



Department of  
Civil Service

**AMENDED RFP – JUNE 20, 2024 July 8, 2024  
July 11, 2024**

## REQUEST FOR PROPOSALS

ENTITLED:

**New York State Health Insurance Program  
Decision Support System (DSS)**

RELEASE DATE:

**May 29, 2024**

PROPOSAL DUE DATE:

**August 1, 2024**

**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 Designated Contact as listed in Section 2 of this RFP 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 2: Procurement Protocol and Process).

**All inquiries, questions, filings, and submission of  
Proposals must be directed in writing to:**

Ben Leavitt  
New York State Department of Civil Service  
Attn: Office of Financial Administration,  
Empire State Plaza, Swan Street Building – Core 1  
Albany, New York 12239  
[DCSprocurement@cs.ny.gov](mailto:DCSprocurement@cs.ny.gov)

Timothy R. Hogues  
Commissioner  
NYS Department of Civil Service

Daniel Yanulavich  
Director  
Employee Benefits Division

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## **SECTION 1: INTRODUCTION**

### **1.1 Timeline of Key Events**

EVENT	DATE
Issuance of Request for Proposals	May 29, 2024
Deadline for Submission of Offeror Affirmation of Understanding	See below*
Pre-Proposal Conference	June 5, 2024
Deadline for Submission of Written Questions	June 12, 2024, 4:00 p.m. ET
Responses to Written Questions Posted	June 20, 2024
Deadline for Submission of Proposals	August 1, 2024, 3:00 p.m. ET
Technical Management Interviews	Week of August 27, 2024
Anticipated Tentative Award Date	October 24, 2024
Anticipated OSC Approval of Contract Award and Commencement of Implementation Period	April 3, 2025
Anticipated <b>Contract Project</b> Services Start Date	April 1, 2026

\*Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit Attachment 1, *Offeror's Affirmation of Understanding & Agreement* of this RFP to the Designated Contacts identified in Section 2 of this RFP.

### **1.2 Purpose**

The purpose of this Request for Proposals (RFP), entitled "New York State Health Insurance Program Decision Support System" is to secure the services of a qualified organization (Offeror) to provide a comprehensive, integrated data management system that allows the Department of Civil Service (Department) to store, analyze, and generate business intelligence for the New York State Health Insurance Program (NYSHIP). That system, together with the Project Services, as set forth in Section 3, required by this RFP, is hereinafter referred to as the Decision Support System (DSS). 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, including the integrated data management system, with tools to allow extraction and analysis of large data or record sets, and tools to allow for the comparison of paid claims data against Centers for Medicare and Medicaid (CMS) rates and consulting services needed for expert guidance in relation to clinical topics and data analysis.

This RFP defines minimum contract requirements, details response requirements, and outlines the Department's process for evaluating responses and selecting a qualified organization (Offeror). It is the Department's intent to execute an Agreement with one (1) Offeror selected from this RFP, which will be the sole contact regarding all provisions of the Contract. The Offeror must agree to be bound by its Proposal which will be explicitly incorporated by reference into the resulting Contract.

The Offeror selected from this RFP will be solely responsible for administering the DSS in accordance with the specifications in this RFP. This RFP and other relevant information may be reviewed at: <https://www.cs.ny.gov/DSS2024RFP/>.

Capitalized terms used herein shall have the meanings specified in the Attachment 15, *Glossary of Defined Terms* or in the body of this RFP. If there is a conflict in a definition, the body of the RFP will control.

### **1.3 Period of Performance**

It is the intent of the Department to enter into an Agreement for a term consisting of an Implementation Period of a minimum of 270 days plus five (5) years of Project Services, which shall begin on the Project Services Start Date or Services Start Date and end March 31, 2031.

The Project Services Start Date is April 1, 2026, or 270 Days after OSC approves the Contract, whichever is later.

The Parties may agree to a shorter Implementation Period if such change best meets the needs of the State.

In accordance with New York State policy and New York State Finance Law section 112(2), the resulting contract is deemed executory until it has been approved by the New York State Attorney General's Office (AG) and approved and filed by the New York State Office of the State Comptroller (OSC).

### **1.4 Overview of the New York State Health Insurance Program**

The New York State Health Insurance Program (NYSHIP) was established by the New York State Legislature in 1957 to provide essential health insurance protection to New York State (NYS) employees, retirees, and their eligible Dependents. Civil Service Law allows the NYSHIP the option to be self-funded, which occurred in 2014. 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 roughly 100 Participating Employers and about 800 Participating Agencies in NYSHIP. Under Article XI of the Civil Service Law, as amended and 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended, the President, who also serves as the Commissioner of the Department, through the Department's Employee Benefits Division (EBD) is responsible for the ongoing administration of NYSHIP. NYSHIP currently covers over 625,000 NYS, PA and PE Employees and Retirees. Eligible covered Dependents bring the total number of covered lives to about 1,211,000.

## **The Empire Plan**

The largest health plan option under NYSHIP is The Empire Plan, a Participating Provider Organization (PPO), which is available to New York State Employees and Retirees, PAs, and PEs. The Empire Plan benefit design has four (4) main parts including:

1. Hospital Program benefits that include coverage for hospital inpatient stays, hospice care, emergency care, skilled nursing facilities, infertility services and the Transplants Program. This program is currently administered by Anthem Blue Cross;
2. Medical Program benefits that include coverage for medical and surgical services under the Participating Provider and the Basic Medical Program. This program is currently administered by UnitedHealthcare Insurance Company (UHC) of New York;
3. Mental Health and Substance Use Program benefits administered by Carelon Behavioral Health;
4. Prescription Drug Program benefits that include coverage for prescription drugs dispensed through retail network pharmacies, through the Mail Service Pharmacy Process, through the Specialty Pharmacy Program, and through non-network pharmacies. This program is currently administered by CVS Caremark.

The benefit design of The Empire Plan is the result of collective bargaining between NYS and the various unions representing its employees. Benefits are administratively extended to non-represented NYS 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 there are variations in The Empire Plan's benefit design among the bargaining units. The benefit design cannot deviate from that which has been collectively bargained. Most of the active workforce is represented by various unions, and union participation in the design and oversight of NYSHIP is active and ongoing.

## **Other NYSHIP Options**

Other plan options available to New York State and PE employees include eight (8) Health Maintenance Organizations (HMOs). The Excelsior Plan is a lower cost version of The Empire Plan available only to PAs but will no longer be a NYSHIP offering effective January 1, 2025. Lastly, the Student Employee Health Plan (SEHP) is a health insurance plan for graduate student employees of the New York State and New York City University systems.

## **NYSHIP Governance**

NYSHIP 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 Office of Employee Relations (OER), and the Director of the Division of the Budget (DOB). The Department holds the contracts with the DCS Programs third party administrators. All components of the DCS Programs are self-funded.

## **1.5 Minimum Offeror Eligibility Requirements**

Offerors must meet the following Minimum Offeror Eligibility Requirements to be eligible to submit a Proposal below. **Failure to meet these Minimum Offeror Eligibility Requirements will result in a Proposal being found non-responsive and eliminated from consideration.**

Offeror means any responsible and eligible entity submitting a responsive Proposal to this RFP. It shall be understood that references in the RFP to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any. The Department requests proposals only from qualified Offerors, as specified below:

1. The Offeror must, at time of Proposal submission possess the legal capacity to enter into a Contract with the Department including all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority to provide the Project Services, as detailed in Section 3 of this RFP.
2. The Offeror, at time of Proposal submission and throughout the term of the Contract, must be authorized to conduct business in NYS, or, if the Offeror is not so authorized at time of Proposal Due Date, then the Offeror must, at time of Proposal Due Date, have filed an application for authority to do business in NYS with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: <https://dos.ny.gov/form-corporation-or-business> ). To register with the Secretary of State, contact: <https://dos.ny.gov/form/contact-us> ). The Contractor shall notify the Department immediately in the event that there is any change in the above corporate status.
3. The Offeror must represent and warrant that, at time of Proposal submission, it has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the delivery of Project Services and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law.
4. As of the Proposal submission, the Offeror must have provided similar Project Services for at least one client with a minimum total population of 200,000 covered lives.
5. As of the Proposal submission, the Offeror must have implemented and maintained a decision support system and similar Project Services for a minimum of five million (5,000,000) total covered lives in its full book of business. This includes for health insurers, Health Plans (including public health plans, HMOs, and/or Benefit Administrators), and/or



large employer groups that use decision support services.

6. The Offeror must represent and warrant that, at time of Proposal submission, it possesses adequate staffing resources, financial resources, and organizational capacity to perform the type, magnitude and quality of work specified in the RFP.
7. The Offeror, its parent company, and/or any subsidiaries, partners and/or affiliates cannot be a current or pending Empire Plan administrator. This is to ensure independence in the performance of Project Services. The current Empire Plan administrators are Anthem Blue Cross, UnitedHealthcare, Caredon Behavioral Health, Inc., and CVS Caremark.

#### **1.6 Entirety of Resulting Contract; Conflict of Documents and Clauses**

The Contract resulting from this solicitation shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of the resulting Contract, unless DCS in its sole discretion determines otherwise. Conflicts between the documents shall be resolved in the following order of precedence:

- A. Appendix A, *Standard Clauses for New York State Contracts*, dated June 2023
- B. Any Amendments to the body of the Contract;
- C. The Contract body. Clarifications between the RFP and Contractor's Bid must be specifically noted in writing in the Contract body as to what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence;
- D. Appendix B, *Standard Clauses for all Department Contracts*, dated March 2024;
- E. Appendix C, *New York State Department of Civil Service Information Security Requirements*, dated March 2024
- F. Official Response to Questions from the Offerors;
- G. This RFP including any Addenda (other than Appendix A); and
- H. Selected Contractor's Bid or Proposal, including and any clarifications resulting from Demonstrations, Management Interviews or Department Requests for Clarifications and Contractor's responses.

## **SECTION 2: PROCUREMENT PROTOCOL AND PROCESS**

### **2.1 Rules Governing Conduct of Competitive Procurement Process**

All inquiries, questions, filings, and submission of Proposals in regard to the RFP must be directed in writing to the Designated Contact listed below. Proposals may not be submitted by e-mail or facsimile. Any inquiries, questions, filings, or submission of Proposals that are submitted to any other contact or physical address shall not be considered as official, binding or as having been received by the Department.

#### **1. Designated Contact**

In accordance with New York State Finance Law § 139-j(2)(a) (Procurement Lobbying Law (PLL)), the following individual is the Designated Contact for this Solicitation. All questions relating to this Solicitation must be addressed to the following Designated Contact:

**Ben Leavitt**

New York State Department of Civil Service  
Attn: Office of Financial Administration,  
Empire State Plaza, Swan Street Building, Core 1  
Albany, New York 12239  
[DCSprocurement@cs.ny.gov](mailto:DCSprocurement@cs.ny.gov)

#### **2. Restrictions on Contacts Between Offerors and State Staff During the Procurement Process**

- a. Pursuant to New York State Finance Law sections 139-j and 139-k, this Procurement imposes certain restrictions on communications between the Department and an Offeror during the procurement process. An Offeror is restricted from making contacts from the earliest posting, on the Department's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law, of written notice, advertisement or solicitation of a request for Proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a contract with the Department through final award and approval of the contract by the Department and, if applicable, the Office of the State Comptroller to other than the Designated Contact (unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a)). This time period is defined as the Restricted Period. The Designated Contact for this procurement is set forth in Section 2.1(1) of this RFP. Staff is required to obtain certain information from an

Offeror whenever contacted 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 statutory requirements. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental Procurement Contracts. The Department's policy and procedures can be found in the Attachment 2, *Procurement Lobbying Policy*. Further information about these requirements can be found at <https://www.ogs.ny.gov/ACPL/>.

- b. The Department strictly controls communications between any Offeror and participants in the procurement process. "Offeror" means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, who contacts the Department about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document.

### **3. Pre-Proposal Conference**

A Pre-Proposal Conference will be held approximately one week after the RFP Release Date using a virtual platform. Attendance is not mandatory but is strongly encouraged for Offerors intending to submit a Proposal. If Offeror's organization plans to attend the Pre-Proposal Conference, please notify the Designated Contact identified in Section 2.1(1) of this RFP via e-mail at the address noted in Section 2.1(1) at least 24 hours before the conference with the name, email address, and affiliation of each person attending.

### **4. Submission of Errors or Omissions in this RFP Document**

By participating in activities related to this RFP, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms, including, but not limited to, this process by which an Offeror may submit errors or omissions for consideration. If an Offeror believes there is an error or omission in this RFP, the Offeror may raise such issue as follows:

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

- i. Time Frame: The Department must receive assertions of errors or omissions in the RFP process which are or should have been apparent prior to the Proposal Due Date, in writing, five (5) Business Days after the Release Date of First Official Responses to Questions specified in Section 1.1 of this RFP.
- ii. 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.
- iii. Format of Submission: All submissions asserting an error or omission must be submitted in writing both electronically and in hard copy format to the Designated Contact specified in Section 2.1 of this RFP. [Mailto:DCSprocurement@cs.ny.gov](mailto:DCSprocurement@cs.ny.gov)

The hard copy 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 Proposals"**

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 Offeror and the Offeror shall have no further recourse.

