to audit the terms of this Contract. The Vendor agrees to provide all claim tapes and/or reports requested for the purpose of selecting a sample population, without restriction. No charge may be made for cooperation in such audits by the vendor.
14. **Future Plan Transition Rights:** In the event that the OLR subsequently transfer responsibilities to another vendor, the Proposer must agree to supply the successor administrator with a claims history tape, prior eligibility data, and any other claim records deemed necessary by OLR. The Proposer must agree to make every effort to cooperate with the successor administrator and OLR in order to facilitate the transition.
15. **Eligibility Reporting Rights:** The City will provide one initial enrollment eligibility file or tape with subsequent monthly updates for additions/changes/deletions only.
16. **Financial Reporting Rights:** The Vendor will be expected to provide Management monthly bank reconciliation's and financial year-end accountings. All of these reports are to be provided at no additional cost.