ATTACHMENT I

CONTRACT REQUIREMENTS

Table of Contents

1 CONTRACT TERM 2
2 INCORPORATION OF DOCUMENTS AND ORDER OF PRIORITY 2
3 TIME OF PERFORMANCE/SUSPENSION OF WORK 3
4 SUFFICIENCY OF PERSONNEL AND EQUIPMENT 4
5 CONTRACTOR ROLE/INTERACTION WITH THIRD PARTIES 5
6 SUBCONTRACTORS 6
7 CONTRACTOR RESPONSIBILITIES/CONFLICTS 6
8 PAYMENT TERMS 8
9 CONTRACT INSURANCE REQUIREMENTS 8
10 LETTER OF CREDIT PERFORMANCE BONDS 9
11 DEPARTMENT OVERSIGHT 11
12 INSTALLATION 11
13 TITLE AND RISK OF LOSS 12
14 TOXIC SUBSTANCES 12
15 OWNERSHIP RIGHTS 12
16 SOFTWARE LICENSES 14
17 ESCROW 17
18 WARRANTIES 18
18.1 GENERAL WARRANTIES 18
18.2 INTELLECTUAL PROPERTY WARRANTIES 20
18.3 HARDWARE AND SOFTWARE WARRANTIES 21
18.4 ADDITIONAL SOFTWARE WARRANTIES 22
18.4.1 General Additional Software Warranties 22
18.4.2 Date/Time Warranty 24
18.5 WARRANTY EXCLUSIONS 25
19 AUDIT AND ACCESS TO PREMISES AND RECORDS 25
20 DISPUTES 26
21 LITIGATION/CLAIMS 28
22 INDEMNIFICATION 29
23 CONTRACT AMENDMENT 30
24 ASSIGNMENT OF CONTRACT 31
25 ASSIGNMENT OF CONTRACTOR CLAIMS 31
26 PROVISION RELATED TO CONSULTANT DISCLOSURE LEGISLATION 31
27 PROVISIONS RELATED TO NEW YORK STATE PROCUREMENT LOBBYING LAW 31
28 PROVISIONS RELATED TO NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT 32
29 TERMINATION 32

30 REMEDIES 33
31 NO WAIVER 35
32 CHOICE OF LAW 35
33 SEVERABILITY 35
34 FORCE MAJEURE 35
35 CAPTIONS 36
36 ENTIRE AGREEMENT 36

1 CONTRACT TERM

1. The RFP, including all specifications, general and specific appendices or other This Contract shall commence on the date of execution (i.e., the date the Contract has received all necessary approvals, including but not limited to OSC and the Centers for Medicare and Medicaid Services (CMS)) and shall continue through June 30, 2015. The Contractor is responsible for the successful performance of this Contract, including the design, development, testing, implementation, and operation of all systems proposed or otherwise required under the Contract. Such work must be completed to the satisfaction of the Department in strict accordance with the specifications. The Contractor is also responsible for the successful performance of all subcontractors.
2. At the Department's option, and with the approval of the State Comptroller, the Contract may be extended for up to two (2) one (1) year periods. At the Department's option the Contract may also be extended in one (1) month increments for up to six (6) months. The initial Contract period shall cover all transition and implementation activities, development activities for the Replacement MDW, MDW operations, and Turnover Activities. These activities shall all be completed within the initial contract term. If the Department elects to exercise any of the one (1) year option periods, notice shall be sent to the Contractor at least one hundred eighty (180) calendar days prior to the end of the current Contract period. If the Contractor has not received notice of the Department's intent to exercise such option, it shall then complete all remaining Turnover Task responsibilities specified in Section III.E within the period of such extension. If the Department elects to exercise one or more of the one (1) month options, notice shall be sent to the Contractor at least sixty (60) calendar days before the end of the current contract period. All Contract extensions shall be subject to approval by the State Comptroller and by CMS.

