

State of Illinois Vendor Payment Program

Program Terms December 13, 2012

Background:

As a result of the current cash flow deficit, the State of Illinois (the “**State**”) has been forced to delay payment to the majority of its vendors. Vendors range from small private contractors to larger entities such as not-for-profit groups, local school districts and public universities, the corrections system and the Regional Transportation Authority.

The State’s general process for paying vendors is as follows: In order to make a payment from an Illinois Treasury-held fund, State agencies must certify the payment’s accuracy. The agencies then must obtain the approval of the Illinois Office of the Comptroller (the “**State Comptroller**”) by submitting a request for payment (a “**voucher**”). The voucher contains information concerning the payment and has supporting documents attached. Once the State Comptroller has reviewed and approved the voucher, a State check (a “**warrant**”) is issued and signed by the State Comptroller and the Illinois State Treasurer. The voucher pre-audit process verifies that a voucher relates to goods or services provided by a vendor pursuant to a properly awarded contract with the State for which adequate funds were appropriated.

Because the State has not had sufficient funds available to pay its vendors, the State Comptroller has been approving vouchers without directing the Treasurer to issue a warrant to release funds for payment. As a result of the delay in payment of approved vouchers, many of the State’s vendors are experiencing significant cash flow deficits and, in some instances, implementing layoffs.

Pursuant to the Illinois’ State Prompt Payment Act (30 ILCS 540 *et seq.*) (the “**Prompt Payment Act**”), if a payment is not made to a vendor within 90 days of receipt of a proper invoice, an interest penalty of 1% of any unpaid amount will accrue for each month or, on a prorated basis, each fraction thereof that such payment is delayed after such 90-day period.

In an effort to counter the negative effects that State vendors are experiencing due to the delay in payment of approved vouchers and to ensure faster vendor payment, the State is implementing a program to give qualified institutions the opportunity to purchase outstanding accounts receivable directly from vendors of the State and, through the assignment of such accounts receivable by the vendors, to become creditors of the State. In furtherance of this, the State is establishing a vendor payment program on the following terms:

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I. Establishment of Program

The State is hereby establishing a vendor payment program (the “**Program**”) under which Qualified Purchasers (as defined below) may purchase from Participating Vendors (as defined below) certain Qualified Accounts Receivable (as defined below) owed by the State to the Participating Vendors. As further detailed below, subject to any State Offsets (as defined below), the Purchase Price for any Qualified Account Receivable purchased under the Program will equal one hundred percent (100%) of the Base Invoice Amount (as defined below) associated with such Account Receivable, as determined by the State Comptroller. The Purchase Price for a Qualified Account Receivable will be paid as provided below. In consideration of the payment of the Purchase Price, a Participating Vendor will assign to the Qualified Purchaser all of its rights to payment of such Qualified Account Receivable, including all current and future prompt payment penalties due relating to such Qualified Account Receivable in accordance with the Prompt Payment Act.

The following terms shall have the following meanings when used herein:

“**Account Receivable**” means an invoice (pursuant to the terms of an executed Intergovernmental Agency Agreement between CMS and the State Comptroller) or a voucher approved for payment, due and payable by the State.

“**Applicant**” is any entity seeking to be designated as a Qualified Purchaser.

“**Application Period**” means, with respect to any week in which the Program is effective, the time period when the Program is accepting applications as determined by CMS.

“**Assigned Penalty**” is a penalty payable by the State in accordance with the Prompt Payment Act and 44 Ill. Adm. Code 900 that is assigned to the Qualified Purchaser of an Assigned Receivable.

“**Assigned Receivable**” means, unless otherwise prohibited by law, the Base Invoice Amount of a Qualified Account Receivable and any associated assigned penalties due, currently and in the future, in accordance with the Prompt Payment Act. An Assigned Receivable shall be subject to an Assignment Agreement where no prior assignment of the Account Receivable is reflected in the State Comptroller’s payment system and where the Account Receivable for the Base Invoice Amount in the State Comptroller’s payment system identifies the Qualified Purchaser.