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

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. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee 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 designee.

The Commissioner or 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 act in the best interests of the State in resolving any assertion of error or omission in this RFP document. 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 provided an email address on the submitted Attachment 1, *Offeror Affirmation of Understanding and Agreement* of this RFP. Notice of any extension will also be posted to: <https://www.cs.ny.gov/DSS2024RFP/>.

## **5. Submission of Questions**

Prospective Bidders will have an opportunity to submit written questions and requests for clarification regarding this RFP. Using the Attachment 4, *Questions Template*, a prospective Offeror may submit questions concerning the content of this RFP via email to the Designated Contact's address specified in Section 2 of this RFP. Only those questions received prior to the Questions Due Date specified in Section 1 of this RFP, will be accepted. After the Questions Due Date, the Department will provide an email notification of the posting of all questions and the Department's official answers to all those individuals who provided an email address on the submitted Attachment 1, *Offeror Affirmation of Understanding and Agreement*, and the Attachment 4, *Questions Template*. The questions and answers will also be posted to <https://www.cs.ny.gov/DSS2024RFP/>.

[**Note:** See Bid Deviations section below, specifically Section 2.7(b) with regard to submission of questions.]

## **6. Submission of Proposal**

The Offeror's Proposal must be organized and separated into three separate sections: Administrative Proposal; Technical Proposal; and Financial Proposal. To facilitate the evaluation process, an Offeror must follow the submission requirements described below. Electronic USB devices must conform to the technical specifications outlined in Section 2 of this RFP and shall be included on unprotected Microsoft Windows formatted USB 2.0 or higher storage drive. Additionally, the electronic USB devices must be in Adobe Acrobat PDF searchable format to allow for searchable and selectable text.

### **a. Administrative & Technical Proposals**

- i. Hard Copies (7 Total): One (1) ORIGINAL hard copy and six (6)

additional hard copies which include separate versions of the Administrative and Technical Proposals. The ORIGINAL hard copy of the Administrative and Technical Proposals must be marked "ORIGINAL," 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. The remaining hard copies of the Administrative and Technical Proposals should contain a copy of the official's signature on all forms submitted that require the Offeror's signature and should be numbered sequentially (i.e., Copy #1, Copy #2).

- ii. Electronic USB Devices (7 Total): The Offeror must submit seven (7) electronic USB devices which each contain an electronic copy of the Administrative and Technical Proposals ONLY. Each of the seven (7) electronic USB Devices should be externally labeled by proposal and uniquely designated with a number (e.g., "TECHNICAL & ADMINISTRATIVE COPY 1", "TECHNICAL & ADMINISTRATIVE COPY 2, etc."). The seven (7) electronic USB devices that contain only the Administrative and Technical Proposals should be packaged in a sealed box/envelope labeled Administrative and Technical Proposals.

**b. Financial Proposal**

- i. Hard Copies (2 Total): One (1) ORIGINAL hard copy and one (1) additional hard copy of the Financial Proposal of the RFP (labeled COPY #1).
- ii. Electronic USB Devices (2 Total): The Offeror must submit two (2) electronic USB devices which each contain an electronic copy of the Financial Proposal ONLY.

**c. Master Electronic Submission**

- i. Electronic USB Device (1 Total): A master electronic submission containing all of the ORIGINAL hard copy Proposals (Administrative, Technical, & Financial) must be provided on a master electronic USB device. The master electronic submission must be clearly labeled by Proposal and identified (e.g., "Master Copy of Administrative, Technical, & Financial Proposal). In situations where the proposal content differs between the ORIGINAL bound hard copies and the master electronic submission, the master electronic submission is deemed controlling. The USB device containing the master electronic

submission should be inserted in the Financial Proposal box.

- d. Each Proposal must include a table of contents.
- e. Each major section of the Proposal, including attachments, must be labeled with an index tab that completely identifies the title of the section, subsection or attachment as named in the table of contents.
- f. Each page of the Proposal (both the hard copies and the electronic submissions on USB devices), including attachments, must be dated and numbered consecutively.
- g. Proposals should be placed and packaged together, by section, in sealed boxes/envelopes (i.e., all Administrative Proposals in one box, all Technical Proposals in a second box, and all Financial Proposals in a third box). Each sealed box/envelope should contain a label on the outside, which contains the information below. Each sealed box/envelope should be submitted to the Designated Contact at the address provided in Section 2.1 of this RFP.

**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 FINANCIAL PROPOSAL  
There must be no Financial/cost information included in the Offeror’s  
Administrative Proposal or Technical Proposal, except for proposed  
performance guarantees.**

- h. All Proposals must be mailed or hand-delivered to the address provided in Section 2.1(1) of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four 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 1.1 of this RFP.
- i. Any proposal received after 3:00 p.m. ET on the Proposal Due Date, as specified in Section 1.1 of this RFP, shall not be accepted by the

Department, and may be returned to the submitting entity at the Department's discretion. All Proposals submitted become the property of the Department.

- j. The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in accordance with the format set forth in this Section 2.1(6) of this RFP and will be included as part of the Offeror's Proposal.
- k. An Offeror is solely responsible for timely delivery of the Proposal to the Department prior to the Proposal Due Date stated in Section 1.1 of this RFP. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Proposals is delivered by mail or courier, the Department recommends that it be sent "Returned Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile, or e-mail submission of Proposals will be accepted for this RFP. In addition, it is the sole responsibility of the Offeror to verify that all elements of the proposal submission are complete, correct and without error.

## **7. Bid Deviations**

- a. The Department will not entertain bid deviations to Appendix A, *Standard Clauses for New York State Contracts* of this RFP. The Department will also not entertain material and substantive bid deviations to the solicitation to the Appendix B, *Standard Clauses for All Department Contracts*, and the Appendix C, *Information Security Requirements* of this RFP. New York State law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, Proposals containing a bid deviation (including additional, inconsistent, conflicting, or alternative terms) that are a material and substantive change from the specifications, terms, and conditions set forth in the solicitation may render the Proposal non-responsive and may result in rejection of the Proposal.
- b. If an Offeror has an issue or concern regarding provisions in the solicitation and is considering submission of a proposal containing a bid deviation, the Offeror is strongly advised to raise such issues and/or concerns during the question-and-answer period so that the Department may give due consideration to the issue prior to the submission of Proposals. Failure to use the question-and-answer period and instead submitting a Proposal containing a bid deviation could render the entire Proposal non-responsive and rejected in its entirety.



- c. In general, a material and substantive bid deviation is one that would (i) impair the interests of New York State, (ii) place the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original solicitation, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a Proposal. For example, a deviation that would substantially shift liability (risk) or financial responsibility from the Offeror to New York State would be considered material.
- d. Unless specifically required by the solicitation to be submitted as part of an Offeror's proposal, an Offeror is further advised that its standard, pre- printed material (including but not limited to product literature, order forms, manufacturer's license agreements, standard contracts or other pre- printed documents), which are physically attached or summarily referenced in the Offeror's Proposal are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal. Rather, such material shall be deemed by the Department to have been included by Offeror for informational or promotional purposes only. If such materials are requested by the solicitation, an Offeror must ensure that the materials are properly referenced.
- e. To submit a non-material bid deviation, an Offeror must complete and submit the proposed deviation(s) using the Attachment 6, *Non-Material Deviations Template* of this RFP, as part of the Administrative Proposal. Any non-material deviations proposed by an Offeror must be submitted on the Attachment 6, *Non-Material Deviations Template*, not an alternative document. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.
- f. An Offeror who does not submit the Attachment 6, *Non-Material Deviations Template*, as part of the Administrative Proposal is presumed to have no bid deviations.

## **8. Notification of Tentative Contract Award**

A tentative award letter will be sent to the selected Offeror indicating a tentative award subject to successful contract negotiations. The remaining Offerors will be notified of the tentative award and the possibility that failed negotiations could result in an alternative award.

## 9. Debriefing

Unsuccessful Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made. Debriefings are subject to the Attachment 5, *NYS Department of Civil Service Debriefing Guidelines* of this RFP. An unsuccessful Offeror's written request for a debriefing shall be submitted to the Designated Contact at the address provided in Section 2.1(1) of this RFP.

## 10. Submission of a Protest

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms including, but not limited to, the process by which an Offeror may submit a protest of a non-responsive determination or the selection award for consideration. In the event the Offeror elects to submit a protest of a non-responsive determination, the Offeror agrees it shall not be permitted to also submit a protest on the selection decision. In the event that an Offeror decides to submit a protest, the Offeror may raise such issue according to the following provisions.

### a. Process for Submitting a Protest of a Non-Responsive Determination or a Selection Decision

- i. Time Frame: Any protest must be received no later than 5:00 p.m. ET on the tenth (10<sup>th</sup>) Business Day after an Offeror's receipt of written notification by the Department of a non-responsive determination or tentative award, or if a debriefing has been requested by an Unsuccessful Offeror, pursuant to the Attachment 5, *NYS Department of Civil Service Debriefing Guidelines*, within five (5) Business Days of the debriefing (whichever date is later).
- ii. Content: The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- iii. Format of Submission: The protest must be in writing and submitted to the Designated Contact at the address provided in Section 2.1(1) of this RFP.
- iv. A protest of either a non-responsive determination or a selection decision must have one of the following statements clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for  
Request for Proposals**

**New York State Health Insurance Program  
Decision Support System”**

**OR**

**“Submission of Tentative Award Protest for  
Request for Proposals**

**New York State Health Insurance Program  
Decision Support System”**

- v. 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. Review of Submitted Protests**

- i. The Department shall conduct the review process of submitted protests. The Department’s 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 Proposal, the determination of non-responsiveness, 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 the Commissioner’s designee, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. The Department shall be represented by counsel at such meeting. Any issues concerning the way 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 shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised 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 Department’s final determination in the matter.
- ii. If an Offeror protests the selection decision or a non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the contract with the selected Offeror.

## **11. 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 or not make an award under the RFP, either in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, such amendments will also be posted to: <https://www.cs.ny.gov/DSS2024RFP/>.
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, prior to OSC approval of award of the contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of 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;
- i. Change any of the scheduled dates or times 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 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 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, if any, in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received except to the extent such information/ideas are protected under the New York State Freedom of Information Law, Article 6 of the Public Officers Law as critical infrastructure information or trade secrets;
- q. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, 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 be unsuccessful because of material differences in key provision(s);
- r. Unless otherwise specified in this RFP, every offer is firm and non- revocable for a minimum period of three hundred sixty-five (365) days from the Proposal Due Date as set forth in the RFP; and
- s. Any Offeror whose Proposal might become eligible for a tentative award may be asked to extend the time for which its Proposal shall remain valid if the original award is withdrawn.

## **12. Disclaimers**

The Department is not liable for any cost incurred by any Offeror prior to approval

of the Contract by OSC. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement-related activities. Further, the Department shall not be liable for any costs incurred prior to the Implementation Period performing activities set forth in Section 3 of this RFP. The Department has taken care in preparing the data accompanying this RFP (hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the accuracy of the data. The numbers or statistics which appear in hardcopy attachments, website attachments, and sample document attachments 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 Proposal at their own discretion.

## **2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders**

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. Except as otherwise permitted under Section 2.1(7), Bid Deviations, an Offeror must fully comply with the provisions set forth in this section of the RFP, as well as the provisions of the Appendix A, *Standard Clauses for New York State Contracts*, the Appendix B, *Standard Clauses for All Department Contracts*, and Appendix C, *Information Security Requirements* of this RFP, which will become a part of the resulting contract. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions and whose proposal contains the submission required hereunder.

### **1. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)**

#### **a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL:**

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 New York State agencies interested in the provision of the subject services including, but not limited to, OER and DOB, 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.

The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Offeror upon submission.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding FOIL. If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret or critical infrastructure information and desires that such information not be disclosed 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 a Attachment 7, *Freedom of Information Law Request for Redaction Chart* of this RFP. 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 the Attachment 7, *Freedom of Information Law Request for Redaction Chart* contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary, or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed Attachment 7, *Freedom of Information Law Request for Redaction Chart* must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (USB storage drive and Hard Copy) described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on Attachment 7, *Freedom of Information Law Request for Redaction Chart* and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed Attachment 7, *Freedom of Information Law Request for Redaction Chart* form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable should be protected from FOIL disclosure. The FOIL-related materials described herein are not considered part of the Offeror's Proposal and shall not be reviewed as a part of the Procurement's evaluation process.

Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

b. Requested Redactions (USB Storage Drive and Hard Copy):

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted in the event that its Proposal is the subject of a FOIL request as follows.

The Offeror must provide an electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive of the type outlined in RFP Section 2, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three Proposal documents with redactions marked, but not applied, that are included on the USB storage drives. The electronic documents must be prepared in PDF format. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using either:

- i. The Adobe "Mark for Redaction" function; do not use the "Apply Redactions" function; or
- ii. By highlighting such portions in yellow.

The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the USB storage drives and in hard copy must be complete Proposals, including all Attachments. No section may be omitted from the USB storage drive or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, attachments, and charts, please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page. Do not request redaction of Department-supplied materials or information.

During the Proposal evaluation process, the Department may request additional information through clarifying letters. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests also must be submitted following the instructions, above.

## **2. 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. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancelation of the Contract and criminal proceedings as may be required by law. An Offeror 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 Attachment 12, *New York State Required Certifications*, in the Offeror's Administrative Proposal.

### **3. New York State Required Certifications**

An Offeror is required to submit the signed Attachment 12, *New York State Required Certifications* of this RFP with its Administrative Proposal. This attachment sets forth the Offeror's required certification on the following:

- a. MacBride Fair Employment Principles;
- b. Non-Collusive Bidding;
- c. Executive Order No. 177 regarding discrimination and harassment;
- d. Sexual Harassment Prevention;
- e. Public Officer Law Requirements and Conflict of Interest Disclosure; and
- f. Executive Order No. 16 regarding business operations in Russia.

### **4. New York Subcontractors and Suppliers**

An Offeror is required to complete Attachment 9, *Key Subcontractors or Affiliates* of this RFP. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in New York State, an Offeror for this RFP is strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles. The Attachment 9, *Key Subcontractors or Affiliates* must be submitted with the Offeror's Technical Proposal.

## **SECTION 3: PROJECT SERVICES**

An overview of the DSS Project Services includes:

- The ability to integrate claim, financial and enrollment data that can be easily queried for the purposes of analyzing trends, auditing, ensuring payment integrity, identifying matching claim criteria (such as duplicate claims), and projecting the cost of benefit design changes. Capabilities must include the loading of claim types including claims which have been paid, reversed, and denied.
- A Contractor Hosted Application which allows Users Web Based access to the DSS.
- The ability or functionality to query, download, and compare very large amounts of data by using Python or equivalent data mining and analysis tools. This functionality is not required to be integrated into the DSS as a web-based application, but the User must have the tools to compare DSS data with other large external data sets. Information on the number of claims and record counts can be found in Exhibit 1, *Empire Plan Number of Paid Services and Claims* and Exhibit 2, *Data Elements – Average File Size*.
- The ability or a method to compare Empire Plan non-pharmacy claim costs to Centers for Medicare and Medicaid (CMS) rates. This functionality is not required to be integrated into the DSS as a web-based application, but the User must have the tools to compare Empire Plan paid non-pharmacy claims with CMS rates.
- Consulting Support Services including analytical support and expert guidance in clinical and statistical data analysis.
- Contractor dedicated staff to support the DSS.
- Training for all Users of the DSS.

### **3.1 Account Team**

The Offeror must provide a knowledgeable, experienced Project Manager and team dedicated solely to the DSS who have the responsibility, authority and integrity to command the appropriate resources necessary to implement and deliver Project Services. The Department will provide, at its discretion, an onsite work area, if needed by the Offeror, at the Department's offices in Albany, NY for Key Contractor personnel during Implementation and thereafter.

#### **1. Duties and Responsibilities**

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

- b. The Offerors' assigned Project Management Team must be experienced, accessible and sufficiently staffed to provide timely responses (within 1 to 2 Business Days) to administrative concerns and inquiries posed by the Department and designated Users for the duration of the Contract to the satisfaction of the Department.
- c. The Offeror must propose a Project Manager who will be dedicated to the DSS, so as to have the ability to address direct inquiries by the Department within 1 to 2 Business Days for the entire term of the Contract. The Project Manager must possess at least five (5) years of experience serving as a project manager.
- d. 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.
- e. The Offeror must propose a staff member included in the Biographical Sketch Form who will be available during regular Business Hours, for the majority of the business workweek (at least 30 hours per week) and provide training, assistance to DSS users, and analytic support services such as querying data or running reports.
- f. The Offeror must propose a staff member included in the Biographical Sketch Form who will be available 20 hours per month, during regular business hours, who is skilled in extracting, manipulating and analyzing large amounts of data including capabilities in using Python or other similar data analysis tools. This may be the same staff person as proposed in subpart 1(e). If the same staff person as in subpart 1(e) is assigned these responsibilities, the 20 hours in this section are in addition to the 30 hours per week noted in subpart 1(e).

### **3.2 Implementation Plan**

The Offeror 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. To assist the Offeror in fulfilling its obligations, the Department will provide 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. For the purpose of this RFP, Data Provider means an entity that provides enrollment or claims data to the Contractor for loading into the DSS.

If required by the Offeror, the Department, in its discretion, will provide, for up to two (2) Contractor onsite staff, a workstation, (i.e. desk and chair, personal computer (PC) with internet access and appropriate network access); appropriate building access for the Offeror's onsite staff, technical support and maintenance of State owned Hardware (e.g. computers, keyboards, printers); and associated State owned and installed Software (computer instructions or data that can be stored electronically) used by the Offeror's onsite staff. The Department will not provide

personal phone lines, administrative support staff, or parking privileges to the Offeror's onsite staff.

## 1. Duties and Responsibilities

- a. The Implementation Plan must include evaluation and assessment activities and development of a project plan to achieve the goals of the Project.
- b. The Implementation Plan must be detailed; denoting concrete deadlines and exhibiting a firm commitment that all implementation activities will be completed by the end of the designated Implementation Period so that all Project Services will be fully operational on the Project Services Start Date in all functions required by this RFP (See Section 1.3, *Period of Performance* of this RFP). For the purpose of this guarantee, the Offeror must on, or before, the Project Services Start Date have completed:
  - i. Activities required to bring the DSS 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 ability 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;
  - ii. Acquisition, validation, and loading of seven (7) complete Plan Years of historical data plus all current Plan Year data available. Plan Year means the period from January 1st to December 31st of each Year, unless specified otherwise by the Department;
  - iii. Loading all Department specified data fields unless the Offeror provides justification, subject to the Department approval, why certain fields should or cannot be loaded.

**[Note:** During the Implementation Phase of the Project the Department will discuss file layouts with the selected Offeror and discuss any potential issues that may impact this process.]

- iv. Initial Training of DSS Users prior to the Project Services Start Date to ensure designated staff are familiar with the functionality of the delivered DSS. Initial Training is to include how users are to access DSS, run reporting appropriate to either a Level 1 or Level 2 User, and how to run more complex ad hoc queries.

**[Note:** This is in addition to the requirement to provide continued training throughout the entirety of the Contract at no additional cost to the

Department (see Section 3.4 of this RFP).

- v. Establishment of User support functions, (e.g. telephonic and online support); and
  - vi. All activities related to User Acceptance Testing and received Department sign-off on successful completion of those activities.
- c. The Offeror 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 Offeror's DSS 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.

### **3.3 Data Management**

The Offeror must provide a DSS which allows for:

- Data management and storage;
- Analytic capability to assist in plan and program evaluation;
- Support services, including benchmarking against accepted industry standards/norms and CMS rates for non-pharmacy claim data;
- Benefit design and modeling;
- Utilization analysis at provider and member levels;
- Both standard, pre-defined and Department defined report production;
- The capability to view data at a summary and/or granular claim level; and
- The ability to query, download and manipulate results into a format acceptable to the Department including very large amounts of data that may require use of Python or other similar data programming language to analyze and mine large amounts of data.

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 Offeror must first make best effort(s) to resolve issues through direct contact with the Data Provider.

#### **1. Duties and Responsibilities**

- a. The Offeror 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 seven (7)

years of complete Plan data in addition to the current year's data to be accessible through the DSS.

- b. The Offeror must develop and provide the Department with complete documentation of the DSS which includes a complete description of the meaning of the information and any relationships between the information (metadata) that is available from the DSS.
- c. The Offeror must make any changes needed to update Data Provider fields and layouts at no additional cost or charge against consulting hours. This can include when one of the Empire Plan vendors updates their standard layout. This does not include circumstances where the Department is requesting custom fields within the DSS outside of the standard layouts and fields routinely sent by Data Providers.
- d. The Offeror's DSS adheres, to the extent applicable, to Appendix C, *Information Security Requirements*, which includes that all Confidential Information, including Protected Health Information is not permitted to be hosted, maintained, stored, processed or otherwise accessed outside CONUS (Contiguous United States).
- e. The Offeror must load enrollment and claims data received from the Department or from a Data Provider within 15 Business Days of receipt of valid data. The DSS currently has data from the five (5) following Data Providers; State of New York (NYSHIP eligibility data); Anthem Blue Cross (hospital program claims data); UnitedHealthcare (medical/surgical claims data); Carelon (mental health and substance use disorder claims data); and CVS/Caremark (prescription drug claims data). In addition, the Department plans to load Dental claims data from Anthem Blue Cross and has included the file layout as Exhibit 11, as this should be considered part of Project Services for this RFP.
- f. The Offeror must have the ability to load data from additional providers should the Department add a new Data Provider.
- g. The Offeror must 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.
- h. The Offeror 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 Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Appendices A, B, and C included in this RFP.
- i. The Offeror must use an encryption methodology for data that resides in the DSS 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 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.

- j. Prior to loading, data quality assurance tests must be performed by the selected Offeror. Changes to the data to ensure that only data that has passed required validation edits, or to enhance the overall integrity of the DSS, will be the duty and responsibility of the Offeror 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:
  - i. Data field format incompatibility errors;
  - ii. Missing data;
  - iii. Field value edits;
  - iv. Data integrity validation appropriate to file specifications, (e.g., if summary totals are provided, the data must be reconciled to those totals);
  - v. Data validation with external sources;
  - vi. Data calculation errors;
  - vii. Duplicate information within a single file;
  - viii. Submission of duplicate files; and
  - ix. Follow up with a Data Provider(s) to ensure the Data Provider corrects identified data errors and resubmits the corrected data.
- k. The Offeror must be able to accept data in a variety of formats and media on a monthly basis from the Department and other Data Providers. See Exhibits 1-11 for information on formats, media, and frequencies of data updates by Data Providers. The data must be loaded in the DSS maintained by the Offeror.
- l. A copy of the interface requirements given to the Data Providers by the Offeror 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.
- m. Upon changes in NYSHIP Insurers and/or benefit administrators, the Offeror 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.
- n. **DSS Update Guarantee**: The Offeror must ensure 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 no later than fifteen (15) Business Days from receipt 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.

### **3.4 User Requirements**

User or DSS User means an individual designated by the Department to utilize application programs provided by the selected Offeror under the terms of the Contract resultant from this procurement.

#### **1. Duties and Responsibilities**

- a. Users will be individuals employed by the Department as well as individuals designated by the Department as Users, which may include staff from various New York State agencies. All Users will not have the same level of access and permissions. No User will have the capability to change data in the DSS. The Department is requiring a minimum of two (2) levels of access for up to 50 total Users.
  - i. Level 1 User: Level 1 Users will have full access to all features/functions of the delivered DSS and have the highest level of security permissions granted by the Department, including the ability to view individual claim level data.
  - ii. Level 2 User: Level 2 Users will have access to all features/functions of the delivered DSS but will have restrictions placed on security permissions (i.e., the User will not have access to any individually identifying information).
- b. The Department requires that at least half of all eligible Users be able to access the DSS at the same time and view, query, export, or extract information.
- c. User training is required throughout the term of the Contract at no additional cost to the Department. The Offeror must provide a training plan that is tailored to Level 1 and Level 2 Users and their assigned permissions.
- d. Training for those Users the Department identifies for utilizing additional data analysis tools, which includes the ability or functionality to query, download, and compare very large amounts of data by using Python or equivalent data mining and analysis tools.
- e. At the Department's discretion, 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. On-Demand training must be available, at the Department's request, on an ongoing basis to train new Users and, to train/advise Users of system changes and upgrades.
- f. The DSS design and operation must conform to applicable Federal and State laws and regulations regarding accessibility standards for persons with disabilities. See



Appendix B, *Standard Clauses for All Department Contracts*, for additional Accessibility requirements.

