

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

and

MERATIVE US L.P.

**AGREEMENT NO. C000744**

This Agreement (“Agreement” or “Contract”) is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Empire State Plaza, Albany, NY, 12239 and Merative US L.P. (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 100 Phoenix Drive, Ann Arbor, MI 48108 The foregoing are collectively referred to as “the Parties.”

## WITNESSETH

**WHEREAS**, the Employee Benefits Division of the Department has the lead role for administering the New York State Health Insurance Program (NYSHIP); and

**WHEREAS**, the Department issued a Request for Proposal (“RFP”) entitled “New York State Health Insurance Program Decision Support System” on May 29, 2024, which was amended on July 11, 2024, to procure a comprehensive, integrated data management system that allows the Department to store, analyze, and generate business intelligence for the NYSHIP. That system, together with the Project Services required by the RFP, is hereinafter referred to as the Decision Support System (“DSS”); and

**WHEREAS**, the Contractor submitted a proposal in response to the RFP; and

**WHEREAS**, after thorough review and evaluation by NYS of proposals received in response to the RFP, the Contractor’s Proposal was selected as representing the best value to the State by a responsive and responsible bidder; and

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

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

## **SECTION I: DEFINITION OF TERMS**

The following terms when used in any part of the Contract shall have the meanings indicated below:

- 1.1 **Account Team** means a proactive, experienced Contractor account leader(s) and team(s) in place who are dedicated solely to the Project and who have the authority and expertise to coordinate the appropriate resources to implement and administer the Project.

- 1.2 **Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.3 **Agreement or Contract** means the Agreement with the Department to provide Project Services entered into between the Parties resultant from the RFP.
- 1.4 **Application** means a program or group of programs designed for end users.
- 1.5 **Authorization** means access privileges granted to a user, program, or process or the act of granting those privileges.
- 1.6 **Availability** means the extent to which information is operational, accessible, functional and usable upon demand by an authorized entity (e.g., a system or user).
- 1.7 **Benefit Plan** means 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.
- 1.8 **Benefit Program (BP)** means an indicator used in the NYS computerized enrollment system (NYBEAS), to specify the entire benefit package the individual is eligible for and typically includes specific health, dental, and vision coverage benefit definitions. The benefit program varies based on multiple factors such as, the individual's bargaining unit/union affiliation, employer status, (e.g. State Agency, Participating Agency, Participating Employer), and employment status, (e.g. active, retired).
- 1.9 **Breach** means acquiring of information by a person without valid authorization or through unauthorized acquisition.
- 1.10 **Business Associate** means the term as defined in the HIPAA implementing regulations at 45 CFR 160.103; the Contractor will be a Business Associate of the Department as a consequence of the Contractor's provision of Project Services on behalf of the Department within the context of the Contractor's performance under the Contract and that the Contractor's provision of Project Services will involve the disclosure to the Contractor of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the Contract.
- 1.11 **Business Day(s)** means every Monday through Friday, except for Days designated as Business Holidays by the Contractor and approved as such by the Department prior to January 1<sup>st</sup> of each Calendar Year.
- 1.12 **Business Holiday(s)** means Days designated by the Contractor as Business Holidays and approved as such by the Department prior to January 1<sup>st</sup> of each Calendar Year.
- 1.13 **Business Hours** means 8:00am – 5:00pm ET on a Business Day(s).

- 1.14 **Calendar Year/Annual** means a period of 12-months beginning with January 1<sup>st</sup> and ending with December 31<sup>st</sup>.
- 1.15 **Commissioner** means the Commissioner of the New York State Department of Civil Service.
- 1.16 **Confidential Information** is defined in Appendix B, *Standard Clauses For All Department Contracts* of the Contract, and includes any information, including demographic information, collected from an Employee that relates to the past, present or future physical or mental health or condition of an Employee or to the provision of medical or related health care to an Employee or that identifies the Employee or can be used to identify the Employee.
- 1.17 **Continental United States of America (CONUS)** means the 48 contiguous States, and the District of Columbia.
- 1.18 **Contract or Agreement** means the Contract entered into with the Department to provide Project Services, resultant from the RFP.
- 1.19 **Contractor or Selected Contractor** means the successful Contractor selected as a result of the evaluation of Contractors' Proposals submitted in response to the RFP, and who executes a Contract with the Department to provide Project Services.
- 1.20 **Contractor Staff** includes all officers, employees, agents, consultants and/or sub-contractors of the Contractor who shall perform Project Services under the Contract or have access to Data.
- 1.21 **Cloud Service(s)** means any Product or Service sold as an "as a service" offering and has one or more of the following characteristics:  
(a) User Data is transmitted, acted upon, or stored on equipment not owned by the User;  
(b) Allows a Contractor access to User Data from a location other than the User's premises; or  
(c) Allows a User access to data not owned by the User which access may or may not result in the collection of User Data. (see also Hosted Application)
- 1.22 **Data** means any information, analytic derivatives, formula, algorithms, or other content that the Department or State may provide to the Contractor pursuant to the Contract. Data includes, but is not limited to, any of the foregoing that the Department and/or Contractor (i) uploads to a Cloud Service, and/or (ii) creates and/or modifies using a Cloud Service.
- 1.23 **Data Provider(s)** means an entity that provides enrollment or claims data to the Contractor for loading into the DSS.
- 1.24 **Day(s)** means calendar Days unless otherwise noted.
- 1.25 **Decision Support System (DSS)** means the Contractor's comprehensive and integrated data management system solution that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence to be used by the Department and its designated Users.

- 1.26 **Deliverable** means all Services or products created during the performance of the Project Services hereunder or otherwise identified as a “Deliverable”. A Deliverable is a building block of an overall project. For the purposes of the Contract, a deliverable shall not be set forth as a status report, meeting attendance, a block of staff hours, or an invoice submission.
- 1.27 **Department or DCS** means the New York State Department of Civil Service.
- 1.28 **Designated Contact(s)** means the Department’s authorized person(s) which all communications during the Restricted Period related to the RFP, according to SFL 139-j and 139-k must be directed to.
- 1.29 **Disaster Recovery Plan (DRP)** means a plan for continued operation in the event of a situation which incapacitates part or all of an Contractor’s resources including, but not limited to, personnel, IT equipment, data records, and the building or other physical infrastructure.
- 1.30 **Employee** means “Employee” as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.31 **Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.
- 1.32 **ET** means prevailing Eastern Time.
- 1.33 **Event** means any observable occurrence in a system and/or network that may indicate than a Security Incident is occurring or has occurred.
- 1.34 **Firewall** means a system designed to prevent unauthorized access to or from a private network based upon a set of rules and other criteria. Firewalls can be implemented in either hardware or software, or a combination of both.
- 1.35 **Hardware** means tangible objects such as disks, disk drives, display screens, keyboards, printers and chips.
- 1.36 **HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.37 **Hosted Application** means a software as a service (SaaS) solution that allows users to execute and operate a software application entirely from the cloud on a recurring subscription basis.
- A Hosted Application is hosted and powered from the remote cloud infrastructure and are accessed globally through the Internet. It provides the same functionality as locally installed software but can be updated more easily.
- A Hosted Application may also be known as Internet-based application, Web application and online application.
- 1.38 **Implementation Plan** means a plan to include the evaluation and assessment activities as well as the development of a project plan to achieve Contract requirements and deliver the Project Services.

- 1.39 **Implementation Period** means the minimum period of time as established in the Contract from approval of the Contract by OSC to inception Project Services Start Date.
- 1.40 **Information** means any representation of facts, concepts or instructions created, stored (in temporary or permanent form), filed, produced or reproduced, regardless of the form or media. Information may include but is not limited to the data contained in reports, files, folders, memoranda, statements, examinations, transcripts, images or communications. Information may be electronic or hard copy.
- 1.41 **Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Project Services and incorporates as a part of the Contractor's Project Team. Key Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Agreement, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor's Account Team.
- 1.42 **Level 1 User** means an individual designated by the Department to have full access to all features/functions of the delivered DSS Solution and have the highest level of security permissions granted by the Department.
- 1.43 **Level 2 User** means an individual designated by the Department to have full access to all features/functions of the delivered DSS Solution but with restricted security permissions (e.g., the user will not have access to any individually identifying information).
- 1.44 **Licensed Product or Software** means software transferred upon the terms and conditions set forth in this Agreement. "Licensed Product" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).
- 1.45 **Licensee** means the New York State Department of Civil Service on behalf of the State of New York.
- 1.46 **Licensor** means a contractor who transfers rights in proprietary Product in accordance with the rights and obligations specified in the Contract.
- 1.47 **May** denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should."
- 1.48 **Mandatory** denotes the imperative in a contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Must" and "Shall."
- 1.49 **Must** denotes the imperative in a contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Shall" and "Mandatory."
- 1.50 **New York Benefits Eligibility and Accounting System (NYBEAS)** means the web-based enrollment system for the administration of employee benefits and the source of eligibility information for all Empire Plan and SEHP Members.

- 1.51 **New York State Health Insurance Program (NYSHIP)** means the health insurance program established by NYS to provide health insurance protection to employees, retirees and eligible dependents of New York State and Participating Agencies and Participating Employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through the Empire Plan, Health Maintenance Organizations (HMOs); and the Student Employee Health Plan (SEHP).
- 1.52 **NYS or State** means the State of New York.
- 1.53 **Contractor** means any responsible and eligible entity submitting a responsive Proposal to the RFP. It shall be understood that references to “Contractor” shall include said entity’s proposed Key Subcontractor or Affiliates, if any.
- 1.54 **OSC** means the New York State Office of the State Comptroller.
- 1.55 **Participating Agency (PA)** means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.56 **Participating Employer(s) (PE)** means a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.57 **Plan Year** means the period from January 1<sup>st</sup> to December 31<sup>st</sup> in each Plan Year, unless specified otherwise by the Department.
- 1.58 **Product** means a Deliverable under the Contract which may include commodities, services and/or technology. The term “Product” includes licensed software.
- 1.59 **Project Services** means the entire package of Decision Support System services to be provided by the Contractor in accordance with the Contract.
- 1.60 **Project Team** means the Contractor and those Key Subcontractors, if any, utilized by the Contractor who collectively undertake and perform the Project Services which are the subject of the Contract.
- 1.61 **Proposal or Submissions** means the Contractor’s Administrative Proposal, Technical Proposal, and Financial Proposal, including all responses to supplemental requests for clarification, information, or documentation, submitted during the course of the Procurement.
- 1.62 **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.