“**Assignment Agreement**” means an agreement executed by a Participating Vendor and a Qualified Purchaser pursuant to which the Participating Vendor assigns Qualified Account(s) Receivable to the Qualified Purchaser and makes certain representations and warranties in respect thereof, in the form attached hereto as Exhibit A.

“**Base Invoice Amount**” means the unpaid principal amount of the invoice associated with an Assigned Receivable.

“**CMS**” means the Department of Central Management Services.

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“Commitment Amount” means, with respect to any Qualified Purchaser, the minimum value of Qualified Accounts Receivable such Qualified Purchaser shall have committed to purchase, subject to vendor participation and adequate Qualified Accounts Receivable as set forth in the Qualified Purchaser Designation executed and delivered by such Qualified Purchaser (as amended from time to time) in accordance with the Program Terms.

“Deferred Payment” means the amount withheld (Purchase Price minus the Initial Payment) for the purpose of (i) the Qualified Purchaser’s obligation to pay the Participating Vendor and (ii) the Qualified Purchaser’s right to recover all or a portion of any State Offsets, in each case in accordance with the Program Terms.

“Deferred Payment Reserve Account” means a dedicated account to be maintained by a Qualified Purchaser solely for the purposes of securing (i) the Qualified Purchaser’s obligation to pay the Deferred Payment to a Participating Vendor and (ii) the Qualified Purchaser’s right to recover all or a portion of any State Offsets, in each case in accordance with the Program Terms.

“Full Payment” means payment in full of (i) the Base Invoice Amount associated with an Assigned Receivable and (ii) all associated Assigned Penalties due in accordance with the Prompt Payment Act.

“Initial Payment” means the first payment to the vendor after the State acknowledges the assignment pursuant to the Program, equal to 90% of the Purchase Price.

“Participating Vendor” means a vendor whose application for the sale of a Qualified Account Receivable is accepted for purchase by a Qualified Purchaser pursuant to the Program

“Purchase Price” is 100% of the Base Invoice Amount associated with an Assigned Receivable minus:

- any deductions against the Assigned Receivable arising from State Offsets; and
- if and to the extent exercised by a Qualified Purchaser, other deductions for amounts owed by the Participating Vendor to the Qualifier Purchaser for State Offsets applied against other accounts receivable assigned by the Participating Vendor to the Qualified Purchaser pursuant to the Program.

“Qualified Account Receivable” means, unless otherwise prohibited by law, an Account Receivable which (i) is eligible to accrue prompt payment penalties under the Prompt Payment Act, (ii) is not prohibited by, or otherwise prevented by, applicable law from being transferred or assigned pursuant to these Program Terms, (iii) is not an Account Receivable related to the Medical Assistance Program (including Medicaid) payments and (iv) has been verified by the State in accordance with Section II.2 below. Due to federal law prohibiting certain assignments

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of rights to receive Medicaid payments, this Program shall not apply to the purchase of any accounts receivable related to Medical Assistance Program (including Medicaid) payments.

“Qualified Purchaser” means any entity that, during any Application Period, is approved by CMS to participate in the Program on the basis of certain qualifying criteria set forth in 74 Ill. Adm. Code 900.125(f) as determined by CMS, which shall include, but are not limited to: (i) the Qualified Purchaser’s agreement to commit a minimum purchase amount as established from time to time by CMS based upon the current needs of the Program and the Qualified Purchaser’s demonstrated ability to fund its commitment; and (ii) the demonstrated ability of Qualified Purchaser’s Sub-Participant’s to fund their portions of a Qualified Purchaser’s minimum purchase commitment. The definition of “Qualified Purchaser” shall include any entity that is managed by a Qualified Purchaser, and approved by CMS, if such entity has been formed solely to purchase “Qualified Account Receivables and to perform activities directly relating thereto. In determining whether any entity seeking to be designated as a Qualified Purchaser (an **“Applicant”**) will be so designated, CMS will have the right to review and approve the identity of any individual or entity that intends to purchase Assigned Receivables by or through such Applicant (a **“Sub-Participant”**), and CMS reserves the right to reject or terminate the designation of any such Applicant as a Qualified Purchaser or require an Applicant to exclude a proposed Sub-Participant in order to become or remain a Qualified Purchaser on the basis of such review, whether prior to or after such designation. In furtherance thereof, each Applicant and each Qualified Purchaser has an affirmative obligation hereunder to promptly (and in any event no later than 3 business days thereafter) notify CMS of any change or proposed change in the identity of the Sub-Participants that it has theretofore disclosed to CMS. Each Sub-Participant will be required to execute a Sub-Participant Certification, which will be attached to the corresponding Qualified Purchaser Designation.