2 INCORPORATION OF DOCUMENTS AND ORDER OF PRIORITY

1 The RFP, including all specifications, general and specific appendices or other attachments, such as Attachment A (the Standard Clauses for all New York State contracts), all schedules and forms included with such documents, and work specifications issued pursuant to this Contract will become part of any contract resulting from the Request for Proposal. Anything which is not expressly set forth in the RFP, specifications, appendices and forms and resultant contract or work specifications issues pursuant to this Contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

2 It is the intention of the parties to restate and clarify the terms and conditions provided in the RFP and Proposal. This Contract shall consist of the documents listed below, which are fully incorporated by reference herein. In the event of any inconsistency or conflict among the document elements of this Contract, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

a. Attachment A (Appendix A - The Standard Clauses as Required by the Attorney General for All State Contracts);

b. Written amendments to the Contract agreed to by the parties and approved, where necessary, by the Attorney General and Office of the State Comptroller (OSC);

c. The "State of New York Agreement", including the standard Department cover sheet, except for the attachments, appendices and attachments;

d. The body of this Contract attached to the RFP as Attachment I;

e. The body of the RFP;

f. RFP Attachment J Staffing Qualifications;

g. Statements of Work, Deliverable Specifications, and Change Orders related thereto;

h. Attachment H (Business Associate Agreement);

i. Vendor's Proposal; and

j. All other appendices, exhibits and attachments to this Contract.

3 In the event of a conflict between or among versions of one of the documents referenced, above, the latest in time document shall control.

3 TIME OF PERFORMANCE/SUSPENSION OF WORK

1. The work shall be commenced and shall be actually undertaken within such time as the Department may direct by notice, whether by mail, email, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.

2. The Department reserves the right to stop the work covered by this proposal and the Contract at any time that the Department deems the Contractor to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the proposal, the Contractor and its surety shall be liable to the State of New York for any excess cost on account thereof.

3. The Department, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Department. 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 or reduction in State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any purchase orders, and shall comply with the suspension order.

Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of performance under the Contract.

4 SUFFICIENCY OF PERSONNEL AND EQUIPMENT

1 The Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this Contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.

2 All employees, subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the RFP or Proposal, whichever is more restrictive, and must comply with all security and administrative requirements of the State, as well as those of the Department. The Department reserves the right to conduct a security background check or otherwise approve any employee, subcontractor or agent furnished by the Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the State's and the Department's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Department reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

3 If the Department is of the opinion that the services required cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, and to take steps to ensure satisfactory performance of services at no additional cost to the Department.

4 The Department has the right to approve or reject original and replacement project team members assigned by the Contractor to this project. The Contractor will not be allowed extra time or money to replace personnel. The replacement project team member must possess the same or a higher level of technical expertise and/or experience than the original staff person leaving the project. The Contractor must notify the Department Project Manager or designee of personnel vacancies and provide résumés of replacement staff as support for the Contractor's compliance with this provision.

5 The Department also reserves the right to require the Contractor to discharge specified employees from performance of any or all duties associated with the performance of this Contract. The Department will not exercise this right unreasonably. The Contractor agrees to replace any employees so discharged with an employee of equal or better qualifications and acceptable to the Department. The Contractor will not be allowed extra time or money to replace personnel. The Department's exercise of this right shall be upon written notice to the Contractor setting forth the reasons for the requested action.

5 CONTRACTOR ROLE/INTERACTION WITH THIRD PARTIES

1 The Contractor will be responsible for compliance with requirements under the Contract, even if requirements are delegated to subcontractors. All Department policies, guidelines, and requirements apply to subcontractors. The Contractor and subcontractors must not in any way purport to represent the Department or of the State of New York without the Department's prior written approval.

2 The Contractor must agree that all requirements of this Contract, including performance requirements set out in the RFP, will be adhered to and that requirements will apply to subcontractors even if subcontractor concurrence is not specifically defined. All subcontracts shall contain provisions specifying:

a. That the work performed by the subcontractor must be in accordance with the terms of the Contract, and

b. That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Contract between the Department and the Contractor.

3 The Department will consider the Contractor to be the sole point of contact with regard to contractual matters, payment of any and all charges resulting from the outsource or purchase of the equipment and maintenance of the equipment for the term of the Contract.

4 The Contractor must serve as system integrator and must coordinate services with other entities, if necessary, for hardware and software testing, and the resolution of communications problems.

5 The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.

6 It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable Federal, state and local taxes, and all FICA contributions.

7 The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other contractors or subcontractors of the Department, as necessary to ensure delivery of product or coordination of performance of services. Additionally, the Contractor shall provide support to the Department during the System Performance Review (SPR) process, including selection of samples, production of hard-copy documents, and gathering of other required data. The Contractor's staff shall assist Department staff in responding to CMS inquiries. This level of support shall also be provided to all other State audit agencies or their designees.

