



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

REQUEST FOR PROPOSALS

"New York State Health Insurance Program Decision Support System"

RELEASE DATE: June 30, 2010

PROPOSAL DUE DATE: **September 8, 2010**

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the DSS Procurement Manager as listed below and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service "*Rules Governing Conduct of Competitive Procurement Process*" (refer to RFP, Section II: Procurement Protocol and Process)

Department of Civil Service Contact for
Inquiries and Submissions for this Procurement:

DSS Procurement Manager
Employee Benefits Division, Room 641
New York State Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
(518) 402-4264

e-mail: 2010DSSRFP@cs.state.ny.us

Nancy G. Groenwegen
Commissioner
New York State Department of Civil Service

Robert W. DuBois, CEBS
Director
Employee Benefits Division

SECTION I: INTRODUCTION**A. Purpose**

This Request for Proposals entitled, “New York State Health Insurance Program Decision Support System” (RFP) is being issued by the New York State Department of Civil Service (DCS or Department). The purpose of the RFP is to solicit Proposals from qualified Offerors in order to secure the services of a firm to implement and support a comprehensive and integrated data management solution that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence to be used by the Department and its designated Users, hereinafter referred to as “Project Services.” That solution, together with said Project Services, is hereinafter referred to as the “Decision Support System” or “DSS Solution”. The Department will execute an agreement with that Offeror selected as a result of this Procurement (Contractor) for Project Services under which the Contractor shall be solely responsible for the implementation and ongoing operation of its proposed DSS Solution. For purposes of this RFP, the use of the term Project Services will be understood to mean the entire scope of services to be provided by the Contractor under the Contract.

The agreement resultant from this Procurement (Contract) shall be subject to approval by the NYS Office of the Attorney General (OAG) and the NYS Office of the State Comptroller (OSC). The term of the Contract shall be for a period of five (5) years, with a one (1) year optional extension period. The right to exercise said optional extension shall be at the sole discretion of the Department and is subject to approval by the OAG and the OSC.

The Department shall contract with a single entity only and that entity shall be the sole contact with regard to all provisions of the Contract. If an Offeror’s Proposal includes subcontractors, the Department will consider the Offeror the Prime Contractor, and the Offeror shall assume full responsibility for all aspects of the DSS Solution. The Department reserves the right to approve (or disapprove) any or all subcontractors.

The State may use the Contract for any agency of the State or local government subject to required statutory approvals, including the approval of the NYS Office of General Services.

Offerors intending to submit a Proposal should, at minimum, be aware of the following key points:

- It is **mandatory** that all prospective Offeror/Offerors complete Attachment 1 “Procurement Lobbying Offeror’s Affirmation of Understanding & Agreement,” affirming their understanding of and agreement to comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. As stated in Section II.A.2, a completed Attachment 1 must be submitted to the DSS Procurement Manager prior to a prospective Offeror making its initial contact with the Department (e.g., attendance at the Pre-Proposal Conference, submission of questions, etc.) or concurrent with an Offeror’s submission of its Proposal, whichever shall occur first.
- To assist the Department in better managing the procurement process, it is requested but **not** mandatory, that prospective Offerors, whether they intend to submit a proposal to this RFP or not, complete Attachment 2 “Notice of Bidding Intention Form” and submit it to the Procurement Manager by the Notice of Bidding Intention Due Date as set forth in Section II.A. of this RFP.
- All Proposals must be received by the Department by 3:00 p.m. Eastern Time (ET) on the Proposal Due Date. **No exceptions will be made for late submission or delays in delivery of the Proposal.**
- The Offeror’s proposed DSS Solution will be evaluated based on the product offering as it exists as of the date of proposal submission; proposed and/or yet-to-be-released versions will not be evaluated.

Section II of this RFP provides an estimated timeline of key events as well as detail on the procurement protocol and procedures required for this Procurement.

Note: Refer to **RFP Section VIII, “Decision Support System RFP Glossary of Terms and Abbreviations,”** for definitions of terms used throughout this RFP.

B. Overview of the New York State Health Insurance Program

The New York State Health Insurance Program (NYSHIP) was established by the State Legislature in 1957 to provide health insurance protection to New York State (NYS or State) employees, retirees and their eligible dependents. Subsequent amendment to NYS Civil Service Law and collective bargaining agreements provided for the inclusion of the Dental and Vision Plans. Public authorities, public benefit corporations, and other quasi-public entities, such as the NYS Thruway Authority and the Dormitory Authority may choose to participate in NYSHIP; those that do are called Participating Employers (PEs). Article XI of the NYS Civil Service Law also allows local units of government such as school districts, special districts, and municipal corporations to participate in NYSHIP; those local government units which choose to participate in NYSHIP are called Participating Agencies (PAs). At present, there are approximately 455 NYS agencies, 93 Participating Employers, and 811 Participating Agencies in NYSHIP. NYSHIP is administered by the Department’s Employee Benefits Division.

NYSHIP is designed to provide health insurance coverage through the Empire Plan and the Excelsior Plan, indemnity plans with managed care components; NYSHIP approved Health Maintenance Organizations (HMOs); and through the Student Employee Health Plan (SEHP), a health insurance plan for graduate student employees of the State University and City University systems. NYS and PE employees and retirees may elect to enroll in either the Empire Plan or in one of the HMOs offered through NYSHIP. However, NYSHIP offers only the Empire Plan and the Excelsior Plan, an Empire Plan option that is extended to PAs, local government units which choose to participate in NYSHIP. NYSHIP currently covers over 599,800 NYS, PA and PE employees and retirees. Eligible covered dependents bring the total number of covered lives in NYSHIP (Empire Plan, HMOs and SEHP inclusive) to approximately 1,202,000. Separate from NYSHIP, PAs may, and frequently do, offer HMOs directly to their own employees and retirees as an alternative to Empire Plan coverage.

For the benefit year beginning January 1, 2010, eleven (11) HMOs have been approved for participation in NYSHIP. Consistent with New York State law, the HMOs are community-rated. While NYSHIP establishes certain minimum coverage requirements, the content of the benefit packages offered by the HMOs are not otherwise dictated by NYSHIP or affected by collective bargaining.

The Department's Employee Benefits Division also administers the Dental and Vision Plans for those groups of State employees and PEs that elect to participate in the programs. Dental and Vision Plan enrollees are, for the most part, also enrolled in NYSHIP for health insurance coverage through either the Empire Plan or one of the NYSHIP participating HMOs.

C. The Empire Plan, Excelsior Plan and Student Employee Health Plan

The Empire Plan is a comprehensive health insurance program for New York's public employees and their families. The Empire Plan is sponsored by the Council on Employee Health Insurance (CEHI). The Council is composed of the President of the Civil Service Commission, the Director of the Governor's Office of Employee Relations (GOER), and the Director of the Division of the Budget (DOB). The Department holds the contracts with the Empire Plan Insurers. The Employee Benefits Division of the Department of Civil Service (EBD) is responsible for the administration of the Empire Plan and the Excelsior Plan. The Empire Plan and the Excelsior Plan currently have over 531,700 enrollees with approximately 1,070,800 covered lives. The Empire Plan benefit design has four (4) components:

1. Hospital Program benefits that include coverage for inpatient stays and hospital outpatient and emergency care. This Program is currently insured and administered by Empire HealthChoice Assurance, Inc. d/b/a Empire BlueCross BlueShield (EBCBS);
2. Medical Program benefits that include coverage for medical and surgical services under the Participating Provider and the Basic Medical Programs and includes several specialty programs. This Program is currently insured and administered by United HealthCare Insurance Company of New York (UHICNY);

3. Prescription Drug Program benefits that include coverage for prescription drugs dispensed through retail network pharmacies, the mail service pharmacy, the designated specialty pharmacy, and non-participating pharmacies. This Program is currently insured and administered by United HealthCare Insurance Company of New York (UHICNY) with Medco Health Solutions, Inc. (Medco) serving as the Pharmacy Benefit Manager (PBM); and
4. Managed Mental Health and Substance Abuse Program benefits that include coverage for inpatient and outpatient mental health and substance abuse services through network and non-network providers. This Program is currently insured by United HealthCare Insurance Company of New York (UHICNY) with network administration, managed care services, and claims administration provided by the Behavioral Healthcare Administrator (BHA), OptumHealth, Inc. (Optum).

The benefit design of the Empire Plan is the result of collective bargaining between the State and the various unions representing its employees. Benefits are extended administratively to non-represented State employees, employees of PAs and PEs, and retirees. Therefore, the benefit design is subject to change from time to time as the result of those negotiations, and, as a result, there are minor variations in benefits available to employees in each bargaining unit. The benefit design cannot deviate from that which has been collectively bargained. The majority of the active workforce is represented by various unions, and union participation in the design and oversight of NYSHIP is active and ongoing. Local governments may choose one of two variations of the Plan, the Empire Plan or the Excelsior Plan. The Excelsior Plan is a more affordable alternative to the Empire Plan. It offers many of the same features of the Empire Plan with a higher degree of cost sharing between the employer and plan participants.

In addition to the Empire Plan, NYSHIP affords benefits to members of the Student Employee Health Plan (SEHP) through the Empire Plan insurance contracts. The SEHP was established in 1994 through collective bargaining. The SEHP became part of NYSHIP in 2002 to provide basic health insurance protection to graduate student employees of the State University of New York and their eligible dependents. The SEHP was made available to graduate student

employees of the City University of New York and their eligible dependents on January 1, 2009. Like the Empire Plan, the SEHP includes hospital, medical, managed mental health and substance abuse benefits, and prescription drug benefits. SEHP is administered by EBD. SEHP covers an average of 5,300 employees; their eligible covered dependents bring the total number of average covered lives to approximately 6,400.

The Department maintains all NYSHIP enrollment data in its accounting and enrollment system, New York Benefits Eligibility & Accounting Systems (NYBEAS). NYBEAS is the source of eligibility information for each of the NYSHIP plans, (e.g. the Empire Plan, the Excelsior Plan, the SEHP and the NYSHIP-participating HMOs), and the NYS Dental and Vision Plans.

The Department intends to use the DSS Solution initially and primarily as a tool in the administration and management for only the Empire Plan, the Excelsior Plan and SEHP, with potential application to other benefit programs administered by the Department.

D. Empire Plan Data and Reports

Each of the Empire Plan Insurers provides detailed claims data and summary reports on benefit utilization. However, this information is reported in different formats and maintained separately for each of the four Plan components. As a result, its use in analyzing the Empire Plan's overall performance is limited.

Empire Plan summary reports are provided in a variety of reporting formats including Microsoft Excel, Word, Access, and other standardized reporting formats. These reports reflect various aspects of the Plan's utilization and financial experience on historical, current, and projected basis. The reports are program specific, not integrated with the reports provided by the other Plan insurers. Also, the reports are presented at a summary level and, therefore, do not provide the Department with the capability for in-depth analysis.

The Department has access to claims data for the Empire Plan including the Excelsior Plan and the SEHP, the Dental Plan, and the Vision Plan. Since NYSHIP HMOs are community-rated

plans, EBD does not receive claim data of any type from the HMOs. The Empire Plan claims data is currently received from the Insurers via FTP transmission; however, prior to January 1, 2008; data was transmitted to the Department through various methods, e.g. data tapes, cartridges, CDs and FTP. The claims files are program-specific, and are loaded and stored in Department-designed Oracle Database tables on a Plan Year basis.

While not the primary focus of the DSS Solution at this time, the Department may, during the term of the Contract, include additional data in the DSS Solution. Workers' Compensation medical claim data, pertaining only to NYS employees and currently held by the State Insurance Fund, may be added to the DSS Solution as it becomes accessible to the Department followed by other plan data, such as Dental or Vision, at the Department's option.

E. Decision Support System Overview

The Department is seeking data management and data integration tools and services. The ultimate goal is to have access to a comprehensive and integrated data warehouse and Decision Support System that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence to be used by Department approved individuals including, but not limited to, the Department's program managers, CEHI executives, and staff of the NYS Office of the State Comptroller (OSC) in the administration, management, and oversight of the various NYSHIP programs. Further, the DSS Solution may be used by the Department's actuarial consultant in discharging its contractual obligation to provide benefit consulting services to the Department.

The following is a high level description of the Project Services the Department is seeking:

1. Data Management Services

The Department is seeking data management services whereby the Contractor will collect, maintain, and integrate NYSHIP eligibility and claims data in a manner consistent with the goal of making meaningful and useful program information

available to Users, including NYSHIP administrators and decision-makers. These services include, but are not limited to, activities such as:

- a. Providing facilities and architecture for long-term physical maintenance and storage of detailed claims data.
- b. Conducting all necessary quality assurance activities to ensure that data loaded into the DSS has passed all data validation edits required by the Department, as described more fully in Section IV of this RFP, following up with Data Providers to correct identified data errors, and advising the Department of significant and/or recurring errors by Data Providers.
- c. Create a DSS Solution that effectively integrates NYSHIP eligibility and claims data for Empire Plan, including the Excelsior Plan and SEHP, program areas, and allows for future expansion and integration of other programs.
- d. Conferring with Department staff and NYSHIP Insurers and administrators as appropriate to evaluate existing information assets, assess the Department's information needs, and develop and implement a project plan to achieve the goals of the DSS.
- e. Provide operational data support and services including establishing and documenting specifications for data files, providing comprehensive training and documentation to DSS Solution Users.

2. Information System Tools and Services

The Department is seeking a comprehensive, integrated health benefits information system solution which provides the Department and other CEHI and OSC staff with information required to manage and administer the Empire Plan, Excelsior Plan and SEHP initially, and potentially other NYSHIP benefit programs. The DSS Solution proposed by an Offeror must comply with all federal and State laws and regulations relating to the privacy and security of personal and protected health

information. Also, the proposed DSS Solution must allow access to information by Users only as authorized by the Department. The DSS Solution must provide analytical tools, reports, and information services that result in, at minimum, accomplishment of the following objectives:

- a. Give Users the ability to conduct analysis of detailed claims data by key attributes, such as geographic location, Benefit Program, employee status, relationship, age, gender, etc.
- b. Integrate prescription drug, mental health, medical, and hospital claims data.
- c. Organize medical, hospital, mental health, and prescription drug claims data into unique analytic combinations based on episodes of care to illustrate how specific illnesses/diseases are being treated.
- d. Provide Users with "built-in" analytics such as groupings for clinical conditions within major diagnostic categories, chronic conditions, preventive care measures, and identification of "avoidable admissions"
- e. Provide standard report templates and ad hoc analysis capability (e.g. trend analysis and premium development).
- f. Provide the capability to view claim information on both a "paid" and "incurred" basis.
- g. Offer access to meaningful utilization statistics (e.g. claims per enrollee, cost per claim, average length of stay for admissions, etc.)
- h. Enable Users to analyze prescription drug cost information (e.g. average cost of generic versus brand drugs within a therapeutic category, aggregate discount off AWP for retail generic drugs.)

- i. Provide the ability to identify, track and report Empire Plan cost and financial information, including major cost drivers.
- j. Include tools for in-depth provider analysis. (e.g. high volume providers, network participation levels per specialty area, practice patterns, etc.)
- k. Offer a credible normative database for comparison or benchmarking purposes and the ability to identify significant outliers. (e.g. Average Empire Plan cost per evaluation and management service, average duration of therapy per condition, average cost per generic drug claim, etc.)
- l. Provide recommendations and consultations on how the Department can, utilizing the information contained in the DSS Solution, maximize the value of Empire Plan services.
- m. Provide the capability to model the potential impact to the Empire Plan resulting from proposed benefit design changes or proposed changes to provider reimbursement rates.

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. RULES GOVERNING CONDUCT OF COMPETITIVE PROCUREMENT PROCESS****Amended 8-5-10****1. Timeline/Key Events**

The following estimated timeline will be in effect for this RFP:

RFP Release Date	June 30, 2010
Attachment 1 Procurement Lobbying Offeror's Affirmation of Understanding & Agreement Due Date	*
Questions Due Date	July 14, 2010 5:00 p.m. ET
Release Date of Official Responses to Questions	July 22, 2010
Attachment 2 Notice of Bidding Intention Due Date	August 4, 2010
Proposals Due Date	September 8, 2010 3:00 p.m. ET
Anticipated Contract Start Date	**

* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit Attachment 1 Procurement Lobbying Offeror's Affirmation of Understanding & Agreement to the DSS Procurement Manager.

** Upon approval of the Agreement resultant from this RFP by the NYS Office of the State Comptroller, the Contract Start Date is anticipated to be on or about January 1, 2011.

2. Procurement Lobbying Limitations

- a. Pursuant to State Finance Law §139-j and §139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Contract's final approval by the OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of the RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e., Proposals) in response to the solicitation document (i.e., RFP or Procurement). Staff is required to obtain certain information from Offerors and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an entity is subject to two non-responsibility

findings within four years the entity also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. The Department's policy and procedures are attached as **Appendix D "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to this RFP. Further information about these requirements can also be found at:

www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html.

- b. In order to ensure public confidence and integrity in the procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process from the date the RFP is released until the Contract is approved by OSC. All contacts and inquiries concerning the Procurement must be directed solely to the DSS Procurement Manager, the Department's designated contact for this Procurement. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Fax: 518-402-2835
E-mail: 2010DSSRFP@cs.state.ny.us

Additionally, prospective Offerors and Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any State governmental entity other than the Department from the date the RFP is released until the Contract is approved by OSC, subject only to the specific exceptions listed below. Further, any prospective Offeror or Offeror shall not attempt to influence this Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law §73(5) or §74.

- c. The following contacts are exempted from the provisions of this section:

(1) The submission of written Proposals in response to this RFP;

- (2) The submission of written questions as set forth in this RFP when all written questions and responses are to be distributed to all prospective Offerors who have expressed an interest in the Procurement;
- (3) Participation in the Pre-Proposal Conference as provided for in this RFP;
- (4) A complaint by a prospective Offeror or an Offeror regarding the failure of the DSS Procurement Manager to respond to an authorized contact, when such complaint is made in writing to the Department's Office of the General Counsel, provided that any such written complaint shall become a part of the procurement record;
- (5) Communications by the selected Offeror who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the agreement after having been notified of the tentative award;
- (6) Contact by an Offeror to request a review of a proposed award when done in accordance with the procedure specified in the RFP;
- (7) (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent selected Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the State Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or

(c) Written protests, appeals or complaints to OSC office during the process of contract approval, where the approval of the OSC is required by law, and where

such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to State Finance Law §163.

- d. It is **mandatory** that all prospective Offerors/Offerors complete **Attachment 1 “Procurement Lobbying Offeror’s Affirmation of Understanding & Agreement”**, affirming their understanding of and agreement to comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed **Attachment 1** must be submitted to the DSS Procurement Manager **prior to a prospective Offeror making its initial contact with the Department** (e.g., attendance at the Pre-Proposal Conference, submission of questions, etc.) or concurrent with an Offeror’s submission of its Proposal, whichever shall occur first.

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed **“Certification of Compliance Pursuant to State Finance Law §139-k”** form (see **Exhibit L**) in its Administrative Proposal.

3. Notice of Bidding Intention Deadline

Filing of this notice is **not** mandatory; however, to assist the Department in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete **Attachment 2 “Notice of Bidding Intention Form”** and submit it to the DSS Procurement Manager by the Notice of Bidding Intention Due Date as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b, or electronically at: 2010DSSRFP@cs.state.ny.us or in both formats.

4. Pre-Proposal Conference

There will be no Pre-Proposal Conference held for this RFP.

5. Submission of Errors or Omissions in the RFP Document

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors and Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in the RFP, the prospective Offeror may raise such issue according to the following provisions:

a. Process for Submitting Assertions of Errors or Omissions in RFP Document

- (1) **Time Frame:** Assertions of errors or omissions in the procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.
- (2) **Content:** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the DSS Procurement Manager at the following address:

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

The envelope or package must clearly and prominently display the following statement:

"Submission of Errors or Omissions for the New York State Health Insurance Program Decision Support System Request for Proposal"

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.

b. The Review Process for Assertions of Errors or Omissions in RFP Document

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or his designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in the RFP document. As a consequence of reviewing the assertion, the Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail and those prospective Offerors who attended the pre-proposal conference. Notice of any extension will also be posted to:

www.cs.state.ny.us/2010DSSRFP/index.cfm.

6. Submission of Questions

In the event a prospective Offeror has any substantive or procedural questions concerning the content of the RFP document, those questions can be submitted in the following manner to:

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
Fax: 518-402-2835
E-Mail: 2010DSSRFP@cs.state.ny.us

Prospective Offerors may submit questions to the DSS Procurement Manager, in writing, via e-mail, facsimile or mail, prior to the date of the Pre-Proposal Conference. The Department strongly urges prospective Offerors to submit the questions via e-mail. Written and oral questions also may be submitted at the Pre-Proposal Conference. Each question must cite the particular RFP section, page number and paragraph number to which it refers. Responses to some questions may be deferred until after the conference. All responses will be considered unofficial until issued or confirmed in writing by the Department on the procurement website.

Only those questions received prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding the RFP (see RFP, **Attachment 3 - "Question Template"**).

After the Questions Due Date, the Department will post the Department's Official Responses to all of the questions received. The information will be posted to:

www.cs.state.ny.us/2010DSSRFP/index.cfm

All registered prospective Offerors will be notified of the posting to the website. In responses to questions, the Department will not provide information about processes or information proprietary to any prospective Offeror.

7. Submission of Proposal

a. Submission Requirements

The Offeror's Proposal must be organized in three (3) separate parts: Administrative Proposal; Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit twelve (12) separately bound hard copies (two (2) ORIGINALS and ten (10) copies) and one (1) electronic copy (CD) **of each of the three (3) parts** of the Offeror's Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. These thirty-six (36) documents and three (3) disks are collectively hereafter referred to as "Submissions."

Each ORIGINAL hard copy of each part must be marked "ORIGINAL" and contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror's signature and should be numbered sequentially, i.e. ORIGINAL #1, ORIGINAL #2. The remaining ten (10) hard copies of each part may contain a copy of the official's signature and should be numbered sequentially (e.g. Copy #1, Copy #2, etc). Please note that, for each of the three (3) parts, that hard copy marked "ORIGINAL #1" will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes with a label on the outside containing the information below.

**New York State Department of Civil Service
Request for Proposals
"New York State Health Insurance Program
Decision Support System"**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable:
ADMINISTRATIVE, TECHNICAL or COST PROPOSAL

There must be no cost information included in the Offeror's Administrative Proposal or Technical Proposal.

All Proposals must be mailed or hand-delivered to:

DSS Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

For those Offerors who plan to have the Proposal hand delivered to the Department, arrangements for acceptance of the package must be made in accordance with Department security procedures. **To make such arrangements, the Department requests that the Offeror notify the DSS Procurement Manager forty-eight (48) hours prior to delivery.**

All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section II. A.1 of the RFP. No exceptions will be made for late submission or delays in delivery of the Proposal. If the Proposal is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the Offeror obtains proof of timely delivery.

All Proposals submitted become the property of the Department. Any proposal received after 3:00 p.m. ET on the Proposal Due Date will not be deemed accepted by the Department and may be returned to the submitting entity at the Department's discretion.

The Department will accept amendments and/or additions to an Offeror's Proposal if the request is received by the Department prior to 3:00 p.m. ET on the Proposal Due Date. Such a request must be submitted in writing, in accordance with the format set forth in Section II.A.7.b(5) of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to complete and submit **Exhibit C “Proposal Submission Requirements Checklist”** in its Administrative Proposal submission to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

b. Formatting Requirements

The Administrative Proposal, Technical Proposal and Cost Proposal each must comply with the following formatting requirements:

- (1) ***Binding of Proposal:*** The Administrative, Technical and Cost Proposals must be separately bound. The official name of the organization(s) and “New York State Health Insurance Program Decision Support System” must appear on the outside front cover of each copy of the Offeror's Administrative, Technical and Cost Proposal. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and “New York State Health Insurance Program Decision Support System” also must appear on the spine of the binders;
- (2) ***Table of Contents:*** Each Proposal must include a table of contents;
- (3) ***Index Tabs:*** Each major Section of the Proposal and each Exhibit must be labeled with an index tab that completely identifies the title of the Section or Exhibit as named in the table of contents;
- (4) ***Pagination:*** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;

(5) ***Proposal Updates/Corrections:*** Each Offeror must submit its Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,

(6) ***Required Content of Proposals:*** The Proposal shall consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

8. Notification of Award

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. At that time, Offerors will be advised of the opportunity for a debriefing by the Department of the evaluation of that Offeror's Proposal. No public discussion or news releases relating to this RFP or the Contract shall be made by any Offeror or their agent without the prior approval of the Department.

9. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, all Offerors agree to be bound by its terms including, but not limited to, the process by which an Offeror may submit protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

a. Process for Submitting Post Award Protests of the Selection Decision

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The submission of the protest must clearly and fully state the legal and/or factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All submissions of protest must be in writing and submitted to the DSS Procurement Manager at the following address:

DSS Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for the
New York State Health Insurance Program
Decision Support System”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

b. The Review Process for Submission of Protests

The Department shall conduct the review process of submitted protests. The Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the

opportunity to meet with the Commissioner or his designee, as the case may be, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time for the issuance of the decision is necessary, the Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

In the event that an Offeror protests the selection decision, the Department shall continue working with the selected Offeror pending the outcome of the protest. Any Offeror who's Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their Proposal shall remain valid.

The Department reserves the right to determine and to act in the best interests of the State in resolving any post award selection protest.

10. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make the award under the RFP in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of the RFP, notification of the amendment will be provided to all organizations who submitted a Notice of Bidding Intention Form (**Attachment 2**) via e-mail, facsimile or mail. Any amendments will also be posted to:
www.cs.state.ny.us/2010DSSRFP/index.cfm.
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;

- d. Withdraw the RFP, at any time, in whole or in part, at its sole discretion;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any mandatory requirements of the RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP, at its sole discretion;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability

or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP;

- o. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
- p. Utilize any and all ideas submitted in the Proposal(s) received;
- q. Set aside the original selected Offeror if it is subsequently determined by the Department that the Offeror is non-responsive or not responsible. The Department may then invite the Offeror with the next Highest Combined Total Score to enter into negotiations for purposes of executing an agreement;
- r. Set aside the conditional award to the selected Offeror should the Department be unsuccessful in negotiating an agreement with that Offeror within a time frame acceptable to the Department; such time frame is to be determined solely by the Department based on the best interest of the Department and the State. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may then invite the Offeror with the next Highest Combined Total Score to enter into negotiations for purposes of executing an agreement.

11. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror prior to approval by OSC of the Contract. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any procurement related activities.