“Qualified Purchaser Acknowledgement” means an acknowledgement of the acceptance of a Qualified Account Receivable into the Program as an Assigned Receivable, executed and delivered by a Qualified Purchaser to a Participating Vendor in the form attached hereto as Exhibit B.

“Qualified Purchaser Designation” means an instrument executed and delivered to CMS by an Applicant pursuant to which the Applicant agrees to a Commitment Amount and to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a Qualified Purchaser, in the form attached hereto as Exhibit C.

“Rollover Accounts Receivable” means any Qualified Account Receivable that is not accepted into the Program in any Application Period due to one or more Qualified Purchasers having reached their respective Commitment Amounts for such Application Period.

“State Acknowledgement” means an acknowledgement executed and delivered to a Qualified Purchaser by CMS, acknowledging the assignment of a Qualified Account Receivable by a Participating Vendor to such Qualified Purchaser, in the form attached hereto as Exhibit D or Exhibit D1.

“State Comptroller” means the Illinois Office of the Comptroller.

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“State Offsets” means any amount deducted from payments made by the State with respect to any Qualified Account Receivable due to the State’s exercise of any offset or other contractual rights against a Participating Vendor, including statutorily required administrative fees imposed pursuant to the State Comptroller Act [15 ILCS 405].

“Sub-Participant” means any individual or entity that intends to purchase Assigned Receivables, directly or indirectly, by or through an Applicant or Qualified Purchaser for the purposes of the Program (it being understood that lenders who provide financing pursuant to a credit facility described in Section II (6) shall not be considered “Sub-Participants” hereunder).

“Sub-Participant Certification” means an instrument executed and delivered to CMS by a Sub-Participant, in the form attached hereto as Schedule 1 to Exhibit C, pursuant to which the Sub-Participant certifies its agreement, among others, to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a Sub-Participant.

“Unsecured Shortfall” means the aggregate amount of State Offsets deducted by the State from Full Payment that exceeds the sum of (a) the Pro Rata Reserve Amount and (b) the amount of the related Assigned Penalties.

II. Operation of Program

The Program will be administered in accordance with and subject to the following terms and conditions:

1. A vendor may submit an online application to a Qualified Purchaser for the sale of one or more Accounts Receivable. A vendor may not apply to more than one Qualified Purchaser in a given Application Period.

2. By execution and delivery of an Assignment Agreement to a Qualified Purchaser, a Participating Vendor consents to the assignment of all of its rights to payment by the State of (a) the Base Invoice Amount of each Qualified Account Receivable and (b) any associated prompt payment penalties due, currently and in the future, in accordance with the Prompt Payment Act ((a) and (b) collectively, the “Assigned Receivable”). However if at the time the assignment is executed in the State Comptroller’s payment system, an Account Receivable is found to be unassignable pursuant to these Program Terms, the Prompt Payment Act, and /or 74 Ill. Adm. Code 900, such unassignable Account Receivable shall be considered void under the Assignment Agreement but shall not otherwise impact or modify the parties’ remaining obligations with respect to any other Account Receivable under the Assignment Agreement. After the expiration of each Application Period, the Qualified Purchaser will verify with CMS that a voucher associated with the Base Invoice Amount for an Account Receivable (including any Rollover Accounts Receivable) is unpaid, subject to Prompt Payment interest, and has completed a voucher pre-audit. Verification and processing of assignments of Accounts Receivable will be subject to the operational capacity of the State Comptroller, as determined by the State Comptroller and CMS. Qualified Accounts Receivable (including any Rollover Accounts Receivable), for which an Assignment Agreement has been executed and has been

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timely submitted prior to expiration of such Application Period will be prioritized by the Qualified Purchaser in order of the earliest date on which payment of the Base Invoice Amount of the Qualified Account Receivable, respectively, was due. Upon verification by CMS, the Qualified Purchaser will submit such Qualified Accounts Receivable, in the order of such priority, for purchase pursuant to the Program, provided that such Qualified Purchaser will not be obligated to purchase additional Qualified Accounts Receivable to the extent the Qualified Purchaser has already purchased Qualified Accounts Receivable with an aggregate Base Invoice Amount in excess of such Qualified Purchaser's Commitment Amount.