6 SUBCONTRACTORS

1 Subcontracting by the Contractor shall not be permitted except by prior written approval and knowledge of the Department.

2 The Contractor must have written agreement from the Department prior to replacement or substitution of any subcontractor. For any proposed replacement or substitution before or after the award, the Contractor must provide the Department with references, resumes, and financial documentation, in addition to meeting all other applicable requirements, and submission of all applicable forms, in this RFP.

3 The Department shall have access to documentation and records of the subcontractor relevant to the performance of this Contract, consistent with §10 of Attachment A attached hereto.

4 In the event of contract termination, the Department reserves the right to have the subcontract assigned to it on the same terms as between the Contractor and the subcontractor, to the extent consistent with New York law. The Department shall not be directly liable for payment to a subcontractor for products provided or services rendered under this Agreement unless the sub-contract has been assigned as provided above.

7 CONTRACTOR RESPONSIBILITIES/CONFLICTS

1 The Contractor shall provide, on an annual basis, current information in the form and substance required by the Vendor Responsibility Questionnaire submitted with the Contractor's initial proposal. Such information shall also be provided immediately upon a significant and relevant change in the Contractor's circumstances or upon the Department's reasonable request.

2 Specifically, during the term of this Contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the Contractor fully performing its obligations under this Contract. The Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Accordingly, the Contractor agrees to refrain from any practices, activities, or relationships that could reasonably be considered to be in conflict with the Contractor's fully performing its obligations to the Department under the terms of this Contract, without the prior written approval of the Department. In the event the Contractor is uncertain whether the appearance of a conflict of interest may

reasonably exist, the Contractor shall submit to the Department a full disclosure statement setting forth the relevant details for the Department's consideration and direction. Failure to promptly submit a disclosure statement or to follow the Department's direction in regard to the apparent conflict shall be grounds for termination of the Contract. Failure to comply with those provisions may result in termination of the Contract, and/or other civil or criminal proceedings as required by law.

3 The Contractor shall be responsible for the proper custody and care of any State-owned property furnished by the Department for use in connection with the performance of the Contract and will reimburse the Department for any loss or damage. Likewise, the Department shall be responsible for the proper custody and care of any Contractor-owned property furnished by the Contractor to the State agency for use in connection with the performance of the Contract and will reimburse the Contractor for any loss or damage. Such property will be inventoried annually, designating specific location.

4 The Contractor, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this Contract, as confidential information to the extent required by State and Federal law.

5 The Contractor, and any of its subcontractors, shall use reasonable efforts to cooperate with all persons engaged in performing services for the Department, whether or not related to this Contract, including, without limitation, the Department officers and employees and third party vendors engaged by the Department.

6 The Contractor and its subcontractors, if any, and the agents, officers, and employees of the Contractor or any subcontractor, in the performance of this Contract shall act as independent contractors and not as officers or employees of the State. It is further understood that this Contract shall not be construed as a partnership or joint venture between the Contractor or any subcontractor and the State agency.

7 Deliverables submitted by the Contractor must a) meet the form and content requirements specified by the Department and must b) be approved by the Department.

8 PAYMENT TERMS

1 The Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Department in order to receive payment. Billings and any associated invoices must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Department purchases, and such payment shall be made in accordance with ordinary State procedures and practices.

Submission of an invoice and payment thereof shall not preclude the Department from reimbursement or demanding a price adjustment in any case where the

product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

The Contractor shall provide, upon request of the Department, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Department and in a media commercially available from the Contractor. The Department may direct the Contractor to provide the information to the State Comptroller or to the Department.

2 Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law. Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

9 CONTRACT INSURANCE REQUIREMENTS

1. The Contractor must without expense to the State, procure and maintain, until final acceptance by the Department of the work covered by this proposal and the Contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under the Contract, whether performed by it or by subcontractors. Such insurance must be primary and non-contributing to any insurance or self insurance maintained by the Department or the State.
2. Before commencing the work, the Contractor shall furnish to the Department a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty (30) calendar days written notice has been given to the Department. The kinds and amounts of required insurance are:
    a. A policy covering the obligations of the Contractor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the Contract shall be void and of no effect unless the Contractor procures such policy and maintains it until acceptance of the work. Certificates of such coverage, with regards to Workers' Compensation and Disability Insurance coverage, must be provided and attached to the Contract as Appendices E-1 and E-2, respectively.
    b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than $500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than $1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two (2) or more persons in any one occurrence, and not less than $500,000 for damages arising out of damage to or destruction or property during any single occurrence and not

less than $1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

c. Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the Contract.

d. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.

e. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.