- 1.63 **Regulated Data** means Data that is subject to federal and state laws, regulations, policies, standards and guidelines regarding its protection, storage, access, use, handling, disclosure, and destruction.
- 1.64 **Retiree(s)** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.
- 1.65 **RFP or Procurement** means the Request for Proposals entitled “New York State Health Insurance Program Decision Support System.”
- 1.66 **Selected Contractor or Contractor** means the Contractor selected as a result of the evaluation of Contractor’s Proposals submitted in response to the RFP and who executes a Contract with the Department to provide Project Services.
- 1.67 **Security Incident** means a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. A Security Incident is also defined as any Event that adversely affects the confidentiality, integrity, or Availability of a System and its Data. See NYS ITS Policy NYS-S13-005 or its successor for additional information.
- 1.68 **Shall** denotes the imperative in a contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory.”
- 1.69 **Should** denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May.”
- 1.70 **Software** means computer instructions or data that can be stored electronically.
- 1.71 **State or NYS** means the State of New York.
- 1.72 **Subcontractor(s)** means any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with a Contractor.
- 1.73 **Transition Plan** means a written plan for transition, which outlines, at a minimum, the tasks, milestones, and deliverables associated with transitioning the Project to a new Contractor.
- 1.74 **Use and Disclosure** means that the Contractor may create, receive, maintain, access, transmit, use and/or disclose the Department’s Protected Health Information (PHI) solely in accordance with the terms of the Contract.
- 1.75 **User(s)** means an individual designated by the Department to utilize application programs provided by this Contractor under terms of this Contract resultant from this procurement.
- 1.76 **Will** denotes the imperative in a contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Shall.”

## **SECTION II: TERM**

The Contract will take effect and commence upon approval of the Contract by the New York State Office of the State Comptroller (OSC) (Effective Date). The term of the Contract shall include 5-years of Program Services commencing on April 1, 2026 (Project Services Start Date) and ending on March 31, 2031, subject to the termination provisions contained herein.

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

The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and if required, approved by the AG and the OSC.

## **SECTION III: INTEGRATION, MERGER, AND ORDER OF PRECEDENCE**

- 3.1 The Contract shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
  - 3.1.1 Appendix A, *Standard Clauses for New York State Contracts*, dated June 2023, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.2 Any Amendments to the body of the Contract;
  - 3.1.3 The body of the Contract (that portion preceding signatures);
  - 3.1.4 Appendix B, *Standard Clauses for all Department Contracts*, dated March 2024, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
  - 3.1.5 Appendix C, *New York State Department of Civil Service Information Security Requirements*, dated March 2024, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
  - 3.1.6 The following Attachments are incorporated by reference to the body of the Contract:
    - a. Attachment 1: Department' Official Responses to Contractors' Questions raised concerning the RFP, as amended July 8, 2024;
    - b. Attachment 2: The Amended Request for Proposal, released on May 29, 2024, entitled, "New York State Health Insurance Program Decision Support System," as amended July 11, 2024, except for Appendix A, *Standard Clauses for all New York State Contracts*, which incorporates



any appendices, attachments, exhibits, amendments, and updates to said RFP, including attachments thereto; and

c. Attachment 3: "Contract Fees," which consists all of the Contractor's Fees for DSS Project Services; and

d. Attachment 4, which consists of:

- i. Contractor's Technical Proposal dated August 1, 2024;
- ii. Contractor's Financial Proposal dated August 1, 2024; and
- iii. Contractor's Written Response to the Technical Management Interview, dated September 5, 2024. In the event of an inconsistency or conflict, the Contractor's Written Response to the Technical Management Interview, dated September 5, 2024 shall be given precedence.

e. Attachment 5: End User Terms, American Medical Association and American Dental Association for CPT codes

- 3.2 Only documents expressly enumerated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3 All prior agreements, representations, statements, negotiations, and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.4 The Department rejects all bid deviations or extraneous terms submitted by the Contractor not expressly accepted herein.
- 3.5 Nothing contained in this Contract, expressed, or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns any rights or remedies under or by reason of the Agreement.
- 3.6 The terms, provisions, representations, and warranties contained in the Contract shall survive performance hereunder.

#### **SECTION IV: MODIFICATIONS AND CLARIFICATIONS**

4.1 Appendix C, Section 11, Access Controls, subparagraph (4) is modified as follows:

**Contractor** Access reviews will be performed ~~at least quarterly~~ **no more than twice per Year** for privileged user accounts and at least annually for non- privileged user accounts no more than twice per Year for privileged user accounts and at least annually for non- privileged user accounts. The Department reserves the right to request the Contractor to perform an additional access review for non-privileged user accounts if there is evidence of inappropriate access.

4.2 Appendix C, Section 20, Cloud services subparagraph (b) is modified as follows:

b) The Contractor must follow the National Institute of Standards and Technology (NIST) 800-53 guidelines *or CSF guidelines if they map to NIST 800-53 controls*, for implementing system security and privacy controls and provide results of the Cloud Security Alliance Consensus Assessments Initiative Questionnaire (CAIQ) survey within 30 days of Contract approval, for the State's review. Thereafter on an annual basis, on the anniversary of the Contract Award, Contractor will provide, upon request of the State, a current CAIQ for the States review. The form is available at Cloud Security Alliance (<https://cloudsecurityalliance.org/>). The completion of this requirement is at the Contractor's expense with no additional cost to the State.

#### 4.3 END USER Terms for CPT and CDT Codes

Per Contract Section 6.6.7, the Contractor is required to "Conduct analysis based on medical and hospital service codes including CPT, DRG, and revenue codes." as part of their contractual obligations. The Contractor has indicated that the use of the CPT and the Code on Dental Procedures and Nomenclature (the CDT Code), which access is being provided under the resultant Contract through third parties, is copyrighted by, the American Medical Association (AMA) and American Dental Association (ADA), respectively. Contractor licenses the use of the codes and ability to store them in their database, as well as using them in their groupers, and the ability to allow the State end users to access the codes in Health Insights. The State's users are able to access the AMA and ADA codes when they run reports in Health Insights. When The State access's AMA I ADA codes in Health Insights, the Contractor is contractually obligated by the AMA and ADA to flow down end user terms to our clients.

The State agrees to the inclusion of the end user terms in Attachment 5 to the Contract, as last in the order of precedence of documents included in the Contract. The State acceptance of the AMA and ADA end user terms specific to the CPT and CPT/CDT does not modify the Contractor's obligation to provide CPT/CDT analysis regardless of the source of the codes and their relationship with their subcontractors. In addition, acceptance of these terms does not limit the sharing of the Contractor's work product with other State agencies as required under the terms of the RFP and resulting Contract.

## **SECTION V: LEGAL AUTHORITY TO PERFORM**

- 5.1 The Contractor represents that it possesses the legal authority to perform Project Services in accordance with the terms and conditions of this Contract.
- 5.2 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but is not limited to, the maintenance of an administrative organization capable of delivering Project Services in accordance with this Contract and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 5.3 The Contractor shall provide the Department with prompt notice in writing of the initiation of any legal action or suit which relates in any way to this Contract, or which may affect performance of the Contractor's duties under this Contract.

## **SECTION VI: PROJECT SERVICES**

- 6.1 The DSS Project Services to be delivered by the Contractor include, but are not limited to:
  - 6.1.1 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.
  - 6.1.2 A Contractor Hosted Application which allows Users Web Based access to the DSS.
  - 6.1.3 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* of the RFP.
  - 6.1.4 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.
  - 6.1.5 Consulting Support Services including analytical support and expert guidance in clinical and statistical data analysis.
  - 6.1.6 Contractor dedicated staff to support the DSS.
  - 6.1.7 Training for all Users of the DSS.
- 6.2 The Contractor will provide the following Project Services under this Contract:
  - 6.2.1 Account Team
    - a. The Contractor as of the Effective Date of this Contract must have 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 Contractor, at the Department's offices in Albany, NY for up to 2 key Contractor staff (see Section 6.3 below) during the Implementation Period and thereafter.

- 6.2.2 The Contractor must maintain an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the DSS during Implementation and Ongoing Operations.
- 6.2.3 The Contractor's 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 this Contract to the satisfaction of the Department.
- 6.2.4 The Contractor's Project Manager must 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 this Contract. The Project Manager must possess at least five (5) years of experience serving as a project manager.
- 6.2.5 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.
- 6.2.6 The Contractor must have the staff member, as included in the Contractor's submitted Attachment 8, *Biographical Sketch Form* of the Contractor's Technical Proposal, 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.
- 6.2.7 The Contractor must have the staff member, as included in the Contractor's submitted Attachment 8, *Biographical Sketch Form* of the Contractor's Technical Proposal, 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 Section 6.2.4 of this Contract. If the same staff person as in Section 6.2.6 of this Contract is assigned these responsibilities, the 20 hours in this section (6.2.7) are in addition to the 30 hours per week noted in Section 6.2.4 of this Contract.

### 6.3 Implementation Plan

The Department and Contractor will meet to finalize the Implementation Plan that was submitted as part of the Contractor's proposal to ensure that all implementation activities as required will be completed by the Project Services

Start Date, so the DSS is fully operational by the Project Services Start Date.

The Implementation Team must be composed of individuals knowledgeable in the requirements of a large client comparable to those of the Department. To assist the Contractor 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 Contract, Data Provider means an entity that provides enrollment or claims data to the Contractor for loading into the DSS.

If required by the Contractor, 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 Contractor'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 Contractor's onsite staff. The Department will not provide personal phone lines, administrative support staff, or parking privileges to the Contractor's onsite staff.