The Department has taken care in preparing the data accompanying this RFP (hard copy Exhibits, website Exhibits, and those contained on CD) and sample document exhibits. However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in (hardcopy Exhibits, website Exhibits, and those contained on CD) and sample document exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future

performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposals at their own discretion.

B. COMPLIANCE WITH APPLICABLE RULES, LAWS, REGULATIONS & EXECUTIVE ORDERS

This Procurement is governed by the legal authorities referenced below. All Offerors must fully comply with the provisions set forth in this Section II.B of the RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provision whose Proposal contain the Statements, Formal Certifications and Exhibits submissions required hereunder.

1. Public Officers Law

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the procurement process, termination, suspension or cancellation of the Contract, and criminal proceedings as may be required by law.

Offerors must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed **Exhibit I “Compliance with Public Officers Law Requirements”** in the Offeror’s Administrative Proposal.

2. Omnibus Procurement Act

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement

Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain.

A current list of jurisdictions subject to this provision is available from the NYS Department of Economic Development, or on-line at www.nyscr.com/pub_omnibus.aspx.

A completed **Exhibit K “Omnibus Procurement Act Statement of Acceptance”** form must be submitted in the Offeror’s Administrative Proposal.

3. **Minority and Women-Owned Business Enterprises (MWBE) Act and Federal Equal Employment Opportunities Act (EEO)**

a. General Obligations

The State of New York and the Department actively support and encourage the participation of certified minority and women-owned business enterprises and equal employment opportunities for minorities and women on State contracts. The Contract will contain provisions regarding the participation of MWBEs in the performance of the Contract. Those provisions are set forth below. Generally, the provisions state the Contractor's obligations under Article 15-A of the Executive Law and its implementing regulations, including clauses dealing with equal employment opportunities, organized labor cooperation and advertisements for employees.

b. Minority and Women-Owned Business Enterprises (MWBEs)

The Department has established a zero percent (0%) goal for the participation of the Minority-Owned Business Enterprises and a zero percent (0%) goal for the participation of Women-Owned Business Enterprises in the performance of services under the Contract. The Offeror is encouraged to use its best efforts to solicit and obtain the participation of MBE’s and WBEs on the Contract. In furtherance of this goal, Offerors shall submit **Exhibit M “Article 15-A of the Executive Law”** in the Offeror’s Administrative Section.

c. Equal Employment Opportunity Obligations

The Offeror shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital

status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotions, upgradings, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

The Offeror's EEO Policy Requirements under this RFP shall contain, but not necessarily be limited to, the following:

- (1) The Offeror must demonstrate its compliance with the Equal Employment Opportunity (EEO) Act by affirming to the Department that the Offeror's EEO Policy Statement contains, at a minimum, language consistent with the provisions set forth in **Exhibit F "Equal Employment Opportunity (EEO) Obligations – Offeror Certification of Compliance"**. During the performance of the Contract, the Contractor shall agree to comply with such EEO Policy Statement. The Offeror's EEO Policy Statement shall contain, but not necessarily be limited to, the services under the Contract. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Contract. Offerors must affirm their ability to comply with this requirement by submitting a completed **Exhibit F** in the Offeror's Administrative Proposal.
- (2) As part of its Administrative Proposal, the Offeror shall submit a completed **Exhibit G "Workforce Employment Utilization Report"** to be utilized on the Contract or, where required, information on the Offeror's total workforce, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories specified by the Department.
- (3) On a periodic schedule to be provided by the Department, the Contractor shall submit to the Department a workforce utilization report, on a form to be supplied by the Department, of the workforce actually utilized on the Agreement, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Department.
- (4) The Offeror shall include in every subcontract in connection with the Contract, if any, the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the

Contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the Contract.

4. **Americans with Disabilities Act**

The Contractor will be required to assure its compliance with the Americans With Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Contract shall be accessible under Title II of the Americans With Disabilities Act, and as otherwise may be required under the Americans With Disabilities Act by submitting a completed **Exhibit J “Compliance with Americans with Disabilities Act”** form in the Offeror’s Administrative Proposal.

5. **MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror’s Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of **Exhibit E “MacBride Statement and Non-Collusive Bidding Certification”** form is required to be submitted in the Offeror’s Administrative Proposal.

6. Vendor Responsibility Requirements – State Finance Law §163

New York State Finance Law §163 requires contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offeror.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the proposed contractor prior to making an award.

“Responsibility” encompasses factors including, but not limited to, financial ability to complete the contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity, and “moral worth.” *Does the Offeror possess the integrity to perform the contract?* Factors to be considered may include, but not be limited to, criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust and any other investigations, ethical violations, tax delinquencies, debarment by the Federal government, or prior determinations of integrity-related non-responsibility of the Offeror. In addition, any litigation, investigation or subpoena in which the Offeror is presently involved in regardless of the venue or whether or not the State of New York is a party, which may materially affect the Offeror’s ability to effectively perform, and any present litigation concerning a contract for services similar to that as set forth in this RFP may be considered in this determination. *Has the Offeror performed at acceptable levels on other governmental contracts?* Factors to be considered include, but not limited to, reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc. *Is the Offeror legally capable of performing the contract?* Factors to be considered include, but not limited to, authority to do business in New York State (under the Business Corporation Law or Not-For-Profit Corporation Law), licensing (i.e., with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc. *Is the contractor financially and organizationally capable of performing the contract?* Factors to be considered include, but not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

To assist the Department in evaluating the responsibility of Offerors, a completed **Exhibit H “New York State Vendor Responsibility Questionnaire”** must be submitted in the Offeror’s

Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of “key subcontractors” (i.e., part of the Offeror’s proposed Project Team), the Offeror must submit a completed **Exhibit H** for each key subcontractor completed by a person legally authorized to represent the subcontractor.

Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the contractor must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, “affiliate” means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the Contract exceeds \$100,000, the Contractor must file a properly completed **Appendix E “Form ST-220-CA”** with the Department and a properly completed **Appendix F “Form ST-220-TD”** with the Department of Taxation & Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Contract’s term is renewed. Further, a

new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

Submission of these forms (ST-220CA and ST-220TD) is **not** required at time of Proposal submission however, the selected Offeror will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

www.tax.state.ny.us/forms/sales_cur_forms.htm#Other%20Sales%20Tax%20Forms

8. Consultant Disclosure Requirements

Chapter 10 of the Laws of 2006 requires State contractors to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by those employees. This includes information on any persons working under any subcontracts with the Contractor. The law defines contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services. For further information about this requirement, please refer to OSC Bulletin No. G-226 (Issued 6/19/2006). This Bulletin can be found at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>

The Contractor will be required to provide a completed **Appendix G “State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term – Form A”** (hereinafter “Form A”) at the time the Contract is executed. The completed form must include information for all employees providing such services under the Contract whether employed by the Contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the Contract through the end of the contract term.

Further, the Contractor will be required to report annually to the Department and to OSC the employment information described above, including work performed by subcontractors. The Contractor shall submit a completed **Appendix H “State Consultant Services - Contractor’s**

Annual Employment Report – Form B” (hereinafter “Form B”) for each State Fiscal Year during the term of the Contract. During the term of the Contract, such report shall be due no later than May 15 of each year following the end of the State Fiscal Year being reported.

9. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other State agencies interested in the provision of the subject services including, but not limited to, the Division of the Budget, unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or subsequent communication constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing **Exhibit D “Freedom of Information Law – Request for Redaction Chart.”** The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of Exhibit D contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

Note: Offerors are advised that **Exhibit D**, as a part of the Offeror’s Proposal, is subject to disclosure under FOIL. Offerors should also highlight any parts of **Exhibit D** which the Offeror wishes to protect from FOIL disclosure.

The completed **Exhibit D** must be submitted in the Offeror's Administrative Proposal. In addition, at the time of Proposal submission, the Offeror must submit a hard copy and one consolidated file of their entire proposal on CD in Adobe Acrobat noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow such sections in a manner such that the material remains visible. No security should be applied to the consolidated Adobe Acrobat file. The hardcopy shall be separately bound and clearly labeled "Requested Redactions." These materials will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

If, after the Proposal Due Date, the Offeror makes any submissions during the procurement process that it wishes to protect from FOIL disclosure, the Offeror must submit such submissions with a completed **Exhibit D** in hardcopy and on a CD in Adobe Acrobat noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow such sections in a manner such that the material remains visible. These FOIL-related materials will not be considered part of the Offeror's proposal and will not be reviewed as a part of the procurement's evaluation process.

Upon completion of the procurement process, a copy of the redacted contract and a copy of each Offeror's proposal with approved redactions permanently blacked out will be posted to the procurement website.

If the Offeror chooses not to assert that any proposal material or subsequent correspondence should be protected from FOIL disclosure, the Offeror must so advise the Department by checking the applicable box on **Exhibit D** and including the completed form in the Offeror's Administrative Proposal. You must however provide the Department with a CD in Adobe Acrobat with one consolidated file of the entire Proposal.

In the event any material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

10. Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers' compensation and disability

benefits insurance coverage is produced. Prior to entering into a contract with the Department, the selected Offerors will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Appendix V** – Compliance with NYS Workers' Compensation Law. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website <http://www.wcb.state.ny.us/>.

Failure to provide verification of either of these types of insurance coverage by the time the winning Offeror is selected and the Contract is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

Submission of the insurance verification information is **not** required at the time of submission; however, the Department would prefer the Offeror submit this insurance verification information with the Administrative Section, if possible.

SECTION III: ADMINISTRATIVE PROPOSAL REQUIREMENTS

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal submission, including the minimum mandatory requirements that must be satisfied to qualify an Offeror to be considered for selection. The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals that it determines to be in compliance with the requirements set forth in this Section III.

The Offeror's *Administrative Proposal* must respond to all of the following sections as set forth below in the order and format specified and using the forms set forth in RFP, **Exhibits A through O**. Additional details pertaining to the required forms are found in Section II. B. Compliance With Applicable Rules, Laws, Regulations & Executive Orders.

The *Administrative Proposal* must contain the following information, in the order enumerated below:

A. Formal Offer Letter: At this part of its Administrative Proposal, the Offeror must submit a formal offer in the form of the **"Formal Offer Letter"** as set forth in **Exhibit A**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. Each of the two copies of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. The Offeror must accept the terms and conditions as set forth in RFP, Section VII and Appendices A, B and C and agree to enter into a contractual agreement containing, at a minimum, the terms and conditions identified in the RFP section and appendices as cited herein. (Note: Appendix A, "Standard Clauses for New York State Contracts" is basically a compilation of statutory requirements applicable to all persons and entities contracting with the State and therefore has been deemed to be non-negotiable by the Offices of the Attorney General and the State Comptroller. Appendix B, "Standard Clauses for All DCS Contracts", and Appendix C, "Third Party Connection and Data Exchange Agreement", are compilations of standard

clauses for Department contracts and also are non-negotiable.) If an Offeror proposes to include the services of a subcontractor(s), the Offeror shall be required to assume responsibility for those services as “Prime Contractor.” The Department will consider only the Prime Contractor in regard to contractual matters.

B. Minimum Mandatory Requirements: In this part of its Administrative Proposal, the Offeror must submit a completed **Exhibit B “Offeror Attestation Form”** representing and warranting that the Offeror:

1. possesses, as of the Proposal Due Date, the legal capacity to enter into a contract with the President of the New York State Civil Service Commission (“Commissioner”);
2. has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the NYSHIP Decision Support System and agrees to, during the term of the Contract, comply with any requirements imposed upon it by law;
3. as of the Proposal Due Date, has implemented and maintained decision support system services for Health Insurers, Health Plans (including public health plans, Health Maintenance Organizations (HMOs) and/or Benefit Administrators), and large employer groups that use these decision support services for, in aggregate, a minimum of five million (5,000,000) total covered lives in its full book of business. The Offeror must provide a list of clients with the number of covered lives for each to support its attestation that it meets the minimum requirement of five million (5,000,000) covered lives. In determining covered lives, the Offeror should count all lives [i.e., an employee, a spouse and two (2) eligible dependents counts as four (4)];
4. has prior experience providing the services, which are the subject matter of this RFP, for a large complex client. As evidence of this experience the Offeror must affirm that it currently has, or has had, at least one (1) client with one hundred thousand (100,000) or more covered lives. Confirmation of this experience is demonstrated by

- identification of any and all such client(s) and inclusion of named client(s) as reference(s) in response to Section III.E;
5. will maintain a complete and accurate set of records as may be required by the State to be produced for review by the State pursuant to the requirements of this RFP and the resultant contract including but not limited to Appendices A and B, including any and all financial records as deemed necessary by the State to discharge its fiduciary responsibilities to NYSHIP participants and to ensure that public dollars are spent appropriately;
6. in order to ensure independence in the performance of Project Services the Offeror, its parent company, and/or any subsidiaries, partners and/or affiliates⁽¹⁾:
- can **not** be a current Empire Plan carrier, contractor and/or subcontractor; and/or
- Amended 7-29-10**
- can **not** be a current Department, Division of the Budget and/or Governor's Office of Employee Relations contractor and/or subcontractor⁽²⁾ where the purpose of said contract(s)/subcontract(s) is to provide support to or is related to the administration of NYSHIP and/or the delivery of NYSHIP services, including, insurance coverage, either directly or indirectly and in part or in whole.

Offerors are advised that the two pre-requisites above apply to any and all proposed subcontractor(s) of the Offeror.

⁽¹⁾ For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

⁽²⁾ For the purpose of this requirement, "Subcontractor" means all of those entities specifically engaged by a current Empire Plan carrier and/or contractor and/or a current Department, Division of the Budget (DOB) and/or Governor's Office of Employee Relations (GOER) contractor (where the purpose of said contract is to provide support to or is related to the administration of NYSHIP and/or the delivery of NYSHIP services, including, insurance coverage, either directly or indirectly and in part or in whole) to provide commodities or perform services necessary to allow a contractor/carrier to fulfill its contractual obligation under the terms of the Department, DOB or GOER contract.

7. acknowledges and agrees that:

- a. all claims, enrollment, and other data (i.e., materials) provided by the Department or the Department's agents and/or contractors is being provided to the Offeror (Contractor) solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under the Contract; however, de-identified NYSHIP data may be included in the Contractor's normative database used for their book of business; and
- b. said materials are the sole property of the State; and
- c. provision of said materials to the Offeror (Contractor) does not confer ownership or shared ownership to the Contractor; and
- d. it will not share, sell, release, or make the data available to third parties in any manner without the written authorization of the Director of the Employee Benefits Division of the Department, except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law.

8. represents that the product submitted in response to this RFP is an existing product offering as of the Proposal Due Date; not a proposed and/or yet-to-be-released version of the product.

C. Exhibits: At this part of its Administrative Proposal, the Offeror must complete and submit the various Exhibits specified in Section II.B of this RFP, in satisfaction of the regulatory requirements described therein. A listing of the required Exhibits is set forth as follows:

Exhibit Name	Exhibit #
Proposal Submission Requirement Checklist	Exhibit C
Freedom of Information Law – Request for Redaction Chart	Exhibit D
MacBride Statement and Non-Collusive Bidding Certification	Exhibit E
Equal Employment Opportunity (EEO) Obligations – Offeror Certification of Compliance	Exhibit F
Workforce Employment Utilization Report	Exhibit G
New York State Department of Civil Service Vendor Responsibility Questionnaire	Exhibit H
Compliance with Public Officers Law Requirements	Exhibit I
Compliance with Americans with Disabilities Act	Exhibit J
Omnibus Procurement Act Statement of Acceptance	Exhibit K
Certification of Compliance Pursuant to State Finance Law §139-k	Exhibit L
Article 15-A of the Executive Law	Exhibit M

Note: If not already provided to the Department by time of Proposal submission, the Offeror must also enclose a completed Attachment 1 “Offeror’s Affirmation of Understanding and Agreement.”

D. Key Subcontractors: At this part of its Administrative Proposal, the Offeror must provide a statement identifying all Key Subcontractors, if any, that the Offeror will be contracting with to provide Project Services and must, for each such subcontractor identified, complete and submit **Exhibit N “Key Subcontractors”**: 1) provide a brief description of the services to be provided by the subcontractor; and 2) provide a description of any current relationships with such subcontractor and the clients/projects that the Offeror and subcontractor are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project. The Offeror must indicate whether or not, as of the date of the Offeror’s Proposal, a subcontract has been executed between the Offeror and the Key Subcontractor for services to be provided by the subcontractor relating to this RFP. If the Offeror will not be subcontracting with any Key Subcontractor(s) to provide Project Services, the Offeror must provide a statement to that effect.

E. Reference Checks: At this part of its Administrative Proposal, for the purpose of reference checks, the Offeror must list five (5) references comprised of a combination of both current and former clients for which the Offeror has supplied decision support services pertaining to

medical claims similar to those required in this RFP (Project References). For each Project Reference provided the Offeror must complete and submit **Exhibit O “Project References.”** At least one (1) of the referenced clients must be an entity with one hundred thousand (100,000) or more covered lives. If the Offeror has no former clients to submit as references; the Offeror must include a statement attesting to that fact. Otherwise, the Offeror must list, at minimum, one (1) former client as a reference for which the Offeror has supplied services similar in nature to those required in this RFP. The Offeror shall be solely responsible for providing contact names and phone numbers that are readily available to be contacted by the State. The Offeror must also indicate what participation, if any, the Project Manager and each key staff person proposed for this project had in the referenced services.

F. Financial Statements: At this part of its Administrative Proposal, the Offeror must provide a copy of the Offeror's last issued GAAP annual audited financial statement. A complete set of statements, not just excerpts, must be provided. Additionally, for each Key Subcontractor, if any, that provides any of the Project Services; provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor, is a privately held business and is unwilling to provide copies of their annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor must make arrangements for the procurement evaluation team to review the financial statements.

G. Conflict of Interest: At this part of its Administrative Proposal, the Offeror must list and describe all Conflicts of Interest.¹

¹ A Conflict of Interest means a situation which has or may influence or appear to influence, compromise or bias the Offeror's/Contractor's actions and/or judgments in the Offeror's/Contractor's performance of Project Services. Such situations may result from the Offeror's/Contractor's direct or indirect interests, including but not limited to, financial, business, proprietary or personal interests, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP). A Conflict of Interest can result from relationships between the Offeror/Contractor and any individual, entity or organization that existed prior to or that may arise during the term of the Contract.

For each Conflict of Interest identified by the Offeror/Contractor, the Offeror/Contractor must describe what Firewalls and/or other controls, policies and procedures which a reasonable person would expect to provide corrective or mitigating action to adequately safeguard or protect the Department against any Conflict of Interest which have been or will be implemented by the Offeror/Contractor.

Notwithstanding the Conflicts of Interest (and proposed Firewalls or remedies) identified by each Offeror/Contractor, the Department reserves the right to determine whether the Offeror/Contractor has a Conflict of Interest. If the Department determines that there is a Conflict of Interest, the Department may disqualify the Offeror or terminate the Contract. Notwithstanding the preceding, where a Conflict of Interest has been determined, the Department may, along with all other remedies available, require the Contractor to implement Firewalls and/or other controls, policies and procedures identified by the Offeror/Contractor or by the Department to adequately safeguard or protect the Department against any Conflict of Interest. Further, if the Department determines that the implemented Firewalls and/or other controls, policies and procedures do not adequately safeguard or protect against a Conflict of Interest, the Department may disqualify the Offeror or terminate the Contract.

Note: Any Offeror that fails to satisfy one or more of the above submission requirements may be deemed non-responsive and/or non-responsible and eliminated from further consideration.

SECTION IV: TECHNICAL PROPOSAL REQUIREMENTS

The Department's goal is to have a fully functional DSS Solution available to the Department and its Users not later than twelve (12) months from the Contract effective date. This section of the RFP sets forth the requirements for the Offeror's Technical Proposal submission, describes the duties and responsibilities of the Contractor and poses questions and solicits information from Offerors concerning those duties and responsibilities; the responses to which form the basis of the Offeror's Technical Proposal offering (see those subsections below titled "*Required Submission Material*").

The Offeror's Technical Proposal must contain responses to all of the items listed under the Required Submission Material subsections in this Section IV of the RFP in the order and format specified. **Do not include any cost information in the Technical Proposal, including any exhibits or attachments thereto.** Offerors' proposed performance guarantee responses including fee amounts to be put at risk are not considered to be cost information and therefore should be stated in the Offeror's Technical Proposal.

Each Technical Proposal will be evaluated based on the Offeror's responses to the information sought in Section IV of the RFP (Note: see the "Required Submission Material" subsections throughout this Section IV of the RFP).

Note: Numbers, data or statistics which may appear in Appendices referenced throughout this RFP are considered to be accurate but should not be used or viewed by prospective Offerors as guarantees or representations of any future enrollment or claim volume.

The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals that it determines to be responsive to the programmatic duties and responsibilities set forth in this Section IV of the RFP.

A. Administrative Services**1. Executive Summary****a. Requirements**

In this section, the Offeror must demonstrate that it has the experience and expertise to provide the required services for the implementation and administration of the DSS.

b. Required Submission Material

In its Technical Proposal, the Offeror must submit an Executive Summary that must include:

- (1) The name and address of the Offeror's main and branch offices and the name of the senior officer who will be responsible for this account;
- (2) A description of the Offeror's understanding of the requirements presented in the RFP, the Department's needs, approach, and how the Offeror can assist the Department in accomplishing its objectives;
- (3) A statement explaining previous experience providing DSS services to other state governments, large public entities or any other organizations administering health benefits programs. The Offeror's submitted statement must indicate such experience was with one or more client(s) with, at minimum, one hundred thousand (100,000) covered lives. Also, include a description of the Offeror's experience with the management of various health-related data from multiple data providers. Detail how this experience qualifies the Offeror and, if applicable, any subcontractors, to undertake the functions and activities required by this RFP; and
- (4) Specify which function(s), if any, will be subcontracted.

2. Project Management Team

A key aspect to successful implementation and ongoing operation of the DSS is a strong project management team. The Department expects the Contractor to have a knowledgeable, experienced Project Manager and an experienced team in place that will have the responsibility, authority and integrity to command the appropriate resources necessary to implement and deliver Project Services. The Department will provide an onsite work area for key Contractor personnel during Implementation and thereafter, as necessary.

a. Duties and Responsibilities

- (1) The Contractor must maintain an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the DSS Solution during Implementation and Ongoing Operation.
- (2) The Contractor's assigned project management team must be experienced, accessible and sufficiently staffed to provide timely responses (1 Business Day) to administrative concerns and inquiries posed by the Department and designated Users for the duration of the Contract to the satisfaction of the Department.
- (3) The Offeror must propose a Project Manager who will be dedicated to the NYSHIP DSS, so as to have the ability to address direct inquiries by the Department within one (1) Business Day, for the entire term of the Contract. The Project Manager must possess at least five (5) years experience serving as a project manager.
- (4) The Contractor's Project Manager must immediately notify the Department of any actual or anticipated events impacting the delivery of Project Services and present options available to minimize or eliminate the impact of those events on the delivery of Project Services.

b. Required Submission Material

In its Technical Proposal, the Offeror must:

- (1) Provide an organizational chart and description illustrating how the Offeror proposes to administer, manage, and oversee all aspects of the DSS functions. Include the following:
 - (a) The responsibilities of each key position, including subcontractor provided key staff, if any, of the project management team. The Offeror must include the percentage of time (by position) dedicated to the Project and reporting relationships. Also include how the team will interact with other departments or functional areas within the Offeror's organization and with any subcontractors for this Project. Describe how the project management team interfaces with the organization's senior management;
 - (b) Names, qualifications, and job descriptions of those individuals selected to comprise the implementation, operational and management team for the Offeror. Complete **Exhibit P "Biographical Sketch Form,"** for all key staff, including subcontractor provided key staff, if any, of the proposed project management team; and
 - (c) Where individuals are not named, include qualifications of the individuals that you would seek to fill the positions.
- (2) In responding to this requirement, the Offeror must describe in detail how the Offeror proposes to ensure the project management team will meet the Department's accessibility and timely response requirements. The Offeror must state how it proposes to ensure that the Project Manager will have the authority to guarantee that problem areas identified by the Department will be corrected in a manner satisfactory to the Department.

- (3) Describe the experience of the individual who will assume the role of Project Manager for the DSS Solution. Include a description of the individual's experience with clients whose needs were of similar size and scope as those of the Department.

3. General Qualifications of the Offeror

a. Requirements and Responsibilities

- (1) The Contractor must have the experience, reliability and integrity to ensure that the Department's needs are addressed in a cost effective manner consistent with the requirements of the RFP.
- (2) The Contractor must have prior experience providing decision support services for a large complex client.
- (3) Except as otherwise required by the Contract resulting from this procurement, the Offeror must agree that it will not disclose any information related to NYSHIP to any party without written authorization from the Director of the Employee Benefits Division of the Department. Such request for authorization must be made to the Director in writing and the Contractor must submit to the Department a written description of the situation and a justification for the requested authorization prior to the expected access by the parties in question. Further, such written requests must satisfy all requirements for notification as stated in the Agreement resulting from this RFP.

b. Required Submission

In its Technical Proposal, the Offeror must:

- (1) Describe the Offeror's experience in implementing and providing services similar in scope to those described in this RFP for large clients. Include the timetable for Implementation of each referenced client's solution, adherence to the schedule (e.g. was it implemented on time?), how long the client's solution has been in operation,

any issues that arose during implementation or ongoing operation and an explanation of how those issues were resolved.

(2) Submit documentation of all ownership agreements and other relationships, current, pending or proposed, between, or among, the Offeror and any third parties including, but not limited to, the ownership of the Offeror by, or the Offeror's ownership of, an entity or organization. Such relationships must be identified and explained as follows:

- (a) all direct and indirect relationships the Offeror has with any entity involved in health benefits insurance and/or administration (or any parent, subsidiary, division, or related or affiliated entity), or any officer/director/board member/agent/partner/or employee of any of the previously described entities;
- (b) For each relationship identified, the Offeror must state (a) the name of the entity or individual with which the Offeror has the relationship; (b) the type and basic terms of the relationship, whether formal or informal, whether direct or indirect, whether separate or bundled, including but not limited to all relationships arising out of: any brokerage agreements, commission or other fee agreements, or any contracts to perform any work or services; (c) whether the relationship was or is based on an oral or written agreement; (d) when the relationship arose; and (e) when the relationship terminated or will terminate.

B. Implementation, Operation, and Support Services

The Department is seeking a DSS Solution with the capability to collect and integrate disparate claim, provider, financial and enrollment data into an organized system that can be accessed in order to define, measure, and analyze historical, current, and future benefits.