10 LETTER OF CREDIT

Without additional cost to the Department, and as a material condition of the Contract:

1. The Contractor must furnish and maintain in full force and effect, for the duration of the contract term (including any extensions) plus one hundred eighty (180) calendar days thereafter, an irrevocable Standby Letter of Credit (SLOC) for the benefit of the Department in the amount of 12.5 million ($12,500,000) U.S. Dollars. The SLOC shall be issued by a financial institution ("Issuer") licensed to do business under the laws of the State of New York. The Issuer shall be subject to the approval of the Department. The form for the SLOC shall be subject to the approval of the Department. The Contractor must provide the initial SLOC to the Department within ten (10) business days of notice from the Department of contract approval. Failure to provide the initial SLOC to the Department within ten (10) business days of such notice will constitute grounds for termination for cause. The SLOC must contain provisions that satisfy the following requirements:

a. No Contingent Obligations:

The obligations of Issuer under the SLOC shall in no way be contingent upon reimbursement by Contractor.

b. Required Notices:

Issuer is required to provide the Department with written notice of: i) any failure of the Contractor to replenish the SLOC to the full aggregate amount, (ii) any failure of the Issuer to renew the SLOC; or (iii) any failure by the Contractor to abide by its SLOC agreement with the Issuer. Such written notice shall be provided so that it is received by the Department within five (5) business days of each such event. The Department shall be entitled to draw the balance of the SLOC within one (1) business day of receipt of such notice.

c. The SLOC must provide funds to the Department for any liability, loss, damage, or expense as a result of the Contractor's failure to perform fully and completely all requirements of the Contract. Such requirements include, but are not limited to, the Contractor's obligation to pay liquidated damages, indemnify the Department under circumstances described in the Contract and the Contractor's obligation to perform the services required by the Contract throughout the entire term of the Contract. Department Oversight

1 The Department shall designate a Contract Administrator or designee who shall be responsible for all matters related to this Contract.

2 Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on the State or the State agency, said right, power, or duty so imposed shall be possessed and exercised by the Contract Administrator. The Contract Administrator is authorized to delegate certain rights, powers, or duties. Notice of such delegation of authority will be conveyed to the Contractor in writing.

3 The Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary to clarify to the Contractor its scope of work and performance obligations. The Contract Administrator may periodically conduct evaluations, or request independent evaluations be conducted, of the Contractor's performance and deliverables. The Contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems or deficiencies identified in the periodic evaluations.

4 The Contract Administrator will designate a Project Manager who will be the Contractor's primary contact for working with other Department staff. The Project Manager will initially receive all Contractor progress reports and deliverables, oversee scheduling of meetings with Department staff, and maintain first-line administrative responsibility for the Contract.

5 The Project Manager or designee shall determine successful completion of all Implementation Phase milestones. The Project Manager will also track overall progress, formally review and approve all deliverables, authorize Contractor reimbursement, and confirm final readiness for start of operations and acceptance of the system.

6 The Project Manager or designee will chair weekly status meetings during the Implementation Phase and attend all formal project walk-throughs.

7 The Project Manager shall have direct oversight of the entire Medicaid Data Warehouse Replacement/OHIP Data Mart Operational Support Project and may request periodic presentations by the Contractor that demonstrate progress achieved during the project.

8 In no instance shall Contractor staff refer any matter to the Contract Administrator or any other official in New York State unless initial contact, both

verbal and in writing, regarding the matter has been first presented to the Project Manager.

11 INSTALLATION

4. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the product in the proper location.
5. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc., is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Department and with proper consideration for the rights of other contractors or workers.
6. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.
7. The Contractor must pay all packaging, shipping and other costs to transport hardware to be installed, whether at the Contractor's main location, or if applicable, to any other location designated by the Department.

12 TITLE AND RISK OF LOSS

1. Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Department until the products have been received, inspected and accepted by the Department. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the RFP or purchase order. Mere acknowledgment by Department personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the products received. Any delivery of the product that is substandard or does not comply with the Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Department.

