

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

and

TRUVEN HEALTH ANALYTICS INC.

AGREEMENT #C000588

THIS AGREEMENT entitled, “New York State Insurance Program Decision Support System” (hereinafter referred to as the “Contract” or “Agreement”), is entered into by and between the NEW YORK STATE DEPARTMENT OF CIVIL SERVICE (“Department” or “DCS”), having its principal office in Albany, NY, 12239 and TRUVEN HEALTH ANALYTICS INC., a corporation authorized to do business in the State of New York with a principal place of business located at 777 E. Eisenhower Parkway, Ann Arbor, MI 48108 (“Contractor”), and collectively referred to as “the Parties.”

WITNESSETH

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

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

WHEREAS, on June 30, 2010, the Department issued a Request for Proposal (RFP) entitled, “New York State Health Insurance Program Decision Support System,” as subsequently amended on July 29, 2010 and August 5, 2010, to secure the services of a qualified organization to provide, for the benefit of the Department and its Users, a Decision Support System solution as more fully described in the RFP; and,

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

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

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

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.2.0 Agreement or Contract** means the agreement entered into between the Parties resultant from the RFP.
- 1.3.0 Application** means a program or group of programs designed for end users.
- 1.4.0 Benefit Plan** means an indicator used in the NYS computerized enrollment system (NYBEAS), to indicate the NYSHIP health insurance option (e.g. Empire Plan or a NYSHIP participating HMO) chosen by an individual, or to indicate the particular benefit package within the NYS Dental or Vision Plans that the individual is eligible for.
- 1.5.0 Benefit Program** means an indicator used in the NYS computerized enrollment system (NYBEAS), to specify the entire benefit package the individual is eligible for and typically includes specific health, dental, and vision coverage benefit definitions. The benefit program varies based on multiple factors such as, the individual's bargaining unit /union affiliation, employer status, (e.g. State Agency, Participating Agency, Participating Employer), and employment status, (e.g. active, retired).
- 1.6.0 Business Day(s)** means every Monday through Friday for administrative services, and every Monday through Saturday for DSS operations, under the terms of the Contract, except for days designated as business holidays by the Department prior to January 1 of each calendar year.
- 1.7.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.

- 1.8.0 Completion Date** means the date proposed by the Contractor and agreed upon by the Department, for delivery of a fully functional DSS; the completion date may not, in any case, exceed two hundred and fifty-five calendar days after the Project Effective Date.
- 1.9.0 Conflict of Interest** means a situation which has or may influence or appear to influence, compromise or bias the Offeror's/Contractor's actions and/or judgments in the Offeror's/Contractor's performance of Project Services. Such situations may result from the Offeror's/Contractor's direct or indirect interests, including but not limited to, financial, business, proprietary or personal interests, in the operation and/or administration of the New York State Health Insurance Program (NYSHIP). A Conflict of Interest can result from relationships between the Offeror/Contractor and any individual, entity or organization that existed prior to or that may arise during the term of the Contract.
- 1.10.1 Contract Effective Date** means the date the Contract is approved by the Office of the State Comptroller of the State of New York ("OSC").
- 1.11.0 Contractor** means Truven Health Analytics Inc., the Offeror selected as the result of the RFP with which the Department enter into the Agreement to perform Project Services.
- 1.12.0 Day(s)** means calendar days unless otherwise noted.
- 1.13.0 Data Provider** means an entity (an Insurer or the Department) that provides enrollment or claims data to the Contractor for loading Benefit Administrator into the DSS Solution.
- 1.14.0 DCS or Department** means the New York State Department of Civil Service.
- 1.15.0 Decision Support System (DSS) or DSS Solution** 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.
- 1.16.0 Disaster Recovery Plan** means a plan for continued operation in the event of a situation which incapacitates part or all of a contractor's resources including, but not limited to, personnel, IT equipment, data records, and the building or other physical infrastructure.

- 1.17.0 Empire Plan** means the experience-rated health plan administered by the NYS Department of Civil Service to provide health insurance benefits for the employees, retirees and eligible dependents of New York State and NYSHIP Participating Agencies and Participating Employers. It has four components: Medical Program, Hospital Program, Managed Mental Health and Substance Abuse Program, and Prescription Drug Program.
- 1.18.0 Employee Benefits Division (EBD)** means the division of the New York State Department of Civil Service responsible for administering the New York State Health Insurance Program.
- 1.19.0 ET** means prevailing Eastern Time.
- 1.20.0 Excelsior Plan** means a variation of the Empire Plan available to local government units which choose to participate in NYSHIP. The Excelsior Plan offers many of the same features of the Empire Plan with a higher degree of cost sharing between the employer and plan participants.
- 1.21.0 Firewall** means a system designed to prevent unauthorized access to or from a private network based upon a set of rules and other criteria. Firewalls can be implemented in either hardware or software, or a combination of both.
- 1.22.0 Hardware** means tangible objects such as disks, disk drives, display screens, keyboards, printers and chips.
- 1.23.0 Insurer/Benefit Administrator** means one of the several insurers or benefit administrators contracted by the Department to provide health insurance services for the NYSHIP.
- 1.24.0 Key Subcontractors** means those vendors with whom the Contractor subcontracts to provide Project Services and incorporates as a part of the Contractor's Project Team.
- 1.25.0 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
- 1.26.0 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).

- 1.27.0 Level 3 User** means an individual designated by the Department to have access to limited functions of the DSS Solution (e.g. access to simple, predefined queries and standard reports, and would have the most restricted security permissions).
- 1.28.0 Licensed Product** means software transferred upon the terms and conditions set forth in the Agreement. “Licensed Product” includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).
- 1.29.0 Licensee** means the New York State Department of Civil Service on behalf of the State of New York.
- 1.30.0 New Product Releases (Product Revisions)** means any commercially released revisions to the version of a Product as may be generally offered and available to the market. New releases involve a substantial revision of functionality from a previously released version of the Product.
- 1.31.0 New York State Health Insurance Program (NYSHIP)** means the health insurance program established by NYS to provide health insurance protection to employees, retirees, and eligible dependents of New York State and Participating Agencies and Participating Employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through the Empire Plan, Health Maintenance Organizations (HMOs); and Student Employee Health Plan (SEHP).
- 1.32.0 Normal Business Hours** means Monday – Friday 7:00 a.m.–7:00 p.m. ET and Saturday 7:00 a.m.–5:00 p.m. ET, unless specified otherwise by the Department.
- 1.33.0 NYBEAS** means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of employee benefits.
- 1.34.0 NYS** means New York State.
- 1. 35.0 “Or Equal”** means that where a copyright brand name, trade name, catalog reference, or patented Product is referenced, references to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. A comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature,

specifications and test data, etc. The Department's decision as to acceptance of the Product as equal shall be final.

1.36.0 Plan means the Empire Plan.

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

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

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

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

1.41.1 Project Effective Date means the date on which the Contractor and the Department hold the on-site project "kick-off" meeting as stipulated in the Contractor's Technical Proposal. As mutually agreed to by the Parties, a Project Effective Date shall be set no later than thirty (30) business days after the Contract Effective Date.

1.42.0 Project Services means the entire package of Decision Support System services to be provided by the Contractor in accordance with the terms of the Agreement.

1. 43.0 Proposal means the Offeror's Administrative Proposal, Technical Proposal and Cost Proposal, submitted during the course of the procurement process including all responses to supplemental requests for clarification, information, and documentation.

1.44.0 RFP means the Request For Proposals entitled "New York State Health Insurance Program Decision Support System" dated June 30, 2010, as subsequently amended on July 29, 2010 and August 5, 2010.

