

DATE: 09/26/2023

NON-CONSTRUCTION CONTRACT SOLICITATION NOTICE

MTA- HQ IS NOW ADVERTISING FOR THE FOLLOWING:

SSE #: 0000430645

OPENING/DUE DATE: 10/23/2023

TYPE OF SOLICITATION: RFP

DOCUMENT AVAILABILITY DATE: 09/26/2023

SOLICITATION TITLE: MTA NYCT Dental Benefits

DESCRIPTION: The MTA is soliciting Step 1 RFP submissions for Prequalification Requirements from Proposers to provide Dental Benefit services on behalf of its NYCT Agency, which at the time of publication includes bargained/represented employees, retirees and their dependents. MTA is utilizing a two-step RFP process. The prequalification requirements and submission procedures are specified in the Step 1 Prequalification Form he Metropolitan Transportation Authority (“MTA or “Authority”) issues this Request for Proposal (“RFP”) for Dental Benefit services on behalf of the New York City Transit Authority (“NYCTA”) and the Manhattan and Bronx Surface Transit (“MaBSTOA”), which at the time of publication includes bargained active employees, retirees, and their dependents from SSSA and TSO Local 106. NYCTA and MaBSTOA shall be collectively referred to as “NYCT”, except where the context is indicated, otherwise, or their individual acronyms are used instead. Through this RFP, the MTA is seeking cutting-edge solutions that will deliver an optimal member experience, empower members to make optimal dental choices, and improve the overall health of the covered population.

Funding: 100% Operating Goals: N/A Est \$ Range: \$10M- \$50M Contract Term:3 Years with two year option

****PLEASE REVIEW THE ATTACHED SOW FOR ADDITIONAL INFORMATION****

() **PRE-BID CONFERENCE** **DATE:** **TIME:**

() **SITE TOUR** N/A **DATE:** **TIME:**

PLACE:

FOR MORE INFORMATION, PLEASE CONTACT:

PROCUREMENT REPRESENTATIVE: Re-An Pasia

EMAIL: re-an.pasia@mtahq.org



NOTICE TO RECIPIENTS: THIS MTA STEP 1 RFP ISSUANCE AND PROPOSER QUALIFICATIONS SUBMISSION PROCESS FOR THIS PROCUREMENT WILL BE CONDUCTED VIA A SECURE ONLINE PORTAL

September 26, 2023

To Prospective Proposers:

**Re: Request for Proposal (RFP) No. 430645
MTA NYCT Dental Benefits**

The Metropolitan Transportation Authority (“MTA”) is soliciting technical and cost proposals from qualified insurance companies (“Proposers”) that are interested in providing Dental Benefits services to the MTA New York City Transit Authority (“NYCTA” or “NYCT”).

Description of Goods or Service:

MTA is soliciting Step 1 RFP submissions for Prequalification Requirements from Proposers to provide Dental Benefit services on behalf of its NYCT Agency, which at the time of publication includes bargained/represented employees, retirees and their dependents. MTA is utilizing a two-step RFP process. The prequalification requirements and submission procedures are specified in the Step 1 Prequalification Form.

MTA will be conducting this procurement through a secure online portal managed by Conductiv (formerly Government Sourcing Group aka GSG). In order for a company to access the Conductiv platform and be eligible to submit an electronic proposal prior to the specified due date, a company must register with Conductiv. If you previously have submitted MTA proposals through GSG, the email and password used for the GSG portal can be utilized on the Conductiv platform. A company that registers is encouraged to submit their qualifications and if qualified, a proposal, but is not obligated to do either after its registration.

Conductiv will facilitate Prospective Proposers’ registration process and provide access to the RFP documents with instructions for responding to the RFP process. Conductiv’s web-based process has been customized for MTA to electronically receive proposals in an electronically secure manner. To obtain information about the registration process and register for this procurement, a Prospective Proposer must contact Elvis Herrera of Conductiv by telephone at (917) 579-2486 or by email to elvis.herrera1@mtabsc.org.

**MTA RFP 430645
Notification Letter
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Prospective Proposers may register their company for this event by completing the form at <https://app.conductiv.com/login> .

No Conductiv / GSG Portal Fees:

A Proposer will not be charged any fee by Conductiv / GSG to register or submit a proposal for this procurement and the proposer awarded contract will not be charged any fees by or have any reporting obligation to Conductiv / GSG.

MTA will evaluate Prospective Proposers submissions received based on the Evaluation Criteria specified in the RFP documents, discuss / negotiate in person or by telephone or by email with one or more Proposers and make up to the number of awards specified in the RFP documents.

It is anticipated that the Step 1 Prequalification document will be available on the Conductiv portal to the registered Proposers on or about September 29, 2023.

The currently scheduled due date for MTA to receive Step 1 Prequalification submissions through the Conductiv portal is October 23, 2023 at 2:00pm ET. No Step 1 Prequalification submissions will be accepted after the due date, unless that date is extended at the MTA's sole discretion.

Please be advised that all MTA agency procurement opportunities are subject to the NYS Procurement Lobbying Law. A Prospective Proposer is not permitted to contact any MTA or Conductiv personnel other than the designated points of contact, who are Re-An Pasia for the MTA (re-an.pasia@mtahq.org) and Elvis Herrera for Conductiv. A violation will be reported and may result in a non-responsibility determination, disqualification from award or debarment for a period of up to four years. For additional information about the Lobbying Law, please find information on the NYS Office of General Services website at <https://ogs.ny.gov/acpl>.