- g. 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:
  - i. User Manuals, quick reference guides;
  - ii. Data Dictionary with applicable crosswalks to carrier data field names; and
  - iii. Updates as appropriate to correspond to DSS upgrades/changes.
- h. Access to both online and telephonic support/Help Desk must be available to all Users regardless of User Level. Telephone and online support services, (e.g. help screens, frequently asked questions (FAQs)), must be available during regular business hours, defined as, Monday – Friday 8:00 a.m. to 5:00 p.m. ET. The Offeror must be able to 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 selected Offeror.
- i. The Offeror must identify all Software and hardware requirements, (e.g., compatible browsers, including release version), for remote Department IT assets (i.e.; laptop, desktop, mobile, etc.) utilization of the DSS. The Offeror's requirements are subject to Department approval.
- j. The Offeror must provide authenticated connectivity to the Hosted Application using standard security protocols and encryption in compliance with Appendix C, *Information Security Requirements*.

### **3.5 Analytical Capabilities**

#### **1. Duties and Responsibilities**

The DSS 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. These analytical capabilities must provide Users with the ability to:

- a. 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. ICD-

- 10, DRG) 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.
- b. The DSS must have the capability to analyze episodes of care in relation to regional and national benchmarks and, to allow a method for comparing Empire Plan payment rates (with the exception of pharmacy) to CMS payment rates.
  - c. Conduct analysis of individual member's claims experience through unique member identifiers provided in Empire Plan eligibility data.
  - d. Conduct analysis by member demographics such as Benefit Plan, Benefit Program, and Medicare status.
    - Benefit Plan is an indicator used in the NYS computerized enrollment system, the New York Benefits Eligibility and Accounting 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 is 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).
    - Medicare Status is an indicator used in the NYS computerized enrollment system (NYBEAS) to indicate if an Empire Plan member has Medicare as their primary insurance. Empire Plan requires enrollment in Medicare Parts A and B when an employee is retired and is eligible for Medicare.
  - e. Perform analysis of provider billed, allowed and paid amounts, frequency and complexity of services rendered, geographic location, and other utilization and profiling indicators.
  - f. Perform analysis on diagnostic related groups, including those defined by the ICD-9 and ICD-10 international classification of diseases and American Psychiatric Association DSM codes.
  - g. Conduct analysis based on medical and hospital service codes including CPT, DRG, and revenue codes.
  - h. Allow analysis and evaluation of Empire Plan utilization based on provider participation status.
  - i. 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.

- j. Model and analyze potential benefit changes and evaluate cost containment strategies.
- k. Conduct analysis based on the Offeror's unique and/or proprietary analytic categories and classifications to provide Users with enhanced insight and understanding of Plan costs, utilization, and outcome measures.
- l. Review data at the claim level to ensure claims are paid in accordance with the Plan's benefit design.
- m. Export, manipulate, and view large amounts of records, including millions of rows of data for use in audit and data mining. This must include the ability or applications to query, download, and compare very large amounts of data by using Python or equivalent data analysis tools. Training is to be conducted during the Implementation Period. Training will ensure users can utilize applications to the User's satisfaction in order to export, mine, and analyze data.

### **3.6 Query and Reporting Capabilities**

The proposed DSS must provide the capability for Users to request a variety of information from the system and have those results presented in a formatted and organized manner. The proposed DSS 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.

#### **1. Duties and Responsibilities**

- a. The DSS must provide a web-based query tool that allows designated Users to, at a minimum:
  - i. Access all claims and enrollment files and attributes.
  - ii. Provide the capability to view claim information on both a "paid" and "incurred" basis.
  - iii. Link data for analysis.
  - iv. Select subsets of data fields and/or summary or statistical information.

- v. Perform flexible filtering of data through pre-defined groups, (Active vs. Retiree, Benefit Program, etc.), as well as user-defined groups, for those Users with the highest level of privileges:
  - 1) To set criteria so that only desired records and/or information is returned. Users should have the ability to select criteria such as relationship, employee status, age, gender, service type, service location, provider type, and/or diagnostic groupings, (e.g. ICD-9, ICD-10 codes, DRGs), as requested;
  - 2) Utilize “built-in” analytics such as groupings for chronic conditions, preventive care measures, and identification of “avoidable admissions;”
  - 3) Sort selected subsets of records or information based on multiple sort criteria; and
  - 4) Save query design(s) for future reference and use.
- b. The DSS must provide benchmarking capabilities that, at minimum:
  - i. 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 must have the ability to create norms from internal data for comparison purposes; and
  - ii. Provide the capability for comparison of claim experience, enrollment experience, and provider practice/treatment patterns to the normative standards.
- c. The DSS must have web-based reporting capabilities that provide Users the option:
  - i. 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);
  - ii. To utilize copy and paste functions; and
  - iii. To store and reuse report templates.
- d. The DSS must have ad hoc analysis capability (e.g. trend analysis and premium development) and provide the capability for Users to define/produce reports required to meet their needs for a particular project or analysis.
- e. The DSS must provide the capability to deliver pre-defined reports electronically. Examples of such reports that the Department may request include, but are not

limited to:

- i. Utilization reports by enrollee, patient, and/or provider;
- ii. Provider reports that include use and cost performance details for physicians, hospitals and networks;
- iii. Monthly Paid Claims Updates;
- iv. Cost trend reports that reflect overall trend by type of service including hospital admissions, mental health/substance abuse care, pharmacy utilization, and medical services; and
- v. Quarterly and Annual Plan summary reports.

### **3.7 Consulting Support Services**

Once Implementation has been completed and the DSS has been deemed fully operational and accepted by the Department, the selected Offeror must provide enhanced analytical assistance to Users at the Department's request. Such enhanced analytical assistance may include, but not be limited to, expert advice regarding the dynamics of the health care system, or assistance with a large project, such as the modeling of a benefit design change. The support services shall provide expert technical advice and assistance to identified Users. Such Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing training.

#### **1. Duties and Responsibilities**

- a. Once the DSS is fully operational to the Department's satisfaction, the selected Offeror must provide, up to 800 hours of consulting support services during the balance of the term of the Contract, at no additional cost to the State.
- b. The Consulting Support Services must provide analytical support and expert guidance in relation to clinical topics, or statistical data analysis in relation to special or exigent projects requiring a more complex level of data review and study beyond the support provided by the Offeror's dedicated staff member. **[Note:** These services are separate and apart from User Training, either initial or incremental ongoing User Training. Examples of Consulting Support Services include, but are not limited to:
  - i. Creating and loading custom fields from Empire Plan vendor data, including diagnosis-related groups for hospital data and ordering provider state code, ordering provider zip code, and generic product indicator for prescription drug claims.
  - ii. Providing a custom report related to specialty drug pricing as billed by

medical providers.

- iii. Proving clinical insights, such as completing a study comparing medical outcomes between different groups.
- c. The Offeror is expected to proactively provide recommendations of enhanced analytic projects or reports that may provide value. Contractor's time to research or provide recommendations of enhancements will not reduce the number of consulting Hours. The Department will provide final approval before any consulting projects are to begin that would be charged against the balance of the 800 Consulting Support hours.
- d. Should the Department exhaust the 800 consulting hours the Offeror will quote in their Financial Proposal the fees for additional consulting hours in Attachment 21, *Additional Consulting Support Services Fee Form*.

### **3.8 DSS Operational Requirements**

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

#### **1. Duties and Responsibilities**

- a. The Department requires that the DSS be available in its entirety to Users Monday – Friday 8:00 a.m. – 5:00 p.m. ET (Normal Business Hours). To the extent possible, the selected Offeror 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 selected Offeror must provide the Department with, at a minimum, forty-eight (48) hour notice of all preventive maintenance and/or service interruption due to system upgrades or enhancements that may occur during Normal Business Hours.
- b. The Department's point of contact in the Employee Benefits Division must be notified as soon as possible upon detection of any unscheduled interruption of Project Services. The notification must include the reason for the interruption and estimated timeframe for restoration of Project Services.
- c. Within five (5) Business Days of the disruption, notification must be provided to the Department's point of contact upon full restoration of services and include an explanation of the cause and remedial steps taken to avoid a reoccurrence.

- d. The Offeror 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 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 Offeror 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.
- e. The Offeror 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 Offeror 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.
- f. The selected Offeror is required to provide the infrastructure to support the Hosted Application (DSS) and DSS Project Services at no additional cost to the Department. This includes:
  - i. All hardware, software, personnel, maintenance, storage, and related processes and procedures;
  - ii. All security updates for systems and components; and
  - iii. All required hardware and software upgrades and enhancements.

**Note:** Any hardware, component and/or software no longer supported by the hardware or software manufacturer cannot be utilized to support the DSS.

- g. The Offeror must establish technically sound quality assurance standards, techniques and tools including, but not limited to, the following:
  - i. Operational procedures;
  - ii. Data naming standards;
  - iii. Standards and techniques for controlling data synonyms, aliases and versions;
  - iv. Standards for data characteristics;
  - v. Data design standards to ensure modularity, extensibility and flexibility, and to ensure the efficient and consistent use of the data;
  - vi. Standards for data searching and cross-referencing techniques;
  - vii. Standards to control data redundancy;

- viii. Standards for data views;
  - ix. Standards for database administration; and
  - x. Test-of-correctness and objective measurements of quality.
- h. 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. For the purpose of this RFP, DRP means a plan for continued operation in the event of a situation which incapacitates part or all of an Offeror's resources including, but not limited to, personnel, IT equipment, data records, and the building or other physical infrastructure. The DRP must include offsite secure backup of the DSS and the ability to establish a fully functional DSS 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. In addition, the DRP must, at a minimum, meet the following requirements:
- i. If the DSS fails, the DSS shall be able to be restored to its last consistent state before the failure occurred. The selected Offeror must address any data loss resulting from a system failure;
  - ii. The DSS shall retain archived data and system records in accordance with State regulations, policies, and procedures;
  - iii. The DSS shall be designed assuming zero fault tolerance (i.e. no single physical or electronic point of failure);
  - iv. The DSS shall be backed up on a regularly scheduled basis; the schedule must be provided to the Department for review and approval;
  - v. The DSS 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 shall be fully functional during Normal Business Hours except for scheduled outages for maintenance agreed to by the Department; and
  - viii. In the event of data loss or data corruption, the DSS shall be able to recover lost data within one (1) day from local backup/recovery and within three (3) days from offsite backup/recovery.



### **3.9 Security**

The DSS and all associated support processes and procedures must comply with Appendix C, *Information Security Requirements*, Federal HIPAA laws, and all applicable Federal and State laws and regulations concerning data security and personal privacy protection.

#### **1. Duties and Responsibilities**

- a. The Offeror must commit to maintaining compliance with Appendix C, *Information Security Requirements*, and all Federal and State privacy protection laws for the life of the Contract.
- b. The Offeror must have a Written Information Security Program (WISP) for the DSS, acceptable to the Department in place on the effective date of the Contract resulting from this RFP, which complies with Appendix C, *Information Security Requirements*, and 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 WISP must, at a minimum:
  - i. Agree to the policies, terms and conditions stated in this RFP, the resultant Contract and Appendices;
  - ii. Allow for the configurable control of access to processes, reports, content and functions;
  - iii. Allow the definition of a robust, multi-level row security model;
  - iv. Allow the maintenance of a robust, multi-level row security model;
  - v. Support configurable role-based security; and
  - vi. Support the encryption of data being communicated over a public network.
- c. 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 selected Offeror must agree to cooperate fully with the audit and respond to all findings in the audit in a timely manner.

### **3.10 Transition Period**

The State may require the selected Offeror 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 selected Offeror and the Department must ensure that any transition from one Contractor to another Contractor is carried out 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. For the purpose of this RFP, Transition Plan means a written plan for transition, which outlines, at a minimum, the tasks, milestones, and deliverables associated with transitioning the Program to a new Offeror.

## **1. Duties and Responsibilities**

- a. The Offeror 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.
- b. 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.
- c. For purposes of this guarantee, within one-hundred twenty (120) Days of the Department's written request, but not later than one hundred twenty (120) 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 by 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:
  - i. 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);
  - ii. 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
  - iii. 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.

- d. The selected Offeror shall be responsible for providing Transition Services in accordance with the approved Transition Plan. "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.

## **SECTION 4: ADMINISTRATIVE PROPOSAL**

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal. The Department will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the requirements set forth in this section of the RFP. Any Offeror which fails to satisfy any of these requirements shall be eliminated from further consideration.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this RFP. Additional details pertaining to the required forms are found in Section 2 of this RFP.

### **4.1 Formal Offer Letter**

The Offeror must submit a formal offer in the form of the Attachment 3, *Formal Offer Letter* of this RFP. 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. The copy 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. Except as otherwise permitted under Section 2.1(7), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, Appendix A, *Standard Clauses for New York State Contracts*, Appendix B, *Standard Clauses for All Department Contracts*, Appendix C, *Information Security Requirements*, Attachment 15, *Glossary of Defined Terms*, and agree to enter into a Contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP and appendices as cited herein. If an Offeror proposes to include the services of a Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as "Prime Contractor." The Department will consider the Prime Contractor solely responsible for Contractual matters.