The finalized Implementation Plan will include the following:

- 6.3.1 Evaluation and assessment activities and development of a project plan to achieve the goals of the Project.
- 6.3.2 Details 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 Contract. For the purpose of this guarantee, the Contractor must on, or before, the Project Services Start Date have completed:
  - a. 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 Contract, (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 Contract).
  - b. Submission of their proposed data interface requirements to the Department for review and, once approved by the Department, supply all Data Providers with the Interface requirements;
  - c. 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;
  - d. Loading all Department specified data fields unless the Contractor 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 Contractor and discuss any potential issues that may impact this process.]

- e. 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 this Contract at no additional cost to the Department (see Section 6.5 of this Contract).

- f. Establishment of User support functions, (e.g., telephonic and online support); and
- g. All activities related to User Acceptance Testing and received Department sign-off on successful completion of those activities.

## 6.4 Data Management

6.4.1 The Contractor must provide a DSS which allows for, but not limited to;

- a. Data management and storage;
- b. Analytic capability to assist in plan and program evaluation;
- c. Support services, including benchmarking against accepted industry standards/norms and CMS rates for non-pharmacy claim data;
- d. Benefit design and modeling;
- e. Utilization analysis at provider and member levels;
- f. Both standard, pre-defined and Department defined report production;
- g. The capability to view data at a summary and/or granular claim level; and
- h. 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 Contractor must first make best effort(s) to resolve issues through direct contact with the Data



Provider.

- 6.4.2 The Contractor must provide a methodology satisfactory to the Department for archiving historical data and retrieving archived data, should the Department choose to utilize such services.
- 6.4.3 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.
- 6.4.4 The Contractor 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.
- 6.4.5 The Contractor 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.
- 6.4.6 The Contractor's DSS adheres, to the extent applicable, to Appendix C, *Information Security Requirements* of this Contract, which includes that all Confidential Information, including Protected Health Information (PHI) is not permitted to be hosted, maintained, stored, processed or otherwise accessed outside CONUS (Contiguous United States).
- 6.4.7 The Contractor 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 of the RFP.
- 6.4.8 The Contractor must have the ability to load data from additional providers should the Department add a new Data Provider.
- 6.4.9 The Contractor 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.
- 6.4.10 The Contractor must have a secure method to accept data during transmission that complies with applicable Federal and State laws, rules and regulations including, but not limited to Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Appendices A, B, and C included in this Contract.
- 6.4.11 The Contractor 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.

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

- a. Data field format incompatibility errors;
- b. Missing data;
- c. Field value edits;
- d. Data integrity validation appropriate to file specifications, (e.g., if summary totals are provided, the data must be reconciled to those totals);
- e. Data validation with external sources;
- f. Data calculation errors;
- g. Duplicate information within a single file;
- h. Submission of duplicate files; and
- i. Follow up with a Data Provider(s) to ensure the Data Provider corrects identified data errors and resubmits the corrected data.

6.4.13 The Contractor 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 of the RFP for information on formats, media, and frequencies of data updates by Data Providers. The data must be loaded in the DSS maintained by the Contractor.

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

6.4.15 Upon changes in NYSHIP Insurers and/or benefit administrators, the Contractor must provide its interface requirements to the new Insurer or benefit

administrator within thirty (30) Business Days of notification of the change by the Department.

## 6.5 User Requirements

“User” or “DSS User” means an individual designated by the Department to utilize application programs provided by the Contractor under the terms of this Contract.

6.5.1 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:

- a. 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; and
- b. 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).

6.5.2 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.

6.5.3 User training is required throughout the term of this Contract at no additional cost to the Department. The Contractor must provide a training plan, subject to approval of the Department, that is tailored to Level 1 and Level 2 Users and their assigned permissions.

6.5.4 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.

6.5.5 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.

6.5.6 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* of this Contract, for additional Accessibility requirements.

- 6.5.7 User support documentation must be provided to the Department as applicable to each User Level. The documentation must be provided for all Users, in downloadable electronic versions, preferably PDF. User support documentation must include, but not be limited to:
- a. User Manuals, quick reference guides;
  - b. Data Dictionary with applicable crosswalks to carrier data field names; and
  - c. Updates as appropriate to correspond to DSS upgrades/changes.
- 6.5.8 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 Contractor 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 Contractor.
- 6.5.9 The Contractor 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 Contractor's requirements are subject to Department approval.
- 6.5.10 The Contractor must provide authenticated connectivity to the Hosted Application using standard security protocols and encryption in compliance with Appendix C, *Information Security Requirements* of this Contract.

## 6.6 Analytical Capabilities

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, but not limited to:

- 6.6.1 Integrate data for all clinically related services for one patient for a discrete diagnostic condition, from the point the initial treatment is identified until treatment is completed, into an episode of care. The DSS must identify the codes (e.g. 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.
- 6.6.2 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.

- 6.6.3 Conduct analysis of individual member's claims experience through unique member identifiers provided in Empire Plan eligibility data.
- 6.6.4 Conduct analysis by member demographics such as Benefit Plan, Benefit Program, and Medicare status.
- a. 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;
  - b. 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); and
  - c. 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.
- 6.6.5 Perform analysis of provider billed, allowed and paid amounts, frequency and complexity of services rendered, geographic location, and other utilization and profiling indicators.
- 6.6.6 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.
- 6.6.7 Conduct analysis based on medical and hospital service codes including CPT, DRG, and revenue codes.
- 6.6.8 Allow analysis and evaluation of Empire Plan utilization based on provider participation status.
- 6.6.9 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.
- 6.6.10 Model and analyze potential benefit changes and evaluate cost containment strategies.

- 6.6.11 Conduct analysis based on the Contractor's unique and/or proprietary analytic categories and classifications to provide Users with enhanced insight and understanding of Plan costs, utilization, and outcome measures.
- 6.6.12 Review data at the claim level to ensure claims are paid in accordance with the Plan's benefit design.
- 6.6.13 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.

## 6.7 Query and Reporting Capabilities

The 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 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.

- 6.7.1 The DSS must provide a web-based query tool that allows designated Users to, at a minimum:
  - a. Access all claims and enrollment files and attributes;
  - b. Provide the capability to view claim information on both a "paid" and "incurred" basis;
  - c. Link data for analysis;
  - d. Select subsets of data fields and/or summary or statistical information;
  - e. 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:
    - i. 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;
    - ii. Utilize "built-in" analytics such as groupings for chronic conditions, preventive care measures, and identification of "avoidable admissions;"



- iii. Sort selected subsets of records or information based on multiple sort criteria; and
- iv. Save query design(s) for future reference and use.

6.7.2 The DSS must provide benchmarking capabilities that, at minimum:

- a. Use and provide full access to files containing standard industry accepted norms including, but not limited to, national, regional, state, and county as grouped by member and provider zip codes, for benchmarking analysis. In addition, the DSS must have the ability to create norms from internal data for comparison purposes; and
- b. Provide the capability for comparison of claim experience, enrollment experience, and provider practice/treatment patterns to the normative standards.

6.7.3 The DSS must have web-based reporting capabilities that provide Users the option:

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

6.7.4 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.

6.7.5 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:

- a. Utilization reports by enrollee, patient, and/or provider;
- b. Provider reports that include use and cost performance details for physicians, hospitals and networks;
- c. Monthly Paid Claims Updates;
- d. 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
- e. Quarterly and Annual Plan summary reports.

## 6.8 Consulting Support Services

Once all Implementation activities have been completed and the DSS has been

deemed fully operational and accepted by the Department, the Contractor must provide enhanced analytical assistance to Users at the Department's request. Such enhanced analytical assistance may include, but not be limited to, 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. Consulting Support Services include:

- 6.8.1 Up to 800 hours of consulting support services during the balance of the term of this Contract, at no additional cost to the State.
- 6.8.2 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 Contractor's dedicated staff member. 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:
  - a. 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;
  - b. Providing a custom report related to specialty drug pricing as billed by medical providers; and
  - c. Proving clinical insights, such as completing a study comparing medical outcomes between different groups.
- 6.8.3 The Contractor is expected to proactively provide recommendations of enhanced analytic projects or reports that may provide value. The 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 or services are to begin that would be charged against the balance of the 800 Consulting Support hours included in this Contract.
- 6.8.4 The Department may require Additional Consulting Support Services to cover analytical support and expert guidance in relation to projects that exceed the 800 Hours of Support Services included as part of the Contractor's Ongoing Monthly Fee. Such Additional Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing. If Additional Consulting Support Services are required, the Contractor will provide a quote for the services based on the number of estimated hours, title, and rates quoted in the Attachment 3, *Contract Fees* of this Contract. The Contractor's time to research or provide recommendations of enhancements will not be charged to or reduce the number of Consulting Hours. The Department will provide final written approval before any Additional Consulting Support Services are to begin. Additional Consulting Support Services may require an

amendment to the Contract, and any necessary approvals from the Office of the State Comptroller (OSC), if applicable.

## 6.9 DSS Operational Requirements

During the term of this Contract, the Contractor will provide the following functions and meet the following specific requirements to fulfill the Department's needs:

- 6.9.1 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 Contractor must agree to schedule outages for required maintenance or system upgrades outside of Normal Business Hours. Any unavoidable maintenance or system upgrades that cannot be scheduled outside of Normal Business Hours and must take place during those hours must receive prior approval from Director of the Department's Employee Benefits Division or his designee. The Contractor must provide the Department with, at a minimum, forty-eight (48) hour notice of all preventive maintenance and/or service interruption due to system upgrades or enhancements that may occur during Normal Business Hours.
- 6.9.2 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.
- 6.9.3 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 recurrence.
- 6.9.4 The Contractor must have physical safeguards in place that ensure Department data is secure from unauthorized persons and unauthorized access at all times. Technical safeguards must also be maintained to ensure that the data is stored in a secure manner and will be processed such that the confidentiality of the data is protected at all times. The Contractor must agree to provide both physical and technical security for this project in agreement with the policies, terms and conditions stated in the RFP, this Contract, and Appendices.
- 6.9.5 The Contractor must have existing corporate policies and procedures in place regarding ethics, privacy, and security pertaining to the protection of client data and information. At minimum, the Contractor must, for the protection of NYSHIP DSS data and activities, agree to apply policies and procedures equal to Department policies and procedures and equal to or better than the policies and procedures in existence for other clients. Such effective, comprehensive policies and procedures must be maintained for NYSHIP data and information in perpetuity.
- 6.9.6 The Contractor 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:

- a. All hardware, software, personnel, maintenance, storage, and related processes and procedures;
- b. All security updates for systems and components; and
- c. All required hardware and software upgrades and enhancements. Any hardware, component and/or software no longer supported by the hardware or software manufacturer cannot be utilized to support the DSS.