We look forward to your participation in this e-procurement.

Sincerely,

Re-An Pasia
MTAHQ Category Manager

**Metropolitan Transportation Authority (MTA)
Dental Benefits Request for Proposal (RFP)
RFP No.: 430645**

Scheduled RFP Release Date: September 29, 2023

STEP 1 - Mandatory Pre-Qualification

RFP Objective

The Metropolitan Transportation Authority (“MTA or “Authority”) issues this Request for Proposal (“RFP”) for Dental Benefit services on behalf of the New York City Transit Authority (“NYCTA”) and the Manhattan and Bronx Surface Transit (“MaBSTOA”), which at the time of publication includes bargained active employees, retirees, and their dependents from SSSA and TSO Local 106. NYCTA and MaBSTOA shall be collectively referred to as “NYCT”, except where the context is indicated, otherwise, or their individual acronyms are used instead.

Through this RFP, the MTA is seeking cutting-edge solutions that will deliver an optimal member experience, empower members to make optimal dental choices, and improve the overall health of the covered population.

The MTA will utilize a two-step RFP process as follows:

1. Step 1 – Prequalification of firms, in accordance with the requirements detailed herein; and
2. Step 2 – Submission of proposals from firms pre-qualified under Step 1.

Current State

The NYCT currently offers a PPO and a DHMO plan administered by a single vendor.

Plan Type	Dental Enrollment
PPO	7,382
DHMO	3,493
Total	10,875

Future State

The MTA is seeking to offer a PPO and DHMO plan with a best-in-class dental benefit services vendor.

It is anticipated that any contract entered into as a result of this RFP (the “Contract”) will have a term of two (2) years that commences on or about January 1, 2025, and ends December 31, 2027. All plan years will be based on a calendar year basis beginning on January 1 and ending December 31 of the same calendar year. The MTA, in its sole and absolute discretion, will have the option to extend the Term of the Contract for an additional two (2) years, which shall modify the Contract term to expire December 31, 2029. The MTA further reserves the right to exercise such option one year at a time or two years at one time.

The MTA will only consider proposals from pre-qualified proposers. As such, the MTA is conducting this Mandatory Pre-Qualification as Step 1 to the RFP process, to establish the list of firms eligible to propose for the RFP.

MTA Point of Contact; Lobbying Law Requirement

Questions or comments about this Mandatory Pre-Qualification, or the RFP generally, must be directed only to the MTA’s designated Point of Contact: Re-An M. Pasia, Category Manager, MTA Procurement by email to re-an.pasia@mtahq.org, c/o the MTA authorized representative Elvis Herrera of Conductiv by telephone at (917) 579-2486 or by email to elvis.herrera1@mtabsc.org with copy by email to Re-An M. Pasia at re-an.pasia@mtahq.org.

Pursuant to the New York State Finance Law Sections 139-j and 139-k (the “Lobbying Law”), which imposes restrictions on “contacts” during the procurement process and addresses the disclosure of contacts and the responsibility of proposers during procurements, the designated Point of Contact is the only person authorized to receive questions regarding this Mandatory Pre-Qualification or the RFP. The Lobbying Law defines “contact” as oral, written, or electronic communications with the MTA during the procurement process which is intended to influence the procurement.

Step 1: Mandatory Pre-Qualification of Prospective Proposers

All Mandatory Pre-Qualification responses must be e-mailed to the Point of Contact. The Point of Contact must receive the completed Mandatory Pre-Qualification responses by 2:00pm ET on October 23, 2023. Copies of the RFP will be distributed thereafter, to short-listed proposers who have satisfied the Mandatory Pre-Qualification requirements set forth below.

Pre-Qualification Requirements

All prospective proposers must submit the following documentation to the MTA by the pre-qualification date to be considered for pre-qualification.

1. Include a Cover Letter with the following information:
 - a. Name and address of organization
 - b. Name, address, phone number, and email address of individual submitting this Step 1 Pre-Qualification Statement
 - c. Statement attesting that your organization meets all the Minimum Qualifications

2. Minimum Qualifications for Dental Coverage (Fully Insured and Self-Insured). The MTA’s minimum qualifications are listed below in questions one (1) through eight (8). Only prospective proposers who answer all eight (8) minimum qualifications shall be considered as pre-qualified, and eligible to submit a proposal to this RFP as part of Step 2.

	Minimum Qualification	Yes/No	Remarks
1.	Does the prospective proposer maintain a current business license and/or other required certifications necessary to operate in the States of New York?		
2.	Does the prospective proposer meet all minimum state insurance net worth and reserve requirements?		
3.	Does the prospective proposer maintain network of providers in these areas? <ol style="list-style-type: none"> 1. Tri-state Area (NY, NJ & CT) 2. Pennsylvania 3. Florida 4. North Carolina 5. South Carolina 		
4.	Does the prospective proposer offer a Dental PPO plan (if proposing a PPO)?		
5.	Does the prospective proposer offer a Dental DHMO plan (if proposing a DHMO)?		
6.	Does the prospective proposer have three (3) years' experience offering a self-insured and/or fully insured Dental PPO and/or DHMO plan (for the plan type proposing)? Identify the coverages/funding type.		
7.	Does the prospective proposer service, at a minimum, three (3) large employer groups, consisting of 20,000 subscribers (defined as employees and retirees) or more?		
8.	Does the prospective proposer's current plan membership have a minimum of one million participants?		