### **4.2 Offeror Attestation Form**

The Offeror must complete and submit an executed copy of the Attachment 14, *Offeror Attestations Form* attesting that it meets or exceeds the criteria for eligibility to bid as set forth in Section 1 of this RFP. A person legally authorized to represent the Offeror must execute this certification.

### **4.3 Key Subcontractors or Affiliates**

The Offeror must complete the Attachment 9, *Key Subcontractors or Affiliates* form to identify all Subcontractors or Affiliates with whom the Offeror subcontracts to provide Project Services. For purposes of reporting in the Attachment 9, *Key Subcontractors or Affiliates* form, Subcontractors include:

1. All vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this RFP; or
2. Any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Offeror's Account Team (described in section 3.1, Account Team).

For each Subcontractor identified, the Offeror must complete and submit the Attachment 9, *Key Subcontractors or Affiliates* form and indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the RFP. On the Attachment 9, *Key Subcontractors or Affiliates* form, the Offeror must:

1. Mark the applicable box if the Offeror will not be subcontracting with any Subcontractor(s) or Affiliate(s) to provide Project Services.
2. Indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Subcontractor or Affiliate for services to be provided by the Subcontractor or Affiliate relating to this RFP.
3. Provide a brief description of the services to be provided by the Subcontractor or Affiliate.
4. Provide a description of any current relationships with such Subcontractor or Affiliate and the clients/projects that the Offeror and Subcontractor or Affiliate are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project.

#### **4.4 New York State Standard Vendor Responsibility Questionnaire**

The Offeror must complete and submit an executed copy of the New York State Vendor Responsibility Questionnaire. A person legally authorized to represent the Offeror must execute the questionnaire. The questionnaire must be completed by all Subcontractors as defined above.

The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To use the VendRep System, please refer to:  
<https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

By submitting a Proposal, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will rely on the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror

agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

#### **4.5 New York State Tax Law Section 5-a**

Tax Law § 5-a requires certain Offerors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Offeror's sales delivered into NYS is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any Affiliates and subcontractors whose sales delivered into NYS exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

An Offeror is required to file the completed and notarized Form ST-220-CA with the Department certifying that the Offeror filed the ST-220-TD with DTF. If the forms are not completed and returned with bid submission, the Offeror should complete and return the certification forms within five Business Days from the date of request. Failure to make either of these filings may render an Offeror non-responsive and non-responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Offeror certification forms and instructions are provided below.

1. Form ST-220-TD must be filed with and returned directly to DTF and can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its Affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.
2. Form ST-220-CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST-220-TD with DTF. This form can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

#### **4.6 Consultant Disclosure Requirement**

The Offeror must complete the Attachment 11, *New York State Consultant Services Contractor's Planned Employment* form for all employees proposed to provide Project Services under the Contract whether employed by the Offeror or a Subcontractor. 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. 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.

Further, the selected Offeror will be required to report annually to the Department and OSC the employment information described above, including work performed by subcontractors.

#### **4.7 Insurance Requirements**

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this RFP, policies of insurance as required by this section, written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by DFS to issue insurance in the State of New York. The Department may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

While acceptance of insurance documentation shall not be unreasonably withheld, conditioned, or delayed, acceptance and/or approval by the Department does not, and shall not be construed to, relieve an Offeror of any obligations, responsibilities or liabilities under this RFP or any Contract resulting from this RFP. The Offeror shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this RFP.

##### **1. General Conditions**

- a. All policies of insurance required by this Solicitation or any Contract resulting from this RFP shall comply with the following requirements:
  - i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in Section 4.7(2) of this RFP.
  - ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in writing by the Department, policies must be

written on an occurrence basis. Under certain circumstances, the Department may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the selected Offeror must purchase, at its sole expense, Discovery Clause or "Tail" coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Department prior to the policy's expiration or cancellation.

- iii. **Certificates of Insurance/Notices.** The selected Offeror shall provide the Department with a Certificate or Certificates of Insurance, in a form satisfactory to the Department, as detailed below and pursuant to the timelines set forth in Section 4.7(1)(m) of this RFP. Certificates should reference the Solicitation or award number and shall name the New York State Department of Civil Service, Agency Building 1, Empire State Plaza, Albany, NY 12239, as the certificate holder.
- iv. **Document Submissions.** An Offeror shall deliver to the Department evidence of the insurance required by this RFP and any Contract resulting from this RFP upon notification of tentative award.

b. **Certificates of Insurance shall:**

- i. Be in the form acceptable to the Department and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- ii. Disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- iii. Be signed by an authorized representative of the insurance carrier of the referenced insurance carriers; and
- iv. Contain the following language in the Description of Operations/Locations/Vehicles section of the Certificate or on a submitted endorsement as applicable: Additional insured protection



afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

- c. Only original documents (Certificates of Insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted. The Department generally requires an Offeror to submit only certificates of insurance and additional insured endorsements, although the Department reserves the right to request other proof of insurance. An Offeror should refrain from submitting entire insurance policies, unless specifically requested by the Department. If an entire insurance policy is submitted but not requested, the Department shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the Department does not constitute proof of compliance with the insurance requirements and does not discharge an Offeror from submitting the requested insurance documentation.
- d. Primary Coverage: All liability insurance (excluding Professional Liability insurance) policies where the Department is required to be included as an additional insured, shall provide that the required coverage shall be primary and non-contributory to other insurance available to the Department and their officers, agents, and employees. Any other insurance maintained by the Department and their officers, agents, and employees shall be in excess of and shall not contribute with the Offeror's insurance.
- e. Breach for Lack of Proof of Coverage: The failure to comply with the requirements of this RFP at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the Department and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.
- f. Self-Insured Retention/Deductibles: Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the Department. Such approval shall not be unreasonably withheld, conditioned or delayed. An Offeror shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Offeror is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

- g. Subcontractors: Prior to the commencement of any work by a Subcontractor, the Offeror shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement (ISO coverage form CG 20 38 04 13), or the equivalent, evidencing such coverage shall be provided to the Offeror prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section 4.7(1)(m) of this RFP, as applicable, and shall be provided to the Department upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
- h. Waiver of Subrogation: For all liability policies (with the exception of Professional Liability Insurance and Cyber Liability Insurance) and the workers' compensation insurance required below, the Offeror shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department and their officers, agents, and employees, or, if such waiver is unobtainable:
  - i. An express agreement that such policy shall not be invalidated if the Offeror waives or has waived before the casualty, the right of recovery against the Department and their officers, agents, and employees; or
  - ii. Any other form of permission for the release of the Department or any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
- i. Additional Insured: The Offeror shall cause to be included in each of the liability policies required below (excluding Professional Liability Insurance) coverage for on-going work and operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage) the Department and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Department pursuant to the timelines set forth in Section 4.7(1)(m) of this RFP. A blanket Additional Insured Endorsement evidencing such coverage is also

acceptable. For Offerors who are self-insured, the Offeror shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Offeror would have been required to pursuant to this RFP had the Contractor obtained such insurance policies.

- j. Excess/Umbrella Liability Policies: Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage, and limits of insurance), including proof that the excess/umbrella insurance follows form, must be provided upon request. Unrelated underlying policies included in the schedule that are not required to meet the insurance requirements may be redacted from the Schedule.
- k. Notice of Cancellation or Non-Renewal: Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five Business Days of receipt of any notice of cancellation or nonrenewal of insurance, the Offeror shall provide the Department with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.
- l. Policy Renewal/Expiration: Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to the Department, the Offeror shall immediately cease work. The Offeror shall not resume work until authorized to do so by the Department.
- m. Deadlines for Providing Insurance Documents after Renewal or Upon Request: As set forth herein, certain insurance documents must be provided to the Department contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Offeror shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:
  - i. For certificates of insurance: 5 Business Days from request or renewal, whichever is later;

- ii. For information on self-insurance or self-retention programs: 15 Calendar Days from request or renewal, whichever is later;
- iii. For other requested documentation evidencing coverage: 15 Calendar Days from request or renewal, whichever is later;
- iv. For additional insured and waiver of subrogation endorsements: 30 Calendar Days from request or renewal, whichever is later; and
- v. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 Business Days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Offeror shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Department, the Department shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 Calendar Days.

## **2. Specific Coverage Limits**

### **a. Commercial General Liability**

Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract, using form CG 00 01 12 07 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence limit – \$1,000,000.00
- ii. General Aggregate – \$2,000,000.00
- iii. Products/Completed Operations – \$2,000,000.00
- iv. Personal Advertising Injury – \$1,000,000
- v. Damage to Rented Premises – \$50,000
- vi. Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- i. Premises liability;

- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
- iv. Defense and/or indemnification obligations, including obligations assumed under this contract;
- v. Cross liability for additional insureds;
- vi. Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract;
- vii. Explosion, collapse, and underground hazards,
- viii. Contractor means and methods; and
- ix. Liability resulting from Section 240 or Section 241 of the New York State Labor Law, if applicable.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Department. Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy(ies) of insurance, if applicable.

b. Business Automobile Liability Insurance

The Contractor shall carry and maintain applicable coverage in the amount of at least \$1,000,000.00, per occurrence.

Such insurance shall cover liability arising out of automobiles used in connection with performance under this Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by Civil Service. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage in accordance with the insurance requirements of the Contract.

c. Technology Errors & Omissions Insurance

The Contractor and any subcontractor retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of the Contract, Technology Errors & Omissions Insurance in the amount of \$2,000,000.00, for claims for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software, development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. The policy shall include coverage for third-party fidelity including cyber theft if coverage is not met in a Data Breach and Privacy/Cyber Liability policy. The Technology Errors & Omissions Insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. If applicable, the Contractor shall provide coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

d. Crime Insurance

The Contractor shall carry and maintain applicable coverage in the amount of at least \$50,000.00.

If, during the term of the Contract, the Contractor plans to enter the premises of the Department to fulfill its obligations under this Contract, the Contractor is required to fulfill the Crime Insurance requirements herein and shall be required to provide proof of compliance with the requirements. If, during the term of the Contract, the Contractor plans to enter the premises of the Department to fulfill its obligations under this Contract, the Contractor shall maintain, during the term of the Contract, Crime Insurance on a "loss sustained form" or "loss discovered form," and coverage must include the following;

- i. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- ii. The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- iii. Any warranties required by the Contractor's insurer as a result of the Contract must be disclosed and complied with. Said insurance shall

extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of the Contract.

- iv. The policy shall include coverage for third-party fidelity and name "The People of the State of New York, the New York State Office of Civil Service, any entity authorized by law or regulation to use the Contract as an Authorized User and their officers, agents, and employees" as "Loss Payees" for all third-party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- v. The policy shall not contain a condition requiring an arrest and conviction.
- vi. The policy shall include coverage for, but is not limited to, employee theft, forgery or alteration, inside the premises-theft of money and securities, inside the premises-robbery or safe burglary of other property, outside the premises computer crime/fraud, and money orders and counterfeit paper currency.
- vii. If coverage is provided as underlying coverage of another policy, all requirements must be met within the primary policy.

e. Data Breach/Cyber Liability

The Contractor shall carry and maintain applicable coverage in the amount of at least \$5,000,000.00.

Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- ii. Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and

- vi. Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims-made basis, the policy shall provide the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than three (3) years after work is completed in the event that coverage is cancelled or not renewed or must agree to insure for one year following any Contract under award. This requirement applies to both primary and excess liability policies, as applicable. If coverage is provided as underlying coverage of another policy, all requirements must be met within the primary policy.

- f. Workers' Compensation Insurance: To comply with coverage provisions of Workers' Compensation Law (WCL) Section 57, businesses must be legally exempt from obtaining workers' compensation insurance coverage; or obtain such coverage from insurance carriers; or be a Board-approved self-insured Employer or participate in an authorized group self-insurance plan. An Offeror must provide one of the following forms: Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Worker's Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov)); or
  - i. For C-105.2 (9/15), Certificate of Workers' Compensation Insurance, sent to the Department by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the Department upon request from the Contractor; or
  - ii. Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office; or
  - iii. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.
- g. Disability Benefits Insurance: To comply with coverage provisions of WCL Section 220(8), regarding disability benefits, businesses must be legally exempt from obtaining disability benefits insurance coverage; or obtain such coverage from insurance carriers; or be a Board-approved self-insured Employer. An Offeror must provide one of the following forms:
  - i. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York



State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov)); or

- ii. Form DB-120.1, Certificate of Disability Benefits Insurance, sent to the Department by the Contractor's insurance carrier upon request; or
- iii. Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

## **SECTION 5: TECHNICAL PROPOSAL REQUIREMENTS**

The purpose of this Section 5 of the RFP is to set forth the technical proposal submissions required of the Offeror. The Offeror's Technical Proposal must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on the responses to the required submissions contained in Section 5 of this RFP. An Offeror must not include any cost information in the Technical Proposal, including attachments. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any attachments submitted with the Technical Proposal.