The Contractor must provide a DSS Solution that provides Web-based access that effectively integrates NYSHIP enrollment and claims data for all Empire Plan benefit areas, while allowing for future expansion and integration of additional data. The number of Empire Plan claims has increased at an approximate annual rate of 3.6% over the last five years. See **Appendix I “NYS Empire Plan Number of Paid Services and Claims”** for an overview of

claims experience based upon number of claims and/or services paid (a claim may be composed of one or more services) for the Empire Plan over the last eight years.

NOTE: Unless stated otherwise, Empire Plan data is understood to include the Excelsior Plan and the SEHP.

Project Services required by the Department are as follows:

1. Implementation

The Contractor must have a well developed Implementation Plan to ensure that its proposed DSS Solution will be fully functioning within one year after the Contract effective date.

The Contractor's Implementation Plan must be detailed, comprehensive and exhibit a firm commitment that all Implementation activities will be completed within one year of the Contract effective date.

To assist the Contractor in fulfilling its obligations, the Department will provide Department staff to participate in meetings and provide administrative oversight in the data acquisition process to ensure Data Provider cooperation in provision of the initial historical data load during the Implementation period. The Department will provide a workstation, (i.e. desk and chair, personal computer (PC) with internet access and appropriate network access), and appropriate building access for the Contractor's onsite staff, if any, during this period. The Department will provide technical support and maintenance of Hardware (e.g. PC) and associated Department owned and installed Software used by the Contractor's onsite staff. The Department will **not** provide personal phone lines, administrative support staff, or parking privileges to the Contractor's onsite staff.

a. Duties and Responsibilities

- (1) The Contractor must deliver an overall Implementation Plan, and designate an Implementation Team composed of individuals knowledgeable in the requirements of a large client comparable to those of the Department. The Implementation Team must be committed to work with the Department to analyze and document User

needs. The Implementation Plan must include evaluation and assessment activities and development of a project plan to achieve the goals of the Project.

- (2) The Contractor must provide, subject to Department approval, a detailed Acceptance Testing Plan (ATP) that identifies the functions the Department will test in order to ensure the Contractor's DSS Solution functionality is fully operational and meets all requirements identified in the RFP. The Department reserves the right to modify the ATP to meet the Department's needs. User training of key participants in the ATP must be completed prior to the start of testing. The ATP must include, at a minimum, the nature and duration of the tests, definition of roles of staff required to perform the tests, process for resolution of testing issues, definition of acceptable test outcomes and provision for Department signoff on testing plan and successful completion of testing activities. The ATP must confirm:
- (a) The Contractor's DSS Solution meets the requirements set forth in Section IV.B.2 - 6 of this RFP. These requirements include, but are not limited to data management, analytical, query and reporting capabilities, and user specifications; and
 - (b) The Contractor meets the requirements set forth in Section IV.B.7 - 8 of this RFP which include, but are not limited to, system availability and connectivity, response time, environment specifics, and maintenance program.
- (3) The Contractor must, at a minimum, guarantee that all DSS Implementation activities will be completed within twelve (12) months of the Contract effective date, so that all Project Services will be fully operational in all functions required by this RFP. As defined in this RFP, the specified completion date means the date proposed by the Contractor and agreed upon by the Department for delivery of a fully functional DSS Solution; the completion date may not, in any case, exceed twelve (12) months after the Contract effective date. For the purpose of this guarantee, the Contractor must on, or before, the specified completion date have completed:

- (a) Preparation of facilities for long-term physical maintenance and storage of data. See **Appendix I** for Empire Plan paid claims and services over the period 2002 – 2009 and **Appendix K** for data storage information;
- (b) Activities required to bring the DSS Solution to full production and to be fully functioning in all aspects of the Project Services as described in this RFP, (i.e. accepting data from all Data Providers with full decision support capability and able to fulfill all other related tasks and responsibilities designated in this RFP). Initially, the Contractor must submit their proposed data interface requirements to the Department for review and, once approved by the Department, supply all Data Providers with the interface requirements. The Contractor must set up a meeting(s) with all Data Providers within thirty (30) Business Days of the Contract's effective date to present file layout requirements. Once the Data Providers have produced data in a layout conforming to the Contractor's requirements, the Contractor must proceed to load historical data into the DSS Solution and provide access to the Department for acceptance testing no later than sixty (60) calendar days from the date the loadable data is received from the Data Providers;
- (c) Acquisition, validation, and loading of six (6) complete Plan Years of historical data and all current Plan Year data available to be loaded into the DSS. In addition, after the load of historical and current Plan year is completed, a minimum of one complete current update cycle from each current Data Provider must be successfully transmitted, received and loaded into the DSS in order for Implementation to be deemed complete;
- (d) Training, including proficiency testing of Users and, if necessary, additional training of Users at no additional cost to the Department;
- (e) Establishment of User support functions, (e.g. telephonic and online support);
and

- (f) All activities related to user acceptance testing and received Department sign-off on successful completion of those activities.

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) Provide a detailed Implementation Plan (narrative, diagram, and timeline) designed to implement the Offeror's proposed DSS Solution within one year of the Contract's effective date indicating: roles, responsibilities, estimated timeframes for completion of individual tasks, and testing dates and objectives. The Implementation Plan must include key activities such as:
 - (a) the date the historical initial data feeds from all of the Data Providers will be loaded into the DSS Solution;
 - (b) the date the DSS Solution will be in full production accepting data from all sources with full decision support capability;
 - (c) the dates of user acceptance testing including target test completion dates; and
 - (d) the training dates for Users.
- (2) Submit a proposed Acceptance Testing Plan that identifies the functions that will be tested to ensure the DSS Solution functionality is fully operational and meets all requirements identified in the RFP. At minimum, the ATP must include:
 - (a) Nature and duration of test(s);
 - (b) Identification of resources required to complete the testing process;
 - (c) Definition of roles of staff, both Department and Offeror, as applicable, required to perform tests;
 - (d) Process for resolution of testing issues;

- (e) Definition of acceptable test outcomes;
- (f) Reporting and analysis of test results; and
- (g) Department/Offeror signoff process.

(3) *Implementation Guarantee:* In this part of its Technical Proposal, the Offeror must state its agreement and guarantee that all Implementation activities will be completed to the satisfaction of the Department, as determined in its sole discretion, no later than twelve (12) months from the effective day of the Contract. The Offeror must provide its Implementation Guarantee in the following format:

- (a) Assuming a contract effective date of January 1, 2011, the Offeror proposes an Implementation Completion Date of [Insert Date]. For contract purposes, the Implementation Completion Date will be adjusted in accordance with a change in the contract effective date initiated by, or agreed to by, the Department.
- (b) The Offeror proposes to permanently forfeit [Insert Offerors quoted Number] times the dollar amount of the Ongoing Operations Monthly Fee for each month, or part thereof, after the Offeror's proposed Implementation Completion Date that any of the Implementation activities listed above, in Section IV.B.1.a remain incomplete.

NOTE: The Offeror must agree to permanently forfeit, at a minimum, an amount equal to one (1) time the dollar amount of the Ongoing Operations Monthly Fee for each month, or part thereof after the Offeror's proposed date that any of the Implementation activities remain incomplete.

2. **Data Management**

The DSS Solution must provide data management, analytic capability, and support services including benchmarking against accepted industry standards/norms, plan and program evaluation, benefit design and modeling, utilization analysis at provider and member levels

and both standard, pre-defined and Department defined report production. The Contractor must provide a DSS Solution which allows for independent analysis, including the capability to view data at a summary and/or granular level, and the ability to download and manipulate results into a format acceptable to the Department.

Department staff will be available to discuss validation criteria for data for which the Department is the direct provider and/or is provided on behalf of the Department from other Data Providers, as necessary, to assist in resolving escalated data integrity issues with Data Providers. The Contractor must first make best effort(s) to resolve issues through direct contact with the Data Provider.

The following Project Services are required in order to meet the Department's needs:

a. **Duties and Responsibilities**

(1) The Department requires that:

- (a) The DSS Solution be capable of containing a minimum of the previous six (6) complete calendar years of data in addition to the current Plan Year's data to date;
- (b) The Contractor develop and provide the Department with complete documentation of the DSS Solution. The documentation must provide the Department with a complete description of the meaning of the information and any relationships between the information (metadata) that is available from the DSS Solution;
- (c) The Contractor's DSS Solution adheres, to the extent applicable, to the NYS Office for Technology (NYSOFT) policies and standards as stated in New York State Information Technology Policy NYS-P08-005 (Accessibility of Web-Based Information and Applications) in regards to system user interfaces. NYS-P08-005 can be viewed at: <http://www.cio.ny.gov/Policy/NYS-P08-005.pdf>

- (d) The Contractor receive required enrollment and claims data from the Department, or from a Data Provider on behalf of the Department, and loads the data for use in the DSS Solution in a timely manner.
 - (e) The Contractor work with the Department to define specifications such as the method of transmission, frequency of data exchange, and format of the enrollment and claims data feeds (e.g. FTP with PGP encryption, monthly, new set of data – not limited to updates/changes).
- (2) The Contractor must provide a methodology satisfactory to the Department for archiving historical data and retrieving archived data, should the Department choose to utilize such services. The Department requires a minimum of six (6) Plan Years plus the current Plan Year data to be accessible through the DSS Solution.
 - (3) The Contractor must have a secure method to accept data during transmission that complies with applicable federal and State laws, rules and regulations including, but not limited to HIPAA and Appendices A, B and C.
 - (4) The Contractor must use an encryption methodology for data that resides in the DSS Solution that masks the identity of an individual but still provides the means to link together an individual's claim and coverage history without disclosing the individual's social security number or other personal identification indicator. In addition, designated Users must be provided with decryption capability, and/or security level, to associate claim and coverage history to a specific identifiable individual. The Contractor's proposed encryption methodology must ensure all individually identifiable health information is protected in compliance with applicable federal and State laws, rules and regulations including, but not limited to HIPAA.
 - (5) Prior to loading, data quality assurance tests must be performed by the Contractor. Changes to the data to ensure that only data that has passed required validation edits, or to enhance the overall integrity of the DSS Solution, will be the duty and responsibility of the Contractor working in conjunction with the Data Providers and

with Department approval. Areas to be addressed through the data quality assurance process should include, at a minimum:

- (a) Data field format incompatibility errors;
 - (b) Missing data;
 - (c) Field value edits;
 - (d) Data integrity validation appropriate to file specifications, (e.g., if summary totals are provided, the data must be reconciled to those totals);
 - (e) Data validation with external sources;
 - (f) Data calculation errors;
 - (g) Duplicate information within a single file;
 - (h) Submission of duplicate files; and
 - (i) Follow up with a Data Provider(s) to ensure the Data Provider corrects identified data errors and resubmits the corrected data.
- (6) The Contractor must be able to accept data in a variety of formats and media on a monthly, bi-weekly, and weekly basis from the Department and other Data Providers. See **Appendices J through S** for information on formats, media, and frequencies of data updates by Data Providers. The data must be loaded in the DSS Solution maintained by the Contractor.
- (7) A copy of the interface requirements given to the Data Providers by the Contractor must also be supplied to the Department. The Department reserves the right to review, request clarification, and/or suggest modifications to the interface requirements ultimately given to the Data Providers.

- (8) The Contractor's interface requirements must be provided to the Data Providers within thirty (30) Business Days of the contract award. Upon changes in NYSHIP Insurers and/or benefit administrators, the Contractor must provide its interface requirements to the new Insurer or benefit administrator within thirty (30) Business Days of notification of the change by the Department.
- (9) Thirty (30) Business Days prior to the start of each Plan Year, the Contractor must establish and provide the Department with a schedule identifying the planned DSS data loads, as well as due dates for receipt of data from the Data Providers. The Contractor must notify the Department within one (1) Business Day of any failure to meet the due date by any Data Provider.
- (10) *DSS Update Guarantee:* The Contractor must guarantee that the data supplied by the Data Providers will be processed through quality assurance testing and, if the data as submitted meets the standards, the data will be loaded in the DSS Solution not later than fifteen (15) Business Days of its receipt from each Data Provider. This guarantee does not apply to data model changes, new data providers or types, or reprocessing of previously processed data due to Data Provider error.
- (11) On a quarterly basis, the Contractor must submit a report to the Department that details the Contractor's compliance with the Performance Guarantees - DSS Update Guarantee and DSS Solution Availability Guarantee, stated in this RFP in Section IV.B.2 a(10) and B.7.b(9), respectively. The reports are due sixty (60) calendar days after the end of the quarter. In addition, the Contractor must provide timely notification, i.e. within two (2) Business Days, to the Department of any and all occurrences of non-compliance with Performance Guarantees.

b. Required Submission

In its Technical Proposal, the Offeror must:

- (1) Describe in detail the proposed process for operating the DSS Solution to meet the requirements specified in this RFP. Include how data interface requirements will be

communicated to the Data Providers and explain the proposed process for scheduling, receiving and validating data. Explain the process proposed for monthly and more frequent regularly scheduled updates and loading of historical data into the DSS Solution once it becomes operational.

- (2) Provide a complete description of the meaning of the information contained in the DSS Solution and any relationships between the information (metadata) that is available from the DSS Solution.
- (3) Describe the process proposed by the Offeror for resolving data integrity issues with Data Providers:
 - (a) During the term of the Contract, there is the potential for one or more insurers/benefit administrators of the Empire Plan components to change. This would require claim data “run-out”, (i.e. transmission of data from the prior insurer/data provider) and integration of the data into the DSS Solution for one or more years coincident with acquisition and integration of data from the new insurer/data provider. Detail the Offeror’s proposed process for handling such a change.
 - (b) Describe in detail the proposed process/procedures for archiving and retrieving historical data, including the frequency of archival process (e.g. annual).
 - (c) Describe the process proposed for ensuring that only data that has passed all validation edits required by this RFP will be loaded in the DSS Solution, and for following up with the Data Providers to correct identified data errors. The Offeror should provide a description of their proposed data validation procedures which should, at a minimum, address the areas identified in Section IV.B.2.a. (5). The Offeror should include the external validation sources it is proposing to be used as part of its DSS Solution and identify the validation sources that will be available to the Department as part of the proposed DSS Solution. In responding to this requirement, the Offeror must include the typical turnaround times for correction of data inaccuracies due to either Offeror error or due to Data Provider error, i.e. Empire Plan insurer, the Department.

- (d) Explain the procedure for maintaining NYSHIP enrollee specific information.
The explanation should include possible methods for receiving the information, frequency of the exchange and format of updated information. For example, FTP with PGP encryption, monthly, entirely new set of data with each exchange.
- (e) Confirm the Offeror's ability and agreement to accept encrypted data, in a variety of formats and media on the various frequencies required by the RFP (e.g., monthly, biweekly, and weekly).
- (f) Describe the proposed process for updates from Data Providers in terms of the timing of their receipt and loading into the DSS Solution. For example update each benefit area, (e.g. medical, hospital, prescription drug), at the same frequency (e.g. monthly) but on a staggered schedule (e.g. medical claims on the 5th of the month, hospital claims on the 15th of the month) or is all data held for one monthly update?
- (g) Provide a detailed description of the proposed transmission encryption methodology including how it will meet federal and State legal requirements as well as the requirements identified by the Department. In responding to this requirement, the Offeror must detail if this a new encryption methodology proposed to be used for the DSS Solution or is it a proven methodology currently used for the rest of the Offeror's books of business. Detail the tasks, if any, required of the Data Providers.
- (h) Provide a high-level description of the technical infrastructure, such as the hardware platform and database management platform, for the proposed DSS Solution.
- (i) *DSS Update Guarantee*: The Offeror must guarantee that the data supplied by each Data Provider will be processed through quality assurance testing and, if the data as submitted meets the standards, the data will be loaded in the DSS Solution not later than fifteen (15) Business Days from the scheduled data

receipt date of the data from each Data Provider. This guarantee does not apply to data model changes, new Data Providers or types, or reprocessing of previously processed data due to Data Provider error. If the data is received after the scheduled receipt date, the data will be loaded in the DSS Solution not later than fifteen (15) Business Days from the date the data was received.

The Offeror shall propose a dollar amount for each twenty-four (24) hour period, or part thereof, to be forfeited for failure to load the data in the DSS Solution by the specified date, as a required above, from each Data Provider.

The Standard Credit amount for this guarantee is \$500

Provide the guarantee in the following format:

For each twenty-four (24) hour period, or part thereof, beyond fifteen (15) Business Days from receipt of data from a Data Provider, in accordance with the submitted schedule, that the data is not loaded into the DSS Solution and fully accessible to all Users, the Offeror proposes to forfeit \$_____.

- (j) Confirm the Offeror's agreement to submit a report on a quarterly basis that details the Offeror's compliance with the Performance Guarantees - DSS Update Guarantee and DSS Solution Availability Guarantee and to provide timely notification, (i.e. within two (2) Business Days), to the Department of any and all occurrences of non-compliance with Performance Guarantees. The reports are due sixty (60) calendar days after the end of the quarter.

3. User Requirements

a. Duties and Responsibilities

- (1) Users will be individuals employed by the Department as well as individuals designated by the Department as Users, which may include, but not be limited to, employees of GOER, DOB, OSC and the Department's benefit management and actuarial consultant. The majority of Users will be Department employees located at

the Albany, NY offices of the Department; however, additional Users will be physically located elsewhere. All Users will not have the same level of access and permissions. No User will have the capability to change data in the DSS Solution. The Department is requiring three (3) levels of Users:

- (a) Level 1 User – The Department will require a minimum of fifteen (15) Users to be designated as and receive training as Level 1 Users. Level 1 Users will have full access to all features/functions of the delivered DSS Solution and have the highest level of security permissions granted by the Department.
 - (b) Level 2 User – The Department will require a minimum of ten (10) Users to be designated as and receive training as Level 2 Users. Level 2 Users will have full access to all features/functions of the delivered DSS Solution and restricted security permissions, (e.g. the User will not have access to any individually identifying information).
 - (c) Level 3 User - The Department will require a minimum of twenty (20) Users to be designated as and receive training as Level 3 Users. These Users will require a significantly lower level of permissions. Level 3 Users will be restricted to accessing simple, predefined queries and standard reports, performing simple data manipulations from the pre-defined reports and queries and exporting data results from such reports/queries. Level 3 Users will not require access to the same applications/software features as Level 1 or 2 Users. These Users would have the most restricted security permissions.
- (2) The Department may require that its maximum number of licensed Users be able to access the DSS at a single point in time. The DSS must allow multiple Users to utilize the system concurrently without limitations to the number of Users at any single point in time.

- (3) Dependent on the category of User, the DSS Solution must provide the Users with the capability to access various functions. At a minimum, the DSS must allow the Level 1 and Level 2 Users to directly view, access, manipulate, compare, and analyze data, run queries and develop non-standard (e.g. user defined) reports. Level 1 and Level 2 Users will have the maximum query capabilities supported by system design and will be able to manipulate the resultant data from these queries; however, the base data will remain unchanged. Level 1 and 2 User capabilities must include, but not be limited to, the ability to:
- (a) Develop and view report information at either a granular and/or summary level, as appropriate for User's needs;
 - (b) Export data to other standard applications (e.g. Microsoft Access, Microsoft Excel, Microsoft Word); and
 - (c) Extract data and reports to print and download.
- (4) User training is required. The Contractor must provide a training plan that is tailored to the types of Users and their assigned permissions. The training plan must include proficiency testing of Users and, if necessary, additional training as required based on results of testing to ensure the DSS training goals and outcomes are achieved with said additional training, if any, at no additional cost to the Department. All training provided by the Contractor under its training plan must be provided onsite at the Department's facilities. On-Demand training must be available, at the Department's request, on an ongoing basis to handle User turnover, system changes and upgrades at the rates set forth in the Offeror's Cost Proposal.
- (5) The DSS Solution's design and operation must conform to applicable federal and State laws and regulations regarding accessibility standards for persons with disabilities. Section IV.B. 2.a(1)(c) provides information regarding NYSOFT standards and policies.

- (6) User support documentation must be provided as applicable to each User Level. The documentation must be provided for all Users, in downloadable electronic versions, preferably PDF. User support documentation must include, but not be limited to:
- (a) User Manuals, quick reference guides;
 - (b) Data Dictionary; and
 - (c) Updates as appropriate to correspond to DSS Solution upgrades/changes.
- (7) Access to both online and telephonic support/Help Desk must be available to all Users regardless of User Level. Online support services, (e.g. help screens, frequently asked questions (FAQs)), must be available 24 hours per day/seven (7) days per week. Telephonic support/Help Desk, utilizing a toll-free number, must be available, at a minimum, Monday – Friday 7:00 a.m. to 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET. The Contractor must respond to all requests for assistance within four (4) business hours of the initial request and provide a proposed timeline for resolution of the identified issue. The proposed timeline will be subject to mutual agreement by both the Department and the Contractor.
- (8) The Contractor must provide connectivity as a secure, internet-based service. The Department requires:
- (a) Connectivity between the Contractor's facility at which the DSS Solution is housed and the Department and sites designated by the Department;
 - (b) A browser-only thin client deployment model;
 - (c) Generation of pages that validate to XHTML 1.0 or HTML 4.01 transitional standards;
 - (d) The Contractor must provide all DSS Solution-related Software inclusive of installation, maintenance and support; and

- (e) The Contractor is solely responsible for overall trouble-shooting and problem solving related to the delivered Project Services.
- (9) The Contractor must identify Software requirements, (e.g. compatible browsers including release version), for onsite Department utilization. The Offeror requirements are subject to Department approval.

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) Confirm the Offeror's ability to establish User Levels, including permissions and restrictions on usage, as specified in Section IV.B.3.a(1). In responding to this requirement, the Offeror must describe, in detail, any restrictions on the number of Users overall or within a category, i.e. User Level.
- (2) Describe in detail the capabilities for access, manipulation, analysis, security, etc., for each User Level in the Offeror's proposed DSS Solution. Explain how the Offeror's proposed User Levels will meet the Department's requirements for access, functionality and security at the three levels described in this RFP, Section IV.B.3.a(1).(a).
- (3) Confirm the DSS will not include limitations as to the number of Users able to concurrently use the DSS Solution.
- (4) Provide a description of the training plan the Offeror proposes for Users, including items such as, session length, number of sessions, class size and position/qualifications of instructor(s) providing training. Identify the plan's goals and expected outcomes. The Offeror must state its agreement to provide all training, both initial and subsequent, onsite at the Department's offices. The Offeror must also state if Webinar training is available and confirm the Offeror's agreement to provide On-Demand training, at the Department's request, on an ongoing basis to handle User turnover, system changes and upgrades and at the rates set forth in the Offeror's Cost Proposal.

- (5) Describe the accessibility accommodations of the proposed DSS Solution that can be implemented for disabled Users at no additional cost to the Department.
- (6) Describe and/or provide copies of the User support documentation to be provided to Users.
- (7) Describe the proposed technical support services, online and telephonic, that will be available to Users during the Department's required timeframes for online support services (e.g. help screens, FAQs) and telephonic support services. The Offeror's response should include a description of its Help Desk operation, including staff size. The Offeror must also state its agreement that all requests for assistance will be responded to within four (4) business hours of the initial request, at which time the caller will be provided with a proposed timeline for resolution of the identified issue (subject to mutual agreement by both the Department and the Contractor).
- (8) State the Offeror's agreement to provide secure connectivity as an Internet-based service offering. Describe in detail the Offeror's proposed web-based product. Identify any client(s) for which the Offeror has provided services similar to those set forth in the RFP as an Internet-based service offering. The Offeror's response must state if the identified clients' DSS Solutions have been in full production mode for twelve (12) months or more, with at least twenty-four (24) months of historical data.
- (9) Provide a description of software requirements, (e.g. compatible browsers including release version), for onsite Department utilization.

4. Analytical Capabilities

a. Duties and Responsibilities

The DSS Solution must provide Users with the ability to conduct analysis on any field or attribute, either individually or collectively, designated to be populated with data provided by the Data Providers in the DSS Solution. Such capabilities include, but are not limited to, trend and normative analysis and projections of utilization and benefit

costs, benefit and program modeling as tools for use in the administration and oversight of various NYSHIP contracts, and advanced and integrated analytics based on the Contractor's unique and proprietary methodologies. These analytical capabilities must provide Users with the ability to:

- (1) Integrate data for all clinically related services for one patient for a discrete diagnostic condition, from the point the initial treatment is identified until treatment is completed, into an episode of care. The DSS must identify the codes (e.g. AMA ICD-9, APA DSM IV, CPT codes) used in defining the episode and provide the User with the ability to exclude codes and/or include additional codes as the User deems appropriate. The DSS must have the capability to analyze episodes of care in relation to regional and national benchmarks.
- (2) Conduct analysis of individual member's claims experience through unique member identifiers provided in Empire Plan eligibility data.
- (3) Conduct analysis by member demographics such as Benefit Plan, Benefit Program, Medicare status, etc.
- (4) Perform analysis of provider billed, allowed and paid amounts, frequency and complexity of services rendered, geographic location, and other utilization and profiling indicators.
- (5) Perform analysis on diagnostic related groups as defined by the AMA ICD-9 international classification of diseases and American Psychiatric Association DSM IV codes.
- (6) Conduct analysis based on medical and hospital service codes including CPT and revenue codes.
- (7) Allow analysis and evaluation of Empire Plan utilization based on provider participation status.
- (8) Perform analysis of prescription drug data at the National Drug Code (NDC) level based ingredient cost, utilization, therapeutic class, Preferred Drug List (PDL)

status, and specialty and compound drug indicators; allow Users to model various strategies designed to contain costs while enhancing the therapeutic value of PDL drugs.

- (9) Model and analyze potential benefit changes and evaluate cost containment strategies.
- (10) Conduct analysis based on the Contractor's unique and/or proprietary analytic categories and classifications in order to provide Users with enhanced insight and understanding of Plan costs, utilization, and outcome measures.

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) Describe in detail how the Offeror's proposed DSS Solution will provide the Department with the analytical capabilities detailed in Section IV. B. 4. a.
- (2) Describe, in detail, the analytic tool available in the proposed Solution for episode of care analysis. Include components of care identified by the tool, such as costs, procedures, treatment location, etc. State the flexibility or degree of User definition allowed by the tool. Provide an example of an episode of care analysis.
- (3) Identify the industry standard diagnostic and procedural groups the Offeror's proposed DSS Solution will support and explain how the information is integrated in the DSS Solution.
- (4) Describe the tools which will enable users to analyze the data contained in the system in an effective and efficient manner. Characterize the ease of use of the analytical tools, and describe the typical learning curve for new users.
- (5) Describe the advanced and unique analytic tools, categories and classifications proposed that will afford Users the capacity to generate information and reports that provide them with enhanced insight and understanding of Plan costs, utilization, benefit models, and outcome measures.