6.9.7 The Contractor must establish technically sound quality assurance standards, techniques and tools including, but not limited to, the following:

- a. Operational procedures;
- b. Data naming standards;
- c. Standards and techniques for controlling data synonyms, aliases and versions;
- d. Standards for data characteristics;
- e. Data design standards to ensure modularity, extensibility and flexibility, and to ensure the efficient and consistent use of the data;
- f. Standards for data searching and cross-referencing techniques;
- g. Standards to control data redundancy;
- h. Standards for data views;
- i. Standards for database administration; and
- j. Test-of-correctness and objective measurements of quality.

6.9.8 The Department requires that the Contractor have a thorough and detailed Disaster Recovery Plan (DRP) in place that is updated and tested at least annually. DRP means a plan for continued operation in the event of a situation which incapacitates part or all of the Contractor'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:

- a. If the DSS fails, the DSS shall be able to be restored to its last consistent state before the failure occurred. The Contractor must address any data loss resulting from a system failure;
- b. The DSS shall retain archived data and system records in accordance with State regulations, policies, and procedures;

- c. The DSS shall be designed assuming zero fault tolerance (i.e. no single physical or electronic point of failure);
- d. The DSS shall be backed up on a regularly scheduled basis; the schedule must be provided to the Department for review and approval;
- e. The DSS backup media shall be stored offsite in a controlled access, physically protected location;
- f. Scheduled maintenance shall be coordinated with the Department;
- g. The DSS shall be fully functional during Normal Business Hours except for scheduled outages for maintenance agreed to by the Department; and
- h. 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.

## 6.10 Security

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

6.10.1 The Contractor must commit to maintaining compliance with Appendix C, *Information Security Requirements* of this Contract, and all Federal and State privacy protection laws for the life of this Contract.

6.10.2 The Contractor must have a Written Information Security Program (WISP) for the DSS, acceptable to the Department in place on the effective date of this Contract, which complies with Appendix C, *Information Security Requirements* of this Contract, 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:

- a. Agree to the policies, terms and conditions stated in this Contract and Appendices;
- b. Allow for the configurable control of access to processes, reports, content and functions;
- c. Allow the definition of a robust, multi-level row security model;
- d. Allow the maintenance of a robust, multi-level row security model;
- e. Support configurable role-based security; and
- f. Support the encryption of data being communicated over a public

network.

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

## 6.11 Transition Period

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

The Contractor 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. 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 contractor.

- 6.11.1 The Contractor must 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.
- 6.11.2 At all times during the Transition Period, and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in this 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.
- 6.11.3 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 this Contract, or within forty-five (45) Days of notice of termination of this 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. The Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the Department. The Transition Plan must, at a minimum detail:

- a. The length of time proposed by the Contractor to complete the transition



of Project Services to the Department or a Successor Contractor, if any (Transition Period);

- b. The transmission of data, provision of data dictionaries representing Department-owned data, conversion tables/data mapping and related duties and functions necessary for a smooth transition of the Project Services to the Department or a Successor Contractor, if and as applicable; and
- c. 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 this Contract.

6.11.4 The Contractor 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 this 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 this 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 VII: PERFORMANCE GUARANTEES**

The Parties agree that the following guarantees and the corresponding reduction(s) in fee to the Contractor for failure to meet each guarantee shall be implemented. The Contractor acknowledges and agrees that failure to perform the Project Service features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article VII of this Contract and/or fails to make any reimbursement(s) of any such reduction(s) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in this Contract.

Performance related reduction amounts due from the Contractor to the Department shall be deducted from the next Ongoing Operations Monthly Fee Billing.

### **7.1 DSS Implementation Guarantee and Credit Amount**

- 7.1.1 Performance Guarantee: The Contractor guarantees that all of the Implementation requirements listed in Section 6.3 of this Contract will be in place on or before the Project Services Start Date.

7.1.2 Credit Amount: The Contractor will permanently forfeit [REDACTED] percent of the dollar amount of the Ongoing Operations Monthly Fee for each month, or part thereof, after the Project Services Start Date that all of the Implementation activities listed in Section 6.3 of this Contract remain incomplete.

## 7.2 DSS Update Guarantee and Credit Amount

7.2.1 Performance Guarantee: The Contractor guarantees 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.

7.2.2 Credit Amount: For each twenty-four (24) hour period, or part thereof, beyond Fifteen (15) Business Days from receipt of data from a Data Provider, in accordance with the submitted schedule, that the data is not loaded into the DSS and fully accessible to all Users, the Contractor will forfeit [REDACTED]

## 7.3 DSS Availability Guarantee and Credit Amount

7.3.1 Performance Guarantee: The Contractor guarantees 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.

7.3.2 Credit Amount: For each hour, or part thereof, in which 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, the Contractor shall forfeit [REDACTED]

## 7.4 DSS Transition Guarantee and Credit Amount

7.4.1 Performance Guarantee: The Contractor guarantees that all Transition Plan requirements outlined in Section 6.11 of this Contract will be completed within the required time frames to the satisfaction of the Department.

7.4.2 Credit Amount: For each Day, or part thereof, that the Transition Plan requirements are not met, the Contractor will forfeit [REDACTED]

# **SECTION VIII: PAYMENT FOR SERVICES**

## 8.1 Contract Fees

8.1.1 The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the AG and OSC.

#### 8.1.2 DSS Implementation Fee

The Contractor may submit an invoice for the DSS Implementation Fee, as proposed in the Attachment 3, *Contract Fees* of this Contract, upon completion of all Implementation activities and written acceptance by the Department that the DSS is fully operational, subject to any Implementation credits that may be due.

#### 8.1.3 Ongoing Operations Monthly Fee

Throughout the term of this Contract, the Contractor will be paid on a monthly basis, the Ongoing Operations Monthly Fee, based on the fees set forth in the Attachment 3, *Contract Fees* of this Contract, subject to the following conditions:

- a. The Contractor agrees that the Ongoing Operations Monthly Fee includes a minimum of 50 user licenses and 800-hours of consulting services and ongoing travel;
- b. 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 written acceptance by the Department that the DSS is fully operational is 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 pro-rata fee will be equal to the Ongoing Operations Monthly Fee divided by the total number of Calendar Days in said partial month (Per Diem rate) times the number of Calendar Days during said partial month during which the Contractor's proposed DSS is fully operational, assuming that the date the Contractor's DSS is fully operational is not later than the effective date of this Contract;
- c. This Fee shall include the delivery of Incremental Ongoing Training;
- d. This Fee shall include costs of staff as specified in Section 6.2 of this Contract; and
- e. The Ongoing Operations Monthly Fee shall be the sole and exclusive fee chargeable to and payable by the State under this Contract for the performance of Project Services 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).

#### 8.1.4 Consulting Support Services:

For any Consulting Support Services approved by the Department for amounts above the 800-hours included in this Contract, the Contractor will be paid on a monthly basis by multiplying the number of hours completed during the month by the Contractor's proposed rate in the Attachment 3, *Contract Fees* of this Contract.

- 8.2 The Contractor shall invoice the Department in accordance with the provisions set forth herein, for Project Services rendered, together with full supporting detail(s) to the State's satisfaction. Such invoice shall be submitted electronically to the NYS Office of General Services Business Services Center [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov) and DCS at [InvoiceApproval@cs.ny.gov](mailto:InvoiceApproval@cs.ny.gov)

##### 8.2.1 Such invoice must include:

- a. Name of the NYS Agency being billed;
- b. Name of the vendor and NYS Statewide Financial System (SFS) Vendor Number; and
- c. Contract number.

- 8.3 After the Department approves the Contractor's invoice, the Department shall process the Contractor's invoice to OSC for payment. OSC shall render payment for invoices under this Contract in accordance with ordinary State procedures and practices. The Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of Contract. The Contractor acknowledges that timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department, as applicable, from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of this Contract.

- 8.4 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 this 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 Department, and if deemed warranted by the Department, then said change shall require a formal amendment to this Contract and must be approved by the AG and the OSC.

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

## 8.6 Additional Fees

### 8.9.1 Additional User Fees

During the term of this 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 this Contract the total number of Users is not greater than 50, as per Section 6.5.1. If, during the Operations phase of this 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 this 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 Contractor will be reimbursed for additional users at the rates quoted in Attachment 3, *Contract Fees* of this Contract. Additional User Fees charged, if any, will be added as a separate line to the Contractor's DSS Ongoing Operations Monthly Fee invoice.

### 8.9.2 Data Provider Start-Up Fee

During the term of this Contract, following the completion and acceptance of Implementation activities by the Department, and once the DSS is fully operational, modifications to the Data Providers may take place at the Department's sole discretion. Presently, there are five (5) Data Providers. The Department does not assure that these Data Providers will remain unchanged during the term of this Contract. Updates from the Data Providers will be provided at a minimum frequency of once per month. The Contractor will be reimbursed for services rendered to add a new Data Provider at the associated one-time fixed all-inclusive rate as quoted in Attachment 3, *Contract Fees* of this Contract. No additional or incremental Ongoing Operations Monthly Fee is allowed resultant from the addition of a new Data Provider. If a new Data Provider is added, the Contractor shall 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.

#### 8.9.3 Additional Consulting Support Services Fees

During the term of this Contract, 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, the Contractor will be reimbursed for additional consulting support services. The Contractor will be reimbursed for such services at the rates quoted in Attachment 3, *Contract Fees* of this Contract. Such consulting support services are not to be considered as User Training, either initial or incremental ongoing.