### **5.1 Executive Summary**

The Offeror must submit an Executive Summary outlining its capacity to administer a DSS for a large, comprehensive health plan with over one million (1,000,000) covered Plan members. The Executive Summary must include:

1. The name and address of the Offeror's main and branch offices and the name of the senior officer(s) including the executive who will be responsible for this account;
2. A statement outlining previous experience successfully implementing and managing a DSS for large, comprehensive group health insurance plans of other state governments or large public entities or any other organizations with over 200,000 covered lives, as well as any experience implementing and managing a DSS for a self-funded comprehensive group health insurance plan. Explain how this experience qualifies the Offeror and, if applicable, its Key Subcontractors, to undertake the functions and activities required by this RFP;
3. A statement addressing if the Offeror's organization has been fined, within the last five (5) years, for a HIPAA violation. If so, please summarize the outcome and steps the Offeror enacted to avoid a future occurrence.
4. An organizational plan that includes the roles and responsibilities of each key person involved in administering the DSS, their planned level of effort, and their anticipated duration of involvement. Please include an organizational chart. This includes the Offeror's staff and staff from any Subcontractor to be used. The plan should specifically explain and detail how the Offeror will perform the following administrative and operational functions:
  - a. Project Implementation;
  - b. Database Development;
  - c. Database Maintenance and Data Transfer;
  - d. Reporting;
  - e. Consulting;
  - f. HIPAA Compliance and Data Security; and
  - g. Contract Administration, Transition and Termination of Contract.
5. The Offeror must provide a list of client organizations to clearly demonstrate 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) covered lives].

## **5.2 Account Team**

The Offeror must complete the Attachment 8, *Biographical Sketch Form* for all key staff, including subcontractor provided key staff, if any, of the proposed Project Management Team. Where individuals are not named, include qualifications of the individuals that you would seek to fill the positions. The description of the individual who will assume the role of Project Manager for the DSS must include a description of the individual's experience with clients whose needs were of similar size and scope as those of the Department. In addition, the description must state how 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.

## **5.3 Implementation Plan**

1. The Offeror must provide a detailed Implementation Plan, in narrative and timeline formats, designed to meet the implementation by the Project Services Start Date. Please include project team roles, responsibilities, estimated timeframes for completion of individual tasks, and testing dates. 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;
  - b. The date the DSS 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. The Offeror must submit a proposed Acceptance Testing Plan (ATP) that identifies the functions that will be tested to ensure the DSS 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. **DSS 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, on or before the Project Services Start Date.

The Offeror must, utilizing the Attachment 16, *Performance Guarantees* form, propose the percentage amount of the Ongoing Operations Monthly fee that it will permanently forfeit for each month, or part thereof, after the Project Services Start Date that any of the Implementation activities listed in Section 3.2 of this RFP remain incomplete. At minimum, the proposed percentage amount must equal to 100% of the Ongoing Operations Monthly Fee for each month (defined as the Standard Credit Amount), or part thereof, that implementation is not completed by the Project Services Start Date. However, an Offeror may propose a higher amount on the Attachment 16, *Performance Guarantees* form as part of its Technical Proposal.

#### **5.4 Data Management**

The Offeror must describe in detail the proposed process for operating the DSS to meet the requirements specified in this RFP. Specifically, the Offeror must:

1. Describe 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 data loads and loading of historical data into the DSS once it becomes operational.
2. Confirm that during Implementation a complete description of the meaning of the information contained in the DSS and any relationships between the information (metadata) that is available from the DSS will be provided.
3. Describe the process proposed by the Offeror for resolving data integrity issues with Data Providers, including:
  - a. Detailing the Offeror's proposed process for handling a change in one or more insurers/benefit administrators of the Empire Plan. Such change 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 for one or more years coincident with acquisition and integration of data from the new insurer/data provider.
  - b. Describing in detail the proposed process/procedures for archiving and retrieving historical data, including the frequency of archival process (e.g. annual).
  - c. Describing the process proposed for ensuring that only data that has passed all validation edits required by this RFP will be loaded in the DSS, 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 above in Section 3.3(1)(h). The Offeror should include the external validation sources it is proposing to be used as part of its DSS and identify the validation sources that will be available to the Department as part of the proposed DSS. 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.

- d. Explaining 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. Confirming 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. Describing the proposed process for receiving updates from Data Providers in terms of the timing of their receipt and loading into the DSS. 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 5<sup>th</sup> of the month, hospital claims on the 15<sup>th</sup> of the month) or hold all data for one monthly update.
  - g. Providing 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 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. Providing a high-level description of the technical infrastructure, such as the hardware platform and database management platform, for the proposed DSS.
4. **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 not later than fifteen (15) Business Days from the scheduled data receipt date 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 from a Data Provider after the scheduled receipt date and the data meets quality assurance testing, the data will be loaded in the DSS not later than fifteen (15) Business Days from the date the data was received.

The Offeror must, utilizing the Attachment 16, *Performance Guarantees* form, record the amount that an Offeror proposes to forfeit for each twenty-four (24) hour period, or part thereof, that the data is not loaded into the DSS and fully accessible to all Users, beyond fifteen (15) Business Days from receipt of data, as a required above, from each Data

Provider. At minimum, the forfeited amount (Standard Credit Amount) cannot be less than \$1,000 for each twenty-four (24) hour period, or part thereof, that there is failure to load data in the DSS by the specified date, as a required above, from each Data Provider. However, an Offeror may propose an amount greater than the \$1,000.

## **5.5 User Requirements**

1. The Offeror must confirm User Levels will be established as described in Section 3.4 of this RFP, including permissions and restrictions on usage. 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) and confirm that at least half of all 50 Users simultaneously have the ability to use the DSS.
2. The Offeror must describe in detail the capabilities for access, manipulation, analysis, security, etc., for each User Level in the Offeror's proposed DSS. Explain how the Offeror's proposed User Levels will meet the Department's requirements for access, functionality and security.
3. The Offeror must 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, and identify the plan's goals and expected outcomes. The Offeror must state if web-based 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.
4. The Offeror must describe the accessibility features of the proposed DSS to address all applicable Federal and State laws and regulations regarding accessibility standards for persons with disabilities and Appendix B, Standard Clauses for All Department Contracts requirements, at no additional cost to the Department.
5. The Offeror must 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. 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.
6. The Offeror must 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 and detail if the Offeror has provided services for a customer similar in scope. The Offeror's response must state if the client's system has been in full production mode for twelve (12) months or more, with at least twenty-four (24) months of historical data.
7. The Offeror must provide a description of software requirements, (e.g. compatible browsers

including release version), for Department utilization.

## **5.6 Analytical Capabilities**

The Offeror must submit a document which provides the following information and describes, in detail, the analytic tools available to allow the Department and designated Users the ability to perform advanced analysis. Include in this description any proposed tools that are advanced or unique in application. Include details related to the ability to analyze data: on an individual and group basis; related to paid claims; related to disease state; related to in-network or non-network basis; and related to geographic location. Give specific examples of how the tools work and/or sample reports of how the view would appear to a User. The document must also address the following:

1. Characterizes the ease of use of the analytical tools and describe the typical learning curve for new users.
2. Describes the DSS' ability to identify providers by various categories, (e.g. primary care, specialty, network/non-network, group/individual).
3. Describes abilities to view data at the claim level, including claims that have been denied, reversed, or are duplicates.
4. Describes the abilities or applications to export, manipulate and analyze large amounts of data using Python or similar tools
5. Describes in detail how the DSS will allow a User the capability for future benefit modeling. Include in the description the proposed DSS' ability to evaluate changes in benefits such as a change to a copayments.
6. Explains how the Offeror's proposed DSS will allow for the evaluation of cost containment programs.
7. Details the Offeror's resources that will be offered to assist the Department in understanding Plan costs, including those associated with potential fraud and waste.
8. Details the Offeror's resources to assist the Department in comparing non-pharmacy Empire Plan paid claims to rates used by the Centers for Medicare and Medicaid (CMS).

## **5.7 Query and Reporting Capabilities**

1. The Offeror must provide a complete description of all query functions and capabilities of the proposed DSS, including how the proposed DSS 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 ad hoc query.

2. The Offeror must describe the DSS' capability for exporting/importing query results into standard Microsoft Office applications such as Access, Excel, and Word.
3. The Offeror must describe the benchmarking resources offered by the proposed DSS.
4. The Offeror must describe the report writer function included in the DSS.
5. The Offeror must provide the proposed DSS' average response times for pre-defined, standard reports.
6. The Offeror must describe the Offeror's proposed quality control procedures to be put in place to assure the accuracy and timeliness of reports.
7. The Offeror must summarize reports that it routinely provides to a client of similar size or which it would propose to provide under this contract.

## **5.8 Consulting Support Services**

The Offeror must submit a statement agreeing to provide a minimum of 800 hours of Consulting Support Services during the term of Contract, at no additional cost to the Department, and describe in detail the types of Consulting Support Services the Offeror proposes to provide during the term of the Contract to be included in Consulting Support Services. Examples of types of Consulting Support Services required by the Department can be found in Section 3.7 of this RFP.

## **5.9 DSS Operational Requirements**

1. The Offeror must submit a statement confirming 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. This statement must explain how availability is calculated, whether it includes or excludes planned outages in the calculation and must include details as to how many times the DSS service 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. Availability for purposes of this paragraph means that a User is able to access and query data in the system.
2. The Offeror must submit a statement agreeing to provide both physical and technical security for the Project in agreement with the policies, terms and conditions stated in this RFP and Appendices, including Appendix C, *Information Security Requirements*. This statement 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 must 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 (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);
- 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; and
- 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.

c. 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.

- 3. The Offeror must describe in detail the procedures and safeguards the Offeror will implement following the conclusion of the Project Services or termination/expiration of the Contract, whichever is later, to render DSS data unrecoverable and prevent accidental and/or unauthorized access to such data.
- 4. The Offeror must 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.
- 5. The Offeror must 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).
- 6. The Offeror must 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).

7. The Offeror must detail the proposed process to restore Project Services and describe the proposed steps to be taken to evaluate and remediate the causes of system outages.
8. The Offeror must describe the proposed method to be used to measure, monitor and report system response time.
9. The Offeror must provide details as to how the DSS will be housed, including hardware configuration and manufacturers 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.
10. If Cloud Services are being utilized, please detail the following:
  - a. What is the name of the Cloud Service Provider (CSP)?
  - b. What Cloud Service Model is being Utilized (i.e. IASS, PaaS, SaaS, XaaS, or other)
  - c. What is the cloud deployment model (i.e. Government, Community, Hybrid, Private, Public, other)
  - d. Is the Clouds FedRamp authorized or if not, is the Cloud Service FedRamp compliant?
  - e. Is the cloud governance based on industry standards, if so what standards? Do the data centers and systems used to provide cloud services to the State comply with the ISO 27001 and ISO 27002 information security standards or their successors?
  - f. Where are the data centers physically located?
  - g. What are the data centers Tier level?
  - h. Will the State's Data be encrypted in transit and at rest?
  - i. Will the State's Data be comingled with other customer Data?
  - j. Are the Cloud Services HIPAA compliant?
  - k. Has the offeror entered into a HIPAA-compliant business associate contract or agreement (BAA) with the Cloud Service Provider?
11. The Offeror must describe the quality assurance standards, techniques and tools proposed to be used for the DSS. In responding to this requirement, the Offeror must state if the Offeror has received a Service Organization Control (SOC) 2 or 3 certification or comparable 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, SOC 2, SOC 3, or comparable 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.
12. The Offeror must submit a copy of the Offeror's most current DRP. Include, in detail, the process for data backup, including the frequency of back-up proposed for the DSS, and offsite storage.

13. **DSS Availability Guarantee:** The Offeror must guarantee that the DSS will be available in its entirety to Users Monday – Friday, 8:00 a.m. – 5:00 p.m. ET, except for previously agreed to scheduled outages due to required maintenance, system upgrades and State Holidays.

The Offeror must, utilizing the Attachment 16, *Performance Guarantees* form propose the amount that it will permanently forfeit if the DSS is not available as described above.

The Standard Credit Amount to be forfeited is \$400, for each hour, or part thereof, the DSS is not available in its entirety to Users Monday-Friday between 8:00 a.m.-5:00 p.m. E.T., except for previously agreed to scheduled outages and State Holidays. However, an Offeror may propose a higher amount on Attachment 16, *Performance Guarantees*.

## **5.10 Security**

1. The Offeror must include a copy of the Offeror's proposed DSS Written Information Security Plan (WISP) for providing and maintaining compliance with HIPAA and all Federal and State privacy laws and regulations. The Offeror's WISP should confirm it will comply with, at a minimum, the items identified in Section 3.9(1)(a) and (b).
2. The Offeror must provide appropriate security documentation to allow for the State to conduct an Information Security Review of the solution at the time of implementation and on a regular basis, as needed.