- (6) Describe the DSS Solution's ability to identify providers by various categories, (e.g. primary care, specialty, network/non-network, group/individual).
- (7) Describe in detail how the DSS Solution will allow a User the capability for future benefit modeling. Include in the description the proposed DSS Solution's ability to evaluate changes in benefits, co-payments, co-insurance, etc.
- (8) Explain how the Offeror's proposed DSS Solution will allow for the evaluation of cost containment programs such as utilization review and case management.

5. Query and Reporting Capabilities

The Contractor must provide the capability for Users to request a variety of information from the DSS Solution and have those results presented in a formatted and organized manner. The proposed DSS Solution must provide the capability to provide user-defined reports and analyses on an as needed basis in addition to standard, pre-defined reports, (e.g. quarterly Empire Plan utilization reports). Reports may be requested to meet clinical program review needs, address special population issues and concerns, and/or for review of contract compliance.

a. Duties and Responsibilities

- (1) The DSS Solution must provide an efficient query tool that allows Users to, at minimum:
 - (a) Access all claims and enrollment files and attributes;
 - (b) Link data for analysis;
 - (c) Select subsets of data fields and/or summary or statistical information;
 - (d) Perform flexible filtering of data through pre-defined groups, (e.g. active vs. retiree), as well as user-defined groups, for those Users with the highest level of privileges;

- (e) To set criteria so that only desired records and/or information is returned. Users should have the ability to select criteria such as age, sex, service type, service location, provider type, and/or diagnostic groupings, (e.g. ICD-9 codes, DRGs), as requested;
 - (f) Sort selected subsets of records or information based on multiple sort criteria; and
 - (g) Save query design for future reference and use.
- (2) The DSS Solution must provide benchmarking capabilities that, at minimum:
- (a) Use and provide full access to files containing standard industry accepted norms including, but not limited to, national, regional, state, and county as grouped by member and provider zip codes, for benchmarking analysis. In addition, the DSS Solution must have the ability to create norms from internal data for comparison purposes; and
 - (b) Provide the capability for comparison of claim experience, enrollment experience, and provider practice/treatment patterns to the normative standards.
- (3) Reporting capabilities should provide the option:
- (a) for the Users to save query results in a permanent file (i.e. table or data file) that can be exported/imported utilizing standard Microsoft Office applications (e.g. Access, Excel, Word);
 - (b) to utilize copy and paste functions; and
 - (c) to allow Users the capability to store and reuse report templates.
- (4) The DSS Solution must provide the capability for Users to define and produce reports required to meet their needs for a particular project or analysis.
- (5) The DSS Solution must provide the capability to deliver pre-defined reports electronically. Examples of such reports may include:

- (a) Utilization reports by enrollee, patient, and/or provider;
- (b) Provider reports that include use and cost performance details for physicians, hospitals, networks;
- (c) Cost trend reports that include hospital admissions, pharmacy utilization, ambulatory surgery and physician services. Trends should include all payment components, (e.g. deductibles, copayments, coinsurance) and cost of benefit; and
- (d) Quarterly and Annual Plan summary reports.

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) For each item of functionality detailed in Section IV.B.5.a(1) – (2), confirm that the proposed DSS Solution query tool satisfies these requirements. Provide a complete description of all query functions and capabilities of the proposed DSS Solution. In its response to this requirement, the Offeror must include how the proposed DSS Solution will allow Users to select query parameters from a defined menu of choices as well as the option to allow a User to specify the fields and values to define the query.
- (2) The Offeror must describe the DSS Solution’s capability for exporting/importing query results into standard Microsoft Office applications such as Access, Excel, and Word.
- (3) Describe the filtering capabilities of the proposed DSS Solution.
- (4) Describe the benchmarking resources offered by the proposed DSS Solution.
- (5) The Offeror must describe the report writer function included in the DSS Solution.

- (6) Confirm the DSS Solution report function's ability to provide copy and paste functions and to store and reuse report templates.
- (7) Provide the proposed DSS Solution's average response times for pre-defined, standard reports; include in the response how response time will be measured and monitored.
- (8) Detail how/if the proposed DSS Solution will allow the production of reports upon request, i.e. at time other than the scheduled production date(s).
- (9) Describe the Offeror's proposed quality control procedures to be put in place to assure the accuracy and timeliness of reports.

6. Consulting Support Services

Once Implementation has been completed and DSS Solution has been deemed fully operational and acceptable by the Department, the Contractor must provide enhanced analytical assistance to Users at the Department's request. Such enhanced analytical assistance may include, but not be limited to, assistance in a specific task or project, expert advice regarding the dynamics of the health care delivery system, pharmaco-economics, the input of benefit design changes or enrollee behavior and health status. The support services shall provide expert technical advice and query development assistance to identified Users. Such Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing training.

a. Duties and Responsibilities

- (1) Once the DSS is fully operational to the Department's satisfaction, the Contractor must provide, upon the Department's request, a minimum of 400 hours of consulting support services during the balance of the term of the contract.
- (2) The consulting support services must provide analytical support and expert guidance in clinical and statistical data analysis in relation to special or exigent projects

requiring a more complex level of data review and study. These services are separate and apart from User Training, either initial or incremental ongoing training.

- (3) Consulting services are understood to include, but not be limited to, assistance in a specific task or project, expert advice regarding the dynamics of the health care delivery system, pharmaco-economics, the input of benefit design changes or enrollee behavior and health status

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) State its agreement to provide a minimum of 400 hours of consulting support services during the Ongoing Operational phase of the contract.
- (2) Describe in detail the types of consulting support services the Offeror proposes to provide during the term of the contract for these required services.
- (3) Clearly specify those consulting support services that will be provided in the normal course of business under this contract for which no charge will be assessed to the Department.

7. DSS Solution Operational Requirements

The Department requires that the Contractor provide the following functions and meet specific requirements to fulfill the Department's needs.

a. Duties and Responsibilities

- (1) The Department requires that the DSS Solution be available in its entirety to Users Monday – Friday 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET (Normal Business Hours). To the extent possible, the Contractor must agree to schedule outages for required maintenance or system upgrades outside of Normal Business Hours. Any unavoidable maintenance or system upgrades that cannot be scheduled outside of Normal Business Hours and must take place during those hours

must receive prior approval from Director of the Department's Employee Benefits Division or his designee. The Contractor must provide the Department with, at a minimum, forty-eight (48) hour notice of any and all preventive maintenance and/or service interruption due to system upgrades or enhancements that may occur during Normal Business Hours.

- (2) Unscheduled interruptions of Project Services must be restored within four (4) hours of loss of Project Services. The Department's designated contact must be notified of the interruption within thirty (30) minutes of the detection of the disruption. The notification must include the reason for the interruption and estimated timeframe for restoration of Project Services. Notification must be provided to the Department's contact upon full restoration of services.
- (3) In the case of an interruption exceeding four (4) hours, a written and verbal explanation of the cause and remedial steps taken to avoid a reoccurrence must be provided to the Department within five (5) Business Days of restoration of Project Services.
- (4) The Contractor must have physical safeguards in place that ensure Department data is secure from unauthorized persons and unauthorized access at all times. Technical safeguards must also be maintained so as to ensure that the data is stored in a secure manner and will be processed such that the confidentiality of the data is protected at all times. The Contractor must agree to provide both physical and technical security for this project in agreement with the policies, terms and conditions stated in this RFP, the resultant Contract and Appendices A, B and C.
- (5) The Contractor must have existing corporate policies and procedures in place regarding ethics, privacy and security pertaining to the protection of client data and information. At minimum, the Contractor must for the protection of NYSHIP DSS data and activities agree to apply policies and procedures equal to Department policies and procedures and equal to or better than the policies and procedures in existence for other clients. Such effective, comprehensive policies and procedures must be maintained for NYSHIP data and information in perpetuity.

- (6) The Contractor is required to provide all centralized computing Hardware, Software, staffing, maintenance, and associated processes and procedures necessary to support the proposed DSS Solution in a facility provided by the Contractor. The Contractor is required to provide preventive maintenance and keep the various Hardware and Software components of the DSS Solution current with release and maintenance levels. Hardware and Software not supported by the manufacturer cannot be utilized for the DSS Solution. The Contractor must make all upgrade/enhancements available to the Department in the delivery of the DSS Solution at no additional cost to the Department.
- (7) The Contractor must establish, use, document and maintain professionally and technically sound quality assurance standards, techniques and tools including, but not limited to, the following:
- (a) Operational procedures;
 - (b) Data naming standards;
 - (c) Standards and techniques for controlling data synonyms, aliases and versions;
 - (d) Standards for data characteristics;
 - (e) Data design standards to ensure modularity, extensibility and flexibility, and to ensure the efficient and consistent use of the data;
 - (f) Standards for data searching and cross-referencing techniques;
 - (g) Standards to control data redundancy;
 - (h) Standards for data views;
 - (i) Standards for database administration; and
 - (j) Test-of-correctness and objective measurements of quality.

(8) The Department requires that the Contractor have a thorough and detailed Disaster Recovery Plan (DRP) in place that is updated and tested at least annually. The DRP must include offsite secure backup of the DSS Solution and the ability to establish a fully functional DSS Solution at the alternative location, if needed. The DRP must have safeguards in place to ensure the security and confidentiality of the data and system is neither compromised nor corrupted.

(a) In addition, the DRP must, at a minimum, meet the following requirements:

- (i) If the DSS Solution fails, the DSS Solution shall be able to be restored to its last consistent state before the failure occurred. The Contractor must address any data loss resulting from a system failure;
- (ii) The DSS Solution shall retain archived data and system records in accordance with State regulations, policies, and procedures;
- (iii) The DSS Solution shall be designed assuming zero fault tolerance (i.e. no single physical or electronic point of failure);
- (iv) The DSS Solution shall be backed up on a regularly scheduled basis; the schedule must be provided to the Department for review and approval;
- (v) The DSS Solution backup media shall be stored offsite in a controlled access, physically protected location;
- (vi) Scheduled maintenance shall be coordinated with the Department;
- (vii) The DSS Solution shall be fully functional during Normal Business Hours with the exception of scheduled outages for maintenance agreed to by the Department; and
- (viii) In the event of data loss or data corruption, the DSS Solution shall be able to recover lost data within one (1) day from local backup/recovery and within three (3) days from offsite backup/recovery.

b. Required Submission

In its Technical Proposal, the Offeror must:

- (1) Confirm the Offeror's agreement to the Department's required hours of availability, including notification of scheduled service interruptions as required by the Department, i.e. minimum forty-eight (48) hour prior notification, and avoidance of scheduling maintenance and/or system upgrades during Normal Business Hours. Provide an explanation of how availability is calculated, (e.g. inclusion or exclusion of planned outages in calculation). In responding to this requirement, the Offeror must include detail as to how many times has services been unavailable greater than 1% of the agreed upon hours of operation in the last three (3) years for clients similar in size and receiving similar services.
- (2) State the Offeror's agreement to provide both physical and technical security for the Project in agreement with the policies, terms and conditions stated in this RFP and Appendices A, B and C. The Offeror must describe in detail the protections, procedures, policies, and remedies in place to prevent the DSS data or NYSHIP activity from being disclosed to, or accessed by, any unauthorized individual, entity or organization. The Offeror provide detail of safeguards to be used for the protection of NYSHIP data and activities from disclosure to such individuals, entities or organizations. Such protections should include, but not be limited to:
 - (a) Identification and description of:
 - (i) technical Firewalls;
 - (ii) physical security; and
 - (iii) any other protections provided.
 - (b) Identification and description of corporate policies and practices, including:
 - (i) employee privacy awareness and ethics training
 - (ii) policies and procedures for reporting inappropriate inquiries by unauthorized individuals, entities or organizations

- (iii) application of access restrictions, permission revocations and/or other disciplinary actions, including financial penalties, that may be imposed on an individual or individuals found to be inappropriately accessing client data or gaining knowledge of client activities.
-
- (3) Identification of actions designed to mitigate possible harm to the Department, NYSHIP Contractors, and/or enrollees should unauthorized disclosure of DSS data and/or NYSHIP activities occur. Such actions may include but not be limited to compensation to the Department for all such damages.
 - (4) Describe in detail the procedures and safeguards the Offeror will implement following the conclusion of the project or termination of the Contract to render DSS data unrecoverable and prevent accidental and/or unauthorized access to such data.
 - (5) Describe the capabilities of the system for pre-scheduling reports. In responding to this requirement, the Offeror must include any limitations as to when reports may be scheduled and if reports may be scheduled to run overnight.
 - (6) Clearly state the Offeror's agreement to offer the Project Services in such a manner that the Department has no responsibility for the operation, maintenance and related upgrades of the DSS, (e.g. the decision support system software, technical infrastructure and associated processes and procedures).
 - (7) Describe the proposed process for monitoring Project Services and notifying the Department of service interruptions. Include the proposed frequency of notification (initial and updates), and items that will be reported in the notification, (e.g. the reason for the interruption and estimated timeframe for restoration of services).
 - (8) Detail the proposed process to restore Project Services. Describe the proposed steps to be taken to evaluate and remediate the causes of system outages.

(9) *DSS Solution Availability Guarantees:* The Offeror must guarantee that the DSS Solution will be available in its entirety to Users Monday – Friday, 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET, with the exception of previously agreed to scheduled outages due to required maintenance or system upgrades. The Offeror’s responses must be provided in the following format:

- (a) Confirm the Offeror guarantees that the DSS Solution will be available in its entirety to Users Monday – Friday, 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET, with the exception of previously agreed to scheduled outages due to required maintenance or system upgrades.
- (b) For each hour, or part thereof, beyond the initial four (4) hours from the loss of Project Services that the DSS Solution is not available in its entirety to Users, with the exception of previously agreed to scheduled outages due to required maintenance or system upgrades, the Offeror proposes to forfeit *Insert Number* times the Ongoing Operations Monthly fee, pro-rated to an hourly basis.

Note: The standard credit amount to be forfeited is two (2) times the Ongoing Operations Monthly fee pro-rated to an hourly basis.

The measurement of hours to which the forfeiture is applied shall begin with the first hour the DSS is not available. To illustrate, the DSS is not available for five (5) hours and fifteen (15 minutes) during Normal Business Hours in *Month A* which equates to six (6) hours that the DSS Solution was not available. The Offeror shall forfeit 2 x the Ongoing Operations Monthly fee for *Month A* pro-rated to an hourly rate x 6 (hours).

- (c) Confirm the Offeror guarantees that for each month, the DSS Solution will be available in its entirety, with the exception of previously agreed to scheduled outages, for a minimum of 98% of the scheduled operating hours, based on Normal Business Hours.

- (d) For each month, in which the DSS Solution is not available in its entirety, with the exception of previously agreed to scheduled outages, for a minimum of 98% of the scheduled operating hours, based on Normal Business Hours, the Offeror shall forfeit an amount equal to [insert Offeror proposed Number] time(s) the full Ongoing Operations Monthly fee.

Note: The standard credit amount to be forfeited is one (1) time the full Ongoing Operations Monthly fee.

To illustrate, during *Month A*, the DSS should be available, in its entirety, 298 hours (rounded up to the nearest full hour) based on 304 hours (12 hours/day x 22 weekdays [Mon – Fri] in *Month A* = 264 hours + 10 hours/day x 4 Saturdays in *Month A* = 40 hours) x .98. In this example, if the DSS is available 298 hours or less, the Offeror shall forfeit one (1) time the full Ongoing Operations Monthly fee for *Month A* in which the DSS was not at, or above, the 98% availability standard.

- (10) Describe the proposed method to be used to measure, monitor and report system response time.
- (11) Provide the location of the facility at which the DSS Solution will be housed, hardware configuration, including manufacturer and models, software configuration for the servers and workstations and the network configuration. Describe in detail the Offeror's proposed Preventive Maintenance Plan. State the proposed process for acceptance testing and approval of upgrades and enhancements.
- (12) Describe the quality assurance standards, techniques and tools proposed to be used for the DSS Solution. In responding to this requirement, the Offeror must state if the Offeror has received a Statement of Auditing Standards (SAS) No. 70 certification. If yes, provide the date and a copy of the most recent audit, and state if the Offeror has ever received a qualified opinion as a result of an SAS 70 audit. If yes, provide a detailed explanation of the identified exceptions and/or control deficiencies and remedial action(s) taken as well as a copy of the report.

- (13) Submit a copy of the Offeror's most current Disaster Recovery Plan. Include, in detail, the process for data backup, including the frequency of back-up proposed for the DSS Solution, and offsite storage.

8. Security

The DSS Solution and all associated support processes and procedures must be compliant with Federal Health Insurance Portability and Accountability Act (HIPAA) laws and all applicable federal and State laws and regulations concerning data security and personal privacy protection.

a. Duties and Responsibilities

- (1) The Contractor must commit to maintaining compliance with all federal and State privacy protection laws for the life of the Contract.
- (2) The Contractor must have an Information Security Plan (ISP) for the DSS Solution, acceptable to the Department in place on the effective date of the Contract resulting from this RFP, which states all security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The ISP must, at a minimum:
 - (a) Conform to the requirements of the Department of Civil Service Information Security Policy (**Appendix T**);
 - (b) Support the Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity. Refer to **Appendix U**;
 - (c) Agree to the policies, terms and conditions stated in this RFP, the resultant Contract and Appendices A, B and C.;
 - (d) Allow for the configurable control of access to processes, reports, content and functions;

- (e) Allow the definition of a robust, multi-level row security model;
 - (f) Allow the maintenance of a robust, multi-level row security model;
 - (g) Support configurable role-based security and
 - (h) Support the encryption of data being communicated over a public network.
- (3) The Department reserves the right, at its discretion, to perform security audits on the Project Services being provided to the Department. In the event the Department elects to perform a security audit, either independently or via a third party, the Contractor must agree to cooperate fully with the audit and respond to all findings in the audit in a timely manner.

b. Required Submission

In this part of its Technical Proposal, the Offeror must:

- (1) Include a copy of the Offeror's proposed DSS Solution ISP for providing and maintaining compliance with HIPAA and all federal and State privacy laws and regulations. The Offeror's ISP should confirm it will comply with, at a minimum, the items identified in Section IV B. 8.a.(1) and (2)
- (2) State the Offeror's agreement to comply and cooperate with any Department security audit.

C. Transition and Termination of Contract

1. Transition Period

The State may require the Contractor to provide uninterrupted Project Services after Contract termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services (Transition Period).

The Department anticipates the selection of a successor contractor be completed approximately one year prior to Contract termination. The Contractor and the Department must ensure that any transition from one Contractor to another Contractor is carried out in accordance with the provisions of Article XIV of Section VII and in a way that allows for minimal disruption to the Department. Consequently, it is important that a transition plan be established in a timely manner.

a. Duties and Responsibilities

- (1) The Contractor must commit to fully cooperate with the Department and the successor Contractor, if any, to ensure the timely, smooth transfer of information necessary to provide the Project Services.
- (2) At all times during the Transition Period and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State (i) has approved the Contractor's proposed transition plan, and (ii) an orderly transition to the Department or a Successor Contractor, if applicable has been completed pursuant to the approved Transition Plan as referenced below. The Contractor shall be required to meet its contractual obligations pursuant to this Article notwithstanding the issuance of a termination for cause or convenience by the Department.
- (3) Within ninety (90) Days of the Department's written request, but not later than ninety (90) Days prior to the end of the term of the Contract, or within forty-five (45) Days of notice of termination of the Contract, whichever event occurs first, the Contractor shall provide for approval of the Department a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the timeline, tasks, milestones and deliverables associated with the smooth transition of Services to the Department or a Successor Contractor, if applicable. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the Department: The Transition Plan must, at a minimum detail:

- (a) The length of time proposed by the Contractor to complete the transition of Project Services to the Department or a Successor Contractor, if any (Transition Period);
- (b) encompass the transmission of data, provision of data dictionaries representing Department owned data, conversion tables/data mapping and related duties and functions necessary for a smooth transition of the Project Services to the Department or a Successor Contractor, if and as applicable; and
- (c) encompass the completion of all outstanding Contractor provided services/deliverables, including, but not limited to, the Department requested projects incurred on or before the scheduled termination date of the Contract.

The Contractor shall be responsible for providing Transition Services in accordance with the approved Transition Plan.

- (4) “Transition Services” shall be deemed to include Contractor’s responsibility for all Project Services under the Contract, and for transferring in a planned manner specified in the Transition Plan all such services to the Department or a Successor Contractor, if applicable. It is expressly agreed between the Parties that the level of service rendered during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where a portion of the Project Services has been transitioned to or assumed by the Department or a Successor Contractor during the Transition Period, Contractor shall not be held responsible for the negligent acts or negligent omissions of the Department or the Successor Contractor for any degradation associated with that portion of Project Services transitioned resulting from the negligent acts or negligent omissions of the Department or the Successor Contractor.

b. Required Submission

In its Technical Proposal, the Offeror must:

- (1) Provide an outline of the key elements and tasks that would be included in the Transition Plan with a brief explanation on how these key elements would be accomplished.
- (2) Recommend the estimated start date, duration of the transition period and an approach for ensuring a smooth transition from the Offeror, as the incumbent Contractor, to the Department or a successor Contractor, if any.

SECTION V: COST PROPOSAL REQUIREMENTS**A. Introduction**

The Department seeks to make an award to that responsive and responsible Offeror that will meet the Department's requirements and needs and provide the best value to the Department during the term of the Contract.

The Department expects Offerors to propose an aggressive pricing proposal consistent with the size and functional requirements for the DSS.

The sole compensation for the Contractor under the Contract will be payments based on pricing indicated in the Contractor's Cost Proposal, subject to applicable Not-To-Exceed amounts, if any.

During the term of the Contract and any extension period thereto, amounts paid for which it is subsequently determined that the Contractor was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

Evaluation of Cost Proposals will be performed in accordance with the provisions presented in Section VI of the RFP.

B. Cost Structure and Assumptions

This section of the RFP sets forth the requirements for the Offeror's Cost Proposal submission and the cost structure required by the Department for Offerors to use in developing their submission. The Offeror's Cost Proposal must respond to all of the following mandatory sections as set forth below in the formats as specified and, as applicable, using the tables set forth in **Exhibit Q "DSS Cost Forms."** The Offeror's Cost Proposal must be based upon the assumptions and instructions as set forth herein the RFP

and specifically this Section V and **Exhibit Q**. The Offeror's Cost Proposal must contain responses to all of the items listed under the Required Submission Material subsections in this Section V of the RFP in the order and format specified.

Cost Proposals will be evaluated based on the Offeror's responses to the information sought in Section V of the RFP (Note: see the "Required Submission Material" subsections throughout this Section V of the RFP).

1. The Cost Proposal shall consist of the following:

- a. A ***"DSS Implementation Total Not-To-Exceed Amount"*** to cover all of the Contractor's DSS Solution design, development and implementation activities and their associated costs;
- b. An all-inclusive fixed ***"Ongoing Operations Monthly Fee"*** for the Contractor's performance of ongoing Project Services, which includes the 400 hours of consulting services to be provided during the balance of the term of the Contract and any extension period thereto, once Implementation activities have been completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully operational;
- c. ***"Incremental Ongoing Training Rates"*** to cover ongoing training required as a result of User turnover, system changes and upgrades, during the term of the Contract and any extension period thereto, once Implementation activities have been completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully operational;
- d. A one-time, fixed fee, ***"Data Provider Start-up Fee"*** per new Data Provider, to cover all of the Contractor's costs to add a new Data Provider, should the DSS Solution be expanded to include additional NYSHIP programs, or replace an existing Data Provider, in the DSS Solution during the term of the Contract and any extension

- period thereto, once Implementation activities have been completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully operational; and
- e. **“Additional User Fees”** to cover any increase to the total number of active Users at a given level as requested by the Department, at its sole discretion. The Additional User Fees would be applicable for the term of the Contract and any extension period thereto.
 - f. **“Additional Consulting Support Services Fees”** to cover analytical support and expert guidance requested by the Department in relation to special or exigent projects. These services are separate and apart from User Training, either initial or incremental ongoing training and in addition to the minimum of 400 hours of consulting support services included at no additional cost during the Ongoing Operational phase of the contract.
 - g. **“Other Assumptions, Terms and Payment Provisions”** applicable to Contractor performance under the Contract.

2. Duties and Requirements

a. ***DSS Implementation Total Not-To-Exceed Amount:***

(1) **Duties and Responsibilities:**

The Department seeks the completion of all Implementation activities as soon as practicable in accordance with the Offeror’s proposed DSS Solution Implementation approach, but not later than one year from the effective date of the Contract.

- (a) During the Implementation Phase, the Department will make monthly payments, in arrears, to the Contractor for design, development and implementation costs incurred by the Contractor in its performance of

services/activities described in Section IV.B based on the Personnel, Hardware, Software, Training and Other Cost Categories quoted rates as set forth in the Offeror's Proposal (**Exhibit Q**, Tables 3 through 7), subject to the Not-To-Exceed caps associated with each Cost Category. If a Contractor does not seek separate reimbursement of personnel, hardware, software or training costs, but instead, proposes a fixed flat fee, the fixed flat fee would be based on the DSS Implementation - Other Costs category's Not-To-Exceed amount (Table 7) and that amount would represent the total actual costs to the Department to implement the DSS Solution. Costs incurred by the Contractor in excess of the Total Not-To-Exceed Amounts for Personnel, Hardware, Software, Training and Other costs, if any, shall not be subject to reimbursement by the Department. As regards the Total Not-To-Exceed – Amount - Training Cost cap (**Exhibit Q**, Table 6), notwithstanding the preceding, additional costs incurred resultant from the Contractor training more Users than the number of Users assumed in **Exhibit Q**, Table 6 will not be applied against the Total Not-To-Exceed - Training Cost cap.

- (b) Notwithstanding any payments made to the Contractor during the Implementation Phase associated with any Cost Category, title to all products provided by the Contractor during the Implementation Phase shall remain with the Contractor and shall not transfer to the Department until the Contractor's DSS Solution is accepted by the Department, in its sole discretion.
- (c) Ten percent (10%) of each monthly invoice amount will be withheld from each monthly amount paid to the Contractor (Surety Withhold). The total of all Surety Withhold amounts withheld will be due to the Contractor upon Department acceptance, in its sole discretion, of a fully functional DSS Solution.
- (d) Should the Contractor's DSS Solution ultimately not be accepted by the Department, the Contractor will be considered in default of the Contract and

the Contract shall be subject to termination for cause. In such case of default, the Contractor shall forfeit all Surety Withhold amounts withheld, refund any monies paid to the Contractor during the Implementation Phase and forfeit its right to reimbursement by the Department of any and all costs incurred by the Contractor under the Contract.