#### 8.9.4 Additional Fees Data Analysis

During the Term of the Contract, the Contractor shall be reimbursed for all costs associated with data analysis tools utilized by DSS Users for the exportation and comparison of extensive data sets (using tools such as Python or equivalent analysis tools) at the one-time fixed all-inclusive rate specified in Attachment 3, *Contract Fees* of this Contract. **This reimbursement does not include the costs for a dedicated staff member who is to provide 20 hours per month of specialized support to the Department, as stipulated in Section 6.2.7 of this Contract.**

#### 8.9.5 Additional Fees CMS Rate Comparison

During the term of the Contract, Contractor will be reimbursed for services related to comparing Empire Plan payment rates (with the exception of pharmacy) to CMS payment rates. These Additional Fees for CMS Rate Comparison will be reimbursed at the associated one-time fixed all-inclusive rate specified in Attachment 3, *Contract Fees* of this Contract.

### **ARTICLE IX: INSURANCE REQUIREMENTS**

- 9.1 RFP Section 4.7 sets forth the applicable insurance requirements that must be maintained by the Contractor during the Contract term and is hereby incorporated and expressly made a part of this Contract as if fully set forth herein.

### **ARTICLE X: NOTICES**

- 10.1 The Contractor shall immediately notify the Department upon learning of any situation that can reasonably be expected to adversely affect the rendition of Project Services.
- 10.2 All notices permitted or required hereunder shall be in writing and shall be transmitted via certified or registered United States mail, return receipt requested; by hand delivery; by expedited delivery service; or by e-mail. Such notification must be sent to:



State of New York Department of Civil Service

Name: Dan Yanulavich  
Title: Director, Employee Benefits Division  
Address: [REDACTED]  
Telephone Number: [REDACTED]  
E-Mail Address: [REDACTED]  
With Additional Notice to:

Name: Eugene Sarfoh  
Title: General Counsel, NYS Department of Civil Service  
Address: [REDACTED]  
Telephone Number: [REDACTED]  
E-Mail Address: [REDACTED]

Merative US L.P.

Name: Alicia Sanchez  
Title: Enterprise Account Executive  
Address: [REDACTED]  
Telephone Number: [REDACTED]  
E-Mail Address: [REDACTED]

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

**SECTION XI: ADDITIONAL PROVISIONS**

- 12.1 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.
- 12.2 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.

## 12.3 Use and Disclosure of Protected Health Information:

12.3.1 The Contractor acknowledges that the Contractor 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 Contractor’s provision of Project Services on behalf of the Department within the context of the Contractor’s performance under the Contract and that the Contractor’s provision of Project Services will involve the disclosure to the Contractor of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Contractor’s disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the Contract. As such, the Contractor, as a Business Associate, will be required to comply with the provisions of this Section.

12.3.2 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 Contract, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department in the Contractor’s capacity as a Business Associate. All PHI received or created by the Contractor in the Contractor’s capacity as a Business Associate and as a consequence of its performance under the Contract is referred to herein collectively as “Department’s PHI.”

12.3.3 The Contractor 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 Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that:

- a. The Contractor is a HIPAA “Business Associate” of the group health plans identified herein as “covered entities” as a consequence of the Contractor’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Contractor’s performance under the Contract, and that the Contractor’s provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor’s disclosure to

the Department of individually identifiable health information as a consequence of the services performed under the Contract; and

- b. Contactor is a “covered entity” under HIPAA in connection with its provision of certain services under the Contract. To the extent Contractor acts as a HIPAA “Business Associate” of the group health plans identified as “covered entities”, the Contractor shall adhere to the requirements as set forth herein. Contractor is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Contractor to perform the services hereunder and for the use and disclosure of information, including the Department’s PHI, as permitted under the Contract.

12.3.4 Permitted Uses and Disclosures of the Department’s PHI: The Contractor may create, receive, maintain, access, transmit, use, and/or disclose the Department’s PHI solely in accordance with the terms of the Contract. In addition, the Contractor 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 Contractor may use and disclose the Department’s PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor’s proper management and administration or to carry out the Contractor’s legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Contractor may use and/or disclose the Department’s PHI, as appropriate:

- a. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
- b. 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 Contractor only as agreed to in writing by the Department and permitted by law.

12.3.5 Nondisclosure of the Department’s PHI: The Contractor shall not create, receive, maintain, access, transmit, use, or further disclose the Department’s PHI otherwise than as permitted or required by the Contract or as otherwise required by law. The Contractor 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.

12.3.6 Safeguards: The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department’s PHI otherwise than as

provided for in the Contract. The Contractor 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 Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, accesses, or that it transmits on behalf of the Department pursuant to the 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.

12.3.7 Breach Notification: In addition to the Disclosure of Breach requirements specified in Appendix B, *Standard Clauses for All Department Contracts* of this Contract the following provisions shall apply:

- a. Reporting: The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by the Contract, of which the Contractor 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 Contract is presumed to be a breach unless the Contractor demonstrates that there is a low probability that Department's PHI has been compromised based on the Contractor's risk assessment of at least the following factors:
  - i. The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
  - ii. The unauthorized person who used Department's PHI or to whom the disclosure was made;
  - iii. Whether Department's PHI was actually acquired or viewed; and
  - iv. The extent to which the risk to Department's PHI has been mitigated.
- b. Required Information: In addition to the information required in Appendix B, *Standard Clauses for All Department Contracts* of this Contract, Disclosure of Breach, the Contractor shall provide the following information to the Department within the time period identified in Appendix B, *Standard Clauses for All Department Contracts* of this Contract, Disclosure of Breach, except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances,

the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty Calendar Days from the date of discovery:

- i. The date of the breach incident;
  - ii. The date of the discovery of the breach;
  - iii. A brief description of what happened;
  - iv. A description of the types of unsecured PHI that were involved;
  - v. Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
  - vi. A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
  - vii. Any other details necessary to complete an assessment of the risk of harm to the individual.
- c. The Contractor 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.
  - d. The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
  - e. The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by the Contract.

12.3.8 Associate's Agents: The Contractor 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 Contractor 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 Contractor with respect to the Department's PHI under the Contract.

12.3.9 Availability of Information to the Department: The Contractor shall make available to the Department such information and documentation as the

Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Contractor 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 Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.

- 12.3.10 Amendment of the Department's PHI: The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Contractor.
- 12.3.11 Internal Practices: The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- 12.3.12 Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a Business Associate, has violated a material term of this Section. Data return and destruction upon contract termination is governed by Appendix C, *Information Security Requirements* of this Contract.
- 12.3.13 Indemnification: Notwithstanding the provisions in Appendix B, *Standard Clauses for All Department Contracts* of this Contract, the Contractor agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or omissions related to this section by the Contractor or its employees, officers, subcontractors,

agents, or other members of its workforce, without limitations. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the Contractor's acts or omissions hereunder. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.

#### 12.3.14 Miscellaneous:

- a. 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 Contract.
- b. 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; and
- c. Interpretation: Any ambiguity in the Contract shall be resolved to permit covered entities to comply with HIPAA.

## **SECTION XII: ENTIRE AGREEMENT**

- 12.1 The 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.

**(Remainder of this page intentionally left blank)**



**IN WITNESS WHEREOF**, the Parties hereto have signed this AGREEMENT on the day and year appearing opposite their respective signatures.

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

Contractor Certification: By signing I certify my express authority to sign on behalf of myself, my company, or other entity and full knowledge and acceptance of this Agreement and all appendices. By signing, I affirm my understanding of and agreement to comply with the Department's procedures relative to the Procurement Lobbying Law as required by State Finance Law §139-j and §139-k.

**NEW YORK STATE  
DEPARTMENT OF CIVIL SERVICE**

**MERATIVE US L.P.**

FEIN: 881430661

Name:

Rebecca A. Corso

Title:

Executive Deputy Commissioner

By:

Date:

11/21/24

Name:

Alicia Sanchez

Title:

[Redacted]

By:

Date:

11/8/2024

Approved as to form:

Letitia James  
ATTORNEY GENERAL

Approved:

Thomas P. DiNapoli  
STATE COMPTROLLER

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

|  |
|--|
| <b>APPROVED</b>  |
| DEPT. OF AUDIT & CONTROL   |
| <br>Feb 13 2025<br>Randolph McConnach<br><br>FOR THE STATE COMPTROLLER |

**CORPORATION ACKNOWLEDGMENT**

**STATE OF** \_\_\_\_\_ }

**COUNTY OF** \_\_\_\_\_ } **SS.:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2024, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she/they maintains an office at Town of \_\_\_\_\_ County of \_\_\_\_\_, State of \_\_\_\_\_; and further that: he/she/they is (are) the \_\_\_\_\_ of \_\_\_\_\_,

the corporation described in and which executed the above instrument; that, by authority of the Board of Directors of said corporation, he/she/they is (are) authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

SEE ATTACHED FOR NOTARY PUBLIC

**Notary Public:** \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

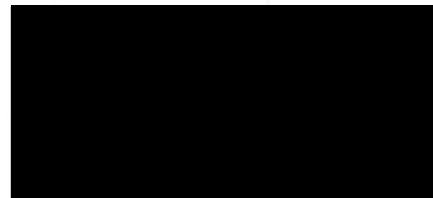
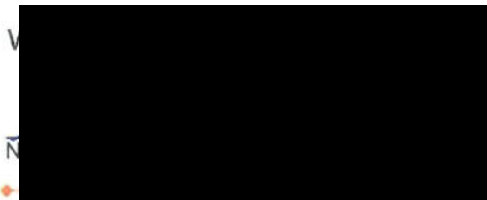
State of California }

County of Sacramento }

On 11-8-2024 before me, S. Darling - Notary Public,  
(Here insert name and title of the officer)

personally appeared Alicia Sanchez,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



(Notary Public Seal)

## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Contract Number: C000744

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 41 Document Date 11-8-24

### CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual(s)  
☒ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

## ATTACHMENT 1

# REQUEST FOR PROPOSAL - Amended 7/8/2024

ENTITLED:

## “New York State Health Insurance Program Decision Support System (DSS)”

### Official Responses to Offerors' Questions

| Question Number | RFP Page # | Section Reference | Question  | Response   |
|-----------------|------------|-------------------|---|--|
| 1               | 8-9        | RFP Section 1.5   | Do both the prime offeror AND any subcontractors have to meet ALL Minimum Offeror Eligibility Requirements? | <p>Per Section 1.5, <i>Minimum Offeror Eligibility Requirements</i> of the amended RFP, Offeror means any responsible and eligible entity submitting a responsive Proposal to the amended RFP. It shall be understood that references in the amended RFP to “Offeror” shall include said entity’s proposed Key Subcontractor or Affiliates, if any.</p> <p><b>The Offeror, either directly or through its subcontractor(s), must meet all Minimum Offeror Eligibility Requirements as specified in Section 1.5 of the amended RFP.</b> The Selected Offeror will remain responsible for all duties and responsibilities under the Contract resultant from the amended RFP regardless of subcontractor participation.</p> |
| 2               | 62         | RFP Section 5.5   | How is this different than the Acceptance Testing Plan which must include training?                         | <p>Amended RFP Section 5.5.3, requires the Offeror to include in their Technical Proposal details regarding 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 identifying the plan’s goals and expected outcomes regarding training during the term of the Contract. Section 3.2.1.c. of the amended RFP requires the Offeror to provide a detailed Acceptance Testing Plan</p>   |

|   |     |   |   |   |
|---|-----|---|---|---|
|   |     |   |   | (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 amended RFP. 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 | N/A | RFP<br>Section 2                              | Please confirm physical address and recommended courier for mailing hard copies.  | All hard copy materials should be mailed to the address specified in Section 2.1.1, <i>Designated Contact</i> of the amended RFP:<br><br><b>Ben Leavitt</b><br>New York State Department of Civil Service<br>Attn: Office of Financial Administration<br>Empire State Plaza, Swan Street Building, Core 1<br>Albany, New York 12239   |
| 4 | 29  | RFP<br>Section 3.2,<br>Implementation<br>Plan | Can you confirm that all administrative deliverables, such as the Acceptance Testing Plan (ATP), are due following the start of the contract? | Not confirmed. Per Section 5.3.2 of the amended RFP, the Offeror must submit as part of their Technical proposal 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 amended RFP.  |
| 5 | 2   | Appendix C,<br>Section 3.2,                   | Can notification be conducted via SOC 2 Type 2 audit results?   | Yes, if the Description Criteria is included in SOC 2 Type 2 audit results.   |
| 6 | 12  | Appendix C,<br>Section 11.4                   | Merative does both Privilege and Non-Privilege accounts twice a year. Is that acceptable?   | Access reviews performed twice a year would be acceptable to the Department as long as it does not materially impact the security of the system. Offerors should submit a Non-material bid deviation using Attachment 6 of the amended RFP for the State's consideration.   |

|    |    |  |   |  |
|----|----|--|---|--|
| 7  | 15 | Appendix C,<br>Section 20.1b                         | Merative follows NIST CSF guidelines; in addition, Health Insights follows HITRUST controls. Each framework covers and can be mapped to NIST 800-53 controls. Does this approach cover this requirement?  | This is acceptable as long as they can be mapped to 800-53.  |
| 8  | 18 | Appendix B,<br>31.1.a<br>Termination for Convenience | Will Contractor be reimbursed for expenses incurred prior to the termination notice necessary to support future services, occurring after the term date?  | Without knowing the specifics regarding the expenses and the future service being referenced, the State cannot respond directly to the question. With that said, if the State terminates the Contract pursuant to Appendix B, Section 31.1.a, Termination for Convenience, “ ... the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.”   |
| 9  | 80 | RFP<br>Section 8, 3.c.2<br>Additional Provisions     | Would you accept a modification to this requirement, so that this requirement is placed on the Health Plan or the State, as we are collecting data from the state and the insurers, not from individuals?   | As the resulting Contractor will be receiving data from the State and the State’s Business Associates (i.e., Plan administrators) and will not be collecting data directly from Members or Enrollees, they will not be responsible to obtain consents and/or authorizations from individual members.   |
| 10 | 7  | Appendix B,<br>Section 17                            | Can the state please specify the types of information that will be needed as part of a financial audit (e.g., audited financial statements)?  | A financial audit would examine the financial transactions, records, and other documentary evidence relating to the Contractor’s delivery of Project Services to determine the accuracy and fairness of items on the Contractor’s submission of claims for payment under the Contract.   |
| 11 | 6  | Appendix B,<br>Section 13                            | Certain third-party content providers require flow-down terms to be included in our customer contracts (e.g., American Medical Association & American Dental Association), adding the provider as a 3rd party beneficiary. Will the Department accept these requirements as part of our contract? | No, the State will not accept Offerors content providers as third-party beneficiaries of the resultant Contract. In addition, there is insufficient information provided with regard to additional requirements that may impact the use of third-party content. If the Offeror requires flow down provisions in the resulting Contract, they should be submitted using Attachment 6, <i>Non-Material Deviations Template</i> of the amended RFP for the State’s consideration. |
| 12 | 8  | Appendix B,<br>Section 19                            | Subcontracting: Do you have any flexibility to remove or modify this requirement?   | Insufficient information is provided to respond to the question regarding modifications to this section. Non-material bid deviations can be submitted using the  |



|    |    |  |  |   |
|----|----|--|--|---|
|    |    |  |  | Attachment 6, <i>Non-Material Deviations Template</i> of the amended RFP for the State's consideration.   |
| 13 | 11 | Appendix B, Section 23                   | Dispute Resolution: Is the Department open to alternative dispute resolution arrangements?   | Insufficient information is provided to respond to the question regarding modifications to this section. Non-material bid deviations can be submitted using the Attachment 6, <i>Non-Material Deviations Template</i> of the amended RFP for the State's consideration.   |
| 14 | 14 | Appendix B, Section 27                   | We are providing a Commercial-Off-the Shelf (COTS) product designed to be implemented and configured for each customer through the use of parameter settings and data tables controlled by the COTS software. Our offering does not constitute "work for hire" where we would develop custom software for Client. Will you accept modification distinguishing between deliverables created specifically for the client versus existing Contractor intellectual property? | Amended RFP Appendix B, Section 27.b addresses ownership of existing Contractor Software: "Title and ownership to existing software delivered by Contractor under the Contract that is normally commercially distributed by the Contractor or a third-party proprietary owner, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products shall remain with Contractor or the third party." |
| 15 | 84 | RFP Section 8, 3.m Additional Provisions | Will the Department accept an appropriate cap on the indemnity?  | With regard to amended RFP Section 8.3(m), the State will not accept a cap on indemnity.  |
| 16 | 6  | Appendix B, Section 16                   | Can you please confirm if this requirement is for employment-related taxes and taxes on Merative's income?   | Appendix B, Section 16(a) is regarding purchases made by the Department on behalf of the State of New York.<br><br>Appendix B, Section 16(b), is with regard to Contractor's liability and responsibility for social security, unemployment insurance, workers' compensation and <b>other taxes and obligations</b> to which Contractor may be subject to by law.   |
| 17 | 80 | RFP Section 3.d                          | Can we please add the following language to the RFP as iii under 3.d, "Department either has or has obtained the appropriate rights and  | The Department declines to add this language.   |

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|    |    |   | <p>licenses to grant to Contractor both during the term of this Solution Description and thereafter the following with respect to Department Content: Department hereby grants to Contractor the right to de-identify Department Content and grants a perpetual, irrevocable, nonexclusive, royalty-free, nontransferable license to use, disclose, distribute, license, copy, display and demonstrate all Department Content, in a de-identified format for inclusion in Contractors Book-of-Business databases. For the purpose of the preceding sentence, the term “de-identified” shall mean information that satisfies the requirements set forth in 45 CFR Section 164.514(b), as amended. In connection with use of the Department Content in its Book of Business databases, Contractor agrees to follow the confidentiality provisions set forth herein. Contractor certifies that it is in compliance with applicable laws, with respect to privacy and data security relative to Department Content and that it has implemented and currently maintains an effective information security program to protect Department Content, which program includes administrative, technical, and physical safeguards.”</p> |   |
| 18 | 35 | RFP<br>Section 3.6,<br>Query &<br>Reporting | <p>Could the state please describe what adhoc query/reporting tools/solutions it currently uses to support its DSS activities?</p>  | <p>The Department’s DSS activities are supported by the incumbent’s Merative Advantage Suite Ad Hoc Report Writer and IBM’s Data Science Connect.</p> |

|    |     | Capabilities  |  |   |
|----|-----|---|--|---|
| 19 | 66  | RFP<br>Section 5.9,<br>DSS<br>Operational<br>Requirements | Requirement 10 appears to reference cloud service-related details including security. This requirement mentions FedRAMP, could the state clarify whether FedRAMP authorization or compliance is a requirement? Additionally, while requirement 10 mentions FedRAMP (and other standards) it does not ask specifically about CSA (Cloud Security Alliance) which is referenced in Appendix C Page 16, could the state provide clarification on any differences between the requirements listed here and those listed in Appendix C? | <p>FedRAMP compliance or authorization would comply with this requirement.</p> <p>FedRAMP is a set of security and privacy controls for cloud security. The CSA guidelines are more of best practices.</p> <p>CSA provides the Cloud Security Alliance Consensus Assessments Initiative Questionnaire (CAIQ) that is mentioned in Appendix C Page 16. This is to document security controls implemented in the proposed solution.</p> |
| 20 | 66  | RFP<br>Section 5.9,<br>DSS<br>Operational<br>Requirements | Is the reference to FedRAMP, referring to the Cloud environment only or also the solution deployed in the Cloud environment? For example, if a Contractor can deploy in a GovCloud (Azure/AWS), but the solution is not yet FedRAMP authorized, will this be acceptable?   | Yes, compliance with this requirement would be met if the cloud environment was FedRamp compliant.  |
| 21 | N/A | Exhibits 5-11<br>Layouts                                  | Is there a data dictionary available for the layouts in the Exhibits 5-11?   | No, the Empire Plan carriers consider this information proprietary. Upon contract award, it would be the responsibility of the awarded Contractor to obtain this information directly from the Empire Plan carriers including, if required, execution of any agreements, as required, to obtain this information.   |
| 22 | N/A | Exhibit 4,<br>Record Counts<br>and Sizes                  | Within this Exhibit the sizes referenced in the summary to the right are Megabyte (MB), but the column heading for each table references Gigabyte (GB), can you please confirm which is correct (MB or GB)?  | <b>Gigabyte</b> Megabytes is the correct reference. See amended RFP Exhibits 2, 3, and 4.   |