## **5.11 Transition Plan**

1. The Offeror must confirm, as outlined in Section 3.10 of this RFP, to:
  - (a) 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; and
  - (b) Provide an outline of the key elements (tasks, milestones, and deliverables) that would be included in the Transition Plan to comply with RFP Section 3.10, with a brief explanation on how these key elements would be accomplished if the Offeror were the incumbent contractor.
2. **DSS Transition Guarantee:** The Offeror must guarantee to meet transition requirements as stated in this RFP, Section 3.10.1 (a-d).

The Offeror must, utilizing the Attachment 16, *Performance Guarantees* form propose the amount that it will permanently forfeit if Transition Plan requirements are not met.

The Standard Credit Amount to be forfeited is \$1,000, for each Day, or part thereof, this guarantee is not met. However, an Offeror may propose a higher amount on Attachment 16, *Performance Guarantees*.

## **SECTION 6: FINANCIAL PROPOSAL**

The Department seeks to make an award to the 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 Agreement.

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

The sole compensation for the Contractor under the Agreement will be payments based on pricing indicated in the Contractor's Financial Proposal. During the term of the Agreement, 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 Agreement.

Evaluation of Financial Proposals will be performed in accordance with the provisions presented in Section 7 of the RFP.

This section of the RFP sets forth the requirements for the Offeror's Financial Proposal submission and the cost structure required by the Department for Offerors to use in developing their submission. The Offeror's Financial Proposal must respond to all the following mandatory sections as set forth below in the formats as specified.

The Financial Proposal must consist of the following:

### **6.1 DSS Implementation Fee**

1. The Offeror must provide a clear statement agreeing to the duties and responsibilities as required by Section 3 of the RFP.
2. The Offeror must submit a completed Attachment 17, *Implementation Fee Form*. The Offeror must include a fixed implementation fee that is fully inclusive of the cost of development, personnel, hardware, software, training and any other costs incurred solely during the Implementation Period.
3. Following the first full month after the commencement of the Implementation Phase, the Contractor will invoice and the Department, after approval, will pay one ninth of the total implementation fee, minus Retainage (6.1.4). Thereafter, on a monthly basis, in arrears, the Contractor will invoice and the Department, after approval, will pay one ninth of the total implementation fee, or that portion of the remaining implementation fee balance, minus Retainage (6.1.4), until the implementation fee is paid in full.
4. Ten percent (10%) of each monthly invoice amount will be withheld from each monthly amount paid to the Contractor (Retainage). The total of all retainage amounts withheld will be due to the Contractor upon Department acceptance, in its sole discretion, of a fully

functional DSS. Should the Contractor's DSS 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 case of default, the Contractor shall forfeit all retainage 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.

## **6.2 Ongoing Operations Monthly Fee**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as required by Sections 3 of the RFP.
2. The Offeror must submit a completed Attachment 18, *Ongoing Operations Monthly Fee Form*, which must include the cost for the Contractor's performance of ongoing Project Services. The Ongoing Operations Monthly Fee must include: a minimum of 50 User fees as detailed in Section 3.4, and 800 hours of consulting services, costs of staff required as detailed in Section 3.1, and ongoing travel. This must be stated as an all-inclusive (i.e.; inclusive of travel, lodging, parking, meals etc.) fixed fee for each of the Contract years.
3. The all-inclusive, fixed Ongoing Operations Monthly Fee commences with the first FULL month following the date on which all Implementation activities are completed and accepted by the Department and the DSS is fully operational. If Implementation activities are completed and accepted by the Department and the DSS is fully operational on a date other than the first day of the month such that the DSS is fully operational for only part of a month, then the Contractor shall be due a pro-rata fee. The fee will be equal to the Ongoing Operations Monthly Fee times the number of Calendar Days during said partial month during which the Offeror's proposed DSS is fully operational divided by the total number of Calendar Days in said partial month, assuming that the date the Contractor's DSS is fully operational is not later than the effective date of the Contract. If the date Contractor's DSS is deemed fully operational is later than the effective date of the Contract, then, the Contractor shall not be due a partial Ongoing Operations Monthly Fee.
4. 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 forth in Section 3 of the RFP once the DSS is fully operational, except the payment of Additional User Fees, if any, and Additional Consulting Support Services, if any, and/or adding a new Data Provider(s).
5. The Ongoing Operations Monthly Fee shall include the delivery of Incremental Ongoing Training.
6. In developing its Ongoing Operations Monthly Fee, the Offeror should consider the following information:
  - a. As of February 2024, NYSHIP currently covers over 624,000 employees and retirees of New York State, participating agencies and participating employers.

Eligible covered Dependents bring the total number of covered lives to about 1,210,000.

- b. There are currently five (5) Data Providers as listed in Section 3.3 of this RFP. The Department does not guarantee that these Data Providers will not change during the term of the contract.
- c. Updates will be received from Data Providers at least monthly.
- d. At a minimum, the DSS must maintain seven (7) Plan Years of data plus the current Plan year-to-date data accessible to the Department and the Department's designated Users via the DSS.
- 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 25% 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 AG and 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 Department, and if deemed warranted by the Department, then said change shall require a formal amendment to the Contract and must be approved by the AG and the OSC.

### **6.3 Additional User Fees**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as

required in Section 3 of the RFP.

2. The Offeror must submit a completed Attachment 19, *Additional User Fees Form* to identify the per user per month cost for each User beyond the assumed number of Users.
3. At a minimum, there will be approximately 50 Users with various levels of access as described in Section 3 of this RFP.
4. During the term of the Contract, the Department may, in its sole discretion add, change, delete or deactivate Users in one or more 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 propose a per User per month Additional User Fee to be charged to the Department for each User beyond the assumed number of Users.

#### **6.4 Data Provider Start-up Fee**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section 3 of the RFP.
2. The Offeror must submit a completed Attachment 20, *Data Provider Start-up Fee Form* to cover all of the Offeror's costs to add a Data Provider(s) or replace an existing Data Provider(s) within the DSS during the term of the Contract. An Offeror must quote a fixed all-inclusive fee that shall remain in effect for the contract duration
3. During the term of the Contract, once Implementation activities have been completed and accepted by the Department, at its sole discretion, and the DSS is fully operational, changes in the Data Providers may occur.
4. The selected Offeror will be reimbursed for services rendered to add a new Data Provider at the associated one-time fixed all- inclusive rate as quoted in the Contractor's Financial Proposal. No additional or incremental Ongoing Operations Monthly Fee is allowed resultant from the addition of a new Data Provider.
5. The selected Offeror must include the run-out data that is received from the previous Data Provider in the DSS for up to three (3) years after the date if a change in Data Providers is made.

## **6.5 Additional Consulting Support Services Fees**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section 3 of this RFP.
2. The Offeror must submit a completed Attachment 21, *Additional Consulting Support Services Fees Form* to cover analytical support and expert guidance requested by the Department in relation to projects that exceed the 800 hours of Consulting Support Services included as part of its Ongoing Operations Monthly Fee. Such consulting support services are not to be considered as User Training, either initial or incremental ongoing.
  - a. The Offeror, using the definitions below, must quote Fixed Hourly Rates for each Contract year for each of the six (6) titles listed. These Position Titles and the Offeror's quoted Fixed Hourly Rates will be used by the Contractor when billing for Additional Consulting Support Services.
    - i. **Director:** The Director must possess at least seven (7) years of management experience and have worked in the areas of health benefit plan management or health data analytics.
    - ii. **Project Manager:** The Project Manager must possess at least five (5) years of experience serving as a project manager in the area of health data analytics and must have prior experience as a project manager with at least one client that is in similar size and scope to the Department.
    - iii. **Senior Consultant:** The Senior Consultant must possess at least seven (7) years of experience working in the area of health data analytics including extensive experience with data modeling, reporting, and analysis.
    - iv. **Consultants:** The Consultants must possess at least five (5) years of experience working in the area of health data analytics.
    - v. **Data Manager/Programmer:** The Data Manager/Programmer must possess at least five (5) years of experience in the area of health care data analytics and have specific experience with coding and/or programming; and
    - vi. **Analysts:** The Analysts can be entry level professionals with at least two (2) years' experience in the field of health care data analytics and would be expected to work under the direct supervision of one of the titles listed above.

## **6.6 Additional Fees Data Analysis**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section 3 of the RFP.



2. The Offeror must submit a completed Attachment 22, *Additional Fees Data Analysis Form* to cover all of the Offeror's costs relating to capabilities for DSS Users to export and compare very large amounts of data by using Python on equivalent analysis tools. **This should not include costs for the dedicated staff person to provide 20 hours per month of dedicated support to the Department as required in Section 3.1 of the RFP.** Staff costs are to be included as referenced in Section 6.2 of this RFP.
3. The selected Offeror will be reimbursed for services rendered for Additional Data Analysis Fees at the associated one-time fixed all-inclusive rate as quoted in the Contractor's Financial Proposal.

#### **6.7 Additional Fees CMS Rates Comparison**

1. The Offeror must provide a statement of agreement to the duties and responsibilities as required by Section 3 of the RFP.
2. The Offeror must submit a completed Attachment 23, *Additional Fees CMS Rate Comparison Form* to cover all of the Offeror's costs relating to capabilities to allow a method for comparing Empire Plan payment rates (with the exception of pharmacy) to CMS payment rates.
3. The selected Offeror will be reimbursed for services rendered for Additional Fees for CMS Rate Comparison at the associated one-time fixed all-inclusive rate as quoted in the Contractor's Financial Proposal.

## **SECTION 7: EVALUATION AND SELECTION CRITERIA**

The Department seeks to contract with a single Offeror to provide and administer the DSS. To this end, the Department intends to select the responsive and responsible Offeror whose Proposal offers the “Best Value” to the State, as defined in Section 7.5 of this RFP.

### **7.1 Administrative Proposal Evaluation**

Proposals determined by the Department to satisfy the submission requirements set forth in Section 4 of this RFP will be evaluated by an evaluation team composed of staff from the Department. An Offeror’s Proposal shall be removed from the evaluation process and not be considered for award if the Offeror does not submit an Attachment 3, *Formal Offer Letter* and an Attachment 14, *Offeror Attestations Form* or should it be determined that the Offeror did not satisfy the requirements specified in Section 4 of this RFP, despite any attestation made regarding the requirements. If the Offeror’s proposal meets these requirements, it will be advanced for technical proposal evaluation.

### **7.2 Technical Proposal Evaluation**

The evaluation of the Offeror’s Technical Proposal will be based on that Offeror’s written Technical Proposal and responses to clarifying questions if any; and, as deemed necessary by the Procuring Agencies, oral presentation(s) and/or site visits conducted to amplify and/or clarify that Offeror’s proposed Technical Proposal.

#### **1. Technical Score Ratings**

The Technical Proposal of any Offeror meeting the requirements set forth in Section 7.1 of this RFP will be evaluated by the Department. Each Offeror’s Technical Proposal will be evaluated based on the following rating scale and criteria as applied to each response as required in Section 5 of this RFP. A rating of “excellent” equates to a score of 5 for each evaluated response. Each reduction in the ratings results in a one-point reduction in the score such that a rating of “poor” equates to a score of 1.

##### **A. Excellent (5)**

The Offeror far exceeds the criteria. The services described indicate that the Offeror will provide high-quality services and is proactive and innovative.

##### **b. Good (4)**

The Offeror exceeds the criteria. The services described indicate that the Offeror will exceed the requirements of the DSS. The Offeror demonstrates some innovative features not shown in typical proposals.

##### **c. Meets Criteria (3)**

The Offeror meets but does not exceed the criteria. The services described indicate that the Offeror will meet the requirements of the DSS.

d. Fair (2)

The Offeror's answer is minimal; or the answer is very general and does not fully address the question; or the Offeror meets only some of the criteria.

e. Poor (1)

The Offeror misinterpreted or misunderstood the question; or the Offeror does not answer the question/criteria in a clear manner or the Offeror does not answer the question; or the Offeror does not meet the criteria.

## **2. Performance Guarantee Ratings**

The Offeror's commitment to meet the levels of standards it outlines in its proposal will be verified by reviewing responses to related Performance Guarantee questions and reviewing the Offeror's proposed credit to the administrative fee (credit amount) for its failure to meet each of its proposed performance guarantees.