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

1.46.0 State means the State of New York.

1.47.0 Student Employee Health Plan (SEHP) means a health insurance plan for graduate student employees of the New York State University system that provides benefits through the various Empire Plan Insurance Contracts. Like the Empire Plan, the SEHP includes: Hospital, Medical, managed Mental Health and Substance Abuse benefits, and Prescription Drug benefits. SEHP is administered by the New York State Department of Civil Service, Employee Benefits Division.

1.48.0 User means an individual designated by the Department to utilize application programs provided by the Contractor under terms of the Agreement.

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

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 The term of the Contract is for a period of five (5) years, with an option for a one (1) year extension period, subject to the approval by the New York State Attorney General's Office ("AG") and the New York State Office of the State Comptroller ("OSC") and subject to the termination provisions contained herein. The Contract shall commence on the date the Contract is approved by the OSC ("Contract Effective Date").

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

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

ARTICLE III: INTEGRATION

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

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

4.1.0 The Contract consists of:

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

4.1.2 Appendix A – Standard Clauses for all New York State Contracts, dated December 2012;

4.1.3 Appendix B – Standard Clauses for all Department of Civil Service Contracts, dated May 2011;

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

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

4.1.5a Exhibit A: The Request for Proposals entitled, “New York State Health Insurance Program Decision Support System,” dated June 30, 2010, as subsequently amended on July 29, 2010 and on August 5, 2010, and Exhibit A-1, the Department’s Official Responses to questions raised concerning the RFP, dated July 29, 2010;

4.1.5b Exhibit B: The Contractor’s Proposal comprised of its Administrative Proposal, dated September 8, 2010, excepting pages 21 through 41 of the Contractor’s Administrative Proposal which are hereby deleted in their entirety (i.e., the following documents entitled “Service Agreement,” “Exhibit A - Production of Initial Database,” “Exhibit B - Ongoing Integrated Information Services,”

“Service Agreement (Modeler)” and “Exhibit A - Medstat Modeler”), Cost Proposal, dated September 8, 2010, excepting the “Additional Assumptions, Terms, and Payment Provisions” as set forth on Pages 22 through 25 of the Contractor’s Cost Proposal which are hereby deleted in their entirety, and Technical Proposal dated September 8, 2010; and Exhibit B-1: The official transcript of the Management Interview, dated September 29, 2010, including the follow-up information provided in the Technical Management Interview Follow-up Information document, dated October 6, 2010 and Attachment 1A and 1B thereto; and Exhibit B-2: related materials clarifying the Contractor’s Proposal as set forth in TABLE #1 – Clarifying Materials as follows:

TABLE #1 – Clarifying Materials		
Clarification Number	Document Type	Document Components/Dates
001	Request	Letter from Linda Burk to Pamela J. Conrad dated September 16, 2010
	Response	<p>2 pieces of correspondence as follows:</p> <ol style="list-style-type: none"> 1. 9-21-10, 5:22 pm email from Kristyn Kuennen to Linda Burk; and, 2. Exhibit E – MacBride Statement and Non-Collusive Bidding Certification dated 9-20-10.

4.1.5c Exhibit C, Department of Civil Service Information Security Policy; and

4.1.5d Exhibit D, Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity.

4.1.6 In the event of any inconsistency in, or conflict among, the document elements of the Contract identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

4.1.6a First, Appendix A - Standard Clauses for All New York State contracts;

4.1.6b Second, Appendix B - Standard Clauses for All Department of Civil Service contracts;

4.1.6c Third, Appendix C – Third Party Connection and Data Exchange Agreement

4.1.6d Fourth, any Amendments to the body of the Contract;

4.1.6e Fifth, the body of the Contract;

4.1.6f Sixth, Exhibit A – the Request for Proposals entitled, “New York State Health Insurance Program Decision Support System,” dated June 30, 2010 as amended and Exhibit A-1, the Department’s Official Responses to questions raised concerning the RFP, dated July 29, 2010; and

4.1.6g Seventh, Exhibit B – the Contractor’s Proposal comprised of its Administrative Proposal, dated September 8, 2010 excepting Pages 21 through 41 of the Contractor’s Administrative Proposal which are hereby deleted in their entirety (i.e., the following documents entitled “Service Agreement,” “Exhibit A - Production of Initial Database,” “Exhibit B - Ongoing Integrated Information Services,” “Service Agreement (Modeler)” and “Exhibit A - Medstat Modeler*”), Cost Proposal, dated September 8, 2010, excepting the “Additional Assumptions, Terms, and Payment Provisions” as set forth on Pages 22 through 25 of the Contractor’s Cost Proposal which are hereby deleted in their entirety, and Technical Proposal dated September 8, 2010, and Exhibit B-1: the official transcript of the Management Interview, dated September 29, 2010, including the follow-up information provided in the Technical Management Interview Follow-up Information document, dated October 6, 2010 and Attachment 1A and 1B thereto; and related materials clarifying the Contractor’s Proposal as set forth in TABLE #1 – Clarifying Materials above.

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

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

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

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

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

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

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

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

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

6.1.1 cannot be a current Empire Plan carrier, contractor, and/or subcontractor; and/or,

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

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

implement Firewalls and/or other controls, policies and procedures identified by the Contractor or by the Department to adequately safeguard or protect the Department against any Conflict of Interest. Further, if the Department determines that the implemented Firewalls and/or other controls, policies and procedures do not adequately safeguard or protect against a Conflict of Interest, the Department may terminate the Contract.

ARTICLE VII: PROJECT SERVICES

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

7.2.0 Project Management Team

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

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

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

7.2.4 The Contractor's Project Manager shall immediately notify the Department of any actual or anticipated events impacting delivery of Project Services and present options available to minimize or eliminate the impact of those events on the delivery of Project Services.

7.3.0 Implementation, Operation, and Support Services

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

7.3.1 Implementation

The Contractor must undertake and complete all Implementation activities, including, but not limited to, those specified activities set forth in Section 8.1.1 of the Contract, so that the Contractor can deliver to the Department a fully operational Decision Support System that is accepted in the Department's sole discretion, on the Completion Date, which shall not be later than two hundred and fifty five (255) calendar days after the Project Effective Date.

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

7.3.1.a The Contractor must deliver, no later than the Project Effective Date, an overall Implementation Plan, and designate an Implementation Team, both subject to Department approval, composed of individuals knowledgeable in the requirements of a large client comparable to those of the Department. The Implementation Team must be committed to work with the Department to analyze and document User needs. The Implementation Plan must include evaluation and assessment activities and development of a project plan to achieve the goals of the Project.

7.3.1.b No later than the Project Effective Date, the Contractor must provide, subject to Department approval, a detailed Acceptance Testing Plan (ATP) that identifies the functions the Department will test in order to ensure the Contractor's DSS Solution functionality is fully operational and meets all requirements identified

in the RFP. The Department reserves the right to modify the ATP to meet the Department's needs. User training of key participants in the ATP must be completed prior to the start of testing. The ATP must include, at a minimum, the nature and duration of the tests, definition of roles of staff required to perform the tests, process for resolution of testing issues, definition of acceptable test outcomes and provision for Department signoff on testing plan and successful completion of testing activities. The ATP must confirm whether or not:

7.3.1.b(1) The Contractor's DSS Solution meets the requirements set forth in Section 7.3.2.1 of this Agreement. These requirements include, but are not limited to data management, analytical, query and reporting capabilities, and user specifications; and

7.3.1.b(2) The Contractor meets the requirements set forth in Section 7.3.3 of this Agreement which include, but are not limited to, system availability and connectivity, response time, environment specifics, and maintenance program.