3. Submit all items listed as required submissions for Mandatory Pre-Qualification:

- a. Intent to propose
 - i. DHMO - Fully Insured
 - ii. PPO - Self-Insured
 - iii. PPO - Fully Insured; and
- b. Non-Disclosure Agreement.

Step 2: Proposal submissions from pre-qualified firms

As part of Step 2 to this RFP process, only prospective proposers who are pre-qualified under this Step 1 process may submit their proposals for consideration for the following lines of coverage:

- Fully Insured Dental HMO (DHMO) and/or
- Self-Insured or Fully Insured Preferred Provider Organization (PPO) plan

Prospective Proposers must clearly indicate in their proposals which of the two types of plans (Self-Insured, Fully Insured, or both) will be proposed for each line of coverage.

Each firm will be requested to provide insured rate proposals and self-funded rates as part of their proposal. Proposal submission requirements will be set forth in the RFP documents, which shall be released at the conclusion of this Step 1 (Mandatory Pre-Qualification).

Intent to Propose
Metropolitan Transportation Authority
Dental Benefits Request for Proposal No. 430645

All Proposers must complete, sign and upload this form to the Conductiv portal no later than October 23, 2023 at 2:00pm ET.

We confirm the receipt of the Request for Proposal and intend to propose on the following plan components signified by an "X" in the applicable box(es):

Plan Component	DENTAL BENEFITS PLAN	
	Self-Insured	Fully Insured
Preferred Providers Organization (PPO)		
Dental HMO (DHMO)	N/A	

Print Name: _____

Title: _____

Company's Legal Name: _____

Company's Federal Tax ID: _____

Signature: _____

Date: _____

Email Address: _____

NOTE: Proposers must sign, have the Acknowledgement completed, and return to the MTA the Confidentiality and Non-Disclosure Agreement in order to receive the RFP, and related data and attachments.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Vendor Name:	
Vendor Address:	

The Purpose. The above-named vendor (the “**Vendor**” or “**Receiving Party**”) has submitted an Intent to Propose to the Metropolitan Transportation Authority (“**MTA**” or “**Disclosing Party**”) related to MTA’s Request for Proposal for MTA NYCT Dental Benefits (the “**RFP**”) No. 430645. To facilitate Receiving Party’s development and submission of a proposal that is responsive to the RFP, the MTA as the Disclosing Party, may provide Vendor with Confidential Information, the confidential nature of which shall be governed by the terms and conditions of this Confidentiality and Non-Disclosure Agreement (this “**Agreement**”). In return for access to Confidential Information, the Receiving Party agrees as follows:

1. Definitions.

- a. “**Confidential Information**” means any and all data, information and any other content, contained in any media including, but not limited to, electronic, paper, or verbal interactions by the MTA, an MTA Representative or an MTA Third Party Contractor that: (i) concerns Employee Information, Plan Data, census and claims data, information concerning MTA present and/or future business operations and processes, computer systems, and technology, information concerning current and/or former MTA employees, contractors, and/or vendors, methods, research, processes, procedures, operations, or other information of or about the MTA; (ii) is contained within notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Receiving Party containing, in whole or in part, any such information furnished by the MTA, and all reproductions of such information; (iii) results from any discussions between the MTA and the Receiving Party relating to the Purpose; (iv) is marked confidential, restricted, or proprietary at the time of disclosure or a reasonable period thereafter; or (v) by the nature of the information itself, or the circumstances surrounding its disclosure, should in good faith be treated as confidential.
- b. “**Disclosing Party**” means the MTA, as the party disclosing Confidential Information or on whose behalf Confidential Information is disclosed.
- c. “**Employee Information**” means any individual information related to employees and/or their family members, including names, birthdates, ages, identifying numbers, addresses, relationships, and salary and wage information. Employee Information expressly includes dependent information.
- d. “**Personal Information**” means information that could be used to: (i) identify a unique natural person; (ii) authenticate such natural person, or (iii) commit identity theft or impersonation. By way of clarification, and not limitation, certain Employee Information could contain Personal Information, though not all Employee Information is classified as Personal Information.
- e. “**Plan Data**” means any information related to a benefit plan that is sponsored by the MTA, including but not limited to enrollment information, benefit claim data, and benefit plan documentation.
- f. “**Receiving Party**” means the above-named Vendor, as the party that receives or is otherwise given access to the Confidential Information of the Disclosing Party.
- g. “**Representative**” means, with respect to any party, its affiliates and subsidiaries, and the directors, officers, employees, attorneys, including outside counsel, accountant(s) and agents of such party or its affiliates.
- h. “**Third Party**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental authority (or any department, agency, or political subdivision thereof) other than the parties to this Agreement. The term Third Party expressly excludes contractors, consultants, subcontractors and sub consultants under contract by either party to work on the Purpose (collectively, “**Third Party Contractors**”).