A Qualified Purchaser will not have the right to reject the purchase of an Assigned Receivable unless (a) the vendor is subject to offset, but not including any administrative fees pursuant to 15 ILCS 405, (b) the Qualified Purchaser has already accepted Assigned Receivables with an aggregate Base Invoice Amount equal to or greater than its Commitment Amount and for which payment of Base Invoice Amounts were due earlier in time, (c) immediately prior to assignment, such Assigned Receivable is not free and clear of liens and encumbrances, (d) such Assigned Receivable has been assigned or otherwise transferred to another Qualified Purchaser or other person or entity as part of the Program or otherwise, or (e) such Qualified Purchaser validly rejected the purchase of such Assigned Receivable in a prior Application Period. To the extent a vendor's Rollover Accounts Receivable will be considered for participation in each next subsequent Application Period, without the requirement of a new online application by the vendor, until such time as such Rollover Accounts Receivable is accepted for purchase pursuant to the Program (it being understood that a participating vendor's initial application may be used in any subsequent Application Period so long as there has been no material change in the information provided in such application).

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3. If the Qualified Purchaser determines that an Account Receivable is not a Qualified Account Receivable or otherwise rejects the purchase of the Account Receivable as permitted by Section II.2, the Qualified Purchaser will give the vendor and CMS written notice that such receivable is not eligible for purchase under the Program and the Qualified Purchaser's reasonable basis for such determination (including any supporting documentation thereof), and the Qualified Purchaser will have no obligation to purchase such Account Receivable; provided, however, that the vendor will have the right to file a written appeal of the Qualified Purchaser's determination with CMS. Neither the failure of an Account Receivable to qualify as a Qualified Account Receivable nor the rejection of an Account Receivable for any other reason pursuant to Section II.2 will preclude a vendor from resubmitting an application for such Account Receivable under the Program during a subsequent Application Period, if that Account Receivable becomes eligible for acceptance into the Program.

4. If the Qualified Purchaser determines that such receivable is a Qualified Account Receivable, subject to the limitations set forth in Section II.2 above, the Qualified Purchaser will execute and deliver to the Participating Vendor a Qualified Purchaser Acknowledgement (or an assignment agreement or supplemental schedule of receivables either of which is in form for execution by the Qualified Purchaser and Participating Vendor) evidencing the Qualified Purchaser's acceptance of such Qualified Account Receivable into the Program as an Assigned Receivable, and the Qualified Purchaser will purchase such Assigned Receivable and pay the Purchase Price therefor on the terms set forth below.

5. An Assigned Receivable (or any interest therein) may not be subsequently assigned, sold or otherwise transferred by a Qualified Purchaser to any person or entity without the prior execution and delivery to CMS of a Qualified Purchaser Designation with respect to the subsequent assignee and a representation letter in the form attached hereto as Exhibit E, together with written notice of such subsequent assignment to CMS and the Participating Vendor who initially assigned the Assigned Receivable. No such assignment, sale or transfer may be made for the purpose of securitizing Assigned Receivables (it being understood that a credit facility described under Section II (6) will be not considered a securitization). Any purported assignment, sale or other transfer in violation of this Subsection 5 shall be deemed void *ab initio*. CMS will have the right to review and approve the identity of any assignee that intends to take assignment of Assigned Receivables by or through a Qualified Purchaser, and such assignee shall expressly assume all of the obligations of the Qualified Purchaser hereunder and under the terms of any ancillary documents executed by the Qualified Purchaser in connection with the Program.