7.3.2 Data Management and Ongoing Operational Services

The DSS Solution shall provide data management, analytic capability, and support services including benchmarking against accepted industry standards/norms, plan and program evaluation, benefit design and modeling, utilization analysis at provider and member levels and both standard, pre-defined and Department defined report production. The Contractor shall provide a DSS Solution which allows for independent analysis, including the capability to view data at a summary and/or granular level, and the ability to download and manipulate results into a format acceptable to the Department.

7.3.2.1 Data Management

The Department requires and the Contractor agrees to the following:

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

- 7.3.2.1b** The Contractor shall develop and provide the Department with complete documentation of the DSS Solution. The documentation must provide the Department with a complete description of the meaning of the information and any relationships between the information (metadata) that is available from the DSS Solution;
- 7.3.2.1c** The Contractor's DSS Solution adheres, to the extent applicable, to the NYS Office of Information Technology Services (ITS) policies and standards as stated in New York State Information Technology Policy NYS-P08-005 (Accessibility of Web-Based Information and Applications) in regards to system user interfaces. NYS-P08-005 can be viewed at: <http://www.its.ny.gov/policy/NYS-P08-005.pdf>
- 7.3.2.1d** The Contractor shall accept enrollment and claims data from the Department or from a Data Provider on behalf of the Department and shall load the data for use in the DSS Solution in a timely manner.
- 7.3.2.1e** The Contractor shall work with the Department to define specifications such as the method of transmission, frequency of data exchange, and format of the enrollment and claims data feeds (e.g. FTP with PGP encryption, monthly, new set of data – not limited to updates/changes).
- 7.3.2.2** The Contractor shall provide a methodology satisfactory to the Department for archiving historical data and retrieving archived data, should the Department choose to utilize such services. The Department requires and the Contractor shall provide, at a minimum, six (6) complete calendar years of Plan data, plus the current Plan Year's data accessible through the Contractor's DSS Solution.
- 7.3.2.3** The Contractor shall employ a secure method to accept data during transmission that complies with applicable federal and State laws, rules and regulations including, but not limited to HIPAA and Appendices A, B and C.
- 7.3.2.4** The Contractor's DSS Solution shall incorporate and use an encryption methodology for data that resides in the DSS Solution that masks the identity of an individual but still provides the means to link together an individual's claim and

coverage history without disclosing the individual's social security number or other personal identification indicator. In addition, designated Users shall be provided with decryption capability and/or security level, to associate claim and coverage history to a specific identifiable individual. The encryption methodology employed and utilized by the Contractor shall ensure that all individually identifiable health information is protected and in compliance with applicable federal and State laws, rules and regulations including, but not limited to HIPAA.

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

7.3.2.5a Data field format incompatibility errors;

7.3.2.5b Missing data;

7.3.2.5c Field value edits;

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

7.3.2.5e Data validation with external sources;

7.3.2.5f Data calculation errors;

7.3.2.5g Duplicate information within a single file;

7.3.2.5h Submission of duplicate files; and

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

- 7.3.2.6** The Contractor must be able to accept data in a variety of formats and media on a monthly, bi-weekly, and weekly basis from the Department and other Data Providers. The data must be loaded in the DSS Solution maintained by the Contractor.
- 7.3.2.7** A copy of the interface requirements given to the Data Providers by the Contractor must also be supplied to the Department. The Department reserves the right to review, request clarification, and/or suggest modifications to the interface requirements given to the Data Providers.
- 7.3.2.8** The Contractor's interface requirements must be provided to the Data Providers within thirty (30) Business Days of the Project Effective Date. During the term of the Contract, should a new Data Provider be added in place of an existing Data Provider, the Contractor must provide its interface requirements to the replacement Data Provider within thirty (30) Business Days of notification of the change by the Department.
- 7.3.2.9** Thirty (30) Business Days prior to the start of each Plan year, the Contractor must establish and provide the Department with a schedule identifying the planned DSS data loads, as well as due dates for receipt of data from the Data Providers. The Contractor must notify the Department within one (1) Business Day of any failure to meet the due date by any Data Provider.
- 7.3.2.10** The Contractor must be able to accommodate data files containing International Classification of Diseases, 10th Edition (ICD-10) codes in accordance with federally mandated implementation date for the ICD-10 code set not later than October 1, 2014, unless the mandated implementation date is extended beyond October 1, 2014. In no instance can the Contractor's capability to accommodate ICD-10 codes extend beyond the federally mandated implementation date. In addition, the Contractor shall have a functional crosswalk to map all existing ICD-9 codes to the ICD-10 code set not later than the federally mandated implementation date.

7.3.3 User Requirements

Users will be individuals employed by the Department as well as individuals designated by the Department, at its sole discretion, as Users, which may include, but not be limited to, employees of NYS Governor's Office of Employee Relations, NYS Division of the Budget, NYS Office of the State Comptroller and the Department's benefit management and actuarial consultant. All Users will not have the same level of access and permissions. No User will have the capability to change data in the DSS Solution.

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

7.3.3.1a Level 1 User: The Department requires a minimum of fifteen (15) Users to be designated as and receive training as Level 1 Users. Level 1 Users shall have full access to all features/functions of the delivered DSS Solution and have the highest level of security permissions granted by the Department.

7.3.3.1b Level 2 User: The Department requires a minimum of ten (10) Users to be designated as and receive training as Level 2 Users. Level 2 Users shall have full access to all features/functions of the delivered DSS Solution and restricted security permissions (e.g. the User will not have access to any individually identifying information).

7.3.3.1c Level 3 User: The Department requires a minimum of twenty (20) Users to be designated as and receive training as Level 3 Users. These Users will require a significantly lower level of permissions. Level 3 Users would be restricted to accessing simple, predefined queries and standard reports, performing simple data manipulations from the pre-defined reports and queries and exporting data results from such reports/queries. Such Users do not require access to the same applications/software features as Level 1 or 2 Users. Level 3 Users have the most restricted security permissions.

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

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

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

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

7.3.3.3c Extract data and reports to print and download.

7.3.3.4 User training is required. The Contractor must provide a training plan that is tailored to the types of Users and their assigned permissions. The training plan must include proficiency testing of Users and, if necessary, additional training as required based on results of testing to ensure the DSS training goals and outcomes are achieved with said additional training, if any, at no additional cost to the Department. All training provided by the Contractor under its training plan must be provided onsite at the Department's facilities. On demand training must be available, at the Department's request, on an ongoing basis to handle User turnover, system changes and upgrades at the rates set forth in the Contractor's Cost Proposal incorporated in this Contract as Exhibit B. User Training is not part of the 400 hours of Consulting Support Services.

7.3.3.5 The DSS Solution's design and operation must conform to applicable federal and State laws and regulations regarding accessibility standards for persons with disabilities. Section 7.3.2.1c provides information regarding ITS standards and policies.