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| 23 | 29  | Data Management                                | Please provide the expectation from the Department on the number of environments that must be maintained (Development, Testing, and Production, etc.).   | Section 3.3 Data Management of the amended RFP does not specify the number of environments that must be maintained by the Offeror.  |
| 24 | 66  | RFP Section 5.9, DSS Operational Requirements  | If we are deployed on a cloud, does the Department wish to deploy on their Cloud? If not, is the Department willing to accept cloud consumption costs to be passed through? If not, where should the cloud costs be included in the Financial Proposal, and will they be excluded from the evaluation?   | The Decision Support System will not be deployed in a State cloud environment. The resulting Contractor is responsible for all costs associated with the deployment and ongoing costs associated with the maintenance and operation of their DSS solution including the hosting in a cloud environment. Attachment 18, Ongoing Operations Monthly Fee Form, is where Offerors would submit their proposed Ongoing Operations Monthly Fee which is inclusive of all operational costs. |
| 25 | N/A | Attachment 22, Data Analysis Form              | Is there an average expectation of the volume size and frequency of the data extracting Python?  | Please refer to the amended RFP Exhibit 1, <i>Empire Plan Number of Paid Services and Claims</i> , for claims and record counts categorized by year, and broken down by each of the (4) Empire Plan program administrators.   |
| 26 | 78  | RFP Section 7.3, Financial Proposal Evaluation | The evaluation of the Financial Proposal accounts for the cost of the Implementation and Ongoing Operations. Given the incumbent will be significantly favored in this evaluation since they will have little to no implementation costs, would the Department consider providing a method to balance the scoring for non-incumbent proposers? | Per Section 7.5 of the amended RFP, the bid proposals will be evaluated based on Best Value. The proposal that optimizes quality, cost, and efficiency among responsive and responsible Offerors shall be selected for award.   |
| 27 | 13  | RFP Section 2.1.6, Submission of Proposals     | Would the Department consider an electronic only submission of the proposal organized in the manner provided (Technical, Administrative, Financial, and Master) in order to conserve paper?  | No, Offerors must strictly adhere to the instructions indicated in Section 2.1.6 of the amended RFP, <i>Submission of Proposals</i> . However, Proposals and Attachments may be printed double-sided.   |
| 28 | N/A | Appendix C, Section 20.1 Cloud Services        | We would like to confirm with the state that either Cloud Security Alliance standards or FedRAMP are required  | Cloud Security Alliance standards and FedRAMP leverage the NIST 800-53 guidelines for security and privacy controls for federal information systems. Either   |

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|    |     |  | but not both?  | Cloud Security Alliance standards or FedRAMP must be complied with. In addition, Section 20.1b of the amended RFP indicates that NIST 800-53 guidelines must be followed.   |
| 29 | N/A | Appendix C, Section 20.1 Cloud Services                    | For CSA is there a requirement that the vendor be a CSA Trusted provider or participate in the STAR registry (if not required to be a trusted provider) and if so which level of assurance? STAR level 1 or level 2?   | There was no requirement for the vendor be a CSA Trusted provider or participate in the STAR registry, but the CAIQ is required, which is the basis for STAR level 1 membership.  |
| 30 | N/A | Appendix C, Section 18 Payment Card Industry Data Security | Has the current vendor for NYSHIP DSS performed project services to or on behalf of the department where they were acting as a merchant or payment card processor as defined by PCI DSS standards? If so, could the state please describe the type of services which were provided? If not, could the state describe any potential expectations they have for such services in the future? | No, the current vendor for NYSHIP DSS does not provide project services to or on behalf of the department where they were acting as a merchant or payment card processor as defined by PCI DSS standards. There is no expectation for the term of the resulting contract where PCI DSS standards would be required, but if so, compliance with PCI DSS standards would be required.   |
| 31 | N/A | RFP Section 3.3.1, Duties & Responsibilities               | Does the state anticipate loading any other types/sources of data other than "additional providers?" For example, state employee job/role data and/or socio-economic data?   | As NYS systems are updated, there could be changes to the NYSHIP Eligibility Layout in amended RFP Exhibit 5. However, at this time, the State does not anticipate loading any additional data fields related to eligibility.   |
| 32 | 33  | RFP Section 3.5, Analytical Capabilities                   | Could the state please describe what analytical tools/solutions it currently uses to support its DSS activities ?  | See the response to Question 18.  |
| 33 | 33  | RFP Section 3.5, Analytical Capabilities                   | Are there current reports or dashboards currently in use that the Department would like recreated. in the new DSS during implementation? If so, please provide the number of reports/dashboards. and a description of these.   | There are currently 10 reports ran on a monthly basis; please see bulleted list below. The Department will determine during the Implementation Period if some or all of these reports will continue to be needed and require recreation as part of the implementation phase. In addition, amended RFP Section 3.6.1.e provides examples of reports the Department may require as part |

|    |    |  |   |   |
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|    |    |  |   | <p>of the DSS.</p> <p>The current list is:</p> <ul style="list-style-type: none"> <li>• COVID 19 Reporting</li> <li>• Monthly Drug Reports</li> <li>• Monthly Drug Reports Medicare vs. Non-Medicare</li> <li>• Monthly Empire Plan Key Trends</li> <li>• Monthly Early Retirees Empire Plan Key Trends</li> <li>• Monthly Overview Total Empire Plan</li> <li>• Monthly Overview Active and Early Retiree</li> <li>• Monthly Carelton Out of Network (OON) Dashboard</li> <li>• Monthly UHC OON Dashboard</li> <li>• Monthly Paid Claims Update</li> </ul> <p>Amended RFP Sections 3.6.1.c and 3.6.1.d advise of required User reporting capabilities, including the capability for Users to define/produce reports required to meet Users needs for a particular project or analysis.</p> |
| 34 | 33 | RFP Section 3.5, Analytical Capabilities | Could the state provide information on any current systems that would require integration with the DSS? | There is no requirement for the proposed DSS to be integrated with a current State system.  |
| 35 | 6  | General                                  | Who is currently managing and operating the existing DSS?   | Merative, US, LP is the current contractor for the New York State Health Insurance Program Decision Support System (DSS).   |
| 36 | 6  | General                                  | What type of data visualization tool - QuickSight, PowerBI, Tableau?                                    | The amended RFP does not specify the application the resulting Contractor must use to address the visualization functionality requirements in the amended RFP.  |
| 37 | 6  | General                                  | How many reports and dashboards are there?  | Please see answer to Question 33.   |
| 38 | 6  | General                                  | How many users currently use the DSS?   | The DSS is currently utilized by approximately 47 total Users within the Department of Civil Service (DCS), The Office of the New York State Comptroller (OSC), The New York State Division of the Budget (DOB), The New York State Department of Financial Services (DFS), and The New York State Office of Employee Relations (OER).  |

|    |   |         |  |   |
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|    |   |         |  | <p>Additionally, data analysis tools (Data Science Connect), are utilized by 9 total users within the Department of Civil Service and The Office of the New York State Comptroller.</p>   |
| 39 | 6 | General | <p>How many users will need to be trained?</p> | <p>Per Section 3 of the amended RFP, the Offeror must complete training for <u>all</u> DSS Users to ensure designated staff are familiar with the functionality of the delivered DSS.</p> <p>The selected Offeror will be responsible for 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.</p> <p>Occasionally, User training will be required throughout the term of the Contract resultant from the amended RFP at no additional cost to the Department. Additionally, the selected Offeror will be responsible for training 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.</p> |



PLACEHOLDER  
ATTACHMENT 2

## ATTACHMENT 3



Department of  
Civil Service

**"Contract Fees"**  
**NYSHIP Decision Support System**  
**Contract #C000744**

### Implementation Fee:

Fixed Implementation Fee

TAS

Merative

LW

DCS

### Ongoing Operations Monthly Fee:

|              | Year 1* | Year 2 | Year 3 | Year 4 | Year 5 |
|--------------|---------|--------|--------|--------|--------|
| Monthly Fee: |         |        |        |        |        |

\* First 12-Month Period Following Implementation

### Additional User Fees:

*Incremental User Fees (per user/per month cost)*

| Range of Users | Level 1 | Level 2 |
|----------------|---------|---------|
| 0 - 5          | N/A     | N/A     |
| 6 - 10         | N/A     | N/A     |
| 11 - 15        | N/A     | N/A     |
| 16 - 20        | N/A     | N/A     |
| 21 - 30        | N/A     | N/A     |
| 31 - 50        | N/A     | N/A     |
| 51 - 55        |         |         |
| 56 - 60        |         |         |
| 60 - 65        |         |         |
| 70 or more     |         |         |

### Data Provider Start-Up Fee:

Per Data Provider Start-Up Fee:

## ATTACHMENT 3



Department of  
Civil Service

**"Contract Fees"**  
**NYSHIP Decision Support System**  
**Contract #C000744**

### Additional Consulting Support Services Hourly Rates by Title:

| Position/Title          | Hourly Rate |
|-------------------------|-------------|
| Director                |             |
| Project Manager         |             |
| Senior Consultant       |             |
| Consultants             |             |
| Data Manager/Programmer |             |
| Analysts                |             |

### Additional Fees - Data Analysis:

|             | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|-------------|--------|--------|--------|--------|--------|
| Annual Fee: |        |        |        |        |        |

### Additional Fees - CMS Rate Comparison:

|             | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|-------------|--------|--------|--------|--------|--------|
| Annual Fee: |        |        |        |        |        |

PLACEHOLDER  
ATTACHMENT 4

## ATTACHMENT 5

Amended  
12-12-2024

## ATTACHMENT 5



Department of  
Civil Service

**"End User Terms"**  
**NYSHIP Decision Support System**  
**Contract #C000744**

### END USER TERMS

**American Medical Association and American Dental Association for CPT codes**

#### **American Medical Association CPT Code Terms:**

Company is Authorized by the American Medical Association ("AMA") to distribute and sublicense Licensed Content (as defined below) as part of the SaaS, provided that Client is bound by certain terms and conditions. Client's rights to use the Licensed Content terminates if Client fails to comply with any of the material terms and conditions thereof. The terms and conditions that apply to the SaaS generally also apply to the Licensed Content. The following are the additional terms and conditions that apply to the Licensed Content:

**(a) Definitions:**

i. "Licensed Content" means the Current Procedural Terminology ("CPT®") Data File, which means content from the print publication Current procedural Terminology, Fourth Edition and CPT Standard data file published by the AMA.

ii. "Territory " is defined as the following: Algeria, Argentina, Australia, Bahamas, Bahrain, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Federated States of Micronesia, Finland, France, Germany, Greece, Guam, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea (South Korea), Kuwait, Lebanon, Mexico, New Zealand, Nigeria, Northern Mariana Islands, Norway, Panama, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States and U.S. Virgin Islands.