6. Notwithstanding the foregoing provisions of Section II, if a Qualified Purchaser does not have any Sub-Participants, the Assigned Receivables may be pledged as collateral to a person or entity (who or which is not a Sub-Participant) for the purpose of securing a credit facility solely for the purpose of purchasing Qualified Accounts Receivable, and such collateralization as well as the exercise by such person or entity of its remedies with respect to the Assigned Receivables pledged to it as collateral under applicable law shall not be considered an assignment, sale or transfer necessitating the prior execution and delivery to the State of a Qualified Purchaser Designation with respect to such person or entity. In the event of such

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collateralization, the rights of any lender under a credit facility shall be subordinate to the rights of the Participating Vendor, as those rights are set out in the Program Terms.

7. If a Qualified Purchaser has complied with the terms of the Program, as well as the terms of any Assignment Agreement between a Qualified Purchaser and a Participating Vendor, such Participating Vendor will be prohibited from assigning any of its Qualified Account Receivables to any other Qualified Purchaser under this Program, other than its existing Qualified Purchaser or an entity managed or affiliated with such existing Qualified Purchaser, unless the Qualified Purchaser with which the Participating Vendor previously contracted is temporarily or permanently not participating in the Program.

III. Payment of Purchase Price; Deferred Payment Reserve Account

The Purchase Price for each Assigned Receivable will equal one hundred percent (100%) of the Base Invoice Amount associated with such Assigned Receivable (subject to any deductions arising from State Offsets) and will be paid as follows:

1. Within 10 days after a Qualified Purchaser receives a State Acknowledgement of a Qualified Account Receivable being assigned pursuant to the Program, the Qualified Purchaser will: (i) (A) if section III.6 does not apply deposit the Deferred Payment into the Deferred Payment Reserve Account maintained by such Qualified Purchaser or (B) if Section III.6 does apply, retain the Deferred Payment to be later distributed in accordance with Section III.7 and (ii) pay the Initial Payment. The Initial Payment shall be made in immediately available U.S. funds by check, ACH or wire transfer, in accordance with the instructions of the Participating Vendor.

Subject to the Program Terms set forth below, the Deferred Payment Reserve Account will be maintained and controlled by the Qualified Purchaser at its sole cost and at no cost (whether in the form of fees or otherwise) to the Participating Vendors. The Qualified Purchaser shall not deposit funds into or release or withdraw funds from the Deferred Payment Reserve Account except as provided pursuant to the Program Terms. The Deferred Payment Reserve Account will be maintained as a non-interest-bearing account. The Qualified Purchaser will track and maintain an ongoing accounting of the funds in the Deferred Payment Reserve Account, identifying the dollar amount of funds attributable to the balance of the Deferred Payment due to the Participating Vendor for each Assigned Receivable purchased by the Qualified Purchaser (the "Pro Rata Reserve Amount"), as well as the Participating Vendor associated with such Assigned Receivable. The Qualified Purchaser shall promptly furnish a copy of such accounting to the State Comptroller and CMS on a monthly basis, no later than 30 days after the end of each month, and otherwise upon request of the State Comptroller or CMS from time to time.

2. Subject to subsections III.3 and III.4 below, within 10 days after a Qualified Purchaser's receipt of amounts due from the State with respect to the Base Invoice Amount for any Assigned Receivable, the Qualified Purchaser will deliver written notice to the relevant State agency, in a form provided by the State, setting out the Qualified Purchaser's estimate of the amount of the Assigned Penalty due from the State with respect to such Assigned Receivable and requesting such State agency to confirm the amount of the Assigned Penalty. The relevant

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State agency shall notify the Qualified Purchaser in writing of the actual amount of the Assigned Penalty.

3. Except if Section III.6 applies, within 5 days after the Qualified Purchaser has received such written notice from the relevant State agency of the actual amount of the Assigned Penalty, the Qualified Purchaser will release the following amounts from the Deferred Payment Reserve Account:

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(a) to the Qualified Purchaser, an amount equal to the sum of such Assigned Penalty plus the amount, if any, of State Offsets charged against payment of the Base Invoice Amount, provided that in no event shall such amount exceed the Pro Rata Reserve Amount(s) attributable to the Participating Vendor's Assigned Receivable(s); and

(b) to the Participating Vendor, an amount equal to the balance of the Pro Rata Reserve Amount (if any) remaining in the Deferred Payment Reserve Account after the disbursement of funds contemplated by subsection III.3(a), as partial payment of the Deferred Payment due and owing to the Participating Vendor from the Qualified Purchaser.