7.3.3.6 User support documentation must be provided as applicable to each User Level.

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

7.3.3.6a User Manuals, quick reference guides;

7.3.3.6b Data Dictionary; and

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

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

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

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

7.3.3.8b A browser-only thin client deployment model;

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

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

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

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

7.3.4 Analytical Capabilities

The DSS Solution must provide Users with the ability to conduct analysis on any field or attribute, either individually or collectively, designated to be populated with data provided by the Data Providers in the DSS Solution. Such capabilities include, but are not limited to, trend and normative analysis and projections of utilization and benefit costs, benefit and program modeling as tools for use in the administration and oversight of various NYSHIP contracts, and advanced and integrated analytics based on the Contractor's unique and proprietary methodologies. These analytical capabilities must provide Users with the ability to:

7.3.4.1 Integrate data for all clinically related services for one patient for a discrete diagnostic condition, from the point the initial treatment is identified until treatment is completed, into an episode of care. The DSS must identify the codes (e.g. AMA ICD-9, ICD-10, APA DSM IV, CPT, REV, HCPCS codes) used in defining the episode and provide the User with the ability to exclude codes and/or include additional codes as the User deems appropriate. The DSS must have the capability to analyze episodes of care in relation to regional and national benchmarks.

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

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

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

7.3.4.5 Perform analysis on diagnostic related groups as defined by the AMA ICD-9 and ICD-10 international classification of diseases and American Psychiatric Association DSM IV codes.

7.3.4.6 Conduct analysis based on medical and hospital service codes including but not limited to: CPT and revenue codes.

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

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

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

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

7.3.5 Query and Reporting Capabilities

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

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

7.3.5.1a Access all claims and enrollment files and attributes;

7.3.5.1b Link data for analysis;

7.3.5.1c Select subsets of data fields and/or summary or statistical information;

7.3.5.1d Perform flexible filtering of data through pre-defined groups (e.g. active vs. retiree), as well as user-defined groups, for those Users with the highest level of privileges;

7.3.5.1e To set criteria so that only desired records and/or information is returned. Users shall have the ability to select criteria such as age, sex, service type, service location, provider type, and/or diagnostic groupings (e.g. ICD-9 and ICD-10 codes, DRGs), as requested;

7.3.5.1f Sort selected subsets of records or information based on multiple sort criteria; and

7.3.5.1g Save query design for future reference and use.

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

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

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

7.3.5.3 Reporting capabilities must provide the option:

7.3.5.3a For Users to save query results in a permanent file (i.e. table or data file) that can be exported/imported utilizing standard Microsoft Office applications (e.g. Access, Excel, Word);

7.3.5.3b To utilize copy and paste functions; and

7.3.5.3c To allow Users the capability to store and reuse report templates.

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

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

7.3.5.5a Utilization reports by enrollee, patient, and/or provider;

7.3.5.5b Provider reports that include use and cost performance details for physicians, hospitals, networks;

7.3.5.5c Cost trend reports that include hospital admissions, pharmacy utilization, ambulatory surgery, and physician services. Trends shall include all payment components (e.g. deductibles, copayments, coinsurance) and cost of benefit; and

7.3.5.5d Quarterly and Annual Plan Summary Reports.

7.3.6 Consulting Support Services

On completion of Implementation and upon determination solely by the Department that the DSS Solution 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, assistance in a specific task or project, expert advice regarding the dynamics of the health care delivery system, pharmaco-economics, the input of benefit design changes or enrollee behavior and health status. The support services shall provide expert technical advice and query development assistance to identified Users. Such Consulting Support Services are not to be considered as User Training, either initial or incremental ongoing training.

7.3.6.1 Upon the Department's determination that the DSS is fully operational to the Department's satisfaction, the Contractor must provide upon the Department's

request, a minimum of 400 hours of consulting support services during the balance of the five (5) year term of the contract.

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

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

7.4.0 DSS Solution Operational Requirements

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

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

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

estimated timeframe for restoration of Project Services. Notification must be provided to the Department's contact upon full restoration of services.

- 7.4.3** In the case of an interruption exceeding four (4) hours, a written and verbal explanation of the cause and remedial steps taken to avoid a reoccurrence must be provided to the Department within five (5) Business Days of restoration of Project Services.
- 7.4.4** The Contractor must have physical safeguards in place that ensure Department data is secure from unauthorized persons and unauthorized access at all times. Technical safeguards must also be maintained so as to ensure that the data is stored in a secure manner and will be processed such that the confidentiality of the data is protected at all times. The Contractor must agree to provide both physical and technical security for this project in agreement with the policies, terms and conditions stated in this Agreement and Appendices A, B and C.
- 7.4.5** The Contractor must have existing corporate policies and procedures in place regarding ethics, privacy and security pertaining to the protection of client data and information. At minimum, the Contractor must agree to apply policies and procedures equal to or better than the policies and procedures in existence for other clients to ensure the protection of NYSHIP DSS data and activities. Such effective, comprehensive policies and procedures must be maintained for NYSHIP data and information through the term of the Contract.
- 7.4.6** The Contractor is required to provide all centralized computing Hardware, Software, staffing, maintenance, and associated processes and procedures necessary to support the proposed DSS Solution in a facility provided by the Contractor. The Contractor is required to provide preventive maintenance and keep the various Hardware and Software components of the DSS Solution current with release and maintenance levels. Hardware and Software not supported by the manufacturer cannot be utilized for the DSS Solution. The Contractor must make all upgrade/enhancements available to the Department in the delivery of the DSS Solution at no additional cost to the Department.

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

7.4.7.1 Operational procedures;

7.4.7.2 Data naming standards;

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

7.4.7.4 Standards for data characteristics;

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

7.4.7.6 Standards for data searching and cross-referencing techniques;

7.4.7.7 Standards to control data redundancy;

7.4.7.8 Standards for data views;

7.4.7.9 Standards for database administration; and

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

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

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

7.4.8.1a If the DSS Solution fails, the DSS Solution shall be able to be restored to its last consistent state before the failure occurred. The Contractor must address any data loss resulting from the system failure;

- 7.4.8.1b** The DSS Solution shall retain archived data and system records in accordance with State regulations, policies, and procedures;
- 7.4.8.1c** The DSS Solution shall be designed assuming zero fault tolerance (i.e. no single physical or electronic point of failure);
- 7.4.8.1d** The DSS Solution shall be backed up on a regularly scheduled basis; the schedule must be provided to the Department for review and approval;
- 7.4.8.1e** The DSS Solution backup media shall be stored offsite in a controlled access, physically protected location;
- 7.4.8.1f** Scheduled maintenance shall be coordinated with the Department;
- 7.4.8.1g** The DSS Solution shall be fully functional during Normal Business Hours with the exception of scheduled outages for maintenance agreed to by the Department; and
- 7.4.8.1h** In the event of data loss or data corruption, the DSS Solution shall be able to recover lost data within one (1) day from local backup/recovery and within three (3) days from offsite backup/recovery.

7.4.9 Security

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

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

7.4.9.2 The Contractor shall have a DSS Solution Information Security Plan (ISP) acceptable to the Department in place on the Contract Effective Date of this

Contract that states all of the security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The DSS Solution ISP must, at minimum:

7.4.9.2a Conform to the requirements of the Department of Civil Service Information Security Policy (Exhibit C of the Contract);

7.4.9.2b Support the Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity (Exhibit D of the Contract);

7.4.9.2c Agree to the policies, terms and conditions stated in Appendices A, B and C of the Contract;

7.4.9.2d Allow for the configurable control of access to processes, reports, content and functions;

7.4.9.2e Allow the definition of a robust, multi-level row security model;

7.4.9.2f Allow the maintenance of a robust, multi-level row security model;

7.4.9.2g Support configurable role-based security; and

7.4.9.2h Support the encryption of data being communicated over a public network.

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

ARTICLE VIII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding reduction(s) in fee to the Contractor for failure to meet each guarantee shall be implemented effective on the Project Effective Date. The Contractor acknowledges and agrees that failure to perform the Project Service features in such a manner

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

Performance related reduction amounts due from the Contractor to the Department for failure to perform any Project Service feature at the Guarantee level as set forth above shall be made at the time and in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall deduct such amounts from the DSS Implementation Total Not-to-Exceed Amount or next applicable Ongoing Operations Monthly Fee Billing, as appropriate.