(2) **Required Submission Material**

- (a) The Offeror must provide a clear statement of agreement to the duties and responsibilities required by Section V B.2.a.(1).
- (b) The Offeror must submit completed **Exhibit Q, Tables 1 through 7**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2.a as set forth below:

Table 1: DSS Total Projected Cost

Table 2: DSS Implementation Total Not-To-Exceed Amount

Table 3: Total Not-To-Exceed Amount – Personnel Costs

Table 4: Total Not-To-Exceed Amount – Hardware Costs

Table 5: Total Not-To-Exceed Amount – Software Costs

Table 6: Total Not-To-Exceed Amount – Training Costs

Table 7: Total Not-To-Exceed Amount – Other Costs

b. Ongoing Operations Monthly Fee for Ongoing Operations

(1) **Duties and Responsibilities:**

- (a) The payment of the **Ongoing Operations Monthly Fee** shall commence with the first FULL month following the date on which all Implementation activities are completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully operational. If Implementation activities are completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully

operational on a date other than the first day of the month such that the DSS Solution is fully operational for only part of a month, then the Contractor shall be due a **DSS Partial Month Ongoing Operations Fee** equal to the **Ongoing Operation Monthly Fee** times the number of Calendar Days during said partial month during which the Offeror's proposed DSS Solution is fully operational divided by the total number of Calendar Days in said partial month, assuming that the date the Contractor's DSS Solution is fully operational is not later than one (1) year from the effective date of the Contract. If the date Contractor's DSS Solution is deemed fully operational is later than one (1) year from the effective date of the Contract, then, the Contractor shall not be due a **DSS Partial Month Ongoing Operations Monthly Fee**.

- (b) The **Ongoing Operations Monthly Fee** rate quoted must be a fixed all-inclusive rate to cover all of the Offeror's costs in fulfilling its duties and responsibilities in the performance of Project Services as set for in Section IV.B of the RFP, except the delivery of Incremental Ongoing Training, adding a new Data Provider to the DSS Solution, Additional User Fees, if any, and Additional Consulting Support Services, if any. The **Ongoing Operations Monthly Fee** charged to the Department for such services shall be quoted on a fixed all-inclusive dollar amount per month basis and the rate quoted will remain unchanged over the initial five (5) year term of the Contract (i.e., the rate quoted and charged for the first month of ongoing operations will be the same as the rate charged for the last month of ongoing operations).
- (c) The **Ongoing Operations Monthly Fee** shall be the sole and exclusive fee chargeable to and payable by the State under the Contract for the performance of Project Services as set for in Section IV.B of the RFP once the DSS Solution is fully operational, except the payment of Additional User Fees, if any and any fees for Incremental Ongoing Training provided, Additional Consulting Support Services, if any and/or adding new a Data Provider and the payment of a **DSS Partial Ongoing Operations Fee**, if any.

(d) In developing its ***Ongoing Operations Monthly Fee***, the Offeror should consider the following information:

(i) As of June 2010, there are approximately 531,700 enrollees and an additional 539,100 dependents in the Empire Plan (including the Excelsior Plan and SEHP) as reported by the NYBEAS enrollment bringing the total Covered Lives in the Empire Plan to approximately 1,070,800. With the inclusion of HMO enrollees and dependents, the total number of covered lives in NYSHIP is approximately 1,202,000.

(ii) There are currently five (5) Data Providers, i.e. insurers/administrators, as follows: Empire Plan hospital contract insurer (currently EBCBS), Empire Plan medical contract insurer (currently UHICNY), Empire Plan mental health and substance abuse contract insurer and benefit administrator (currently UHICNY and Optum), Empire Plan prescription drug contract insurer and benefit manager (UHICNY and Medco), and the Department for enrollment eligibility data that will be loaded into the DSS Solution. The Department does not guarantee that these Data Providers will not change during the term of the contract and subsequent extension, if any.

(ii) Updates will be received from Data Providers at least monthly.

(iv) At a minimum, the DSS must maintain six (6) Plan Years of data plus the current Plan year-to-date data accessible to the Department's and Department designated Users via the DSS Solution.

(e) Should changes including, but not limited to, an increase or decrease in enrollment or the addition or loss of Data Provider(s) cause the volume of data and related storage needs of the Department to increase or decrease by 15% or more, over the term of the Contract, the Contractor may request a change in the

Ongoing Operations Monthly Fee. In such cases, if any, the Department will review and consider the justification submitted by the Contractor. The Department reserves the right to request, and the Contractor shall be required to provide, any additional information and documentation the Department deems necessary to verify that the request for a change in the ***Ongoing Operations Monthly Fee*** is warranted. The Department's decision to modify the ***Ongoing Operations Monthly Fee*** to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the State, and if deemed warranted by the Department, then said change shall require a formal amendment to the Contract and must be approved by the OSC.

- (f) If a significant change in technology or benefits occurs during the term of the Contract which materially impacts the Offeror's level of effort or cost, to either a greater or lesser extent, the State reserves the right to renegotiate the ***Ongoing Operations Monthly Fee***. In such cases, if any, the Department will review and consider the justification submitted by the Contractor. The Department reserves the right to request, and the Contractor shall be required to provide, any additional information and documentation the Department deems necessary to verify that the request for a change in the ***Ongoing Operations Monthly Fee*** is warranted. The Department's decision to modify the ***Ongoing Operations Monthly Fee*** to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the State, and if deemed warranted by the Department, then said change shall require a formal amendment to the Contract and must be approved by the OSC

(2) **Required Submission Material**

- (a) The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section V B.2.b.(1).

- (b) The Offeror must submit completed **Exhibit Q, Tables 1, 8, and 8A**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2.b. as set forth below:

Table 1: DSS Total Projected Cost

Table 8: DSS Ongoing Operations Monthly Fee

Table 8A: DSS Partial Month Ongoing Operations Fee

- c. ***Incremental Ongoing Training Rates*** to provide, at the Department's request, training on an ongoing basis to handle User turnover, system changes and upgrades (i.e., "Incremental Ongoing Training").

(1) **Duties and Responsibilities:**

- (a) During the term of the Contract, as a result of User turnover, system changes and upgrade the Department may require/request the delivery of Incremental Ongoing Training from the Contractor.
- (b) When requested by the Department, the Contractor must provide Incremental Ongoing Training services at the associated rates as quoted in the Contractor's Proposal.

(2) **Required Submission Material**

- (a) The Offeror must provide a clear statement of agreement to the duties and responsibilities as required by Section V B.2.c.(1).
- (b) The Offeror must submit a completed **Exhibit Q, Table 9**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2.c. as set forth below:

Table 9: Incremental Ongoing Training Rates

- d. ***Data Provider Start-up Fee*** to add a new Data Provider to the DSS Solution.

(1) **Duties and Responsibilities:**

- (a) During the term of the Contract, once Implementation activities have been completed and accepted by the Department, at its sole discretion, and the DSS Solution is fully operational, changes in the Data Providers may occur. The Contractor shall integrate a data feed with the new Data Provider into the DSS Solution effective with the contracted effective date of the new Data Provider into the Empire Plan or other NYSHIP benefit should the DSS Solution be expanded to include additional programs during the term of the Contract and any extension period.
- (b) The Contractor shall be reimbursed for services rendered as required in this section V.B.2.d to add a new Data Provider at the associated one-time fixed all-inclusive rate as quoted in the Contractor's Cost Proposal. No additional or incremental Ongoing Operations Monthly Fee is allowed resultant from the addition of a new Data Provider.
- (c) The Contractor must include the run-out data that is received from the previous Data Provider in the DSS Solution for up to three (3) years after the date a change in Data Providers is made.

(2) **Required Submission Material:**

- (a) The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section V B.2.d.(1)

- (b) The Offeror must submit a completed **Exhibit Q, Table 10**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2.d. as set forth below:

Table 10: Data Provider Start-up Fee

e. Additional User Fees

(1) **Duties and Responsibilities**

- (a) At a minimum, there will be approximately 45 Users with various levels of access as described in Section IV.B.3.a. As part of its proposed DSS Ongoing Operations Fee, the Offeror shall incorporate the cost of any proposed User access, use or licensing fees associated with the assumed number of Users (i.e., fifteen [15] Level 1 Users, ten [10] Level 2 Users and twenty [20] Level 3 Users).
- (b) During the term of the Contract, and any extension thereof, the Department may, in its sole discretion add, change, delete or deactivate Users in one or more of levels. Deleted/Deactivated Users may be replaced with new Users at no additional charge to the Department, assuming that during the Operations phase of the Contract the total number of Users is not greater than the assumed number of Users for the given level. If, during the Operations phase of the Contract, the number of active Users in a given level is less than the assumed number for that level, no reduction in the DSS Ongoing Operations Fee will be due the Department. During the Operations phase of the Contract, if during a given month, the number of active Users in a given level is greater than the assumed number of Users for that level, the Offeror may, but is not required to, propose a per user per month Additional User Fee to be charged to the Department for each User beyond the assumed number of Users. Additional User Fees charged, if any, will be added to the Contractor's DSS Ongoing Operations. For example if the number of Level 1 Users in month fourteen of the Contract term is fifteen, then no

Level 1 Additional User Fee would be due the Contractor. If the number of Level 1 Users in month fifteen is seventeen, then, for that month, in addition to its DSS Ongoing Operations Fee, the Contractor would be due two (2) times its proposed Level 1 per user per month fee as set forth on “Range of Users” line 16 – 20 Table 11.

(2) **Required Submission Material**

- (a) The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section V B.2.e.(1) and (2).
- (b) The Offeror must submit a completed **Exhibit Q, Table 11**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2. as set forth below:

Table 11: Additional User Fee

f. Additional Consulting Support Services Fees

(1) **Duties and Responsibilities**

- (a) The Offeror must include a minimum of 400 hours, post Implementation, of Consulting Support Services as stated in Section IV B.6 of this RFP, for enhanced analytical assistance to Users at the Department’s request.
- (b) Such Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing training.

(2) Required Submission Material

- (a) The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section V B.2.f.(1) and (2).
- (b) The Offeror must submit a completed **Exhibit Q, Table 12**, in accordance with the instructions and pricing assumptions set forth therein, in response to this subsection V.B.2. as set forth below:

Table 12: Additional Consulting Support Services Fees

g. Other Assumptions, Terms and Payment Provisions**(1) Duties and Responsibilities:**

- (a) The Contract shall commence on the approval date of the Contract by the OSC (“effective date”) and shall be for a term of five (5) years from the effective date, with one (1) year optional extension period. Said optional extension is at the sole discretion of the Department and are subject to formal written amendment and the approval by the OAG and OSC.

Should the Department choose to exercise its right to extend the Contract, the Contractor or Department may request a rate change (increase or decrease) to the **Ongoing Operations Monthly Fee**; the **Data Provider Start-up Fee**, the **Incremental Ongoing Training Rates**, and **Additional Consulting Support Services Fees** rates based upon fluctuations in the latest published copy of the Consumer Price Index - All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/> . [Go to “Inflation & Prices” then click “Consumer

Price Index" and then click on "CPI Tables" then click on "Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present."]

Price adjustments using the CPI to calculate rates for an extension period involve changing the base rates (i.e., then current rates) by the percent change in the level of the CPI between the Reference Period and the Subsequent Time Period. This is calculated by first determining the Index Point Change between the two periods and then the percent change. The price adjustment shall be calculated as follows: Take the CPI for the 3rd month prior to the month of the start date of either the last year of the Contract or the last approved annual extension period, whichever is later (Reference Period) and subtract this figure from the CPI value for the 3rd month prior to the start date of the extension period (Subsequent Time Period). (For example, if the effective date of the Contract is January 1, and there have been no approved annual extension periods and the start date of the last year of the Contract is January 2016; then the Reference Period would be October 2015 and the Subsequent Time Period would be October 2016.) That sum is then divided by the CPI value for the Reference Period and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage of increase or decrease shall be effective as of the start date of the extension period. The following example illustrates the computation of percent change:

Subsequent Time Period – CPI for the 3rd month prior to the start date of the extension period (October 2016 based on the above example)	136.0
Less: Reference Period – CPI for the 3rd month prior to the month of the start date of the last year of the Contract or the last approved annual extension, whichever is later (October 2015 based on the above example)	<u>129.9</u>
Equals Index Point Change	6.1
Divided by the Reference Period CPI (October 2015 based on	

the above example)	<u>129.9</u>
Equals Percent Change	0.047
Result multiplied by 100	0.047
	<u>x 100</u>
Equals Percent of Adjustment to be applied to the base rates to calculate rates for the extension period	4.7%

The Contractor has the sole responsibility to request an annual rate change during said optional extension period and, in such case, the Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the Department. Should the Contractor fail to request a rate change at the time the amendment is executed by the Parties, the Contractor shall be deemed to have waived its right to any increase in price associated with that year, however, the State shall not be barred from making the appropriate adjustment, at anytime during the Contract term as amended, in the case of a decrease determined in accordance with the above methodology.

- (b) The State shall render payment for invoices in accordance with ordinary State procedures and practices. The Contractor must certify the accuracy of all Contractor invoices prior to their submission to the Department and the Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt.
- (c) The Department reserves the right to negotiate any aspect of the proposed rate(s)/fee(s).

(2) **Required Submission Material:**

The Offeror must provide a clear statement of agreement to the duties and responsibilities as required by Section V B.2.e.(1). There is no submission table associated with or required of this subsection.

SECTION VI: EVALUATION AND SELECTION CRITERIA

The Department intends to select that responsive and responsible Offeror whose Proposal offers the “Best Value” to the Department and the State for the purpose of entering into negotiations for the execution of a contract. The Department will evaluate Offerors’ Proposals in accordance with the evaluation methods, procedures, and criteria as set forth in this Section VI of the RFP. Pursuant to Article XI of the State Finance Law, the basis for award shall be on a “Best Value” basis. As defined in New York State Finance Law, Article XI, “Best Value” means the basis for awarding contracts to a responsible and responsive Offeror whose offer optimizes quality, cost and efficiency, and which is consistent with the best interests of the State of New York. The evaluation will involve the review and scoring of the Offeror’s Technical Proposal and Cost Proposal.

The award shall be based on the objective and quantifiable analysis as described in this Section VI of the RFP, with seventy percent (70%) of the overall award based on the Offeror’s Technical Proposal and thirty percent (30%) of the overall award based on the Offeror’s Cost Proposal. **The Offeror’s proposed DSS Solution will be evaluated based on the product offering as it exists as of the date of proposal submission (“Product”); proposed and/or yet-to-be-released versions will not be evaluated.** Notwithstanding the proceeding, during the term of the Contract, and any extension thereof, the Contractor may and the Department shall be entitled to, at no additional cost to the Department, incorporate error corrections, updates, revisions, fixes, upgrades to Product and/or new releases of Product in the delivery of Project Services under the Contract.

The Department shall evaluate Proposals in an objective, comprehensive manner designed to benefit both the State and Offerors. Through this process, the Department shall identify the contractor who will best meet its needs and does so in a cost-effective manner. The Department intends that all Proposals will be evaluated uniformly and consistently, providing Offerors an equal opportunity to be considered.

Using the evaluation process described herein, the Department will evaluate Proposals that are complete and received prior to the Proposal Due Date deadline. The Department will not consider Proposals that are incomplete or that are received late.

The Department will first perform a Pass-Fail Screening as described below of each Proposal received to determine whether the Proposal contains all the required content. Proposals that pass the Pass-Fail screening review will continue to the next steps — Technical Proposal Evaluation, and Cost Proposal Evaluation. The Department may, at its discretion, conduct its evaluation of the components of the Offerors' proposals concurrently.

The Department will score each section of the Proposals on a scale to be determined by the Department prior to submission of Proposals and set forth in the evaluation criteria submitted to the Office of the State Comptroller, which will become part of the procurement record. When the Technical and Cost Proposal Evaluations are complete, the Technical Proposal score will be added to the Cost Proposal score to develop a Total Combined Score. The Offerors will be ranked based on their Total Combined Score.

For the purpose of evaluation, the Department may seek assistance from any person, other than one associated with a competing Offeror, designated by the Department.

During the evaluation process, the Department may require clarifying information from an Offeror for the purpose of assuring the Department's full understanding of the Offeror's responsiveness to the RFP requirements. This clarifying information must be submitted in writing in accordance with the formats set forth in Sections II and III of this RFP and shall be included as a formal part of the Offeror's Proposal. Failure to provide any required information by the due date set forth in the Department's request for clarification may result in rejection of the Offeror's Proposal. Nothing in the foregoing shall mean or imply that it is obligatory upon the Department to seek or allow clarifications provided for herein. The Department may, at its sole discretion, elect to have some or all Offerors provide a management interview, including product demonstrations and/or site visits pertaining to their Administrative, Technical or Cost

Proposal. The Procurement Manager will coordinate the necessary scheduling of these events, if any.

Proposals accepted in response to this RFP shall be subject to the following evaluation process.

A. Conformance to Submission Requirements – Pass/Fail Screening

Each Proposal will be screened on an initial pass/fail basis for completeness and conformance to the submission requirements stated in Sections II and III of this RFP and submitted in the Administrative Proposal. Proposals that do not pass this level of initial screening may be deemed non-responsive and removed from further consideration.

B. Technical Evaluation – 70% of Overall Score

Each Offeror's ability and willingness to deliver the Project Services as set forth in the RFP will be evaluated and scored based on a weighted point system. The evaluation of the Offeror's Technical Proposal will be based on that Offeror's written Technical Proposal, including responses from the Offeror to clarifying questions posed by the Department, if any; information obtained through reference checks, including the Department's experience with the Offeror or its proposed subcontractors, if any; management interviews and site visits conducted to clarify that Offeror's Technical Proposal offering as deemed necessary by the Department. An Offeror may be asked to provide a demonstration of its proposed solution in satisfying the requirements as described in Section IV.B.4 and 5 of the RFP at the Department's Albany office. Each Offeror assumes the responsibility of being prepared for and conducting these activities at its own expense. The demonstration should provide an overview of the functionality of the product, the major analytic features available, and include a demonstration of, at least, one episode of care analysis including national trends and other appropriate benchmark comparisons.

1. Allocation of Technical Proposal Score Points

The relative point value for each section is as follows:

a. Administrative Services and General Qualifications of the Offeror - 15% of Total Technical Score

The Offeror's Proposal will be rated on various administrative components of the required services including executive summary, project management team and general qualifications of the Offeror.

b. Implementation, Operation, and Support Services and Transition and Termination of Contract – 85% of Total Technical Score

The Offeror's Proposal will be rated on the various components of service delivery including implementation, data management, operation and support services, DSS Solution operational requirements, security, and transition and termination of contract.

2. Scoring of the Technical Proposal

- a. Each Offeror's Technical Proposal will be evaluated independently by multiple evaluators based on the RFP Evaluation Criteria as submitted to the Office of the State Comptroller by the Department in advance of the bid opening. The average score of "Excellent" for each evaluated response will result in a maximum available raw score of 1,000. The technical raw score for each Offeror shall be based on the points allocated to each evaluated response and the average of the evaluators' scores for each evaluated response. Scores assigned to each evaluated response are made in accordance with the following point structure:

<u>Score</u>	<u>Points</u>
Excellent	5
Good	4
Meets Criteria	3
Fair	2
Poor	1

- b. A Technical Score for each Offeror will be determined based on the following formula:

$$\text{Technical Score} = 700 \times \frac{\text{Raw Score of the Technical Proposal being scored}}{\text{Highest Raw Score of Technical Proposals evaluated}}$$

The Technical Scores will be calculated to the hundredth decimal place.

If an Offeror is eliminated anytime during the evaluation process, and that Offeror had the highest score for either the Technical or Cost proposal, the Department shall recalculate the applicable Technical and/or Cost scores for each remaining Offeror based on the score of the remaining Offeror with the next highest Technical or Cost score.

C. Cost Evaluation – 30% of Overall Score

1. To evaluate the total DSS cost to the Department, the Department will calculate a Total Projected DSS Solution Cost for each Offeror as the sum of the Offeror's quoted a) DSS Total Projected Cost amount from **Exhibit Q**, Table 1 of the Offeror's Cost Proposal; b) Incremental Ongoing Training Rates fees from **Exhibit Q**, Table 9 of the Offeror's Cost Proposal at pre-determined utilization levels of such services; and c) Data Provider Start-up Fee rate from **Exhibit Q**, Table 10 of the Offeror's Cost Proposal at pre-determined utilization levels of such services. The evaluation of Offerors' Cost Proposals shall be based on the rates quoted for Years 1 – 5 of the Contract. Each component shall be calculated based on the following:

-
- a. *DSS Total Projected Cost*: The Offeror's quoted DSS Total Projected Cost amount as set forth in **Exhibit Q**, Table 1 of the Offeror's Cost Proposal;
 - b. *Incremental Ongoing Training Rates*: The Offeror's Incremental Ongoing Training Rates fees as set forth in **Exhibit Q**, Table 9 of the Offeror's Cost Proposal assuming five (5) new Users for each of the three (3) User Levels will be trained annually for Contract years 2 through 5 as a result of User turnover and that one system change or upgrade will occur during Contract years 2 through 5 which will result in required training of fifteen (15) Level 1 Users, ten (10) Level 2 Users and twenty (20) Level 3 Users.
 - c. *Data Provider Start-up Fee*: The Offeror's Data Provider Start-up Fee rate as set forth in **Exhibit Q**, Table 10 of the Offeror's Cost Proposal assuming one new Data Provider added to the DSS Solution during the term of the Contract.
 - d. The Total Projected DSS Solution Cost for each Offeror shall be calculated by the Department as the sum of the total amounts calculated by the Department in Sections VI.C.1 a through c, above.
2. The Department reserves the right to make other cost calculation adjustments as deemed necessary to determine the evaluated cost of the Offeror's Cost Proposal. Any such adjustments shall be made with the intent to evaluate Offerors' Cost Proposals on a fair and consistent basis, without prejudice. These normalization adjustments may include, but are not limited to, any unforeseen circumstances whereby the normalization of specific factors among Offerors shall result in a more accurate and fair comparison of the Offeror's Cost Proposal.
 3. The Department may seek clarification of the Offeror's Cost Proposal in writing or through a management interview, with written responses to follow.

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4. A Cost Score for each Offeror will be determined based on the following formula, with the lowest Total Projected DSS Solution Cost as calculated in accordance with Section VI.C.1.d receiving the maximum points:

$$\text{Cost Score} = 300 \times \frac{\text{Lowest Total Projected DSS Solution Cost}}{\text{Total Projected DSS Solution Cost of Proposal being scored}}$$

Scores will be calculated to the hundredth decimal place.

D. Total Combined Score

To calculate a Total Combined Score for each Offeror, the Department will combine the Offeror's Technical Score and the Offeror's Cost Score.

E. Best Value Determination/Contract Award

The Department shall select and enter into negotiations for the purpose of executing a contract with the responsive and responsible Offeror that has accumulated the highest Total Combined Score. If an Offeror's Total Combined Score is equal to or less than 1 point below the highest Total Combined Score, the Offeror's proposal will be determined to be substantially equivalent to the Offeror with the highest score. Among any Offeror proposals deemed substantially equivalent, the Department shall select the Offeror that has the lowest evaluated cost calculated pursuant to Section VI.C.1.d. of this RFP to enter into negotiations for the purpose of executing a contract.

Please note that the terms in Appendix A, Standard Clauses for All New York State Contracts, Appendix B, Standard Clauses for all DCS Contracts, and Appendix C, Third Party Connection and Data Exchange Agreement, are not subject to negotiation.

If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful because of material differences in key provision(s) as

determined by the Department, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror are unsuccessful because of material differences in key provision(s).

SECTION VII: DRAFT CONTRACT**AGREEMENT NO. C000588**

THIS AGREEMENT (hereinafter referred to as the “Contract”), effective TBD, is entered into by and between the New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Alfred E. Smith Office Building, Albany, NY, 12239 and *(Insert Name of Contractor)*, a corporation authorized to do business in the State of New York with a principal place of business located at *(Insert Contractor’s Address)*, and collectively referred to as “the Parties.”

WITNESSETH

WHEREAS, New York State, through the Department, oversees the New York State Health Insurance Program (NYSHIP) for New York State employees and retirees and their dependents; and

WHEREAS, NYSHIP is administered by the President of the New York State Civil Service Commission, who also serves as the Commissioner of the Department (President), subject to New York State laws and regulations including the Civil Service Law, the State Finance Law Article XI, and their respective implementing regulations; and

WHEREAS, on June 30, 2010, the Department issued a Request for Proposal (RFP) entitled, “New York State Health Insurance Program Decision Support System”, to secure the services of a qualified organization to provide, for the benefit of the Department and its Users, a Decision Support System solution as more fully described in the RFP; and

WHEREAS, after thorough review and evaluation by the Department of Offerors’ Proposals received in response to the RFP, the Contractor’s Proposal was selected as representing the highest combined total score to the State by a responsive and responsible bidder; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver Project Services, in the manner set forth in the RFP and as proposed in the Contractor's Proposal, pursuant to the terms and conditions set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.2.0 Agreement or Contract** means the agreement entered into between the Parties resultant from this RFP.
- 1.3.0 Application** means a program or group of programs designed for end users.
- 1.4.0 Benefit Plan** means an indicator used in the NYS computerized enrollment system (NYBEAS), to indicate the NYSHIP health insurance option (e.g. Empire Plan or a NYSHIP participating HMO) chosen by an individual, or to indicate the particular benefit package within the NYS dental or vision plans that the individual is eligible for.
- 1.5.0 Benefit Program** means an indicator used in the NYS computerized enrollment system (NYBEAS), to specify the entire benefit package the individual is eligible for and typically includes specific health, dental, and vision coverage benefit definitions. The benefit program varies based on multiple factors such as, the individual's bargaining unit

/union affiliation, employer status, (e.g. State Agency, Participating Agency, Participating Employer), and employment status, (e.g. active, retired).

1.6.0 Business Day(s) means every Monday through Friday for administrative services, and every Monday through Saturday for DSS operations, under the terms of the Contract, except for days designated as business holidays by the Department prior to January 1 of each calendar year.

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

1.8.0 Completion Date means the date proposed by the Offeror and agreed upon by the Department, for delivery of a fully functional DSS; the completion date may not, in any case, exceed twelve (12) months after the contract effective date.

1.9.0 Conflict of Interest means a situation which has or may influence or appear to influence, compromise or bias the Offeror's/Contractor's actions and/or judgments in the Offeror's/Contractor's performance of Project Services. Such situations may result from the Offeror's/Contractor's direct or indirect interests, including but not limited to, financial, business, proprietary or personal interests, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP). A Conflict of Interest can result from relationships between the Offeror/Contractor and any individual, entity or organization that existed prior to or that may arise during the term of the Contract.