13 TOXIC SUBSTANCES

1. Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide the Department with not less than two (2) copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.
2. Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Department.

14 OWNERSHIP RIGHTS

1. Any materials, articles, papers, etc., developed by the Contractor under or in the course of performing this Contract shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the Department for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the Contractor shall be free to publish in scholarly journals along with a disclaimer that the views within the article or the policies reflected are not necessarily those of the New York State Department of Health, the Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. The Contractor shall not release any information regarding the Department's data warehouse project without the Department's prior written approval. Prior to the release of any such information, the Contractor must complete a detailed review of any information, promotional materials, media releases, or advertising proposed to be released by it or any subcontractor. The Contractor's review must ensure the accuracy of terminology, numerical totals, statistical conclusions, and the like. The Contractor or any subcontractor shall make no media, news, or press release without the prior written approval of the Department.
3. The Department will have exclusive ownership of all MDW or other eMedNY-related data gathered or developed pursuant to the Contract resulting from this RFP. The Contractor will have no rights to any such data gathered or developed pursuant to the Contract resulting from this RFP. All such data must be designated "confidential," and must be protected as specified within the Contract or as otherwise required by law. At the end of the Contract the Department will own such data as well as all database and data storage design documents, schema, documentation, licensing, and end-user documentation developed to support the system.
4. Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is secured from the State or under circumstances as indicated in Section 15, paragraph 1 above. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
5. No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the Contractor or any of its

employees, nor shall any notice of copyright be registered by the Contractor or any of its employees in connection with any report, document or other data developed pursuant to this Contract.

6. All reports, data sheets, documents, etc., generated under this Contract shall be the sole and exclusive property of the Department. Upon completion or termination of this Contract the Contractor shall deliver to the Department upon its demand all copies of materials relating to or pertaining to this Contract. The Contractor shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department or its authorized agents.
7. If any invention, improvement, or discovery of the Contractor or any of its subcontractors is conceived or first actually reduced to practice in the performance of work under this Contract, and if such is or may be patentable, the Contractor shall notify the Department immediately and provide a detailed written report. All Contractor inventions, improvements and discoveries shall be jointly owned by the Contractor and the State and each party may exercise all rights therein, including the right to grant non-exclusive licenses to third parties, without accounting to and without the consent of the other party. If applicable, the rights and responsibilities of the Contractor, third party contractors, and the State with respect to such invention, improvement, or discovery will be determined in accordance with Federal laws and regulations in existence on the date of execution of this Contract which define Contractor title, right to elect title, Federal government "march in" rights, and the scope of the Federal government's right to a non-exclusive, royalty-free, irrevocable license to practice or have practiced a subject invention on behalf of the United States throughout the world. The Contractor shall include the requirements of this paragraph in its third party contracts for the performance of the work under this Contract.
8. Additional Department rights relating to software are set forth in Section "16" *Software Licenses*.
9. The provisions of this section shall survive termination or expiration of this Contract.

15 SOFTWARE LICENSES

Where software and/or documentation is acquired on a licensed basis:

1. The Contractor must pay all associated license, maintenance, and support fees throughout the Contract term for software (also referred to below as "product" or included in "Materials") proposed by the Contractor. All proprietary software used in the design, development, programming, testing, installation, operation, administration, use, security, and maintenance of the system must be licensed in the name of the Department. The obligation to pay maintenance and support fees, as applicable, applies even where software or documentation is not acquired on a licensed basis.
2. The proprietary software of the Contractor and all subcontractors and suppliers proposed for installation must be available to the Department for its use for the

entire Contract period, for any extensions the Department may choose to exercise and for any extended license terms the Department may choose to exercise after termination of the Contract. The Contractor must provide an escrow account to assure the Department of its ability to continue to use the proprietary software should the original Contractor and/or copyright holder no longer be in a position to guarantee such access.