8.1.0 Implementation Guarantee

8.1.1 *Guarantee:* Provided that the Department and all of the Department's designated Data Providers, have supplied all information and/or usable data on a timely basis necessary for implementation activities to take place, the Contractor guarantees that all Implementation activities will be completed no later than two hundred and fifty-five days after the Project Effective Date, so that, effective as of the Completion Date or earlier, the Contractor can deliver a DSS that is fully operational in all functions required by the Department, as determined in the Department's sole discretion that is ultimately accepted by the Department. For the purpose of this guarantee, the Contractor must, on the Completion Date have completed the following non-exclusive list of Implementation activities:

8.1.1a Preparation of facilities for long-term physical maintenance and storage of data;

8.1.1b Activities required to bring the DSS Solution to full production and to be fully functioning in all aspects of the Project Services as described in the Contract (i.e. accepting data from all Data Providers with full decision support capability and able to fulfill all other related tasks and responsibilities designated in the Contract). Initially, the Contractor must submit their proposed data interface requirements to the Department for review and, once approved by the Department, supply all Data

Providers with the interface requirements. The Contractor must set up a meeting(s) with all Data Providers within thirty (30) Business Days of Contract's Project Effective Date to present file layout requirements. Once the Data Providers have produced data in a layout conforming to the Contractor's requirements, the Contractor must proceed to load historical data into the DSS Solution and provide access to the Department for acceptance testing no later than sixty (60) calendar days from the date the loadable data is received from the Data Providers;

8.1.1c Acquisition, validation, and loading of six (6) complete years of historical data and all current Plan Year data available to be loaded into the DSS. In addition, after the load of historical and current Plan year is completed, a minimum of one complete current update cycle from each current Data Provider must be successfully transmitted, received and loaded into the DSS in order for Implementation to be deemed complete;

8.1.1d Training, including proficiency testing of Users and, if necessary, additional training of Users at no additional cost to the Department;

8.1.1e Establishment of User support functions, (e.g. telephonic and online support); and

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

8.1.2 Reduction in payment to Contractor: The Contractor will permanently forfeit, one (1) times the dollar amount of the Ongoing Operations Monthly Fee for each month, or part thereof, after the Completion Date that any of the Implementation activities listed above, in Section 8.1.1a–f, remain incomplete and/or if the Contractor fails to deliver a fully operational DSS Solution that is accepted by the Department, in its sole discretion.

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

8.2.1 Guarantee: The Contractor shall guarantee that the data supplied by the Data Providers will be processed through quality assurance testing and, if the data as submitted meets the standards, the data will be loaded in the DSS Solution not later than ten (10) Business Days from the scheduled data receipt date of the data from each Data Provider. This

guarantee does not apply to data model changes, new Data Providers or types, or reprocessing of previously processed data due to Data Provider error. If the data is received after the scheduled receipt date, the data will be loaded in the DSS Solution not later than ten (10) Business Days from the date the data was received.

8.2.2 Reduction in payment to Contractor:

8.2.2a For each twenty-four (24) hour period, or part thereof, beyond the specified date that Contractor fails to load the data in the DSS Solution as required in 8.2.1 above, from each Data Provider, the Contractor shall forfeit [REDACTED].

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

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

8.3.2 Reduction in payment to Contractor:

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

8.3.2b Contractor guarantees that, each month, the DSS will be available in its entirety with the exception of previously agreed to scheduled outages, for a minimum of

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

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

ARTICLE IX: PAYMENT FOR DECISION SUPPORT SYSTEM SERVICES

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

9.1.1 During the Implementation Phase, the Department will make monthly payments, in arrears, to the Contractor for design, development and implementation costs incurred by the Contractor in its performance of services/activities described in Section IV.B.1 of the RFP (Exhibit A) based on the Personnel, Hardware, Software, Training and Other Cost Categories quoted rates as set forth in the Contractor’s Cost Proposal - Appendix III.A, Tables 3 through 7 (Exhibit B), subject to the Not-To-Exceed caps associated with each Cost Category. Costs incurred by the Contractor in excess of the Total Not-To-Exceed Amounts for Personnel, Hardware, Software, Training and Other costs, if any, shall not be subject to reimbursement

by the Department. As regards, the Total Not-To-Exceed – Amount - Training Cost cap - Appendix III.A, Table 6 of Contractor's Cost Proposal (Exhibit B), notwithstanding the preceding, additional costs incurred resultant from the Contractor training more Users than the number of Users assumed in Appendix III.A, Table 6 (Exhibit B) will not be applied against the Total Not-To-Exceed - Training Cost cap.

9.1.2 Notwithstanding any payments made to the Contractor during the Implementation Phase associated with any Cost Category, title to all products provided by the Contractor during the Implementation Phase shall remain with the Contractor and shall not transfer to the Department until the Contractor's DSS Solution is fully accepted by the Department, in its sole discretion, in accordance with the provisions set forth herein the Contract.

9.1.3 Ten percent (10%) of each monthly invoice amount will be withheld from each monthly amount paid to the Contractor (Surety Withhold). The total of all Surety Withhold amounts withheld will be due to the Contractor upon Department acceptance of a fully functional DSS Solution. Should the Contractor's DSS Solution ultimately not be accepted by the Department, at its sole discretion, the Contractor will be considered in default of the Contract and the Contract shall be subject to termination for cause. In such case of default, the Contractor shall forfeit all Surety Withhold amounts withheld, refund any monies paid to the Contractor during the Implementation Phase and forfeit its right to reimbursement by the Department of any and all costs incurred by the Contractor under the Contract.

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

9.2.1 The payment of the *Ongoing Operations Monthly Fee* shall commence with the first FULL month following the date on which all Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational. If Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational on a date other than the first day of the month such that the DSS Solution is fully operational

for only part of a month, then the Contractor shall be due a *DSS Partial Month Ongoing Operations Fee* equal to the *Ongoing Operation Monthly Fee* times the number of Calendar Days during said partial month during which the Contractor's proposed DSS Solution is fully operational divided by the total number of calendar days in said partial month, assuming that the date the Contractor's DSS Solution is fully operational and is not later than the Completion Date. If the date the Implementation activities are completed and accepted by the Department and the DSS Solution is fully operational is a date later than the Completion Date then, the Contractor shall not be due a *DSS Partial Month Ongoing Operations* and shall be subject to a reduction in payment per Section 8.1.2.

9.2.2 The *Ongoing Operations Monthly Fee* rate shall be a fixed all-inclusive rate to cover all of the Contractor's costs in fulfilling its duties and responsibilities in the performance of Project Services as set forth in Sections IV.B of the RFP (Exhibit A), excepting the delivery of Incremental Training, adding a new Data Provider to the DSS Solution, Incremental User Fees, if any and Additional Consulting Support Services, if any. The *Ongoing Operations Monthly Fee* charged to the Department for such services shall be quoted on a fixed all-inclusive dollar amount per month basis and the rate quoted will remain unchanged over the initial five (5) year term of the Contract and any extension thereof (i.e., the rate quoted and charged for the first month of ongoing operations will be the same as the rate charged for the sixtieth month of ongoing operations).