(b) The Licensed Content is copyrighted by the American Medical Association and CPT is a registered trademark of the AMA.

(c) Company, as a party to a license agreement with the AMA, is authorized to grant Client a limited, non-exclusive, non-transferable, non-sublicensable license for Client to use Licensed Content in SaaS, for the sole purpose of internal use by Client within the Territory. The sublicense granted hereunder shall automatically terminate upon termination of the Agreement between Company and AMA., unless prior written consent of AMA is obtained by Company or a direct license between Client and AMA is entered.

(d) The provision of updated Licensed Content in the SaaS is dependent on a continuing contractual relationship between Company and the AMA.

(e) Client is prohibited from making Licensed Content publicly available, creating

## ATTACHMENT 5



Department of  
Civil Service

### "End User Terms" NYSHIP Decision Support System Contract #C000744

derivative works (including translating), transferring, selling, leasing, licensing, or otherwise making available to any unauthorized party the SaaS, or a copy or portion of Licensed Content to any unauthorized party, including a subsidiary, affiliate, or other legal entity, however designated, for any purpose whatsoever except as expressly permitted in this Agreement.

(f) Client expressly acknowledges and agrees to the extent permitted by applicable law, use of the Licensed Content is at Client's sole risk and the licensed Content is provided "as is" without warranty of any kind. The AMA does not directly or indirectly practice medicine or dispense medical services. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The Licensed Content does not replace the AMA's current Procedural Terminology book or other appropriate coding authority. The coding information contained in the Licensed Content should be used only as a guide. *Notwithstanding the foregoing, the Company warrants that it has the rights to license and distribute any Licensed Content it is providing under the Agreement.*

Merative.: OS  
NYS DCS: KU

(g) Royalties: Company shall report to AMA in writing at the end of each calendar quarter with a direct count of the number of Users of the SaaS. "User" means an individual who: (i) accesses, uses, or manipulates the Licensed Content contained in the SaaS; or (ii) accesses, uses, or manipulates the SaaS to produce or enable an output (data, reports or the like) that could not have been created without the Licensed Content embedded in the SaaS even though the Licensed Content may not be visible or directly accessible; or (iii) makes use of an output of the SaaS that relies on or could not have been created without the Licensed Content embedded in the SaaS even though the Licensed Content may not be visible or directly accessible.

(h) For U.S. Government Clients the below notice applies:  
CPT is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. This agreement does not grant the Federal Government a direct license to use CPT based on FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items).

(i) Client must ensure that anyone with authorized access to the SaaS will comply with the provisions contained in this *Attachment 5*.

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NYS DCS: KU

(j) To the extent necessary to enforce its intellectual property rights that arise as a result of material breaches of the underlying agreement between Company and Client ("Client Agreement"), the AMA shall be named as a third-party beneficiary of the Client Agreement.



## ATTACHMENT 5



**Department of  
Civil Service**

**"End User Terms"  
NYSHIP Decision Support System  
Contract #C000744**

(k) Client expressly consents to the release of its name, city, state, country and number of Users to the AMA for the sole purpose of compliance with the license agreement

executed between Company and AMA and under confidentiality terms.

### **American Dental Association**

#### **1. Client License Grant**

Company is authorized by the American Dental Association ("ADA") to distribute and sublicense Current Dental Terminology, a coding system of nomenclature and codes for reporting of dental services (collectively, "CDT"), as part of the Solution, provided that Client is bound by certain terms and conditions. Client is hereby granted a non-exclusive, nontransferable right to use the CDT solely as part of the Solution and solely for Client's internal business purposes not for redistribution. This license grants Client the right:

- a. to install and use the CDT on Client's computer system;
- b. to retrieve CDT codes, descriptors and nomenclature via commands contained in the Solution for the exclusive use of Clients employees;
- c. to reproduce and distribute partial listings of the CDT codes, nomenclature and descriptors in various printed and electronic documents for purposes of claims processing, billing and patient treatment, or healthcare analytics, via commands contained in the Solution;
- d. to print limited portions of the CDT solely for the exclusive use of Client; and to print a complete listing of the CDT codes, nomenclature and descriptors solely for the exclusive use of Client.

#### **2. Client License Restrictions**

"Output" means any electronic or printed copy of the CDT, or portions thereof (including without limitation any complete or partial listings of the CDT codes, nomenclature or descriptors), created by using the Bundled Products.

"Code" means the Code on dental procedures and nomenclature, whether delivered in print or machine-readable format. Each individual dental procedure is comprised of at least the following two components: (1) a five character alphanumeric sequence called the "code" that identifies a specific dental procedure and (2) a short, written literal definition of the dental procedure called the "nomenclature." Some but not all individual dental procedures have a third component, (3) a written narrative that provides a more detailed definition and the intended use of the procedure code, called the "descriptor."

Except as expressly permitted in section 1 above, Client may not and may not permit anyone else to (a) copy the CDT; (b) alter, amend, change or modify the CDT, including the CDT codes, nomenclature and descriptors or other content of the CDT; (c) remove any copyright or other proprietary notices, labels or marks from the CDT or from Output created by using the Solution;

(d) distribute, sell, assign, lease or otherwise transfer the CDT, including the Code or any portion thereof, in any printed, machine-readable or other form to any other person, firm or entity, including but not limited to, as Output; or

## ATTACHMENT 5



Department of  
Civil Service

### "End User Terms" NYSHIP Decision Support System Contract #C000744

(e) use the CDT, whether on a time-sharing, remote job entry or other multiple user

arrangement. Client shall take reasonable measures to maintain the security of the CDT. The restriction set forth in section 2(b) shall not limit Client's right to add additional content to the Solution ("Client Content"), provided: Client does not alter, amend,

change or modify existing CDT codes, nomenclature and descriptors or other CDT content, and Client's Output does not claim or otherwise imply that such Client Content is owned, created, approved or endorsed by ADA.

IN NO EVENT SHALL CLIENT USE THE CDT FOR OR ON BEHALF OF ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO USE OF THE CDT TO PROVIDE CONSULTING, TIME- SHARING OR OUTSOURCING SERVICES OR TO ACT AS A SERVICE BUREAU OPERATION. END USER IS EXPRESSLY PROHIBITED FROM DISTRIBUTING OUTPUT, INCLUDING THE CODE OR PORTIONS THEREOF, TO ANY PERSON, FIRM OR ENTITY. The foregoing restriction shall not be deemed to restrict the Client from using the CDT codes in the ordinary course of its business, to identify procedures used in the treatment of patients and processing of insurance claims.

#### 3. Ownership of Intellectual Property

Client acknowledges and agrees that ADA owns all right, title and interest (including all copyrights and other intellectual property rights) in the CDT (in all print and machine readable forms), all other rights of commercialization, rental or sale of the CDT or any part thereof, the right to make derivatives of the CDT and the right to distribute the CDT and copies thereof. End user acquires no proprietary interest in the CDT, or any portion thereof. Except for the limited rights expressly granted to Client in this Agreement, all other rights in the CDT are owned and retained by ADA.

#### 4. Warranty

EXCEPT AS EXPRESSLY STATED HEREIN, THE CDT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. END USER BEARS ALL RISK RELATING TO QUALITY, ACCURACY AND PERFORMANCE OF THE CDT.

*NOTWITHSTANDING THE FOREGOING, THE COMPANY WARRANTS THAT IT HAS THE RIGHTS TO LICENSE AND DISTRIBUTE ANY LICENSED CONTENT IT IS PROVIDING UNDER THE AGREEMENT.*

Merative.: OS  
NYS DCS: RW

#### 5. Limitation of Liability

IN NO EVENT WILL ADA BE LIABLE FOR ANY LOST PROFITS OR ANY DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR ANY OTHER TYPE OF DAMAGES, ARISING OUT OF THIS LICENSE AGREEMENT OR THE USE OF OR IN ABILITY TO USE THE CDT OR DOCUMENTATION, EVEN IF ADA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS

## ATTACHMENT 5



Department of  
Civil Service

**"End User Terms"**  
**NYSHIP Decision Support System**  
**Contract #C000744**

LIMITATION OF LIABILITY SHALL APPLY TO ANY CLAIM OR CAUSE

WHATSOEVER WHETHER SUCH CLAIM OR CAUSE IS IN CONTRACT, TORT OR OTHERWISE.

### 6. Indemnification

*Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the Client shall hold ADA harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Client or of its officers or employees when acting within the course and scope of their employment."*

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NYS DCS: VW

### 7. Third Party Beneficiary

ADA is a direct and intended third party beneficiary of the Client License between Company and Client; provided, however, ADA's rights as a third party beneficiary are limited solely to the Client's use of the CDT outside the scope of the Client License.