- 2. Duty of Confidentiality; Non-disclosure Standards.** The Receiving Party shall (i) not use Confidential Information for any purpose other than responding to the RFP; (ii) disclose Confidential Information only to the Receiving Party's Representatives and Third Party Contractors who have a need-to-know such Confidential Information for the purpose of facilitating or assisting the Receiving Party in responding to the RFP; (iii) protect all Confidential Information, and direct all Third Party Contractors to protect all Confidential Information, from unauthorized use, access, or disclosure with the same degree of care as the Receiving Party treats its own Confidential Information, which shall be no less restrictive than the Receiving Party's duty hereunder and by applicable law; (iv) limit its storage, transmission and use of the Confidential Information to locations within the United States and which are in accordance with all applicable statutory and regulatory requirements; and (v) not disclose the Confidential Information to any Third Party without the prior, written consent of the MTA, which consent may include the requirement of a signed Business Associate Agreement between the Receiving Party and the Third Party. The Receiving Party agrees that it shall (i) be fully responsible for any breach of this Agreement by the Receiving Party or any of its Representatives and Third Party Contractors; and (ii) promptly notify in writing the MTA in case of any misuse or misappropriation of such Confidential Information that may come to its attention. Except for the permitted uses and disclosures expressly set out in this Agreement, no other uses or disclosures are permitted.
- 3. Exceptions.** Except for Personal Information, for which there shall be no exception, Confidential Information does not include information that: (i) was already known to the Receiving Party at the time of disclosure; (ii) was or becomes available to the Receiving Party on a non-confidential basis from a Third Party, provided that such Third Party is not bound by an obligation of confidentiality to the MTA with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of the Receiving Party; (iv) is independently developed by the Receiving Party without access to, or use of, the Confidential Information, as evidenced through proper documentation; or (v) is required to be disclosed by law, court order by a court of competent jurisdiction, governmental demand, other compulsory legal process, provided that the Receiving Party notifies the MTA of such required disclosure promptly and in writing and cooperates with the MTA, at the MTA's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure, except to the extent that providing such prior notice to the MTA is prohibited by law or regulatory authority. Notwithstanding the foregoing, in the event the Receiving Party obtained information related to the Purpose prior to the execution of this Agreement, and such information would have been classified as Confidential Information, the Receiving Party agrees to cease any disclosure thereof as of the Effective Date, even if Receiving Party has previously disclosed such information to Third Parties.
- 4. No Publicity.** The Receiving Party and its Representatives shall not, without the prior written consent of the other party, disclose to any Third Party the fact that Confidential Information has been disclosed under this Agreement, that discussions are taking place between the parties, the existence of a potential future transaction or any of the terms, conditions, status or other facts with respect thereto, except (i) as required by law and then only with the prior written notice as soon as possible to the other party to permit such party to object to such disclosure; or (ii) in the event both the Disclosing and Receiving Parties have a non-disclosure agreement with a Third Party also taking part in the Purpose, the existence of which is made known in advance to all parties in writing (email sufficient).
- 5. No Obligation or Reliance.** Except as may otherwise be expressly stated herein, all Confidential Information is delivered on an "as is" basis and all representations and warranties, express or implied, are hereby disclaimed. The MTA shall not be responsible or liable for any decisions made by the Receiving Party in reliance upon any Confidential Information.
- 6. Ownership.** Nothing contained in this Agreement shall be construed to (i) transfer any ownership in Confidential Information, or (ii) grant any license to use, sell, exploit, copy or further develop any Confidential Information or any MTA trademark, trade name, or any other intellectual property rights.
- 7. Relationship of the Parties; No Commitment.** This Agreement does not create any agency, partnership or joint venture relationship between the parties.

 - a.** Nothing contained in this Agreement shall create or imply any obligation or commitment on or by either party to: (i) disclose any particular information, (ii) make any investment in or payment to the

other party or in any business of the other party, (iii) enter into any other business arrangement or contract of any nature whatsoever with the other party; or (iv) purchase or sell any products or services to or from the other.

- b. Nothing contained in this Agreement (i) limits the right of either party to develop, procure or market systems, products, or services that may be similar to or competitive with those of the other party; provided that no unauthorized use or disclosure of the other party's Confidential Information is used in such activities; or (ii) will be construed to prevent either party from entering into negotiations or business relationships with any Third Party, even if such Third Party is a competitor of a party to this Agreement.

- 8. **Prohibition on Identity Determination.** The Receiving Party acknowledges that Confidential Information includes Employee Information and Plan Data. Receiving Party represents, warrants and agrees that it will (i) store, maintain, and transmit Confidential Information in accordance with all applicable legal requirements and best practices and in a manner that maintains the anonymity of persons whose information may be contained therein; (ii) not, under any circumstance, use Confidential Information disclosed pursuant to this Agreement, alone or in combination with any other information in the possession of or available to Receiving Party, regardless of the source or nature of such information, for the purpose of determining the identity of persons to whom Confidential Information disclosed pursuant to this Agreement pertains or to otherwise determine which persons one or more records comprising the Confidential Information pertains. This shall include, without limitation, using Confidential Information in combination with any other information in the possession of or otherwise available to the Receiving Party, regardless of the public or non-public nature of such.
- 9. **Term.** This Agreement shall commence on the Effective Date and shall continue (i) unless terminated in accordance with Section 10 (Termination); or (ii) the parties enter into a definitive agreement/contract. Notwithstanding the termination or expiration of this Agreement, the Receiving Party's obligations hereunder shall survive and continue perpetually unless the Confidential Information is subject to Section 3 (Exceptions) at no fault of either party.
- 10. **Termination.** The MTA may terminate this Agreement for any reason upon ten (10) days' written notice to the Receiving Party.
- 11. **Return of Materials.** All Confidential Information including, but not limited to, all copies and reproductions thereof and all documents and materials derived from such Confidential Information prepared by or for the Receiving Party or any of its Representatives, shall, irrespective of whether such is in writing or stored electronically, be returned or irrevocably destroyed by the Receiving Party and its Representatives, at the MTA's election, promptly upon the earlier of: (i) the termination or expiration of this Agreement; (ii) either party's decision not to pursue the Purpose; or (iii) the MTA's request. The MTA may request certification from Receiving Party that destruction has been irrevocably completed for all primary, backup and any other applicable systems from the Receiving Party, which shall be promptly provided.
- 12. **Remedies.** The Vendor acknowledges that any breach or anticipatory breach of this Agreement will cause MTA irreparable harm for which there may be no adequate remedy at law, and that the MTA shall therefore be entitled to injunctive or other equitable relief without bond, in addition to any other remedy available to it at law or otherwise. MTA shall be entitled to recover its attorney's fees and other costs reasonably incurred in any action to enforce its rights under this Agreement.
- 13. **Indemnification.** Receiving Party will defend, indemnify and hold harmless MTA, its Representatives and Third Party Contractors (collectively, "Indemnitees") from and against any and all third-party claims and actions ("Claims") and any damage, loss, liability, costs and expenses of any kind (including reasonable attorneys' fees) actually incurred in connection therewith (collectively, "Loss") (i) arising from any use, disclosure and/or access to or of the Confidential Information that was not authorized by this Agreement, (ii) arising from any material breaches of the obligations of the Receiving Party under this Agreement, and (iii) incurred by or asserted against Indemnitees and arising from the acts or omissions of Receiving Party, its Representatives or its Third Party Contractors in material breach of this Agreement.