1.10.0 Contractor means the Offeror selected as the result of this RFP with which the Department enter into the Agreement to perform Project Services.

1. 11.0 Day(s) means calendar days unless otherwise noted.

1.12.0 Data Provider means an entity (an Insurer or the Department) that provides enrollment or claims data to the Contractor for loading into the DSS Solution.

1.13.0 DCS or Department means the New York State Department of Civil Service.

1.14.0 Decision Support System (DSS) or DSS Solution means a comprehensive and integrated data management system solution that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence to be used by the Department and its designated Users.

1.15.0 Disaster Recovery Plan means a plan for continued operation in the event of a situation which incapacitates part or all of a contractor's resources including, but not limited to, personnel, IT equipment, data records, and the building or other physical infrastructure.

1.16.0 Empire Plan means the experience-rated health plan administered by the NYS Department of Civil Service to provide health insurance benefits for the employees, retirees and eligible dependents of New York State and NYSHIP Participating Agencies and Participating Employers. It has four components, the Medical Program, the Hospital Program, the Managed Mental Health and Substance Abuse Program, and the Prescription Drug Program.

1.17.0 Employee Benefits Division (EBD) means the division of the New York State Department of Civil Service responsible for administering the New York State Health Insurance Program.

1.18.0 ET means prevailing Eastern Time.

1.19.0 Excelsior Plan means a variation of the Empire Plan available to local government units which choose to participate in NYSHIP. The Excelsior Plan offers many of the same features of the Empire Plan with a higher degree of cost sharing between the employer and plan participants.

- 1.20.0 Firewall** means a system designed to prevent unauthorized access to or from a private network based upon a set of rules and other criteria. Firewalls can be implemented in either hardware or software, or a combination of both.
- 1.21.0 Hardware** means tangible objects such as disks, disk drives, display screens, keyboards, printers and chips.
- 1.22.0 Insurer** means one of the several insurers or benefit administrators contracted by the Department to provide health insurance services for the NYSHIP.
- 1.23.0 Key Subcontractors** means those vendors with whom the Contractor subcontracts to provide Project Services and incorporates as a part of the Contractor's Project Team.
- 1.24.0 Level 1 User** means an individual designated by the Department to utilize the most advanced features of applications provided by the Vendor under the terms of the Contract and have the highest level of security permissions.
- 1.25.0 Level 2 User** means an individual designated by the Department to have full access to all features/functions of the delivered DSS but with restricted security permissions,(e.g. the user will not have access to any individually identifying information).
- 1.26.0 Level 3 User** means an individual designated by the Department to have access to limited functions of the DSS, (e.g. access to simple, predefined queries and standard reports, and would have the most restricted security permissions).
- 1.27.0 Licensed Product** means software transferred upon the terms and conditions set forth in the Agreement. "Licensed Product" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

1.28.0 Licensee means the New York State Department of Civil Service on behalf of the State of New York.

1.29.0 New Product Releases (Product Revisions) means any commercially released revisions to the version of a Product as may be generally offered and available to the market. New releases involve a substantial revision of functionality from a previously released version of the Product.

1.30.0 New York State Health Insurance Program (NYSHIP) means the health insurance program established by NYS to provide health insurance protection to employees, retirees and eligible dependents of New York State and participating agencies and participating employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through the Empire Plan, Health Maintenance Organizations (HMOs); and the Student Employee Health Plan (SEHP).

1.31.0 Normal Business Hours means Monday – Friday 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET, unless specified otherwise by the Department.

1.32.0 NYBEAS means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of employee benefits.

1.33.0 NYS means New York State.

1. 34.0 “Or Equal” means that where a copyright brand name, trade name, catalog reference, or patented Product is referenced, references to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. A comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Department’s decision as to acceptance of the Product as equal shall be final.

1.35.0 Plan means the Empire Plan.

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

1.37.0 Plan Year means the period from January 1 to December 31 of each Year, unless specified otherwise by the Department.

1.38.0 President means the President of the Civil Service Commission and the Commissioner of the Department.

1.39.0 Product means a deliverable under the Contract which may include commodities, services and/or technology. The term "Product" includes licensed software.

1.40.0 Project Services means the entire package of decision support system services to be provided by the Contractor in accordance with the contract resultant from this RFP.

1.41.0 Proposal means the Offeror's Administrative Proposal, Technical Proposal and Cost Proposal, submitted during the course of the procurement process including all responses to supplemental requests for clarification, information, and documentation.

1.42.0 RFP means the Request For Proposals entitled "New York State Health Insurance Program Decision Support System" dated June 30, 2010.

1.43.0 Software means computer instructions or data that can be stored electronically.

1.44.0 State means the State of New York.

1.45.0 Student Employee Health Plan (SEHP) means a health insurance plan for graduate student employees of the New York State University system that provides benefits

through the various Empire Plan Insurance Contracts. Like the Empire Plan, the SEHP includes hospital, medical, managed mental health and substance abuse benefits, and prescription drug benefits. SEHP is administered by the New York State Department of Civil Service, Employee Benefits Division.

1.46.0 User means an individual designated by the Department to utilize application programs provided by the Contractor under terms of the contract resultant from this procurement.

1.47.0 Virus means any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 The term of the Contract is for a period of five (5) years, with an option for a one (1) year extension period, starting on January 1, 2011 through and including December 31, 2015, subject to the approval by the New York State Attorney General's Office ("AG") and the New York State Office of the State Comptroller ("OSC") and subject to the termination provisions contained herein.

2.2.0 The Contract may be extended, at the sole discretion of the Department, for a one (1) year optional extension period. The optional extension is subject to the approval of the AG and OSC and subject to the termination provisions contained herein.

2.3.0 The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the Office of the State Comptroller of the State of New York and subject to the termination provisions contained herein.

ARTICLE III: INTEGRATION

3.1.0 The Contract, including all Appendices attached hereto and Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations, and undertaking are superseded hereby.

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

4.1.0 The Contract consists of:

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

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

4.1.3 Appendix B – Standard Clauses for all Department of Civil Service Contracts;

4.1.4 Appendix C – Third Party Connection and Data Exchange Agreement;

4.1.5 The following Exhibits attached and incorporated by reference to the body of the Contract:

4.1.5a Exhibit A: the Request for Proposals entitled, “New York State Health Insurance Program Decision Support System,” dated June 30, 2010 and Exhibit A-1, the Department’s Official Responses to questions raised concerning the RFP, dated *(Insert Date Responses Issued)*;

- 4.1.5b** Exhibit B: the Contractor’s Proposal comprised of its Administrative Proposal, Cost Proposal and Technical Proposal, all three of which are dated, (Insert Date of Contractor’s Proposal) and Exhibit B-1: the official transcript of the Management Interview and related materials clarifying the Contractor’s Proposal as follows (Insert Exhibit number [e.g. B-2] the Clarification Response Number and its associated date);
- 4.1.5c** Exhibit C, Department of Civil Service Information Security Policy; and
- 4.1.5d** Exhibit D, Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity;
- 4.1.6** In the event of any inconsistency in, or conflict among, the document elements of the Contract identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

 - 4.1.6a** First, Appendix A - Standard Clauses for All New York State contracts;
 - 4.1.6b** Second, Appendix B - Standard Clauses for All Department of Civil Service contracts;
 - 4.1.6c** Third, Appendix C – Third Party Connection and Data Exchange Agreement
 - 4.1.6d** Fourth, any Amendments to the body of the Contract;
 - 4.1.6e** Fifth, the body of the Contract;
 - 4.1.6f** Sixth, Exhibit A – the Request for Proposals entitled, “New York State Health Insurance Program Decision Support System”, dated June 30,

2010 and Exhibit A-1, the Department's Official Responses to questions raised concerning the RFP, dated (Insert Date Responses Issued); and

4.1.6g Seventh, Exhibit B – the Contractor's Proposal comprised of its Administrative Proposal, Cost Proposal and Technical Proposal, all three of which are dated, (Insert Date of Contractor's Proposal) and Exhibit B-1, the official transcript of the Management Interview and related materials clarifying the Contractor's Proposal as follows (Insert Exhibit number [e.g. B-2] the Clarification Response Number and its associated date).

4.1.7 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.

4.1.8 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.

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

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

5.1.0 The Contractor represents that it possesses adequate legal authority to perform Project Services in accordance with the terms and conditions of the Contract.

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

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

ARTICLE VI: CONFLICT OF INTEREST, TRANSPARENCY, NON-DISCLOSURE

6.1.0 The Contractor can not be a party in any relationships in which the Contractor's parent company, and/or any subsidiaries, partners and/or affiliates has or may have a direct or indirect interest, including but not limited to, financial, business, proprietary or personal, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP) which, in the Department's sole discretion, has or may interfere or appear to interfere, compromise or bias the Contractor's actions and/or judgments. Therefore, the Contractor's parent company, and/or any subsidiaries, partners and/or affiliates:

6.1.1 can **not** be a current Empire Plan carrier, contractor and/or subcontractor; and/or;

6.1.2 can **not** be a current Department, Division of the Budget and/or Governor's Office of Employee Relations contractor and/or subcontractor where the purpose of said contract(s)/subcontract(s) is to provide support to or is related to the administration of NYSHIP and/or the delivery of NYSHIP services, including, insurance coverage, either directly or indirectly and in part or in whole.

- 6.2.0** A Conflict of Interest may be a situation which has or may influence or appear to influence, compromise or bias the Contractor's actions and/or judgments in the Contractor's performance of Project Services. Such situations may result from the Contractor's direct or indirect interests, including but not limited to, financial, business, proprietary or personal interests, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP). A Conflict of Interest can result from relationships between the Contractor and any individual, entity or organization that existed prior to or that may arise during the term of the Contract
- 6.3.0** The Contractor will not disclose any data contained in the DSS Solution and information related to NYSHIP to any party without the written authorization of the Director of the Employee Benefits Division of the Department. Such request for authorization must be made to the Director in writing and the Contractor must submit to the Department a written description of the situation and a justification for the requested authorization prior to the expected access by the parties in question. Further, such written requests must satisfy all requirements for notification as stated in Article XIX of this Agreement.
- 6.4.0** The Contractor shall implement Firewalls and/or other controls, policies and procedures which a reasonable person would expect to provide corrective or mitigating action to adequately safeguard or protect the Department against any Conflict of Interest which have been or will be implemented by the Offeror/Contractor.
- 6.5.0** Notwithstanding the Conflicts of Interest (and proposed Firewalls or remedies) identified by Contractor, the Department reserves the right to determine whether the Contractor has a Conflict of Interest. If the Department determines that there is a Conflict of Interest, the Department may terminate the Contract. Notwithstanding the preceding, where a Conflict of Interest has been determined, the Department may, along with all other remedies available, require the Contractor to implement Firewalls and/or other controls, policies and procedures identified by the Contractor or by the Department to adequately safeguard or protect the Department against any Conflict of Interest. Further, if the Department determines that the implemented Firewalls and/or other controls, policies and

procedures do not adequately safeguard or protect against a Conflict of Interest, the Department may terminate the Contract.

ARTICLE VII: PROJECT SERVICES

7.1.0 During the term of the Contract and any extension thereto, the Contractor shall deliver Project Services required pursuant to the Contract in accordance with its proposed DSS Solution in such a manner so as to comply with the terms and conditions as set forth in the Contract.

7.2.0 Project Management Team

7.2.1 The Contractor must maintain an organization of sufficient size with the skills and experience necessary to administer, manage and oversee all aspects of the DSS Solution during Implementation and Ongoing Operation.

7.2.2 The Contractor's assigned project management team shall be experienced, accessible and sufficiently staffed to provide timely responses (one (1) Business Day) to administrative concerns and inquiries posed by the Department and designated Users for the duration of the Contract to the satisfaction of the Department.

7.2.3 The Contractor shall assign a Project Manager who will be dedicated to the NYSHIP DSS, so as to have the ability to address direct inquiries by the Department within one (1) Business Day, for the entire term of the Contract. The Project Manager must possess at least five (5) years experience serving as a project manager.

7.2.4 The Contractor's Project Manager shall immediately notify the Department of any actual or anticipated events impacting delivery of Project Services and present

options available to minimize or eliminate the impact of those events on the delivery of Project Services.

7.3.0 Implementation, Operation, and Support Services

The Contractor shall be responsible for all Project Services including, but not limited to:

7.3.1 Implementation

The Contractor must undertake and complete all Implementation activities, including, but not limited to, those specified activities set forth in Article 8.1.1 of the Contract, not later than (Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date), so that the Decision Support System is fully operational, as determined in the Department's sole discretion, on (Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date).

During Implementation, the Department will provide Department staff to participate in meetings and provide administrative oversight in the data acquisition process to ensure Data Provider cooperation in provision of the initial historical data load during the Implementation period. The Department will provide a workstation, (i.e. desk and chair, personal computer (PC) with internet access and appropriate network access), and appropriate building access for the Contractor's onsite staff, if any, during the Implementation period. The Department will provide technical support and maintenance of Hardware (e.g. PC) and associated Department owned and installed Software used by the Contractor's onsite staff. The Department will **not** provide personal phone lines, administrative support staff, or parking privileges to the Contractor's onsite staff.

7.3.1.a The Contractor must deliver an overall Implementation Plan, and designate an Implementation Team composed of individuals knowledgeable in the requirements of a large client comparable to those of the Department. The

Implementation Team must be committed to work with the Department to analyze and document User needs. The Implementation Plan must include evaluation and assessment activities and development of a project plan to achieve the goals of the Project.

7.3.1.b The Contractor must provide, subject to Department approval, a detailed Acceptance Testing Plan (ATP) that identifies the functions the Department will test in order to ensure the Contractor's DSS Solution functionality is fully operational and meets all requirements identified in the RFP. The Department reserves the right to modify the ATP to meet the Department's needs. User training of key participants in the ATP must be completed prior to the start of testing. The ATP must include, at a minimum, the nature and duration of the tests, definition of roles of staff required to perform the tests, process for resolution of testing issues, definition of acceptable test outcomes and provision for Department signoff on testing plan and successful completion of testing activities. The ATP must confirm:

- (i) The Contractor's DSS Solution meets the requirements set forth in Article 7.3.2.1 of this Agreement. These requirements include, but are not limited to data management, analytical, query and reporting capabilities, and user specifications; and
- (ii) The Contractor meets the requirements set forth in Article 7.3.3 of this Agreement which include, but are not limited to, system availability and connectivity, response time, environment specifics, and maintenance program.

7.3.2 Data Management and Ongoing Operational Services

The Decision Support System shall provide data management, analytic capability, and support services including benchmarking against accepted industry standards/norms, plan and program evaluation, benefit design and modeling,

utilization analysis at provider and member levels and both standard, pre-defined and Department defined report production. The Contractor shall provide a DSS Solution which allows for independent analysis, including the capability to view data at a summary and/or granular level, and the ability to download and manipulate results into a format acceptable to the Department.

7.3.2.1 Data Management

The Department requires and the Contractor agrees to the following:

7.3.2.1a The DSS Solution shall be capable of containing, a minimum of the previous six (6) complete calendar years of data in addition to the then current year's Plan data to date;

7.3.2.1b The Contractor shall develop and provide the Department with complete documentation of the DSS Solution. The documentation must provide the Department with a complete description of the meaning of the information and any relationships between the information (metadata) that is available from the DSS Solution;

7.3.2.1c The Contractor's DSS Solution adheres, to the extent applicable, to the NYS Office for Technology (NYSOFT) policies and standards as stated in New York State Information Technology Policy NYS-P08-005 (Accessibility of Web-Based Information and Applications) in regards to system user interfaces. NYS-P08-005 can be viewed at:

<http://www.cio.ny.gov/Policy/NYS-P08-005.pdf>

7.3.2.1d The Contractor shall accept enrollment and claims data from the Department or from a Data Provider on behalf of the Department and shall load the data for use in the DSS Solution in a timely manner.

7.3.2.1e The Contractor shall work with the Department to define specifications such as the method of transmission, frequency of data exchange, and format of the enrollment and claims data feeds (e.g. FTP with PGP encryption, monthly, new set of data – not limited to updates/changes).

7.3.2.2 The Contractor shall provide a methodology satisfactory to the Department for archiving historical data and retrieving archived data, should the Department choose to utilize such services. The Department requires and the Contractor shall provide, at a minimum, six (6) complete calendar years of Plan data, plus the current Plan Year's data accessible through the Contractor's DSS Solution.

7.3.2.3 The Contractor shall employ a secure method to accept data during transmission that complies with applicable federal and State laws, rules and regulations including, but not limited to HIPAA and Appendices A, B and C.

7.3.2.4 The Contractor's DSS Solution shall incorporate and use an encryption methodology for data that resides in the DSS Solution that masks the identity of an individual but still provides the means to link together an individual's claim and coverage history without disclosing the individual's social security number or other personal identification indicator. In addition, designated Users shall be provided with decryption capability and/or security level, to associate claim and coverage history to a specific identifiable individual. The encryption methodology employed and

utilized by the Contractor shall ensure that all individually identifiable health information is protected and in compliance with applicable federal and State laws, rules and regulations including, but not limited to HIPAA.

7.3.2.5 Prior to loading data, the Contractor shall perform data quality assurance tests. Changes to the data to ensure that only data that has passed required validation edits, or to enhance the overall integrity of the DSS Solution, will be the duty and responsibility of the Contractor working in conjunction with the Data Providers and with Department approval. Areas to be addressed through the data quality assurance process should include, at a minimum:

7.3.2.5a Data field format incompatibility errors;

7.3.2.5b Missing data;

7.3.2.5c Field value edits;

7.3.2.5d Data integrity validation appropriate to file specifications, (e.g. if summary totals are provided, the data must be reconciled to those totals);

7.3.2.5e Data validation with external sources;

7.3.2.5f Data calculation errors;

7.3.2.5g Duplicate information within a single file;

7.3.2.5h Submission of duplicate files; and

7.3.2.5i Follow up with a Data Provider(s) to ensure the Data Provider corrects identified data errors and resubmits the corrected data.

7.3.2.6 The Contractor must be able to accept data in a variety of formats and media on a monthly, bi-weekly, and weekly basis from the Department and other Data Providers. The data must be loaded in the DSS Solution maintained by the Contractor.

7.3.2.7 A copy of the interface requirements given to the Data Providers by the Contractor must also be supplied to the Department. The Department reserves the right to review, request clarification, and/or suggest modifications to the interface requirements given to the Data Providers.

7.3.2.8 The Contractor's interface requirements must be provided to the Data Providers within thirty (30) Business Days of the Contract award. During the term of the Contract, should a new Data Provider be added in place of an existing Data Provider, the Contractor must provide its interface requirements to the replacement Data Provider within thirty (30) Business Days of notification of the change by the Department.

7.3.2.9 Thirty (30) Business Days prior to the start of each Plan year, the Contractor must establish and provide the Department with a schedule identifying the planned DSS data loads, as well as due dates for receipt of data from the Data Providers. The Contractor must notify the Department within one (1) Business Day of any failure to meet the due date by any Data Provider.

7.3.3 User Requirements

Users will be individuals employed by the Department as well as individuals designated by the Department, at its sole discretion, as Users, which may include, but not be limited to, employees of NYS Governor's Office of Employee

Relations, NYS Division of the Budget, NYS Office of the State Comptroller and the Department's benefit management and actuarial consultant. All Users will not have the same level of access and permissions. No User will have the capability to change data in the DSS Solution.

7.3.3.1 The Contractor shall provide three (3) levels of Users:

- 7.3.3.1a** Level 1 User – The Department requires a minimum of fifteen (15) Users to be designated as and receive training as Level 1 Users. Level 1 Users shall have full access to all features/functions of the delivered DSS Solution and have the highest level of security permissions granted by the Department.
- 7.3.3.1b** Level 2 User – The Department requires a minimum of ten (10) users to be designated as and receive training as Level 2 Users. Level 2 Users shall have full access to all features/functions of the delivered DSS Solution and restricted security permissions, (e.g. the User will not have access to any individually identifying information).
- 7.3.3.1c** Level 3 User - The Department requires a minimum of twenty (20) users to be designated as and receive training as Level 3 Users. These Users will require a significantly lower level of permissions. Level 3 Users would be restricted to accessing simple, predefined queries and standard reports, performing simple data manipulations from the pre-defined reports and queries and exporting data results from such reports/queries. Such Users do not require access to the same applications/software features as Level 1 or 2 Users. Level 3 Users have the most restricted security permissions.

7.3.3.2 The DSS Solution must allow multiple Users to utilize the system concurrently without limitations to the number of Users at any single point in time.

7.3.3.3 Dependent on the category of User, the DSS Solution must provide the Users with the capability to access various functions. At minimum, the DSS must allow the Level 1 and Level 2 Users to directly view, access, manipulate, compare, and analyze data, run queries and develop non-standard (e.g. user defined) reports. Level 1 and Level 2 Users will have the maximum query capabilities supported by system design and will be able to manipulate the resultant data from these queries; however, the base data will remain unchanged. Level 1 and 2 User capabilities must include, but not be limited to, the ability to:

7.3.3.3a Develop and view report information at either a granular level and/or at a summary level, as appropriate for the User's needs;

7.3.3.3b Export data to other standard applications (e.g. Microsoft Access, Microsoft Excel, Microsoft Word); and

7.3.3.3c Extract data and reports to print and download.

7.3.3.4 User training is required. The Contractor must provide a training plan that is tailored to the types of Users and their assigned permissions. The training plan must include proficiency testing of Users and, if necessary, additional training as required based on results of testing to ensure the DSS training goals and outcomes are achieved with said additional training, if any, at no additional cost to the Department. All training provided by the Contractor under its training plan must be provided onsite at the Department's facilities. On demand training must be available, at the Department's request, on an ongoing basis to handle User turnover,

system changes and upgrades at the rates set forth in the Contractor's Cost Proposal incorporated in this Contract as Exhibit B. User Training is not part of the 400 hours of Consulting Support Services.

7.3.3.5 The DSS Solution's design and operation must conform to applicable federal and State laws and regulations regarding accessibility standards for persons with disabilities. Article 6.3.2.1c provides information regarding NYSOFT standards and policies.

7.3.3.6 User support documentation must be provided as applicable to each User Level. The documentation must be provided for all Users, in downloadable electronic versions, preferably PDF. User support documentation must include, but not be limited to:

7.3.3.6a User Manuals, quick reference guides;

7.3.3.6b Data Dictionary; and

7.3.3.6c Updates as appropriate to correspond to DSS Solution upgrades/changes.

7.3.3.7 Access to both online and telephonic support/Help Desk must be available to all Users regardless of User Level. Online support services, (e.g. help screens, frequently asked questions (FAQs)), must be available 24 hours per day/seven (7) days per week. Telephonic support/Help Desk, utilizing a toll-free number, must be available, at minimum, Monday – Friday 7:00 a.m. to 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET. The Contractor must respond to all requests for assistance within four (4) business hours of the initial request and provide a proposed timeline for resolution of the identified issue. The proposed timeline will be subject to mutual agreement by both the Department and the Contractor.

7.3.3.8 The Contractor must provide connectivity as a secure, internet-based service. In addition to the requirements specified in Appendices A, B and C, the Department requires:

7.3.3.8a Connectivity between the Contractor's facility at which the DSS Solution is housed and the Department and sites designated by the Department;

7.3.3.8b A browser-only thin client deployment model;

7.3.3.8c Generation of pages that validate to XHTML 1.0 or HTML 4.01 transitional standards;

7.3.3.8d The Contractor must provide all DSS Solution-related Software inclusive of installation, maintenance and support; and

7.3.3.8e The Contractor is solely responsible for overall troubleshooting and problem solving related to the delivered Project Services.

7.3.3.9 The Contractor must identify Software requirements, (e.g. compatible browsers including release version), for onsite Department utilization. The Contractor requirements are subject to Department approval.

7.3.4 Analytical Capabilities

The DSS Solution must provide Users with the ability to conduct analysis on any field or attribute, either individually or collectively, designated to be populated with data provided by the Data Providers in the DSS Solution. Such capabilities include, but are not limited to, trend and normative analysis and projections of

utilization and benefit costs, benefit and program modeling as tools for use in the administration and oversight of various NYSHIP contracts, and advanced and integrated analytics based on the Contractor's unique and proprietary methodologies. These analytical capabilities must provide Users with the ability to:

7.3.4.1 Integrate data for all clinically related services for one patient for a discrete diagnostic condition, from the point the initial treatment is identified until treatment is completed, into an episode of care. The DSS must identify the codes (e.g. AMA ICD-9, APA DSM IV, CPT codes) used in defining the episode and provide the User with the ability to exclude codes and/or include additional codes as the User deems appropriate. The DSS must have the capability to analyze episodes of care in relation to regional and national benchmarks.

7.3.4.2 Conduct analysis of individual member's claims experience through unique member identifiers provided in Empire Plan eligibility data.

7.3.4.3 Conduct analysis by member demographics such as Benefit Plan, Benefit Program, Medicare status, etc.

7.3.4.4 Perform analysis of provider billed, allowed and paid amounts, frequency and complexity of services rendered, geographic location, and other utilization and profiling indicators.

7.3.4.5 Perform analysis on diagnostic related groups as defined by the AMA ICD-9 international classification of diseases and American Psychiatric Association DSM IV codes.

7.3.4.6 Conduct analysis based on medical and hospital service codes including CPT and revenue codes.

7.3.4.7 Allow analysis and evaluation of Empire Plan utilization based on provider participation status.

7.3.4.8 Perform analysis of prescription drug data at the National Drug Code (NDC) level based ingredient cost, utilization, therapeutic class, Preferred Drug List (PDL) status, and specialty and compound drug indicators; allow Users to model various strategies designed to contain costs while enhancing the therapeutic value of PDL drugs.

7.3.4.9 Model and analyze potential benefit changes and evaluate cost containment strategies.

7.3.4.10 Conduct analysis based on the Contractor's unique and/or proprietary analytic categories and classifications in order to provide Users with enhanced insight and understanding of Plan costs, utilization, and outcome measures.

7.3.5 Query and Reporting Capabilities

The Contractor must provide the capability for Users to request a variety of information from the DSS Solution and have those results presented in a formatted and organized manner. The DSS Solution must provide the capability to provide user-defined reports and analyses on an as needed basis in addition to standard, pre-defined reports, (e.g. quarterly Empire Plan utilization reports). Reports may be requested to meet clinical program review needs, address special population issues and concerns, and/or for review of contract compliance.