Payment of such amounts shall be made in immediately available U.S. funds by check, ACH or wire transfer in accordance with the instructions of the Participating Vendor.

4. Within 5 days after a Qualified Purchaser's receipt of Full Payment, including the Assigned Penalty, of an Assigned Receivable (less any State Offsets), the Qualified Purchaser will notify the Participating Vendor in writing of such payment and will pay to the Participating Vendor an amount equal to the Deferred Payment, less (a) the amount paid to the Participating Vendor pursuant to Section III.3(b) and, (b) any additional State Offsets (without duplication) charged against such Full Payment for that or any other Assigned Receivable purchased by the Qualified Purchaser. Such amount shall be paid by the Qualified Purchaser out of immediately available funds of the Qualified Purchaser and not out of the Deferred Payment Reserve Account.

5. If the aggregate amount of State Offsets, if any, deducted by the State from Full Payment exceeds the sum of (a) the Pro Rata Reserve Amount in the Deferred Payment Reserve Account and (b) the amount of the related Assigned Penalties (the excess amount being the "Unsecured Shortfall"), the Qualified Purchaser may, in its discretion and at its sole cost and obligation, seek the Unsecured Shortfall directly from the Participating Vendor. The Qualified Purchaser may recoup any Unsecured Shortfall by purchasing future Qualified Account(s) Receivable at the Base Invoice Amount minus the amount of the Unsecured Shortfall(s) owed to the Qualified Purchaser by the Participating Vendor. The Qualified Purchaser may only purchase a Qualified Account(s) Receivable at a price other than the Base Invoice Amount in order to recover Unsecured Shortfalls due to State Offsets losses incurred through the Vendor Payment Program. The Qualified Purchaser's sole recourse with respect to any Unsecured Shortfall will be against the Participating Vendor. Under no circumstances will the Qualified Purchaser have any recourse against the State with respect to the recovery of any Unsecured Shortfall.

6. Notwithstanding the foregoing provisions of Section III, if a Qualified Purchaser: (a) does not have any Sub-Participants; (b) establishes a bankruptcy remote trust, the terms of which are acceptable to CMS in its sole discretion; and (c) CMS determines to its satisfaction that such Qualified Purchaser can at all times track, account for and identify the Deferred Payments and the outstanding balance thereof to demonstrate that all Deferred Payment monies owed to a Participating Vendor have either not yet been released by the State to the Qualified Purchaser or are maintained on account by the Qualified Purchaser, then such Qualified Purchaser need

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not maintain Deferred Payment Reserve Accounts or segregate the Deferred Payments or the Pro Rata Reserve Amounts from the Initial Payments.

7. (a) If a Qualified Purchaser purchases Qualified Accounts Receivable pursuant to Section III.6, upon receipt of payment from the State of the Base Invoice Amount with respect to a Qualified Assigned Receivable, such Qualified Purchaser will send a notification to the applicable Participating Vendor and the applicable State agency (on a form to be provided by the State) which notice will set forth (i) the proper bill date, (ii) the ending voucher date, and (iii) the estimated Assigned Penalty that is due with respect to the applicable Qualified Account Receivable and such Qualified Purchaser shall comply with Sections III.7 (b) or (c), below, as applicable.

(b) If a Qualified Purchaser is able to demonstrate to CMS that such Qualified Purchaser can accurately estimate the Assigned Penalty amount, then such Qualified Purchaser, upon receipt of the Base Invoice Amount with respect to an Assigned Receivable may (i) retain an amount equal to the Initial Payment for such Assigned Receivable plus the estimated Assigned Penalty from such Base Invoice Amount and (ii) forward any remaining amount available to the Participating Vendor as a partial payment of Deferred Payment due and owing to the Participating Vendor from such Qualified Purchaser; provided, that, upon its receipt of the actual Assigned Penalty from the State of Illinois, such Qualified Purchaser shall reconcile any discrepancy between its estimate and the amount actually received (it being understood that such Participating Vendor is entitled to receive 100% of the Base Invoice Amount (after adjusting for any State Offsets)). If such reconciliation reveals that the Participating Vendor is entitled to receive any additional payment, such Qualified Purchaser shall make any such payment within ten (10) business days of the reconciliation.