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

9.2.4 During the term of the Contract and any extensions thereof, the Department may, in its sole discretion add, change, delete or deactivate Users in one or more of levels. Deleted/Deactivated Users may be replaced with new Users at no additional charge to the Department, assuming that during the Operations phase of the Contract the total number of Users is not greater than the assumed number of Users for the given level. If, during

the Operations phase of the Contract, the number of active Users in a given level is less than the assumed number for that level, no reduction in the DSS Ongoing Operations Fee will be due the Department. During the Operations phase of the Contract, if during a given month, the number of active Users in a given level is greater than the assumed number of Users for that level, (i.e., fifteen [15] Level 1 Users, ten [10] Level 2 Users and twenty [20] Level 3 Users as described in Section IV. B.3.a of the RFP [Exhibit A]) the Contractor shall be due an Additional User Fee for each User beyond the assumed number of Users based on the rates as set forth in Table 11 of the Contractor's Cost Proposal. Additional User Fees charged, if any, will be added to the Contractor's DSS Ongoing Operations. For example, if the number of Level 1 Users in month fourteen of the Contract term is fifteen, then no Level 1 Additional User Fee would be due the Contractor. If the number of Level 1 Users in month fifteen is seventeen, then, for that month, in addition to its DSS Ongoing Operations Fee, the Contractor would be due two (2) times its proposed Level 1 per user per month fee as set forth on "Range of Users" line 16 – 20 Table 11 (Exhibit B).

- 9.2.5** The Contractor must include a minimum of 400 hours of Consulting Support Services during the balance of the five (5) year term of the contract as stated in Section 7.3.6 in its *Ongoing Operations Monthly Fee*.
- 9.2.6** Should enrollment changes, or the addition of Data Provider(s), cause the volume of data and related storage needs of the Department to increase or decrease by 15% or more, from one year to the next year of the term of the Contract, either Party may submit a written request to initiate review of the *Ongoing Operations Monthly Fee* received by the Contractor for services provided, accompanied by appropriate documentation. The Department reserves the right to request, and the Contractor shall agree to provide additional information and documentation the Department deems necessary to verify that a modification of the fee is warranted. The Department will agree to modify the *Ongoing Operations Monthly Fee* to the extent necessary to compensate the Contractor for documented additional costs determined by Department to be reasonable and necessary. The Contractor will agree to modify the *Ongoing Operations Monthly Fee* to the extent necessary to relieve the Department of the obligation to pay for services that are no longer required. Should the Parties agree to modify the fee, such approval shall be subject to

written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the Department with or without final resolution of any fee proposal.

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

9.3.0 At the Department's request, the Contractor shall provide additional training for Users when needed due to events including, but not limited to, User turnover, system changes and upgrades, during the term of the Contract and any extension periods thereto, once Implementation activities have been completed and accepted by the Department and the DSS Solution is fully operational. The Contractor shall bill based upon *Incremental Ongoing Training Rates* as quoted in the Contractor's Proposal (Exhibit B) for Incremental Ongoing Training services.

9.4.0 At the Department's request, the Contractor shall provide Additional Consulting Support Services in addition to the minimum of 400 hours of Consulting Support Services included in its *Ongoing Operations Monthly Fee* as stated in Section 7.3.6, during the Ongoing Operational phase of the Contract and any extension periods thereto. The Contractor shall bill based upon *Additional Consulting Support Services Fee(s)* as quoted in the Contractor's Proposal (Exhibit B) for Additional Consulting Support Services.

9.5.0 During the term of the Contract, once Implementation activities have been completed and accepted by the Department and once the Contractor delivers a fully operational DSS Solution that is accepted by the Department, changes in the Data Providers may occur. The Contractor shall integrate a data feed with the new Data Provider into the DSS Solution effective with the

contracted effective date of the new Data Provider into the Empire Plan or other NYSHIP benefit should the DSS Solution be expanded to include additional programs during the term of the Contract and any extension periods. The Contractor shall bill the Department based on a one-time fixed all-inclusive *Data Provider Start-up Fee* to cover all of the Contractor's costs to add a Data Provider to the DSS Solution, during the term of the Contract and any extension periods thereto, once Implementation activities have been completed and accepted by the Department and the DSS Solution is fully operational.

9.5.1 The Contractor shall be reimbursed for services rendered as required to add a new Data Provider at the associated one-time fixed all-inclusive rate as quoted in the Contractor's Cost Proposal (Exhibit B). No additional or incremental Ongoing Operations Monthly fee is allowed resultant from the addition of a new Data Provider other than in accordance with the provisions set forth in Section 9.2.6.

9.5.2 The Contractor must include the run-out data that is received from the previous Data Provider in the DSS Solution for up to three (3) years after the date a change in Data Providers is made.

9.6.0 Should the Department choose to exercise its right to extend the Contract pursuant to Section II of this Agreement, the Contractor or Department may request a rate change (increase or decrease) to the *Ongoing Operations Monthly Fee*; the *Data Provider Start-up Fee* and the *Incremental Ongoing Training Rates* based upon fluctuations in the latest published copy of the Consumer Price Index - All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/>. Go to "Inflation & Prices" then click "Consumer Price Index" and then click on "CPI Tables" then click on "Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present."

9.6.1 Price adjustments shall be made using the CPI to calculate rates for an extension period such that the base rates (i.e., then current rates) are changed by the percent change in the level of the CPI between the Reference Period and the Subsequent Time Period. This is calculated by first determining the Index Point Change between the two periods and then the percent change. The price adjustment shall be calculated as follows: The CPI for the 3rd month prior to the month of the start date of either the last year of the

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

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

- 9.6.2** The Contractor has the sole responsibility to request an annual rate change during said optional extension period and, in such cases, the Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the Department. Should the Contractor fail to request a rate change at the time the amendment is executed by the Parties, the Contractor shall be deemed to have waived its right to any increase in price associated with that year, however, the State shall not be

barred from making the appropriate adjustment, at anytime during the Contract term as amended, in the case of a decrease determined in accordance with the above methodology.

- 9.7.0** The OSC shall render payment for invoices in accordance with ordinary State procedures and practices. The Contractor must certify the accuracy of all Contractor invoices prior to their submission to the Department and the Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt
- 9.8.0** All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of the Contract, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under the Contract at more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the Department.
- 9.9.0** The Contractor agrees that the following costs are not allowable and shall not be charged to the Department as either a direct or formula expense including but not limited to: commissions, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at conferences or meetings of professional organizations unless attendance is necessary in connection with the Project Services and the Contractor receives prior written approval by the Department.
- 9.10.0** During the term of the Contract and any extension period thereto, amounts paid for which it is subsequently determined that the Contractor was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

ARTICLE X: DATA SHARING AND OWNERSHIP

- 10.1.0** All claims, enrollment and other data (i.e., materials) provided to the Contractor by the Department or the Department's Data Providers is being provided to the Contractor solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under the Contract and said materials

are the sole property of the State. Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, the Contractor shall not share, sell, release, or make the materials available to third parties in any manner without the prior consent of the Department. This provision shall survive the expiration or termination of the Contract.

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

ARTICLE XI: OWNERSHIP/TITLE TO CONTRACT DELIVERABLES

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

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

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

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

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

11.2.1 Existing Product(s)

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

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

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

11.2.1d In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

11.3.0 During the term of the Contract, the Contractor may and the Department shall be entitled to, at no additional cost to the Department, incorporate error corrections, updates, revisions, fixes, upgrades to Product and/or new releases of Product in the delivery of Project Services under the Contract.

11.3.1 In addition, where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to:

11.3.1a Notify the Department in writing of the intended discontinuance; and

11.3.1b Continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of:

11.3.1b(1) the best terms offered by Contractor to any other customer, or

11.3.1b(2) not less than twelve (12) months from the date of notice; and

11.3.1c at the Department’s option either: provide the Department with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Department to continue use and maintenance of the Product.