7.3.5.1 The DSS Solution must provide an efficient query tool that allows Users to, at minimum:

- 7.3.5.1a** Access all claims and enrollment files and attributes;
- 7.3.5.1b** Link data for analysis;
- 7.3.5.1c** Select subsets of data fields and/or summary or statistical information;
- 7.3.5.1d** Perform flexible filtering of data through pre-defined groups, (e.g. active vs. retiree), as well as user-defined groups, for those Users with the highest level of privileges;
- 7.3.5.1e** To set criteria so that only desired records and/or information is returned. Users should have the ability to select criteria such as age, sex, service type, service location, provider type, and/or diagnostic groupings, (e.g. ICD-9 codes, DRGs), as requested;
- 7.3.5.1f** Sort selected subsets of records or information based on multiple sort criteria; and
- 7.3.5.1g** Save query design for future reference and use.

7.3.5.2 The DSS Solution must provide benchmarking capabilities that, at minimum:

- 7.3.5.2a** Use and provide full access to files containing standard industry accepted norms including, but not limited to, national, regional, state, and county as grouped by member and provider zip codes, for benchmarking analysis. In addition, the DSS Solution must have the ability to create norms from internal data for comparison purposes; and

- 7.3.5.2b** Provide the capability for comparison of claim experience, enrollment experience, and provider practice/treatment patterns to the normative standards.

7.3.5.3 Reporting capabilities must provide the option:

- 7.3.5.3a** for Users to save query results in a permanent file (i.e. table or data file) that can be exported/imported utilizing standard Microsoft Office applications (e.g. Access, Excel, Word);
- 7.3.5.3b** to utilize copy and paste functions; and
- 7.3.5.3c** to allow Users the capability to store and reuse report templates.

7.3.5.4 The DSS Solution must provide the capability for Users to define and produce reports required to meet their needs for a particular project or analysis.

7.3.5.5 The DSS Solution must provide the capability to deliver pre-defined reports electronically. Examples of such reports may include, but are not limited to:

- 7.3.5.5a** Utilization reports by enrollee, patient, and/or provider;
- 7.3.5.5b** Provider reports that include use and cost performance details for physicians, hospitals, networks;
- 7.3.5.5c** Cost trend reports that include hospital admissions, pharmacy utilization, ambulatory surgery and physician services. Trends

should include all payment components, (e.g. deductibles, copayments, coinsurance) and cost of benefit; and

7.3.5.5d Quarterly and Annual Plan summary reports.

7.3.6 Consulting Support Services

On completion of Implementation and upon determination by the Department that the DSS Solution has been deemed fully operational and acceptable by the Department, the Contractor must provide enhanced analytical assistance to Users at the Department's request. Such enhanced analytical assistance may include, but not be limited to, assistance in a specific task or project, expert advice regarding the dynamics of the health care delivery system, pharmaco-economics, the input of benefit design changes or enrollee behavior and health status. The support services shall provide expert technical advice and query development assistance to identified Users. Such Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing training.

7.3.6.1 Upon the Department's determination that the DSS is fully operational to the Department's satisfaction, the Contractor must provide, upon the Department's request, a minimum of 400 hours of consulting support services during the balance of the five (5) year term of the contract.

7.3.6.2 The consulting support services must provide analytical support and expert guidance in clinical and statistical data analysis in relation to special or exigent projects requiring a more complex level of data review and study. These services are separate and apart from User Training, either initial or incremental ongoing training.

7.3.6.3 Consulting services are understood to include, but not be limited to, assistance in a specific task or project, expert advice regarding the

dynamics of the health care delivery system, pharmaco-economics, the input of benefit design changes or enrollee behavior and health status.

7.4.0 DSS Solution Operational Requirements

The Contractor shall provide a DSS Solution that provides the following functions and meet specific requirements to fulfill the Department's needs.

7.4.1 The DSS Solution must be available in its entirety to Users Monday – Friday 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET (Normal Business Hours). To the extent possible, the Contractor must agree to schedule outages for required maintenance or system upgrades outside of Normal Business Hours. Any unavoidable maintenance or system upgrades that cannot be scheduled outside of Normal Business Hours and must take place during those hours must receive prior approval from Director of the Department's Employee Benefits Division or his designee. The Contractor must provide the Department with, at a minimum, forty-eight (48) hour notice of any and all preventive maintenance and/or service interruption due to system upgrades or enhancements that may occur during Normal Business Hours.

7.4.2 Unscheduled interruptions of Project Services must be restored within four (4) hours of loss of Project Services. The Department's designated contact must be notified of the interruption within thirty (30) minutes of the detection of the disruption. The notification must include the reason for the interruption and estimated timeframe for restoration of Project Services. Notification must be provided to the Department's contact upon full restoration of services.

7.4.3 In the case of an interruption exceeding four (4) hours, a written and verbal explanation of the cause and remedial steps taken to avoid a

reoccurrence must be provided to the Department within five (5) Business Days of restoration of Project Services.

- 7.4.4** The Contractor must have physical safeguards in place that ensure Department data is secure from unauthorized persons and unauthorized access at all times. Technical safeguards must also be maintained so as to ensure that the data is stored in a secure manner and will be processed such that the confidentiality of the data is protected at all times. The Contractor must agree to provide both physical and technical security for this project in agreement with the policies, terms and conditions stated in this Agreement and Appendices A, B and C
- 7.4.5** The Contractor must have existing corporate policies and procedures in place regarding ethics, privacy and security pertaining to the protection of client data and information. At minimum, the Contractor must agree to apply policies and procedures equal to or better than the policies and procedures in existence for other clients for the protection of NYSHIP DSS data and activities. Such effective, comprehensive policies and procedures must be maintained for NYSHIP data and information through the term of the Contract.
- 7.4.6** The Contractor is required to provide all centralized computing Hardware, Software, staffing, maintenance, and associated processes and procedures necessary to support the proposed DSS Solution in a facility provided by the Contractor. The Contractor is required to provide preventive maintenance and keep the various Hardware and Software components of the DSS Solution current with release and maintenance levels. Hardware and Software not supported by the manufacturer cannot be utilized for the DSS Solution. The Contractor must make all upgrade/enhancements

available to the Department in the delivery of the DSS Solution at no additional cost to the Department.

7.4.7 The Contractor must establish, use, document and maintain professionally and technically sound quality assurance standards, techniques and tools including, but not limited to, the following:

7.4.7.1 Operational procedures;

7.4.7.2 Data naming standards;

7.4.7.3 Standards and techniques for controlling data synonyms, aliases and versions;

7.4.7.4 Standards for data characteristics;

7.4.7.5 Data design standards to ensure modularity, extensibility and flexibility, and to ensure the efficient and consistent use of the data;

7.4.7.6 Standards for data searching and cross-referencing techniques;

7.4.7.7 Standards to control data redundancy;

7.4.7.8 Standards for data views;

7.4.7.9 Standards for database administration; and

7.4.7.10 Test-of-correctness and objective measurements of quality.

7.4.8 The Contractor shall have a thorough and detailed Disaster Recovery Plan (DRP) in place that is updated and tested at least annually. The DRP must

include offsite secure backup of the DSS Solution and the ability to establish a fully functional DSS Solution at the alternative location, if needed. The DRP must have safeguards in place to ensure the security and confidentiality of the data and system is neither compromised nor corrupted.

7.4.8.1 In addition, the DRP must, at minimum, meet the following requirements:

- 7.4.8.1a** If the DSS Solution fails, the DSS Solution shall be able to be restored to its last consistent state before the failure occurred. The Contractor must address any data loss resulting from the system failure;
- 7.4.8.1b** The DSS Solution shall retain archived data and system records in accordance with State regulations, policies, and procedures;
- 7.4.8.1c** The DSS Solution shall be designed assuming zero fault tolerance (i.e. no single physical or electronic point of failure);
- 7.4.8.1d** The DSS Solution shall be backed up on a regularly scheduled basis; the schedule must be provided to the Department for review and approval;
- 7.4.8.1e** The DSS Solution backup media shall be stored offsite in a controlled access, physically protected location;
- 7.4.8.1f** Scheduled maintenance shall be coordinated with the Department;

7.4.8.1g The DSS Solution shall be fully functional during Normal Business Hours with the exception of scheduled outages for maintenance agreed to by the Department; and

7.4.8.1h In the event of data loss or data corruption, the DSS Solution shall be able to recover lost data within one (1) day from local backup/recovery and within three (3) days from offsite backup/recovery.

7.5.0 Security

The DSS Solution and all associated support processes and procedures shall be compliant with Federal Health Insurance Portability and Accountability Act (HIPAA) laws and all applicable federal and State laws and regulations concerning data security and personal privacy protection.

7.5.1 The Contractor shall commit to maintaining compliance with all federal and State privacy protection laws for the life of the Contract.

7.5.2 The Contractor shall have a DSS Solution Information Security Plan (ISP) acceptable to the Department in place on the effective date of this Contract, that states all security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The DSS Solution ISP must, at minimum:

7.5.2a Conform to the requirements of the Department of Civil Service Information Security Policy (Exhibit C of the Contract);

7.5.2b Support the Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity (Exhibit D of the Contract);

7.5.2c Agree to the policies, terms and conditions stated in Appendices A, B and C of the Contract;

7.5.2d Allow for the configurable control of access to processes, reports, content and functions;

7.5.2e Allow the definition of a robust, multi-level row security model;

7.5.2f Allow the maintenance of a robust, multi-level row security model;

7.5.2g Support configurable role-based security; and

7.5.2h Support the encryption of data being communicated over a public network.

7.5.3 The Department reserves the right, at its discretion, to perform security audits on the Project Services being provided to the Department. In the event the Department elects to perform a security audit, either independently or via a third party, the Contractor must agree to cooperate fully with the audit and respond to all findings in the audit in a timely manner.

ARTICLE VIII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding reduction(s) in fee to the Contractor for failure to meet each guarantee shall be implemented effective *(Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date)*. The Contractor

acknowledges and agrees that failure to perform the Project Service Features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any reimbursement(s) of any such reduction(s) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Contract. The Contractor shall report to the Department on a quarterly basis its level of compliance with these guarantees, as specified in Article 8.4.0 of this Agreement.

Performance related reduction amounts due from the Contractor to the Department for failure to perform any Project Service Feature at the Guarantee level as set forth above shall be made at the time and in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall deduct such amounts from the Implementation Fee or next applicable Ongoing Operations Monthly Fee Billing, as appropriate.

8.1.0 Implementation Guarantee

8.1.1 Guarantee: Provided that the Department and the Department's designated Data Providers, have supplied all information and/or data on a timely basis necessary for implementation activities to take place, the Contractor guarantees that all Implementation activities will be completed no later than (Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date), so that, effective (Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date - no later than 12 Months from Contract Start Date), the Contractor can deliver a DSS that is fully operational in all functions required by the Department, as determined in its sole discretion. For the purpose of this guarantee, the Contractor must, on (Insert Contractor's Proposed Date in terms of days elapsed from Contract Approval Date – no later than 12 Months from Contract Start Date), have completed:

- 8.1.1a** Preparation of facilities for long-term physical maintenance and storage of data;
- 8.1.1b** Activities required to bring the DSS Solution to full production and to be fully functioning in all aspects of the Project Services as described in the Contract, (i.e. accepting data from all Data Providers with full decision support capability and able to fulfill all other related tasks and responsibilities designated in the Contract). Initially, the Contractor must submit their proposed data interface requirements to the Department for review and, once approved by the Department, supply all Data Providers with the interface requirements. The Contractor must set up a meeting(s) with all Data Providers within thirty (30) Business Days of Contract's effective date to present file layout requirements. Once the Data Providers have produced data in a layout conforming to the Contractor's requirements, the Contractor must proceed to load historical data into the DSS Solution and provide access to the Department for acceptance testing no later than sixty (60) calendar days from the date the loadable data is received from the Data Providers;
- 8.1.1c** Acquisition, validation, and loading of six (6) complete years of historical data and all current Plan Year data available to be loaded into the DSS. In addition, after the load of historical and current Plan year is completed, a minimum of one complete current update cycle from each current Data Provider must be successfully transmitted, received and loaded into the DSS in order for Implementation to be deemed complete;
- 8.1.1d** Training, including proficiency testing of Users and, if necessary, additional training of Users at no additional cost to the Department;
- 8.1.1e** Establishment of User support functions, (e.g. telephonic and online support); and

8.1.1f All activities related to user acceptance testing and received Department sign-off on successful completion of those activities.

8.1.2 Reduction in payment to Contractor: The Contractor will permanently forfeit, *[Insert Contractor's quoted Number]* times the dollar amount of the Ongoing Operations Monthly Fee for each month, or part thereof, after the Contractor's proposed Implementation Completion Date that any of the Implementation activities listed above, in Article 8.1.1a–f, remain incomplete. The Contractor may propose to complete Implementation activities on a date earlier than the one year period after the effective date of the Contract. Should the completion of all Implementation activities extend beyond the completion date as proposed by the Contractor, or if no date is proposed by the Contractor, no later than one year after the effective date of the Contract, the Contractor must agree to permanently forfeit, at a minimum, an amount equal to one (1) month Ongoing Operations Monthly Fee for each month, or part thereof after the Contractor's proposed date that any of the Implementation activities remain incomplete.

8.2.0 Decision Support System (DSS) Update Guarantee and Reduction in Payment

8.2.1 Guarantee: The Contractor shall guarantee that the data supplied by the Data Providers will be processed through quality assurance testing and, if the data as submitted meets the standards, the data will be loaded in the DSS Solution not later than fifteen (15) Business Days from the scheduled data receipt date of the data from each Data Provider. This guarantee does not apply to data model changes, new Data Providers or types, or reprocessing of previously processed data due to Data Provider error. If the data is received after the scheduled receipt date, the data will be loaded in the DSS Solution not later than fifteen (15) Business Days from the date the data was received.

8.2.2 Reduction in payment to Contractor:

8.2.2a For each twenty-four (24) hour period, or part thereof, beyond fifteen (15) Business Days from receipt of data from a Data Provider, in accordance with the submitted schedule, that the data is not loaded into the DSS Solution and fully accessible to all Users, the Contractor proposes to forfeit \$ (Insert \$ amount - TBD).

8.3.0 Decision Support System (DSS) Solution Availability Guarantee and Reduction in Payment

8.3.1 Guarantee: The Contractor must guarantee that the DSS Solution will be available in its entirety to Users Monday – Friday, 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET, with the exception of previously agreed to scheduled outages due to required maintenance or system upgrades.

8.3.2 Reduction in payment to Contractor:

8.3.2a For each hour, or part thereof, beyond the initial four (4) hours from the loss of Project Services that the DSS Solution is not available in its entirety to Users, with the exception of previously agreed to scheduled outages due to required maintenance or system upgrades, the Contractor shall forfeit [Insert Number] times the Ongoing Operations Monthly fee, pro-rated on an hourly basis. The measurement of hours to which the forfeiture is applied shall begin with the first hour the DSS is not available. To illustrate, the DSS is not available for five (5) hours and fifteen (15 minutes) during Normal Business Hours on “Month A” which equates to six (6) hours that the DSS Solution was not available. The Offeror shall forfeit 2 x the Ongoing Operations Monthly fee for “Month A” pro-rated to an hourly rate x 6 (hours).

8.3.2b For each month, in which the DSS Solution is not available in its entirety, with the exception of previously agreed to scheduled outages, for a minimum of 98% of the scheduled operating hours, based on Normal Business Hours, the Contractor shall forfeit the Offeror shall forfeit an amount equal to [Insert Number] time(s) the full Ongoing Operations Monthly fee. To illustrate, during “Month A”, the DSS should be available, in its entirety, 298 hours (rounded up to the nearest full hour) based on 304 hours (12 hours/day x 22 weekdays [Mon – Fri] in “Month A” = 264 hours + 10 hours/day x 4 Saturdays in Month A = 40 hours) x .98. In this example, if the DSS is available 297 hours or less, the Offeror shall forfeit one (1) time the full Ongoing Operations Monthly fee for “Month A” in which the DSS was not at, or above, 98% availability standard.

8.4.0 On a quarterly basis, the Contractor must submit a report to the Department that details the Contractor’s compliance with the Performance Guarantees, DSS Update Guarantee and DSS Solution Availability Guarantee, as stated in the Contract in Articles 8.2.0 and 8.3.0, respectively. The reports are due sixty (60) calendar days after the end of the quarter. In addition, the Contractor must provide timely notification (i.e. within two (2) Business Days), to the Department of any and all occurrences of non-compliance with Performance Guarantees.

ARTICLE IX: PAYMENT FOR DECISION SUPPORT SYSTEM SERVICES

9.1.0 The Contractor will bill the Department based on the *DSS Implementation Total Not-To-Exceed Amount* as stated in the Contractor’s Cost Proposal to cover all of the Contractor’s DSS Solution design, development and implementation activities and their associated costs.

9.1.1 During the Implementation Phase, the Department will make monthly payments, in arrears, to the Contractor for design, development and implementation costs

incurred by the Contractor in its performance of services/activities described in Section IV.B.1 of the RFP (Exhibit A) based on the Personnel, Hardware, Software, Training and Other Cost Categories quoted rates as set forth in the Contractor's Cost Proposal - Appendix III.A, Tables 3 through 7 (Exhibit B), subject to the Not-To-Exceed caps associated with each Cost Category. Costs incurred by the Contractor in excess of the Total Not-To-Exceed Amounts for Personnel, Hardware, Software, Training and Other costs, if any, shall not be subject to reimbursement by the Department. As regards, the Total Not-To-Exceed – Amount - Training Cost cap - Appendix III.A, Table 6 of Contractor's Cost Proposal (Exhibit B), notwithstanding the preceding, additional costs incurred resultant from the Contractor training more Users than the number of Users assumed in Appendix III.A, Table 6 (Exhibit B) will not be applied against the Total Not-To-Exceed - Training Cost cap.

- 9.1.2** Notwithstanding any payments made to the Contractor during the Implementation Phase associated with any Cost Category, title to all products provided by the Contractor during the Implementation Phase shall remain with the Contractor and shall not transfer to the Department until the Contractor's DSS Solution is fully accepted by the Department, in its sole discretion, in accordance with the provisions set forth herein the Contract,
- 9.1.3** Ten percent (10%) of each monthly invoice amount will be withheld from each monthly amount paid to the Contractor (Surety Withhold). The total of all Surety Withhold amounts withheld will be due to the Contractor upon Department acceptance of a fully functional DSS Solution. Should the Contractor's DSS Solution ultimately not be accepted by the Department, at its sole discretion, the Contractor will be considered in default of the Contract and the Contract shall be subject to termination for cause. In such case of default, the Contractor shall forfeit all Surety Withhold amounts withheld, refund any monies paid to the Contractor during the Implementation Phase and forfeit its right to reimbursement

by the Department of any and all costs incurred by the Contractor under the Contract.

9.2.0 The Contractor shall bill the Department an all-inclusive fixed *Ongoing Operations Monthly Fee* for the Contractor's performance of ongoing Project Services, during the term of the Contract and any extension periods thereto, once Implementation activities have been completed and accepted by the Department and the Department has determined in its sole discretion that the DSS Solution is fully operational.

9.2.1 The payment of the *Ongoing Operations Monthly Fee* shall commence with the first FULL month following the date on which all Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational. If Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational on a date other than the first day of the month such that the DSS Solution is fully operational for only part of a month, then the Contractor shall be due a *DSS Partial Month Ongoing Operations Fee* equal to the *Ongoing Operation Monthly Fee* times the number of Calendar Days during said partial month during which the Contractor's proposed DSS Solution is fully operational divided by the total number of calendar days in said partial month, assuming that is that the date the Contractor's DSS Solution is fully operational is not later than one (1) year from the effective date of the Contract. If the date the Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational is a date later than one (1) year from the effective date of the Contract, then, the Contractor shall not be due a *DSS Partial Month Ongoing Operations* and shall be subject to a reduction in payment per section 8.1.2..

9.2.2 The *Ongoing Operations Monthly Fee* rate shall be a fixed all-inclusive rate to cover all of the Offerors costs in fulfilling it duties and responsibilities in the performance of Project Services as set for in Sections IV.B of the RFP (Exhibit A), excepting the delivery of Incremental Training adding a new Data Provider to

the DSS Solution, Incremental User Fees, if any and Additional Consulting Support Services, if any. The *Ongoing Operations Monthly Fee* charged to the Department for such services shall be quoted on a fixed all-inclusive dollar amount per month basis and the rate quoted will remain unchanged over the initial five (5) year term of the Contract and any extension thereof (i.e., the rate quoted and charged for the first month of ongoing operations will be the same as the rate charged for the sixtieth month of ongoing operations).

9.2.3 The *Ongoing Operations Monthly Fee* shall be the sole and exclusive fee chargeable to and payable by the State under the Contract for the performance of Project Services as set for in Sections IV.B of the RFP (Exhibit A) once the DSS Solution is fully operational, excepting as regards the delivery and payment of Incremental Ongoing Training Fees, new Data Provider Fees, if any, Additional User Fees, if any, and Additional Consulting Support Services beyond the included 400 hours, if any, and the payment of a *DSS Partial Ongoing Operations Fee*, if any.

9.2.4 During the term of the Contract and any extensions thereof, the Department may, in its sole discretion add, change, delete or deactivate Users in one or more of levels. Deleted/Deactivated Users may be replaced with new Users at no additional charge to the Department, assuming that during the Operations phase of the Contract the total number of Users is not greater than the assumed number of Users for the given level. If, during the Operations phase of the Contract, the number of active Users in a given level is less than the assumed number for that level, no reduction in the DSS Ongoing Operations Fee will be due the Department. During the Operations phase of the Contract, if during a given month, the number of active Users in a given level is greater than the assumed number of Users for that level, (i.e., fifteen [15] Level 1 Users, ten [10] Level 2 Users and twenty [20] Level 3 Users as described in Section IV. B.3.a of the RFP [Exhibit A]) the Offeror may, but is not required to, propose a per user per month Additional User Fee to be charged to the Department for each User beyond the

assumed number of Users. Additional User Fees charged, if any, will be added to the Contractor's DSS Ongoing Operations. For example if the number of Level 1 Users in month fourteen of the Contract term is fifteen, then no Level 1 Additional User Fee would be due the Contractor. If the number of Level 1 Users in month fifteen is seventeen, then, for that month, in addition to its DSS Ongoing Operations Fee, the Contractor would be due two (2) times its proposed Level 1 per user per month fee as set forth on "Range of Users" line 16 – 20 Table 11 (Exhibit B).

9.2.5 The Contractor must include 400 hours of Consulting Support Services as stated in Article 6.3.6 in its ***Ongoing Operations Monthly Fee***.

9.2.6 Should enrollment changes, or the addition of Data Provider(s), cause the volume of data and related storage needs of the Department to increase or decrease by 15% or more, from one year to the next year of the term of the Contract, the Contractor may request a change in the ***Ongoing Operations Monthly Fee***. In such cases, if any, the Department will review and consider the justification submitted by the Contractor. The Department reserves the right to request, and the Contractor shall be required to provide, any additional information and documentation the Department deems necessary to verify that the request for a change in the ***Ongoing Operations Monthly Fee*** is warranted. The Department's decision to modify the ***Ongoing Operations Monthly Fee*** to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the State, and if deemed warranted by the Department, then said change shall require a formal amendment to the Contract and must be approved by the OSC.

9.2.6 If a significant change in technology or benefits occurs during the term of the Contract which materially impacts the Contractor's level of effort or cost, to either a greater or lesser extent, the State reserves the right to renegotiate the ***Ongoing Operations Monthly Fee***. In such cases, if any, the Department will

review and consider the justification submitted by the Contractor. The Department reserves the right to request, and the Contractor shall be required to provide, any additional information and documentation the Department deems necessary to verify that the request for a change in the ***Ongoing Operations Monthly Fee*** is warranted. The Department's decision to modify the ***Ongoing Operations Monthly Fee*** to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the State, and if deemed warranted by the Department, then said change shall require a formal amendment to the Contract and must be approved by the OSC.

- 9.3.0** At the Department's request, the Contractor shall provide additional training for Users when needed due to events including, but not limited to, User turnover, system changes and upgrades, during the term of the Contract and any extension periods thereto, once Implementation activities have been completed and accepted by the Department and the DSS Solution is fully operational. The Contractor shall bill based upon *Incremental Ongoing Training Rates* as quoted in the Contractor's Proposal (Exhibit B) for Incremental Ongoing Training services.
- 9.4.0** At the Department's request, the Contractor shall provide Additional Consulting Support Services in addition to the minimum of 400 hours of Consulting Support Services included in its ***Ongoing Operations Monthly Fee*** as stated in Article 7.3.6, during the Ongoing Operational phase of the Contract and any extension periods thereto. The Contractor shall bill based upon *Additional Consulting Support Services Fee(s)* as quoted in the Contractor's Proposal (Exhibit B) for Additional Consulting Support Services.
- 9.5.0** During the term of the Contract, once Implementation activities have been completed and accepted by the Department and the DSS Solution is fully operational, changes in the Data Providers may occur. The Contractor shall integrate a data feed with the new Data Provider into the DSS Solution effective with the contracted effective date of the new Data Provider into the Empire Plan or other NYSHIP benefit should the DSS Solution be expanded to include additional programs during the term of the Contract and any

extension periods. The Contractor shall bill the Department based on a one-time fixed all-inclusive *Data Provider Start-up Fee* to cover all of the Contractor's costs to add a Data Provider to the DSS Solution, during the term of the Contract and any extension periods thereto, once Implementation activities have been completed and accepted by the Department and the DSS Solution is fully operational.