- 14. No Assignment; Modifications.** This Agreement may not be (i) assigned by Receiving Party y without the prior written consent of the MTA, and/or (ii) amended or modified except by a written agreement signed by each party. This Agreement shall be binding upon and inure to the benefit of any successors and permitted assigns.
- 15. Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its principles of conflict of laws. Each party consents to the jurisdiction of the federal courts in the State of New York or the state courts of the State of New York in connection with any dispute arising under this Agreement, and hereby waives, to the maximum extent permitted by applicable law, any objection, including any objections based on *forum non conveniens*, to the bringing of any such proceeding in such jurisdictions.
- 16. Severability.** In the event any term or provision of this Agreement is determined to be invalid, illegal or unenforceable for any reason, in whole or in part, by any court of competent jurisdiction, the remaining terms or provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.
- 17. No Waiver.** No waiver of rights under this Agreement shall be effective unless granted, in writing, by each party with an interest in such rights. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.
- 18. No Effect on Other Obligations.** Nothing in this Agreement limits any confidentiality obligation(s) of the Vendor to MTA arising outside this Agreement.
- 19. Original Document.** The following shall be deemed an original of this document: an original is signed and notarized by the Receiving Party, scanned and emailed to MTA, and printed out.
- 20. Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any prior or contemporaneous oral or written representation regarding such subject matter.

IN WITNESS WHEREOF, the Vendor/Receiving Party warrants that it has the right to enter into this Agreement and hereby executes this Agreement on the date set forth below (the “**Effective Date**”).

VENDOR/RECEIVING PARTY

By: _____ Date: _____
 Name:
 Title:

ACKNOWLEDGEMENT

State of _____
 County of _____

On this the ____ day of _____, 2023 before me personally came _____ [Name], who proved to me his/her identity on the basis of satisfactory evidence, _____ [Title] of _____ [Name of Vendor], the entity identified as the Vendor in the foregoing Confidentiality and Non-Disclosure Agreement, that s/he is duly authorized to execute said instrument on behalf of Vendor, and that s/he has so executed the foregoing instrument for the purposes stated herein.

 NOTARY PUBLIC OR COMMISSIONER OF DEEDS

BUSINESS ASSOCIATE AGREEMENT

This RFP Questionnaire and Exhibit sets forth the terms and conditions under which the Contractor (“Business Associate”) will provide services, as defined herein, on behalf of the Plan. The New York City Transit Authority is the Sponsor of the Plan.

WITNESSETH

WHEREAS, the Plan is a Covered Entity pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”); and

WHEREAS, the Plan desires to engage the services of Business Associate to perform certain tasks as identified herein on behalf of the Plan which may involve the use or disclosure of certain individually identifiable health information, as defined in 45 CFR § 160.103 (“Protected Health Information” or “PHI”) created or received by the Plan; and

WHEREAS, Business Associate desires to perform the services on behalf of the Plan as set forth in the Dental Benefits Services Agreement Contract No. **TBD** (the “Agreement”) herein;

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms in the federal Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, *as amended*, and the federal Security Standards, 45 CFR Parts 160, 162 and 164 (collectively, the “Privacy Rule”) including, but not limited to, “Business Associate” and “Covered Entity”. Protected Health Information or PHI shall be limited to the information created or received by the Business Associate in its capacity as a business associate (and not a dental or other health care provider) from or on behalf of the Plan.

1.2 The term “Agreement” shall mean the Contract No. **TBD** between the MTA and the Business Associate, to which this Business Associate Agreement is appended as Exhibit **TBD**.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Services to be Provided. On behalf of the Plan, Business Associate will perform or assist in the performance of the following:

Provide dental benefit services for eligible active and retiree groups, as set forth in the Agreement.