11.3.2 In the event that the Contractor is not the Product manufacturer/developer, Contractor shall be required to:

11.3.2a provide the notice required under the paragraph above within ten (10) Business Days of Contractor receiving notice from the Product manufacturer/developer, and

11.3.2b include in such notice the period of time from the date of notice that the Product manufacturer/developer will continue to provide Product or withdraw support. The provisions of this paragraph shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent subcontractor. In the event that such subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to Department approval, to an alternate subcontractor.

ARTICLE XII: WARRANTIES

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

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

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

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

12.4.0 Survival of Warranties: All warranties contained in the Contract shall survive the termination of the Contract.

ARTICLE XIII: MODIFICATION OF SERVICES

13.1.0 In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of the Contract in such a manner that the Department determines that any design elements or requirements of the Contract must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable timeframe within which to implement such revisions.

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

ARTICLE XIV: TRANSITION

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

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

14.1.2 No Interruption of Services: At all times during the Transition Period and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State:

14.1.2a has approved the Contractor's proposed Transition Plan, and

14.1.2b an orderly transition to the Department or a successor contractor, if applicable has been completed pursuant to the approved Transition Plan as referenced below.

The Contractor shall be required to meet its contractual obligations pursuant to this

Article notwithstanding the issuance of a termination for cause or convenience by the Department.

14.1.3 Transition Plan: Within ninety (90) Days of the Department's acceptance of a fully functional DSS, the Contractor shall provide for approval of the Department a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the timeline, tasks, milestones and deliverables associated with the smooth transition of Services to the Department or a successor contractor, if applicable. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the Department. The Transition Plan must, at a minimum detail:

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

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

14.1.3c encompass the completion of all outstanding Contractor provided services/deliverables, including, but not limited to, the Department requested projects incurred on or before the scheduled termination date of the Contract.

14.1.4 The Contractor shall be responsible for providing Transition Services in accordance with the approved Transition Plan or Updated Transition Plan, as defined in Section 14.1.8, as applicable.

14.1.5 Contractor Transition Services: "Transition Services" shall be deemed to include Contractor's responsibility for all Project Services under the Contract, and for transferring in a planned manner specified in the Transition Plan or Updated Transition Plan, as applicable all such services to the Department or a successor contractor, if applicable. It is expressly agreed between the Parties that the level of service rendered during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where a portion of the Project Services has been transitioned to or assumed by the Department or a successor contractor

during the Transition Period, Contractor shall not be held responsible for the negligent acts or negligent omissions of the Department or the successor contractor for any degradation associated with that portion of Project Services transitioned resulting from the negligent acts or negligent omissions of the Department or the successor contractor.

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

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

14.1.8 Updated Transition Plan: Not later than ninety (90) Days prior to the end of the term of the Contract, or within forty-five (45) Days of notice of termination of the Contract, whichever event occurs first, the Contractor shall provide for approval of the Department an Updated Transition Plan which outlines, at a minimum, the timeline, tasks, milestones and deliverables associated with the smooth transition of Services to the Department or a Successor Contractor, if applicable. Contractor agrees to amend the Updated Transition Plan to include all other information deemed necessary by the Department. The Updated Transition Plan must, at a minimum detail those items as set forth in Section 14.1.3 above.

14.1.9 Updated Transition Plan Deliverable Guarantee: If the Contractor does not meet the Updated Transition Plan submission time period requirements as set forth in Section 14.1.8 above, the Contractor will permanently forfeit one hundred percent (100%) of the Monthly Ongoing Operations Fee, or part thereof, corresponding to the time period from the date the Updated Transition Plan was due to the date the Updated Transition Plan is delivered to the Department. Monthly Operation Fees will resume once the Updated Transition Plan is delivered.

ARTICLE XV: AUDIT AUTHORITY

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

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

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

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

15.2.2 Review of compliance with Performance Guarantees; and

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

15.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, pertinent contracts, subcontracts and correspondence.

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

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

15.6.0 The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within thirty (30) Days of receiving

any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B to the Contract.

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

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

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

ARTICLE XVI: CONFIDENTIALITY

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

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

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

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

- 16.3.0** The Contractor, its officers, employees, agents, consultants and/or any subcontractors agree to comply, during the performance of the Contract, with all applicable federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Contract, with particular emphasis on such information relating to NYSHIP enrollees and their dependents.
- 16.4.0** The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, employees, agents, consultants and/or subcontractors contains a provision which strictly conforms to the various confidentiality provisions of the Contract. Information which falls into any of the following categories shall not be considered Confidential Information:
- 16.4.1** Information the Contractor already possesses without an obligation of confidentiality;
 - 16.4.2** Information the Contractor develops independently from publicly available data;
 - 16.4.3** Information the Contractor receives without obligation of confidentiality from a third party;
 - 16.4.4** Information that is, or becomes, publicly available without breach of the Contract;
- 16.5.0** The Contractor shall promptly advise the Department of all requests made to Contractor for information regarding the performance of services under the Contract including, but not limited to, requests for any material and information provided by the Department or a Data Provider.

ARTICLE XVII: BUSINESS ASSOCIATE AGREEMENT

- 17.1.0** For purposes of this Article, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within

the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as “Department’s PHI.”

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

17.3.0 Permitted Uses and Disclosures of the Department’s PHI: The Contractor may use and/or disclose the Department’s PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department’s PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor’s proper management and administration or to carry out the Contractor’s legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

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

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

17.6.0 Breach Notification:

17.6.1 *Reporting:* The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. In the event of a breach, the Contractor must report any such breach to the Department by electronic means within twenty-four hours of date that the Contractor becomes aware of the event, followed by written notice of the breach within five (5) business days of the date the Contractor becomes aware of the event.

17.6.2 *Required Information:* The Contractor shall provide the following information to the Department within ten (10) business days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible

and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery:

17.6.2a the date of the breach incident;

17.6.2b the date of the discovery of the breach;

17.6.2c a brief description of what happened;

17.6.2d a description of the types of unsecured PHI that were involved;

17.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

17.6.2f 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

17.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

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

17.6.4 The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

17.6.5 For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI.

17.6.6 The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.

17.7.0 Associate’s Agents: The Contractor shall require all of its agents or sub-contractors to whom it provides the Department’s PHI, whether received from the Department or created or received by

the Contractor on behalf of the Department, agree to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the Department's PHI under this Agreement.

17.8.0 Availability of Information to the Department: The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.

17.9.0 Amendment of the Department's PHI: The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department's PHI into copies of the Department's PHI as maintained by the Contractor.

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

17.11.0 Termination:

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

17.11.2 Disposition of the Department's PHI: At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the

Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Department's PHI infeasible.

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

17.13.0 Miscellaneous:

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

17.13.2 *Survival:* The respective rights and obligations of Business Associate and Covered Entity under HIPAA as set forth in this Business Associate Agreement shall survive termination of this Agreement.

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

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

ARTICLE XVIII: NOTICE TO STATE

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

ARTICLE XIX: NOTICES

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

19.1.1 via certified or registered United States mail, return receipt requested;

19.1.2 by facsimile transmission;

19.1.3 by personal delivery;

19.1.4 by expedited delivery service; or

19.1.5 by e-mail.

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

State of New York Department of Civil Service

Name:	Robert DuBois
Title:	Director, Employee Benefits Division
Address:	Albany, NY 12239
Telephone Number:	518-473-1977
Facsimile Number:	518-402-2835
E-Mail Address:	Robert.DuBois@cs.state.ny.us

Truven Health Analytics Inc.