- 9.5.1** The Contractor shall be reimbursed for services rendered as required to add a new Data Provider at the associated one-time fixed all-inclusive rate as quoted in the Contractor's Cost Proposal (Exhibit b). No additional or incremental Ongoing Operations Monthly fee is allowed resultant from the addition of a new Data Provider other than in accordance with the provisions set forth in Article 9.2.5.
- 9.5.2** The Contractor must include the run-out data that is received from the previous Data Provider in the DSS Solution for up to three (3) years after the date a change in Data Providers is made.
- 9.6.0** Should the Department choose to exercise its right to extend the Contract pursuant to Article II of this Agreement, the Contractor or Department may request a rate change (increase or decrease) to the *Ongoing Operations Monthly Fee*; the *Data Provider Start-up Fee* and the *Incremental Ongoing Training Rates* based upon fluctuations in the latest published copy of the Consumer Price Index - All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/> . Go to "Inflation & Prices" then click "Consumer Price Index" and then click on "CPI Tables" then click on "Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present."
- 9.6.1** Price adjustments shall be made using the CPI to calculate rates for an extension period such that the base rates (i.e., then current rates) are changed by the percent change in the level of the CPI between the Reference Period and the Subsequent

Time Period. This is calculated by first determining the Index Point Change between the two periods and then the percent change. The price adjustment shall be calculated as follows: The CPI for the 3rd month prior to the month of the start date of either the last year of the Contract or the last approved annual extension period, whichever is later (Reference Period), is subtracted from the CPI value for the 3rd month prior to the start date of the extension period (Subsequent Time Period). (For example, if the effective date of the Contract is January 1, and there have been no approved annual extension periods and the start date of the last year of the Contract is January 2016; then the Reference Period would be October 2015 and the Subsequent Time Period would be October 2016.) That sum is then divided by the CPI value for the Reference Period and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage of increase or decrease shall be effective as of the start date of the extension period. The following example illustrates the computation of percent change:

Subsequent Time Period – CPI for the 3rd month prior to the start date of the extension period (October 2016 based on the above example)	136.0
Less: Reference Period – CPI for the 3rd month prior to the month of the start date of the last year of the Contract or the last approved annual extension, whichever is later (October 2015 based on the above example)	<u>129.9</u>
Equals Index Point Change	6.1
Divided by the Reference Period CPI (October 2015 based on the above example)	<u>129.9</u>
Equals Percent Change	0.047
Result multiplied by 100	0.047 <u>x 100</u>
Equals Percent of Adjustment to be applied to the base rates to calculate rates for the extension period	4.7%

- 9.6.2** The Contractor has the sole responsibility to request an annual rate change during said optional extension period and, in such cases, the Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the Department. Should the Contractor fail to request a rate change at the time the amendment is executed by the Parties, the Contractor shall be deemed to have waived its right to any increase in price associated with that year, however, the State shall not be barred from making the appropriate adjustment, at anytime during the Contract term as amended, in the case of a decrease determined in accordance with the above methodology.
- 9.7.0** The OSC shall render payment for invoices in accordance with ordinary State procedures and practices. The Contractor must certify the accuracy of all Contractor invoices prior to their submission to the Department and the Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt
- 9.8.0** All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of the Contract, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under the Contract at more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the Department.
- 9.9.0** The Contractor agrees that the following costs are not allowable and shall not be charged to the Department as either a direct or formula expense including but not limited to: commissions, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at conferences or meetings of professional organizations unless attendance is necessary in connection with the Project Services and the Contractor receives prior written approval by the Department.

9.10.0 During the term of the Contract and any extension period thereto, amounts paid for which it is subsequently determined that the Contractor was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

ARTICLE X: DATA SHARING AND OWNERSHIP

10.1.0 All claims, enrollment and other data (i.e., materials) provided to the Contractor by the Department or the Department's Data Providers is being provided to the Contractor solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under the Contract and said materials are the sole property of the State. Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, the Contractor shall not share, sell, release, or make the materials available to third parties in any manner without the prior consent of the Department. This provision shall survive the expiration or termination of the Contract.

10.2.0 Within thirty (30) days after the termination or expiration of the Contract for any reason, the Contractor agrees to return to the Department all data provided to the Contractor by the Department or the Department's data providers or, if return is not feasible, destroy any and all such data. In the event returning or destroying such data is not feasible, the Contractor shall provide written notification to the Department of the conditions that make the return or destruction not feasible, in which case, the Contractor must continue to protect such data in perpetuity.

ARTICLE XI: OWNERSHIP/TITLE TO CONTRACT DELIVERABLES

In addition to the Ownership/Title to Product Deliverables requirements specified in Appendices A and B to this Contract, the following provisions shall apply:

11.1.0 For purposes of this section, “Product(s)” is/are defined as a deliverable(s) furnished under the Contract by or through Contractor, including Existing and Custom Product(s), including, but not limited to: (a) components of the hardware environment, (b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media, (c) third party software, (d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and (e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

11.1.1 For purposes of this section, “Existing Product(s)” is/are defined as tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Contract.

11.1.2 For purposes of this section, “Custom Product(s)” is/are defined as Product(s), preliminary, final or otherwise, which is/are created or developed by Contractor, its subcontractors, partners, employees or agents solely for the benefit of the Department under the Contract in its delivery of Project Services.

11.2.0 Title to Contract Deliverables – the Contractor acknowledges that it is commissioned by the Department to perform those Project Services as set forth in the Contract. Unless otherwise specified in writing in the Contract, the Department shall have ownership rights as follows:

11.2.1 Existing Product(s)

11.2.1a Hardware - Title and ownership to Existing Hardware Product(s) shall remain with the Contractor.

11.2.1b Software - Title and ownership to Existing Software Product(s) utilized in the delivery of Project Services under the Contract shall remain with Contractor or other independent software vendor proprietary owner (“ISV”).

11.2.1c Custom Product(s) – Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) is/are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Contract in the course of Contractor’s business.

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

11.3.0 During the term of the Contract, the Contractor may and the Department shall be entitled to, at no additional cost to the Department, incorporate error corrections, updates, revisions, fixes, upgrades to Product and/or new releases of Product in the delivery of Project Services under the Contract. In addition, where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer

going to be offered, Contractor shall be required to: (i) notify the Department in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at the Department's option either: provide the Department with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Department to continue use and maintenance of the Product. In the event that the Contractor is not the Product manufacturer/developer, Contractor shall be required to: (i) provide the notice required under the paragraph above within ten (10) Business Days of Contractor receiving notice from the Product manufacturer/developer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer/developer will continue to provide Product or withdraw support. The provisions of this paragraph shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent subcontractor. In the event that such subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to Department approval, to an alternate subcontractor.

ARTICLE XII: WARRANTIES

Where Contractor generally offers or proposes in its Proposal additional or more advantageous warranties, if any than those set forth below, Contractor shall offer or pass through any such warranties to the Department at no additional cost to the Department. Contractor hereby agrees to the following:

12.1.0 Representations and Warranties: Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Contract whether or not the Contractor or its subcontractor(s) performs such obligations or duties. Project Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Contract,

including all appendices and Project Services provided shall conform to all technical specifications provided in the RFP (Exhibit B).

12.2.0 Workmanship Warranty: Contractor warrants that it shall perform Project Services in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of the Contract, “highest applicable industry standards” shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

12.3.0 Contractor Compliance: Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract at no additional cost to the Department. Prior to award and during the term of the Contract, Contractor warrants that it shall meet or exceed all requirements of the Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman’s compensation, and shall provide such proof as required by the Department. Failure to do so may constitute grounds for the Department to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Department.

12.4.0 Survival of Warranties

All warranties contained in the Contract shall survive the termination of the Contract.

ARTICLE XIII: MODIFICATION OF SERVICES

13.1.0 In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of the Contract in such a manner that the Department determines that any design elements or requirements of the Contract must be

revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.

13.2.0 To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of Project Services that are contemplated in accordance with the terms of the Contract as of the Effective Date and which the Contractor is required to perform or deliver under the Contract, the Contractor may submit a written request to the Department to initiate review of the fee(s) received by the Contractor for Project Services provided and guarantees made by the Contractor under the terms of the Contract, accompanied by appropriate documentation. The Department reserves the right to request and the Contractor shall agree to provide additional information and documentation to the Department within a reasonable period of time and in its sole discretion make a written determination as to whether such request shall be approved or rejected. Should the Department approve the Contractor's request to modify the fee(s), such approval shall be subject to written amendment and approval by the OAG and OSC.

ARTICLE XIV: TRANSITION

14.1.0 The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services (Transition Period). Transition Services, as defined below, shall be governed as follows:

14.1.1 Cooperation with Department/Successor Contractor: The Contractor must commit to fully cooperate with the Department and the Successor Contractor, if any, to ensure the timely, smooth transfer of information necessary to provide the Project Services.

14.1.2 No Interruption of Services: At all times during the Transition Period and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State (i) has approved the Contractor's proposed transition plan, and (ii) an orderly transition to the Department or a Successor Contractor, if applicable has been completed pursuant to the approved Transition Plan as referenced below. The Contractor shall be required to meet its contractual obligations pursuant to this Article notwithstanding the issuance of a termination for cause or convenience by the Department.

14.1.3 Transition Plan: Within ninety (90) Days of the Department's written request, but not later than ninety (90) Days prior to the end of the term of the Contract, or within forty-five (45) Days of notice of termination of the Contract, whichever event occurs first, the Contractor shall provide for approval of the Department a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the timeline, tasks, milestones and deliverables associated with the smooth transition of Services to the Department or a Successor Contractor, if applicable. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the Department: The Transition Plan must, at a minimum detail:

14.1.3.a the length of time proposed by the Contractor to complete the transition of Project Services to the Department or a Successor Contractor, if any (Transition Period);

14.1.3.b encompass the transmission of data, provision of data dictionaries, conversion tables/data mapping and related duties and functions necessary for a smooth transition of the Project Services to the Department or a Successor Contractor, if and as applicable; and

14.1.3c encompass the completion of all outstanding Contractor provided services/deliverables, including, but not limited to, the Department

requested projects incurred on or before the scheduled termination date of the Contract.

The Contractor shall be responsible for providing Transition Services in accordance with the approved Transition Plan.

14.1.4 Contractor Transition Services: “Transition Services” shall be deemed to include Contractor’s responsibility for all Project Services under the Contract, and for transferring in a planned manner specified in the Transition Plan all such services to the Department or a Successor Contractor, if applicable. It is expressly agreed between the Parties that the level of service rendered during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where a portion of the Project Services has been transitioned to or assumed by the Department or a Successor Contractor during the Transition Period, Contractor shall not be held responsible for the negligent acts or negligent omissions of the Department or the Successor Contractor for any degradation associated with that portion of Project Services transitioned resulting from the negligent acts or negligent omissions of the Department or the Successor Contractor.

14.1.5 Compensation for Transition Services: Contractor shall be reimbursed for Transition Services performed during the Transition Period based on the Monthly Ongoing Operation Fee, prorated by the number of days during the month that the Contractor performs Project Services, as set forth in the Contract.

14.1.6 Department Responsibilities for Transition: The Department shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed. Weekly project review meetings shall be held with representatives of the Contractor, the Department and a Successor Contractor, if applicable.

14.1.7 Transition Plan Deliverable Guarantee: If the Contractor does not meet the Transition Plan submission time period requirement as set forth in Article 13.1.3 above, the Contractor will permanently forfeit one hundred percent (100%) of the Monthly Ongoing Operations Fee, or part thereof, corresponding to the time period from the date the Transition Plan was due to the date the Transition Plan is delivered to the Department. Monthly Operation Fees will resume once the Transition Plan is delivered.

ARTICLE XV: AUDIT AUTHORITY

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

15.1.0 The Contractor acknowledges that the Department has the authority to conduct financial and service audits of the Contractor's delivery of Project Services in accordance with the Contract and any applicable State and federal statutory and regulatory authorities.

15.2.0 Such audit activity may include, but not necessarily be limited to, the following activities:

15.2.1 Review of security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data, either independently or via a third party;

15.2.2 Review of compliance with Performance Guarantees; and

15.2.3 Review of any and all activities relating to the Contractor's administration of the Contract.

15.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor

may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, pertinent contracts, subcontracts and correspondence.

15.4.0 The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Contract. Such data may, at Department discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department.

15.5.0 The Contractor shall, at the Department's request, search its files, retrieve information and records and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures.

15.6.0 The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within thirty (30) Days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B to the Contract.

15.7.0 All records and documentation described in this Article for audit review and use by the Department pertain to the administration of the Contract.

15.8.0 If the Contractor has an independent audit performed of the records relating to the Contract, a certified copy of the audit report shall be provided to the Department within ten (10) Days after receipt of such audit report by the Contractor.

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

ARTICLE XVI: CONFIDENTIALITY

In addition to the Confidentiality terms specified in Appendices A and B to the Contract, the following provisions also shall apply:

16.1.0 All claims and enrollment data relating to the Contract are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Contract, for measuring the performance of the Contractor in accordance with the performance guarantees of the Contract, and for providing the Department with material and information as may be specified elsewhere in the Contract.

16.2.0 Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants or subcontractors either during the term of the Contract or in perpetuity thereafter. Contractor shall hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Contract.

16.3.0 The Contractor, its officers, employees, agents, consultants and/or any subcontractors agree to comply, during the performance of the Contract, with all applicable federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information

obtained by the Contractor through its performance under the Contract, with particular emphasis on such information relating to NYSHIP enrollees and their dependents.

16.4.0 The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, employees, agents, consultants and/or subcontractors contains a provision which strictly conforms to the various confidentiality provisions of the Contract. Information which falls into any of the following categories shall not be considered Confidential Information:

- 1) Information the Contractor already possesses without an obligation of confidentiality.
- 2) Information the Contractor develops independently from publicly available data.
- 3) Information the Contractor receives without obligation of confidentiality from a third party.
- 4) Information that is, or becomes, publicly available without breach of the Contract.

16.5.0 The Contractor shall promptly advise the Department of all requests made to Contractor for information regarding the performance of services under the Contract including, but not limited to, requests for any material and information provided by the Department or a Data Provider.

ARTICLE XVII: BUSINESS ASSOCIATE AGREEMENT

17.1.0 For purposes of this Article, the term “Protected Health Information” (“PHI”) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect

to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as “Department’s PHI.” For the purpose of this Article, the term “Contractor” refers to the Insurer, if any, for the administration of the Program.

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

17.3.0 Permitted Uses and Disclosures of the Department’s PHI: The Contractor may use and/or disclose the Department’s PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department’s PHI to provide data

aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department's PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor or any instances of which it is aware in which the confidentiality of the information has been breached.

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

17.5.0 Safeguards: The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, or that it transmits on behalf of the Department pursuant to this Agreement.

17.6.0 Breach Notification

17.6.1 Reporting: The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any

security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) Business Days of the date the Contractor becomes aware of the event.

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

- i. the date of the breach incident;
- ii. the date of the discovery of the breach;
- iii. a brief description of what happened;
- iv. a description of the types of unsecured PHI that were involved;
- v. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
- vi. A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and
- vii. any other details necessary to complete an assessment of the risk of harm to the individual.

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

- 17.6.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
- 17.6.5** For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.
- 17.6.6** The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 17.7.0** Associate’s Agents: The Contractor shall require all of its agents or sub-contractors to whom it provides the Department’s PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree to the same restrictions and conditions on the access, use and disclosure of PHI that apply to the Contractor with respect to the Department’s PHI under this Agreement.
- 17.8.0** Availability of Information to the Department: The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department’s obligations to provide access to, to provide a copy of, and to account for disclosures of the Department’s PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.
- 17.9.0** Amendment of the Department’s PHI: The Contractor shall make the Department’s PHI available to the Department as the Department may require to fulfill the Department’s

obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Contractor.

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

17.12.0 Termination.

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

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

17.13.0 Indemnification: The Contractor agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents or other members of its

workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, subcontractors, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor’s acts or omissions hereunder. The Contractor’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

17.14.0 Miscellaneous:

17.14.1 Amendments. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Regulations.

17.14.2 Survival. The respective rights and obligations of Business Associate and Covered Entity set forth in Sections III.C. and IV shall survive termination of this Agreement.

17.14.3 Regulatory References. Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.

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

ARTICLE XVIII: NOTICE TO STATE

18.1.0 The Contractor shall immediately notify the State upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Agreement. If such notification is verbal, the Contractor shall submit to the State a written description of the situation and a recommendation for its resolution within seven (7) Business Days of learning of the situation.

ARTICLE XIX: NOTICES

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

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

State of New York Department of Civil Service**Name:****Title:****Address:****Telephone Number:****Facsimile Number:****E-Mail Address:****[Contractor Name]****Name:****Title:****Address:****Telephone Number:****Facsimile Number:****E-Mail Address:**

- 19.2.0** Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- 19.3.0** The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XX: SUSPENSION OF WORK

- 20.1.0** Notwithstanding any other provision of the Agreement, DCS reserves the unconditional right to suspend any or all activities under the Agreement, at any time, with or without cause and in the best interests of the State or DCS. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as DCS issues a formal written notice either authorizing a resumption of work or providing notice of the DCS's intent to pursue the DCS's rights pursuant to Article XVII of the Agreement.

ARTICLE XXI: GENERAL PROVISION AS TO REMEDIES

- 21.1.0** The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single

or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.

21.2.0 In addition to any other remedies available to DCS under the Agreement, DCS has the following additional remedies which may include, but are not limited to, the following:

21.2.1 The right for DCS to withhold payment of some or all of the amounts due and owed under the Agreement until Contractor's performance is brought within the specified parameters.

21.2.2 The application of credits against amounts due and owed by DCS under the Agreement.

ARTICLE XXII: TERMINATION

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

22.1.0 The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event

of cancellation without cause by the State, the State agrees to negotiate a payment based on the Fixed Hourly Rates as set forth in the Contractor's Financial Proposal for hours actually worked by Contractor personnel on a given project activity, not to exceed the fixed fee of the project activity;

22.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement or may exercise such other remedies as shall be available under the Agreement, at law and/or equity;

22.3.0 No delay or omission to exercise any right, power or remedy accruing to the State or DCS upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;

22.4.0 If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Agreement, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Project Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue;

22.5.0 In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for

breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:

- 1) terminate the Agreement in whole or in part;
- 2) suspend, in whole or in part, payments due Contractor under the Agreement; and
- 3) pursue equitable remedies to compel Contractor to perform.

The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services;

22.6.0 For Violation of Procurement Lobbying Law. DCS reserves the right to terminate the Agreement in the event it is determined by DCS in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DCS may, at its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

22.7.0 For Violation of Section 5-a of the Tax Law. DCS reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to section 5-a of the Tax Law is/are false. Upon such finding(s), DCS may exercise its termination right by providing written notification to the Contractor;

22.8.0 Termination Notice. Notices required by this section shall be provided consistent with Article 9 of Appendix B; and

22.9.0 Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the

termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XXIII: MERGERS/ACQUISITIONS

23.1.0 The Contractor's obligations to perform under the Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

ARTICLE XXIV: RESPONSIBILITY TERMS

24.1.0 The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed Contractor's Vendor Responsibility Questionnaire (hereinafter "Vendor Responsibility Questionnaire") provided to the Contractor by the Department prior to execution of the Agreement. The Contractor further covenants and represents that as of the date of execution of the Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Vendor Responsibility Questionnaire.

24.2.0 The Contractor shall provide to the Department updates to the Vendor Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Vendor Responsibility Questionnaire becomes available.

24.3.0 Notwithstanding 22.3.0 hereinabove, the Department reserves the right, in its sole discretion, at any time during the term of the Agreement, (i) to require updates or clarifications to the Vendor Responsibility Questionnaire upon written request, (ii) to inquire about information included in or require information omitted from the Vendor Responsibility Questionnaire, and (iii) to require Contractor to provide such information to the Department within a reasonable timeframe.

24.4.0 The Department reserves the right to make a final determination of Contractor's non-responsibility (hereinafter "Determination of Non-responsibility") at any time during the term of the Agreement based on (i) any information provided in the Vendor Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (iii) the Department's discovery of any other material information which pertains to Contractor's responsibility.

24.5.0 If the Department preliminarily determines Contractor to be non-responsible, the Department shall provide written notice to Contractor detailing the reason(s) for the preliminary determination, and shall provide Contractor with an opportunity to be heard.

24.6.0 Upon a Determination of Non-responsibility of Contractor, the Department reserves the right to terminate the Agreement in accordance with Article XXI.

ARTICLE XXV: ALL LEGAL PROVISIONS DEEMED INCLUDED

25.1.0 It is the intent and understanding of the Parties to the Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then the Agreement shall forthwith upon the application of either Party be amended by such insertion so as to comply strictly with the law without prejudice to the rights of either Party hereunder.

ARTICLE XXVI: ENTIRE AGREEMENT

26.1.0 The Agreement and the appendices, exhibits and attachments hereto constitute the entire agreement between the Parties hereto and no statement, promise, condition,

understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto.

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

NANCY G. GROENWEGEN
COMMISSIONER

By: _____

Date: _____

[Insert Name of Contractor]

Date: _____

By: _____

Name: _____

Title: _____

STATE OF)
) ss:
COUNTY OF)

On the _____ day of _____, _____, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the _____ of _____ the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

My commission expires: _____

NOTARY PUBLIC

Approved as to form:

Andrew M. Cuomo
ATTORNEY GENERAL

By: _____

Date: _____

Approved:

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____

Date: _____

SECTION VIII: Decision Support System RFP Glossary of Terms and Abbreviations

Affiliate means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

Agreement or Contract means the agreement entered into between the Parties resultant from this RFP.

Application means a program or group of programs designed for end users.

Benefit Plan means an indicator used in the NYS computerized enrollment system (NYBEAS), to indicate the NYSHIP health insurance option (e.g. Empire Plan or a NYSHIP participating HMO) chosen by an individual, or to indicate the particular benefit package within the NYS dental or vision plans that the individual is eligible for.

Benefit Program means an indicator used in the NYS computerized enrollment system (NYBEAS), to specify the entire benefit package the individual is eligible for and typically includes specific health, dental, and vision coverage benefit definitions. The benefit program varies based on multiple factors such as, the individual's bargaining unit /union affiliation, employer status, (e.g. State Agency, Participating Agency, Participating Employer), and employment status, (e.g. active, retired).

Business Day(s) means every Monday through Friday for administrative services, and every Monday through Saturday for DSS operations, under the terms of the contract resultant from this RFP, except for days designated as business holidays by the Department prior to January 1 of each calendar year.

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

Completion Date means the date proposed by the Offeror and agreed upon by the Department, for delivery of a fully functional DSS; the completion date may not, in any case, exceed twelve (12) months after the contract effective date.

Conflict of Interest means a situation which has or may influence or appear to influence, compromise or bias the Offeror's/Contractor's actions and/or judgments in the Offeror's/Contractor's performance of Project Services. Such situations may result from the Offeror's/Contractor's direct or indirect interests, including but not limited to, financial, business, proprietary or personal interests, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP). A Conflict of Interest can result from relationships between the Offeror/Contractor and any individual, entity or organization that existed prior to or that may arise during the term of the Contract.

Contractor means the Offeror selected in response to this RFP with which the Department intends to enter into an agreement to provide a decision support system solution.

Day(s) means calendar days unless otherwise noted.

Data Provider means an entity (an Insurer or the Department) that provides enrollment or claims data to the Contractor for loading into the DSS Solution.

DCS or Department means the New York State Department of Civil Service.

Decision Support System (DSS) or DSS Solution means a comprehensive and integrated data management system solution that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence to be used by the Department and its designated Users.

Disaster Recovery Plan means a plan for continued operation in the event of a situation which incapacitates part or all of a contractor's resources including, but not limited to, personnel, IT equipment, data records, and the building or other physical infrastructure.

Empire Plan means the experience-rated health plan administered by the NYS Department of Civil Service to provide health insurance benefits for the employees, retirees and eligible dependents of New York State and NYSHIP Participating Agencies and Participating Employers. It has four components, the Medical Program, the Hospital Program, the Managed Mental Health and Substance Abuse Program, and the Prescription Drug Program.

Employee Benefits Division (EBD) means the division of the New York State Department of Civil Service responsible for administering the New York State Health Insurance Program.

ET means prevailing Eastern Time.

Excelsior Plan means a variation of the Empire Plan available to local government units which choose to participate in NYSHIP. The Excelsior Plan offers many of the same features of the Empire Plan with a higher degree of cost sharing between the employer and plan participants.

Firewall means a system designed to prevent unauthorized access to or from a private network based upon a set of rules and other criteria. Firewalls can be implemented in either hardware or software, or a combination of both.

Hardware means tangible objects such as disks, disk drives, display screens, keyboards, printers and chips.

Insurer means one of the several insurers or benefit administrators contracted by the Department to provide health insurance services for the NYSHIP.

Key Subcontractors means those vendors with whom the Contractor subcontracts to provide Project Services and incorporates as a part of the Contractor's Project Team.

Level 1 User means an individual designated by the Department to utilize the most advanced features of applications provided by the Vendor under the terms of the Contract and have the highest level of security permissions.

Level 2 User means an individual designated by the Department to have full access to all features/functions of the delivered DSS but with restricted security permissions,(e.g. the user will not have access to any individually identifying information).

Level 3 User means an individual designated by the Department to have access to limited functions of the DSS, (e.g. access to simple, predefined queries and standard reports, and would have the most restricted security permissions).

Licensed Product means software transferred upon the terms and conditions set forth in the Contract. “Licensed Product” includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

Licensee means the New York State Department of Civil Service on behalf of the State of New York.

New Product Releases (Product Revisions) means any commercially released revisions to the version of a Product as may be generally offered and available to the market. New releases involve a substantial revision of functionality from a previously released version of the Product.

New York State Health Insurance Program (NYSHIP) means the health insurance program established by NYS to provide health insurance protection to employees, retirees and eligible dependents of New York State and participating agencies and participating employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through the Empire Plan, Health Maintenance Organizations (HMOs); and the Student Employee Health Plan (SEHP).

Normal Business Hours means Monday – Friday 7:00 a.m. – 7:00 p.m. ET and Saturday 7:00 a.m. – 5:00 p.m. ET, unless specified otherwise by the Department.

NYBEAS means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of employee benefits.

NYS means New York State.

Offeror means a person or entity that submits a Proposal in response to this RFP.

“Or Equal” means that where a copyright brand name, trade name, catalog reference, or patented Product is referenced, references to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. A comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Department’s decision as to acceptance of the Product as equal shall be final.

Plan means the Empire Plan.

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

Plan Year means the period from January 1 to December 31 of each Year, unless specified otherwise by the Department.

President means the President of the Civil Service Commission and the Commissioner of the Department.

Product means a deliverable under the Contract which may include commodities, services and/or technology. The term “Product” includes licensed software.

Project Services means the entire package of decision support system services to be provided by the Contractor in accordance with the contract resultant from this RFP.

Proposal means the Offeror’s Administrative Proposal, Technical Proposal and Cost Proposal, submitted during the course of the procurement process including all responses to supplemental requests for clarification, information, and documentation.

RFP means the Request For Proposals, entitled New York State Decision Support System, dated June 30, 2010.

Software means computer instructions or data that can be stored electronically.

State means the State of New York.

Student Employee Health Plan (SEHP) means a health insurance plan for graduate student employees of the New York State University system, and as of January 1, 2009, for graduate student employees of the City University of New York that provides benefits through the various Empire Plan Insurance Contracts. Like the Empire Plan, the SEHP includes hospital, medical, managed mental health and substance abuse benefits, and prescription drug benefits. SEHP is administered by the New York State Department of Civil Service, Employee Benefits Division.

User means an individual designated by the Department to utilize application programs provided by the Contractor under terms of the contract resultant from this procurement.

Virus means any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.