2.2 Obligations Regarding Uses and Disclosures of Protected Health Information.
Business Associate agrees to:

- a. not use or disclose PHI other than as permitted or required by law, this Business Associate Agreement, or the Agreement, and that access to PHI shall be restricted to Business Associate's personnel, agents and subcontractors (and maintained only on the equipment used by such persons for purposes hereunder), whose responsibilities justify the need for such access, and who in fact have a need to know such PHI;
- b. use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- c. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement;
- d. timely report to the Covered Entity any use or disclosure of the PHI not provided for by this Business Associate Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 CFR 164.410 (Notification by a Business Associate), and any security incident of which it becomes aware;
- e. in accordance with 45 CFR 164.502(e)(1)(ii), 164.308(b)(2), and 164.314(a), ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply, by law and this Business Associate Agreement, to the Business Associate with respect to such information;;
- f. provide access, at the request of the Plan, and in a reasonable time and manner, to PHI in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual in order to meet the requirements under 45 CFR 164.524 (Access of Individuals to Protected Health Information), which specifies requirements of Individuals to access their PHI;
- g. make any amendment(s) to PHI in a Designated Record Set (i) as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 (Amendment of Protected Health Information), or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.526; (ii) at the request of the Plan or an Individual, and (iii) in a reasonable timely and manner;

- h. make internal practices, books, and records, including policies and procedures and PHI, which relate to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Plan available to the Secretary of the Department of Health and Human Services, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining the Plan's compliance with the Privacy Rule;
- i. document such disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- j. provide the Plan or an Individual, in a reasonable time and manner, information collected in accordance with 2.2(i) above of this Business Associate Agreement, to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528; and
- k. never advertise the sale of, sell or otherwise market any PHI to any third party.

2.3 Permitted General Uses and Disclosures by the Business Associate. Except as otherwise limited by this Business Associate Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, the Plan for the purposes identified in Paragraph 2.1 above, if such use or disclosure of PHI would not violate the Privacy Rule if done by the Plan.

2.4 Specific Use and Disclosure Provisions

- a. Except as otherwise provided in this Business Associate Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- b. Except as otherwise provided in this Business Associate Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential, that it will be maintained, used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Business Associate may use PHI to report violations of law to appropriate federal and State authorities, consistent with 45 CFR 164.502(j)(1).

2.5 Obligations Regarding the Security of Electronic Protected Health Information.

Business Associate will implement reasonable security provisions to ensure the protection of electronic protected health information, if any, as that term is defined in HIPAA's Security Standards, 45 CFR Parts 160, 162 and 164. At a minimum, Business Associate will:

- a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, places on its equipment or transmits on behalf of the Plan as required by the Security Standards; and
- b. Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and
- c. Report to the Plan any security incident or any use or disclosure of the PHI not allowed by this Business Associate Agreement of which it becomes aware except that, for purposes of the Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Business Associate.

3. OBLIGATIONS OF THE PLAN

3.1 Provisions for the Plan to Inform Business Associate of Privacy Practices and Restrictions.

- a. The Plan shall notify the Business Associate of any limitation(s) in the Plan's Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of PHI.
- b. The Plan shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Plan shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to in accordance with 45 CFR 164.522, or that it is mandated by 42 U.S.C. 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- 3.2 Permissible Request by the Plan. The Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Plan, unless Business Associate will use or disclose PHI for, and the Services Agreement includes provisions for, data aggregation or management and administrative activities of Business Associate.

4. COMPLIANCE WITH GINA & HITECH ACTS

- 4.1 The Business Associate agrees to comply with the Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110-233, 122 Stat. 881 (May 21, 2008), as amended, and all relevant regulations, including:
1. Refraining from making coverage determinations, or adjusting premiums or contribution amounts on the basis of genetic information, and
 2. Not asking or requiring an insured to undergo a genetic test for purchasing such information for underwriting purposes.
- 4.2 Business Associate acknowledges that it is directly subject to and agrees to comply with the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009), including those requirements outlined by Sections 13401 and 13405 of the Act, codified at 42 U.S.C. 17931 and 17935, and to ensure that any subcontractors or business associates of Business Associate comply as well.
- 4.3 Business Associate agrees to protect PHI that is stored on mobile electronic devices or transmitted over public networks in a manner consistent with applicable security standards under the HIPAA and the HITECH Act, including, but not limited to, sufficient encryption and other security measures to ensure that PHI is “unusable, unreadable or indecipherable to unauthorized individuals” within the meaning to the HITECH Act and applicable regulations.
- 4.4 Business Associate agrees to secure PHI in a manner consistent with applicable HIPAA Security Standards, NIST Special Publication 800-111 for data at rest, and Federal Information Processing Standards (“FIPS”) 140-2 for data in motion or such other standards as the Secretary of Health and Human Services may adopt from time to time as specified by the HITECH Act.
- 4.5 Notice of Breach of Unsecured PHI.

(a) Business Associate Requirements. Upon the Business Associate’s discovery of a breach of unsecured PHI by the Business Associate, the Business Associate shall –

(1) Pursuant to the requirements set forth in subsection (b) below, provide written notice of the breach, on behalf of the Plan, without unreasonable delay but no later than sixty (60) calendar days following the date the breach is discovered or such later date as is authorized under 45 CFR 164.412, to:

(i) each Individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed as a result of the breach;

(ii) the media to the extent required under 45 CFR 164.406 (unless the Plan has elected to provide this notification and has informed the Business Associate); and

(iii) the Secretary to the extent required under 45 CFR 164.408 (unless the Plan has elected to provide this notification and has informed the Business Associate);

(2) Pursuant to the requirements set forth in subsection (c) below, provide written notice of the breach to the Plan, as soon as administratively practicable, but no later than three (3) business days after the breach is discovered; and

(3) If the breach involves less than 500 individuals, maintain a log or other documentation of the breach which contains such information as would be required to be included if the log were maintained by the Plan pursuant to 45 CFR 164.408, and provide such log to the Plan within five (5) business days of the Plan's written request.