(c) If a Qualified Purchaser cannot demonstrate to CMS that such Qualified Purchaser can accurately estimate the Assigned Penalty amount, then such Qualified Purchaser, upon receipt of the Base Invoice Amount with respect to a Qualified Assigned Receivable, will request the relevant State agency to confirm the amount of estimate set forth in such notice before retaining any amounts from the Base Invoice Amount with respect to any Assigned Receivable. The relevant State agency shall notify such Qualified Purchaser in writing (including via e-mail or other form of electronic communication) of the actual amount of the Assigned Penalty. Within five (5) days after the Qualified Purchaser has received such written notice from the relevant State agency of the actual amount of the Assigned Penalty, the Qualified Purchaser will (i) retain an amount equal to the Initial Payment for such Assigned Receivable plus the actual Assigned Penalty from such Base Invoice Amount and (ii) forward any remaining amount available to the Participating Vendor as a partial payment of Deferred Payment due and owing to the Participating Vendor from such Qualified Purchaser.

IV. Other Obligations of Qualified Purchasers and Sub-Participants

Each Qualified Purchaser will, at its sole cost and expense:

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- (a) administer and facilitate the operation of the Program with respect to that Qualified Purchaser, including without limitation, assisting potential Participating Vendors with the application and assignment process;
- (b) establish a website that is determined by CMS to be sufficient to administer the Program in accordance with the terms and conditions of the Program;
- (c) market the Program to potential Participating Vendors;
- (d) educate Participating Vendors about the benefits and risks associated with participation in the Program;
- (e) deposit funds into, release funds from, and otherwise maintain all required accounts in accordance with the Program Terms and at no cost, whether in the form of fees or otherwise, to Participating Vendors;
- (f) submit a monthly written report (in both hard copy and Excel format) to the State Comptroller and CMS, within 10 days after the end of each month, which at a minimum shall contain:
 - (i) a listing of each Assigned Receivable purchased by such Qualified Purchaser during such month, specifying the Base Invoice Amount and invoice date of such Assigned Receivable and the name of the Participating Vendor, State contract number, Voucher number and State agency associated with such Assigned Receivable;
 - (ii) a listing of each Assigned Receivable with respect to which the Qualified Purchaser has received payment of the Base Invoice Amount from the State during such month, including the amount of and date on which such payment was made and the name of the Participating Vendor, State contract number, Voucher number and State agency associated with such Assigned Receivable, and identifying the relevant Application Period for each such Assigned Receivable;
 - (iii) a listing of any Assigned Penalties received from the State during such month, including the amount of and date on which such payment was made, the name of the Participating Vendor, the Voucher number for the Assigned Penalty receivable, and the associated Assigned Receivable, including the State contract number, Voucher number and State agency associated with such Assigned Receivable, and identifying the relevant Application Period for each such Assigned Receivable;
 - (iv) the aggregate number and dollar value of Assigned Receivables purchased by such Qualified Purchaser from the date on which such

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Qualified Purchaser commenced participating in the Program through the last day of the month;

- (v) the aggregate number and dollar value of Assigned Receivables purchased by the Qualified Purchaser for which no payment by the State of the Base Invoice Amount has yet been received, from the date on which the Qualified Purchaser commenced participating in the Program through the last day of the month; and
 - (vi) such other data as the State Comptroller and CMS may reasonably request from time to time.
- (g) use its reasonable best efforts to diligently pursue receipt of Assigned Penalties associated with the Assigned Receivables, including, without limitation, by promptly notifying the relevant State agency that an Assigned Penalty is due, in accordance with subsection III.2 and, if necessary, seeking payment of Assigned Penalties through the Illinois Court of Claims; and
- (h) use its reasonable best efforts to implement the Program Terms as set forth herein and to perform its obligations under the Program in a timely fashion.