A rating of "excellent" equates to a score of 5 for each evaluated Service Level Standard. Each reduction in the ratings results in a one-point reduction in the score such that a rating of "poor" equates to a score of 1. An Offeror may propose performance guarantees that exceed the Program's service level standards presented in this RFP. Proposed Performance Guarantees are contained within Attachment 16 and will be evaluated using the following criteria:

a. Excellent (5)

- i. The Offeror's proposed performance guarantee exceeds the Program's service level standard contained within this RFP; and
- ii. The Offeror's proposed credit amount is one hundred and twenty-five percent (125%) or more of the Standard Credit Amount stated within this RFP.

b. Good (4)

- i. The Offeror's proposed performance guarantee equals the Program's service level standard contained within this RFP, and the Offeror's proposed credit amount is one hundred and twenty-five percent (125%) or more of the Standard Credit Amount stated within this RFP; or
- ii. The Offeror's proposed performance guarantee exceeds the Program's service level standard contained within this RFP; and the Offeror's proposed credit amount is greater than one hundred percent (100%) but less than one

hundred and twenty-five percent (125%) of the Standard Credit Amount stated within this RFP.

c. Meets Criteria (3)

- i. The Offeror's proposed performance guarantee equals or exceeds the Program's service level standard contained within this RFP; and
- ii. The Offeror's proposed credit amount equals the Standard Credit Amount stated within this RFP.

d. Fair (2)

- i. The Offeror's proposed performance guarantee equals or exceeds the Program's service level standard contained within this RFP; and
- ii. The Offeror's proposed credit amount is greater than fifty percent (50%) but less than one hundred percent (100%) of the Standard Credit Amount stated within this RFP.

e. Poor (1)

- i. The Offeror's proposed performance guarantee is below the Program's service level standard contained within this RFP regardless of the credit amount proposed by the Offeror; or
- ii. The Offeror's proposed credit amount is fifty percent (50%) or less of the Standard Credit Amount stated within this RFP regardless of the level of performance the Offeror pledges.

**3. Performance Guarantees' Standard Credit Amounts**

- a. DSS Implementation Performance Guarantee: As described in Section 5.3, the standard performance credit amount is 100% of the Ongoing Operations Monthly Fee for each month, or part thereof, that implementation is not completed by the Offeror's proposed completion date or not later than the Implementation Period of 270 days.
- b. DSS Update Performance Guarantee: As described in Section 5.4, the standard performance credit amount is no less than \$1,000 for each twenty-four (24) hour period, or part thereof, that there is failure to load data in the DSS within 15 Business Days of receipt, as required, from each Data Provider.
- c. DSS Availability Performance Guarantee: As described in Section 5.9, the Standard Credit Amount to be forfeited is \$400 for each hour, or part thereof, the DSS is not

available in its entirety to Users Monday – Friday between 8:00 am -5:00 pm E.T.  
except for previously agreed to scheduled outages and State Holidays.

#### 4. Allocation of Technical Score Points

The scores referenced above shall be applied to weighted point values associated with each evaluated Submission response. The relative point value for each section of the Technical Proposal is as follows:

Section	Title	% of Technical Score
5.1	Executive Summary	2.5%
5.2.	Account Team	2.5%
5.3.	Implementation Plan	10.0%
5.4	Data Management	15.0%
5.5	User Requirements	6.5%
5.6	Analytic Capabilities	18.0%
5.7	<del>Consulting Support Services</del> Query and Reporting Capabilities	<del>5.0%</del> 18.0%
5.8	<del>Query and Reporting Capabilities</del> Consulting Support Services	<del>18.0%</del> 5.0%
5.9	Operational Requirements	10.0%
5.10	Security Requirements	10.0%
5.11	Transition Period	2.5%
<b>Total</b>		<b>100.0%</b>

#### 5. Technical Proposal Scoring

The Technical Proposal evaluation will be based on 600 total available points. The average score of all evaluators for each section of the Technical Proposal will be applied against the weights depicted in the chart above. The Offeror with the highest technical score will receive 600 points. All other Offerors are awarded points in a proportional manner as follows:

Technical Score of Evaluated Proposal =

600 \* Technical Proposal Score

divided by

Highest Evaluated Technical Proposal Score

### 7.3 Financial Proposal Evaluation

The Financial Proposal of any Offeror meeting requirements set forth in Section 4 of this RFP will be evaluated by the Department.

### **1. Financial Proposal Scoring**

- a. The Department will calculate a Total Projected DSS Cost for each Offeror as the sum of the Offeror's quoted:
  - i. Implementation fee from Attachment 17; **and**
  - ii. The sum of the product of 12 times the Ongoing Operations Monthly Fee for each year of the contract from Attachment 18, *Ongoing Operations Monthly Fee Form*;
  - iii. **The sum of the Annual Fee for each year of the contract from Attachment 22, Additional Fees - Data Analysis Form; and**
  - iv. **The sum of the Annual Fee for each year of the contract from Attachment 23, Additional Fees - CMS Rate Comparison Form.**

**Note:** Based on historical utilization, the Department will not evaluate fees associated with additional Users, additional Data Providers, or additional Consulting hours.

- b. The Offeror's Proposal with the lowest Total Projected DSS Cost will be awarded 400 points. A Financial Proposal score for each remaining Offeror will be determined based on the following formula:

Cost Score of Evaluated Proposal =

400 \* Lowest Evaluated Cost

divided by

Total Cost of Proposal being evaluated

### **7.4 Total Combined Score**

The Total Combined Score assigned to each Offeror will be the sum of the Offeror's Technical Score and Financial Score.

### **7.5 Best Value Determination**

Best Value means the proposal optimizes quality, cost, and efficiency among responsive and responsible Offerors shall be selected for award (State Finance Law, Article 11, Section 163). Best Value will be determined by a weighted point system, with 60 percent allocated to the Technical Proposal and 40 percent allocated to the Financial Proposal. The Department shall select and enter into negotiations for the purpose of executing a Contract with the responsive and

responsible Offeror that has obtained the highest Total Combined Score, inclusive of both cost and technical. If two Offerors' Total Combined Scores are tied, the award shall go to the Offeror with the highest cost score (lowest price), as calculated pursuant to Section 7.3 of this RFP.

## **SECTION 8: ADDITIONAL PROVISIONS**

The Offeror that is determined to provide the Best Value to the Department shall be notified of its conditional award of Contract subject to the successful development of a Contract. The resulting Contract shall incorporate the requirements set forth in the RFP. Additional terms and conditions not already addressed in the RFP are set forth below.

### **1. Information Classification**

The Department has determined that the State information which the Contractor will either host, maintain, or have access to has an impact level of: Confidentiality = High, Integrity = High, and Availability = High; and requires the Contractor to have appropriate security controls pursuant NIST SP 800-53B, Control Baselines for Information Systems and Organizations, implemented to uniformly protect the confidentiality, integrity, and availability of the information entrusted to the Contractor, unless the State indicates otherwise.

### **2. Empire Plan Administrators**

The Contractor, its parent company, and/or any subsidiaries, partners and/or affiliates cannot, during the term of the Contract, be an Empire Plan administrator. This is to ensure independence in the performance of Project Services.

### **3. Use and Disclosure of Protected Health Information**

- a. The Offeror acknowledges that the Offeror is a "Business Associate" as that term is defined in the HIPAA implementing regulations at 45 CFR 160.103, of the Department as a consequence of the Offeror's provision of Project Services on behalf of the Department within the context of the Offeror's performance under the resulting Contract and that the Offeror's provision of Project Services will involve the disclosure to the Offeror of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Offeror's disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting Contract. As such, the Offeror, as a Business Associate, will be required to comply with the provisions of this Section.
- b. For purposes of this Section, 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 the resulting Contract, PHI may be received by the Offeror from the Department or may be created or received by the Offeror on behalf of the Department in the Offeror's capacity as a Business Associate. All PHI received or created by the Offeror in the Offeror's capacity as a Business Associate and as a consequence of its performance under the resulting Contract is referred to herein collectively as "Department's PHI".

- c. The Offeror acknowledges that the Department administers on behalf of NYS, 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 Offeror further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Offeror further acknowledges that:
  - i. The Offeror is a HIPAA "Business Associate" of the group health plans identified herein as "covered entities" as a consequence of the Offeror's provision of certain services to and/or on behalf of the Department as administrator of the "covered entities" within the context of the Offeror's performance under the resulting Contract, and that the Offeror's provision of such services may involve the disclosure to the Offeror of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Offeror's disclosure to the Department of individually identifiable health information as a consequence of the services performed under the resulting Contract; and
  - ii. Contactor is a "covered entity" under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Offeror acts as a HIPAA "Business Associate" of the group health plans identified as "covered entities", the Offeror shall adhere to the requirements as set forth herein. Offeror is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Offeror to perform the services hereunder and for the use and disclosure of information, including the Department's PHI, as permitted under the resulting Contract.



- d. Permitted Uses and Disclosures of the Department's PHI: The Offeror may create, receive, maintain, access, transmit, use, and/or disclose the Department's PHI solely in accordance with the terms of the resulting Contract. In addition, the Offeror may use and/or disclose the Department's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Offeror may use and disclose the Department's PHI for the proper management and administration of the Offeror if such use is necessary for the Offeror's proper management and administration or to carry out the Offeror's legal responsibilities, or if such disclosure is required by law or the Offeror 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 Offeror of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Offeror may use and/or disclose the Department's PHI, as appropriate:
- i. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
  - ii. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Offeror only as agreed to in writing by the Department and permitted by law.
- e. Nondisclosure of the Department's PHI: The Offeror shall not create, receive, maintain, access, transmit, use, or further disclose the Department's PHI otherwise than as permitted or required by the resulting Contract or as otherwise required by law. The Offeror shall limit its uses and disclosures of PHI when practicable 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.
- f. Safeguards: The Offeror shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for in the resulting Contract. The Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPPA Security Rule at 45 CFR §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 CFR § 164.316, appropriate to the size and complexity of the Offeror'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, accesses, or that it transmits on behalf of the Department pursuant to the resulting Contract to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed, or transmitted by a group health plan identified herein.

- g. Breach Notification: In addition to the Disclosure of Breach requirements specified in Appendix B, *Standard Clauses for All Department Contracts* the following provisions shall apply:
  - i. Reporting: The Offeror 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 the resulting Contract, of which the Offeror becomes aware. An acquisition, access, transmission, use, or disclosure of the Department's PHI that is unsecured in a manner not permitted by HIPAA or the resulting Contract is presumed to be a breach unless the Offeror demonstrates that there is a low probability that Department's PHI has been compromised based on the Offeror's risk assessment of at least the following factors:
    - 1) The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
    - 2) The unauthorized person who used Department's PHI or to whom the disclosure was made;
    - 3) Whether Department's PHI was actually acquired or viewed; and
    - 4) The extent to which the risk to Department's PHI has been mitigated.
  - ii. Required Information: In addition to the information required in Appendix B, *Standard Clauses for All Department Contracts*, Disclosure of Breach, the Offeror shall provide the following information to the Department within the time period identified in Appendix B, *Standard Clauses for All Department Contracts*, Disclosure of Breach, except when, despite all reasonable efforts by the Offeror to obtain the information required, circumstances beyond the control of the Offeror necessitate additional time. Under such circumstances, the Offeror shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty Calendar Days from the date of discovery:
    - 1) The date of the breach incident;
    - 2) The date of the discovery of the breach;

- 3) A brief description of what happened;
  - 4) A description of the types of unsecured PHI that were involved;
  - 5) Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
  - 6) A brief description of what the Offeror is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
  - 7) Any other details necessary to complete an assessment of the risk of harm to the individual.
- iii. The Offeror 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 of the United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
  - iv. The Offeror 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.
  - v. The Offeror shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Offeror not permitted by the resulting Contract.
- h. Associate's Agents: The Offeror shall require all of its agents or Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Offeror with respect to the Department's PHI under the resulting Contract.
  - i. Availability of Information to the Department: The Offeror shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Offeror to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Offeror shall provide such information

and documentation within a reasonable amount of time of its receipt of the request from the Department. The Offeror must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, the Offeror must provide the Department with access to the requested PHI in a readable electronic form and format.

- j. Amendment of the Department's PHI: The Offeror 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 Offeror shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Offeror.
- k. Internal Practices: The Offeror 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 Offeror 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 of the U.S. Department of Health and Human Services for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- l. Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Offeror, as a Business Associate, has violated a material term of this Section. Data return and destruction upon contract termination is governed by Appendix C, *Information Security Requirements*.
- m. Indemnification: Notwithstanding the provisions in Appendix B, *Standard Clauses for All Department Contracts*, the Offeror 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 section, Use and Disclosure of Protected Health Information, or from any acts or omissions related to this section by the Offeror or its employees, officers, subcontractors, agents, or other members of its workforce, without limitations. Accordingly, the Offeror 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 Offeror's acts or omissions hereunder. The Offeror's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.

n. Miscellaneous:

- i. Survival: The respective rights and obligations of Business Associate and the "covered entities" identified herein under HIPAA and as set forth in this Section, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, shall survive termination of the resulting Contract.
- ii. 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, as of their respective compliance dates.
- iii. Interpretation: Any ambiguity in the resulting Contract shall be resolved to permit covered entities to comply with HIPAA.

**4. Entire Contract**

The resulting Contract, including all appendices, constitutes the entire Contract 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 and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by OSC and subject to the termination provisions contained herein.