(b) Notice Requirements. This subsection (b) provides the following special rules that shall each be applicable to the provisions of Section 4.5(a)(1) –

(1) The date that a breach is discovered shall be determined by the Business Associate in accordance with the Breach Notification Rule.

(2) The content, form and delivery of each of the notices required by Section 4.5(a)(1) shall comply in all respects with the applicable provisions of the Breach Notification Rule.

(3) The Business Associate shall send the notices described in Section 4.5(a)(1)(i) to each Individual using the address on file with the Business Associate (or as may be otherwise provided by the Plan). If the notice to any Individual is returned as undeliverable, the Business Associate shall make at least one more attempt to effectuate delivery of the notice to the Individual and take any further action as is required by the Breach Notification Rule.

(4) With respect to notices required under Sections 4.5(a)(1)(i) and (ii), the Business Associate and the Plan shall cooperate in all respects regarding the drafting and

the content of the notices. To that end, before sending any notice to any Individual or the media under Sections 4.5(a)(1)(i) or (ii), the Business Associate shall first provide a draft of the notice to the Plan. The Plan shall have at least five business days (plus any reasonable extensions) to either approve the Business Associate's draft of the notice or revise the language of the notice. Alternatively, the Plan may elect to draft the notice for review by the Business Associate. Once the Business Associate and the Plan agree on the final content of the notice, the Business Associate shall send the notice to the Individuals and/or the media based on the requirements of the Breach Notification Rule.

(c) Privacy Official Notice. The notice to the Plan pursuant to Section 4.5(a)(2) shall include the identity of each Individual whose unsecured PHI was involved in the breach, a brief description of the breach and any mitigation efforts. To the extent that the Business Associate does not know the identities of all affected Individuals when it is required to notify the Plan, the Business Associate shall provide such additional information as soon as administratively practicable after such information becomes available. Upon the Plan's written request, the Business Associate shall provide such additional information regarding the Breach as may be reasonably requested from time to time by the Plan.

(d) Determination of Breach. For any incident that the Business Associate determines to not be an actual Breach under paragraph (2) of the definition of a Breach in 45 CFR 164.402, the Business Associate shall maintain in writing the applicable risk assessment ("Risk Assessment") and make it available to the Plan. In addition, the Business Associate and the Plan shall cooperate in all reasonable respects regarding Breach determinations. To that end, the Plan shall have the right to independently determine that any incident of the Business Associate is in fact not an actual Breach by providing a written Risk Assessment to the Business Associate. If the Plan determines that an incident is in fact not a Breach and provides the written Risk Assessment, the incident shall not be treated as an actual Breach by the Business Associate.

5. TERM AND TERMINATION

- 5.1 Term. This Business Associate Agreement shall survive the termination of the Agreement and shall terminate when all of the PHI provided by the Plan to Business Associate, or created or received by Business Associate on behalf of the Plan, is destroyed, returned to the Plan and/or eradicated from its equipment (with confirmation thereof to the Plan), or, if it is infeasible to return or destroy PHI, protections are extended to the termination provisions in this Section 5 (Term and Termination).
- 5.2 Termination for Cause. Upon the Plan's knowledge of a material breach of this Exhibit by Business Associate, the Plan shall either:
- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not

cure the breach or end the violation within the time specified by the Plan or applicable law.

- b. Immediately terminate this Agreement if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, the Plan shall report the violation to the Secretary of the Department of Health and Human Services.

5.3 Effect of Termination.

a. Except as provided in paragraph 5.3 (b) below, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all PHI received from the Plan, or created or received by the Business Associate on behalf of the Plan. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Plan notification of the conditions that make return or destruction infeasible. When return or destruction of PHI is infeasible, Business Associate shall (i) extend the protections of this Business Associate Agreement to such PHI, (ii) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, and (iii) limit further uses and disclosures of such PHI to those purposes that make the return or destructions infeasible, for so long as Business Associate maintains such PHI.

6. MISCELLANEOUS

- 6.1 Regulatory References. A reference in this Exhibit to a section in the Privacy Rule means the section as in effect or as amended and for which compliance is required.
- 6.2 Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA.
- 6.3 Survival. The respective rights and obligations of Business Associate under Paragraphs 2 through 6, inclusive, of this Business Associate Agreement shall survive the termination of the Agreement.
- 6.4 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with the Privacy Rule.

6.5 No Third Party Beneficiary. Nothing express or implied in this Business Associate Agreement or in the rest of the Agreement is intended to confer, nor shall anything herein confer, upon any person other parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

ACCEPTED and AGREED:

Metropolitan Transportation Authority, on behalf of itself, the New York City Transit Authority, and the Plan

By: _____

Print Name: _____

Title: _____

Date: _____

Vendor (TBD)

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit G: Confidentiality of Health Care Information Agreement

_____ (“Contractor”) has entered into a contractual agreement (“Service Agreement”) with the Metropolitan Transportation Authority on behalf of itself and the New York City Transit Authority (collectively, “AUTHORITY”) in connection with Plan, as defined in the Service Agreement,. The Service Agreement gives the AUTHORITY and its authorized representatives the right to review certain records and other information (collectively “Data”) held by Contractor in connection with the Plan. Such Data includes, but is not limited to, Claim history relating to Claims for benefits presented by covered employees, retirees and their dependents and relevant parts of Contractor’s financial terms, or cost or pricing data.