Name:	Tom Weatherup
Title:	Vice President, Client Services
Address:	1 North Dearborn, Suite 1400, Chicago, IL 60602
Telephone Number:	(312) 533-3340
Facsimile Number:	(312) 533-3501
E-Mail Address:	tom.weatherup@truvenhealth.com

19.2.0 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

19.3.0 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XX: SUSPENSION OF WORK

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

ARTICLE XXI: GENERAL PROVISION AS TO REMEDIES

21.1.0 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right

or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.

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

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

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

ARTICLE XXII: TERMINATION

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

22.1.0 The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on the Fixed Hourly Rates as set forth in the Contractor's Financial Proposal for hours actually worked by Contractor personnel on a given project activity, not to exceed the fixed fee of the project activity;

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

- 22.3.0** No delay or omission to exercise any right, power or remedy accruing to the State or DCS upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 22.4.0** If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Agreement, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Project Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue;
- 22.5.0** In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:
- 22.5.1** terminate the Agreement in whole or in part;
 - 22.5.2** suspend, in whole or in part, payments due Contractor under the Agreement; and
 - 22.5.3** pursue equitable remedies to compel Contractor to perform.
- The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services;
- 22.6.0** For Violation of Procurement Lobbying Law. DCS reserves the right to terminate the Agreement in the event it is determined by DCS in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DCS may, at its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

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

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

22.9.0 Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XXIII: MERGERS/ACQUISITIONS

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

ARTICLE XXIV: RESPONSIBILITY TERMS

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

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

24.3.0 Notwithstanding Section 24.2.0 hereinabove, the Department reserves the right, in its sole discretion, at any time during the term of the Agreement:

24.3.1 to require updates or clarifications to the Vendor Responsibility Questionnaire upon written request,

24.3.2 to inquire about information included in or require information omitted from the Vendor Responsibility Questionnaire, and

24.3.3 to require Contractor to provide such information to the Department within a reasonable timeframe.

24.4.0 The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of the Department or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

24.5.0 Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

24.6.0 Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

ARTICLE XXV: ALL LEGAL PROVISIONS DEEMED INCLUDED

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

ARTICLE XXVI: ENTIRE AGREEMENT

26.1.0 The Agreement and the appendices, exhibits and attachments hereto constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto.

ARTICLE XXVII: IRAN DIVESTMENT ACT

27.1.0 As a result of the Iran Divestment Act of 2012 (for purposes of this section only hereinafter referred to as “Act”), Chapter 1 of the 2012 Laws of New York, a new provision was added to the State Finance Law (“SFL”), §165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (“OGS”) was charged with the responsibility to develop a list (“prohibited entities list”) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted on the OGS website on August 10, 2012.

27.2.0 By entering into the Agreement, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the Agreement any subcontractor that is identified on the Prohibited Entities List.

Contractor agrees that after should it seek to renew or extend the Agreement, it must provide the

same certification at the time the Agreement is renewed or extended. Contractor also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of the Agreement.

27.3.0 During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

27.4.0 The Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of the Agreement, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

REST OF PAGE LEFT INTENTIONALLY BLANK

Contract Number: C000588

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Name: [REDACTED]
Title: DEPUTY COMMISSIONER
By: DETRORE TAYLOR
Date: 6.4.13

TRUVEN HEALTH ANALYTICS INC.

By: [REDACTED]
Name: Jonathan S. Newpol
Title: EXECUTIVE VICE President
Date: May 21, 2013

STATE OF Michigan)
COUNTY OF Washtenaw) ss:

On the 21st day of May, 2013 before me personally came
Jonathan S. Newpol, to me known, and known to me to be the person who executed
the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the
Executive Vice President of Truven Health Analytics
described in and which executed the above instrument; and that (s)he signed his/her name thereto.

[REDACTED] My Commission expires: 6-12-13
NANCY L. LAMBORN
Notary Public - Michigan
Washtenaw County
My Commission Expires Jun 12, 2013
Acting in the County of

Approved as to form:

Eric T. Schneiderman
ATTORNEY GENERAL

By: _____
Date: _____

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
JUN 24 2013
Benjamin L. Maggi
BENJAMIN L. MAGGI
ASSISTANT ATTORNEY GENERAL

Approved:

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____
Date: _____

APPROVED
DEPT. OF AUDIT & CONTROL
SEP 16 2013
FOR THE STATE COMPTROLLER

Standard Clauses for all New York State Contracts

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Appendix A, dated December 2012

A PDF version of the document is embedded below:



Appendix A Dec
2012.pdf

Appendix B

Standard Clauses for all Department of Civil Service Contracts

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Appendix B, dated May 2011

A PDF version of the document is embedded below:



APPENDIX B May
2011.pdf

Third Party Connection and Data Exchange Agreement

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Appendix C

A PDF version of the document is NOT embedded due to the fact that it needs to be executed by the Contractor and as such is being provided separately

Exhibit A

Request for Proposal

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Exhibit A: the Request for Proposals entitled, “New York State Health Insurance Program Decision Support System,” dated June 30, 2010, as subsequently amended on July 29, 2010 and on August 5, 2010,

A PDF version of the document is NOT embedded due to the number of documents and their size. The RFP as amended is available at: <http://www.cs.state.ny.us/2010DSSRFP/index.cfm>

Official Responses to questions raised concerning the RFP

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Exhibit A-1, the Department's Official Responses to questions raised concerning the RFP, dated July 29, 2010

A PDF version of the document is embedded below:



Exhibit A-1
Questions and Answe

Exhibit B

Contractor's Proposal

Placeholder for hardcopies of the following documents as set forth at this section of the Agreement:

1. Exhibit B: the Contractor's Proposal comprised of the Offeror's:
 - a. Administrative Proposal, dated September 8, 2010,
 - b. Cost Proposal, dated September 8, 2010, and
 - c. Technical Proposal dated September 8, 2010.

PDF versions of the above documents are NOT embedded due to their size.

Official Transcript of the Management Interview

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. The Official Transcript of the Management Interview dated September 29, 2010;
2. Technical Management Interview Follow-up Information document, dated October 6, 2010 and Attachment 1A and 1B thereto.

PDF versions of the above referenced documents are embedded below:


Technical
Management Interview


01 Technical
Management Interview


02 Attachment 1A -
Payment Integrity Re


03 Attachment 1B -
Payment Integrity Re

Clarifying Responses

Placeholder for hardcopies of the documents, listed in the table below, as set forth at this section of the Agreement. PDF versions of the documents are embedded below:




TABLE #1 – Clarifying Materials			
Clarification #	Document Type	Document Components/Dates	PDF File
001	Request	Letter from Linda Burke to Pamela J. Conrad dated September 16, 2010	 Thomson Reuters Proposal Clarifying Le
	Response	2 pieces of correspondence as follows: 1. 9-21-10, 5:22 pm email from Kristyn Kuennen to Linda Burke; and 2. Exhibit E – MacBride Statement and Non-Collusive Bidding Certification dated 9-20-10	 U__Thomson Reuters_Proposal Re  Exhibit E -- signed 092010.pdf

Exhibit C

Department of Civil Service Information Security Policy

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Exhibit C, Department of Civil Service Information Security Policy

A PDF version of the document is embedded below:



Exhibit C DCS
Information Security I

Exhibit D

Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity

Placeholder for hardcopy of the following document as set forth at this section of the Agreement:

1. Exhibit D, Department of Civil Service Protocol for Protective Security Measures for Applications with High Sensitivity

A PDF version of the document is embedded below:



Exhibit D - Protocol
for Protective Securit