Each Qualified Purchaser's performance and implementation of its obligations in this Section IV shall be subject to review by CMS at any time to confirm that such Qualified Purchaser is undertaking such obligations in a manner consistent with the terms and conditions of the Program. A Qualified Purchaser's failure to so perform its obligations, including without limitation its obligations to diligently pursue receipt of Assigned Penalties associated with Assigned Receivables, will be grounds for CMS to terminate the Qualified Purchaser's participation in the Program in accordance with Section VI herein and 74 Ill. Adm. Code 900.125(i). Any such termination will be without prejudice to any rights a Participating Vendor may have against that Qualified Purchaser, in law or in equity, including without limitation the right to enforce the terms of the Assignment Agreement and of the Program against the Qualified Purchaser.

Each Sub-Participant shall cause the relevant Qualified Purchaser to use such Qualified Purchaser's reasonable best efforts to diligently pursue receipt of Assigned Penalties associated with Assigned Receivables as required in this Section, and use its reasonable best efforts to implement the terms of the Program and to perform its obligations under the Program in a timely fashion.

V. Adopted Amendments

In furtherance of effectuating the Program, the State Comptroller and CMS (a) have adopted certain joint administrative rules to be found at 74 Ill. Adm. Code 900.120(m) & 125, permitting the assignment of rights, under any vendor payment program approved by CMS and the State Comptroller, to receive payment of Accounts Receivable and qualifying an assignee to receive any associated Assigned Penalties under the Prompt Payment Act.

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VI. Term and Termination

The Program commenced in March 2011 and will continue until terminated in accordance with 74 Ill. Adm. Code 900.125(i) and Section VI herein. The Program may be terminated:

- (a) by the State Comptroller, after consulting with CMS, by giving 10 days prior written notice to CMS and the Qualified Purchasers in the Program;
- (b) by CMS, after consulting with the State Comptroller, by giving 10 days prior written notice to the State Comptroller and the Qualified Purchasers in the Program;

In the event a Qualified Purchaser or Sub-Participant breaches or fails to meet any of the terms or conditions of the Program, that Qualified Purchaser or Sub-Participant may be terminated from the Program

- (a) by the State Comptroller, after consulting with the CMS. The termination shall be effective immediately upon the State Comptroller giving written notice to CMS and the Qualified Purchaser or Sub-Participant; or
- (b) by the CMS, after consulting with the State Comptroller. The termination shall be effective immediately upon CMS giving written notice to the State Comptroller and the Qualified Purchaser or Sub-Participant.

A Qualified Purchaser or Sub-Participant may terminate its participation in the Program, solely with respect to its own participation in the Program, in the event of any change to the Prompt Payment Act or to the administrative rules effectuating the Prompt Payment Act from the form that existed on the date the Qualified Purchaser, or Sub-Participant, as applicable, submitted the necessary documentation for admission into the Program if the change materially and adversely affects the Qualified Purchaser's or Sub-Participant's ability to purchase and receive payment on receivables on the terms described herein; provided, however, that no termination under this section shall alter or affect a Qualified Purchaser's or Sub-Participant's obligations with respect to Assigned Receivables purchased by or through such Qualified Purchaser prior to such termination. Without limiting the foregoing, the State may, in its discretion, elect to suspend one or more Application Periods for such duration as the State may determine by giving prior written notice thereof to Qualified Purchasers then participating in the Program.

Notwithstanding anything to the contrary contained in these Program terms, the State hereby reserves the right to amend or modify the Program terms and/or administrative rules effectuating the Prompt Payment Act from time to time in its discretion. In the event of any such amendment or modification, the State will give prior written notice thereof to Qualified Purchasers then participating in the Program, provided that no such amendment or modification shall alter or affect a Qualified Purchaser's or Sub-Participant's rights or obligations with respect to Assigned Receivables purchased by or through such Qualified Purchaser prior to such amendment or modification.

These Program Terms do not constitute a commitment by, or a contractual obligation of the State of Illinois. These Program Terms are not intended to be exhaustive or all-inclusive, and the terms and conditions of the Program may, from time to time, be amended by the State of Illinois in its discretion. These Program Terms are to be construed in accordance with applicable law. In the event of any conflict between the terms hereof and applicable law, applicable law shall control.