The Data to be provided by Contractor pursuant to the Service Agreement includes records and information that shall be kept confidential. The AUTHORITY has requested that Contractor release such Data to (YYY), subject to the understanding and (YYY)’s agreement that the Data released by Contractor to (YYY) pursuant to the AUTHORITY’s request shall be transmitted, handled, stored, maintained, used and eliminated in a manner that shall preserve the confidentiality of the Data. (YYY) further agrees that the Data shall not be used for any purpose other than the administration, evaluation, analysis, and management of the Plan by (YYY) and that, except where required by law, any records or information indicated by Contractor to be of a proprietary nature shall also be considered confidential and shall not be released to any party other than the AUTHORITY without Contractor’s express written consent. If (YYY) believes it must disclose any Contractor Data pursuant to any valid subpoena, court order, litigation, or regulatory request, any other legal requirement of a competent governmental authority, or any request pursuant to New York State Freedom of Information Law, (YYY) shall, promptly following receipt of any such request, or making a determination that disclosure is legally required, notify Contractor in writing before making such disclosure so that Contractor may have a reasonable opportunity to object to such disclosure, take action to ensure confidential treatment of the Data, or take such other action as it considers appropriate to protect the Data.

(YYY) agrees to hold harmless, release and indemnify the AUTHORITY, the Plan, and Contractor, and their respective directors, officers, and employees, against any and all claims, damages, losses, lawsuits, settlements, judgments, costs, penalties, and expenses (including reasonable attorneys’ fees) resulting from and arising out of or in connection with the lawful release of such Data by Contractor to (YYY) at the AUTHORITY’s request and/or arising out of (YYY)’s breach of this Confidentiality of Health Care Information Agreement.

Unauthorized use of Data or Contractor’s proprietary information is a material breach of this Confidentiality of Health Care Information Agreement, which may result in irreparable harm to the AUTHORITY and/or Contractor for which the payment of money damages is inadequate. Recipient agrees that the AUTHORITY or Contractor, upon adequate proof of unauthorized use, or reasonable belief that unauthorized use is intended may immediately obtain injunctive relief in any court of competent jurisdiction enjoining any breach or continuing or further breaches and may obtain entry of judgment for injunctive relief, without any requirement to post a bond. Nothing herein shall be construed to limit the AUTHORITY’s or Contractor’s remedies at law or equity in the event of a breach.

Audits. If (YYY) has been engaged to perform audit services for the AUTHORITY, the following terms shall apply:

Outsourcing the Audit Services. Should (YYY) choose to outsource or seek any assistance for any portion of the Audit Services to a third party, (YYY) shall notify Contractor prior to any Confidential Information being disclosed to such third party. Such third party shall enter into a Confidentiality of Health Care Information Agreement in the same form as this Agreement prior to any work being performed.

All notices required or permitted to be given under this Agreement to any party shall be in writing and shall be deemed given upon personal delivery or three (3) business days after mailing or when received

(whichever is earlier) if sent by certified mail, return receipt requested, all postage and registration or certification fees prepaid or one (1) calendar day after mailing if sent by reputable overnight courier service for next-day delivery, all fees prepaid, and addressed as set forth on the signature page of this Agreement.

This Agreement may be executed in any number of counterparts, and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Agreement. Further, facsimile and computer-printouts may be admitted in any proceeding between the parties to the same extent and under the same conditions as other business records created and preserved in physical documentary form.

Upon (YYY)'s completion of the audit services, any and all written Contractor Data disclosed pursuant to this Agreement shall be returned to Contractor, along with all copies of the same, or shall be destroyed, upon the request and at the option of Contractor, if feasible. Notwithstanding anything herein to the contrary, (YYY) shall have the right to retain one copy of the Contractor Data and any summaries, analysis, notes or extracts prepared by (YYY) which are based on or contain portions of the Contractor Data evidencing its services for the AUTHORITY as required by law, regulation, professional standards or reasonable business practice. If return or destruction is not feasible, the protections of this Agreement will continue to apply to the Contractor Data in (YYY)'s possession, and further uses and disclosures of the Contractor Data shall be limited to those purposes that make the return or destruction of the information infeasible.

To the extent Contractor Data contains any Protected Health Information, as defined in 45 CFR §160.103, (YYY) shall use and disclose such information only in a manner permitted by (YYY)'s business associate agreement with the AUTHORITY and the terms of this Agreement.

The provisions of this Confidentiality of Health Care Information Agreement shall apply with respect to all functions performed by (YYY) for the AUTHORITY that involve the receipt, storage, transmission or use of Data held by Contractor in connection with the Plan. It is agreed that termination of the Service Agreement shall not affect (YYY)'s obligations to hold Contractor, the AUTHORITY, and the Plan harmless as set forth in this Confidentiality of Health Care Information Agreement.

This Confidentiality of Health Care Information Agreement is supplemental to (YYY)'s confidentiality, privacy and non-disclosure obligations pursuant to any applicable law or regulation or other agreement between (YYY) and MTA and/or Contractor.

ACCEPTED and AGREED:

(YYY) Company

By: _____

Print Name: _____

Title: _____

Date: _____

Metropolitan Transportation Authority, on behalf of itself, the New York City Transit Authority, and the Plan

By: _____

Print Name: _____

Title: _____

Date: _____

Vendor (TBD)

By: _____

Print Name: _____

Title: _____

Date: _____