3. The Department and CMS must have a non-exclusive, perpetual, royalty-free, and irrevocable license to use, execute, reproduce, display, perform, merge, or otherwise use the software within its business enterprise and as applicable, for Federal government purposes, and to otherwise use, and authorize others to do the same, with regard to all software, procedures, files, and other documentation (the "Materials) that is designed, developed, installed or enhanced as part of this project. CMS' rights to the software will, in any case, be at least as extensive as required pursuant to 42 CFR 433.112. All software designed, developed or modified as part of this project shall be owned by the Department, and shall be simultaneously owned by CMS, and freely available to them in accordance with 42 CFR 433.112.
4. As the Department's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). The Department does not have to obtain the approval of the Contractor for permitted license transfers, but must give thirty (30) calendar days prior written notice to the Contractor of such move(s).
5. Outsourcers, facilities management or service bureaus retained by the Department shall have the right to use the product to maintain the Department's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) the Department gives notice to the Contractor of such party, site of intended use of the product, and means of access; and (ii) such party has executed, or agrees to execute, the product manufacturer's standard non-disclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for the Department. In no event shall the Department assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Department.
6. Any third party with whom the Department has a relationship for a state function or business operation, shall have the temporary right to use the product (e.g., JAVA applets), provided that such use shall be limited to the time period during which the third party is using the product for the function or business activity.
7. If commercially available, the Department shall have the option to require the Contractor to deliver, at the Contractor's expense: (i) one (1) hard copy and one

(1) master electronic copy of the software documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the software documentation by type of license in the following amounts, unless otherwise mutually agreed:

a. Individual/Named User License - one (1) copy per License;

b. Concurrent Users - 10 copies per site; and

c. Processing Capacity - 10 copies per site.

8. Software media must be in a format specified by the Department, without requiring any type of conversion.

9. If the Contractor is other than the entity holding the copyright for any Commercial Off- the-Shelf (COTS) product(s) offered, the Contractor must include written verification by the entity holding the copyright authorizing the Contractor to supply or sell the software proposed on the license terms required by this Contract.

10. In addition to, and without limiting, the rights granted elsewhere in this Contract:

a. The Department shall have a perpetual license right to make, reproduce (including downloading electronic copies of the documentation) and distribute, either electronically or otherwise, copies of the documentation as necessary to enjoy future use of the software in accordance with the terms of license;

b. The Department may, in perpetuity, use and copy the software and related documentation (collectively "product") in connection with: (i) reproducing a reasonable number of copies of the product for archival back-up and disaster recovery procedures in the event of destruction or corruption of the product or disasters or emergencies which require the Department to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the product not to be installed until and after the declaration by the Department of a disaster; and (iii) reproducing a back-up copy of the product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of the product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

c. The Department and CMS shall have the right, in perpetuity, to use and distribute modifications or customizations of the software or documentation (the Materials) to and for use by the Department, CMS, or any entity otherwise authorized to use the Materials, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No right or interest in any trademark, trade name, or service mark is granted hereunder.

11. Except as expressly authorized by the terms of license, or otherwise authorized by the terms of this Contract or other expanded license rights granted to the State, the Department shall not:
    a. Copy the Product;
    b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or
    c. Export the licensed software in violation of any U.S. Department of Commerce export administration regulations.
12. For commercial software, licensed from a third party or otherwise, that is incorporated into a deliverable, and for which the Department has not signed a separate license agreement governing that commercial software's warranties, the Contractor represents and warrants that it has done one of the following:
    a. Obtained the right from the third party licensor to commit to the warranties and maintenance obligations incorporated in this Contract; or
    b. Obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the Department.

16 ESCROW

1. The Contractor shall either: (i) provide the Department with the source code for the product; or (ii) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the Department. That agreement must, at minimum, provide for release of the source code to the Department a) when the owner of the software notifies the Department that support or maintenance of the Product are no longer available or b) if the Contractor fails to provide services pursuant to this Contract for a continuous period. The escrow agent must be paid by the Contractor; or (iii) will certify to the Department that the product manufacturer/developer has named the Department as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.
2. The Department may release the source code to those who have a) licensed the product or obtained services or b) who are otherwise authorized to use the product or related Materials, pursuant to this Contract or otherwise. Such individuals or entities may use such copy of the source code to maintain the product.

3. Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
4. The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of the data warehouse and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software. All such materials must be provided to the escrow agent within five (5) business days of its use or applicability to the use of the Data Warehouse.
5. Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of Section 17, Paragraph 1.
6. In the event that this Contract expires and is not renewed or extended, the escrow agreement must remain in place and be paid for by the Contractor until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

17 WARRANTIES

17.1 GENERAL WARRANTIES

1. The Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State, as well as those of the Department in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.
2. The Contractor warrants and represents that its work and the deliverables resulting from that work will be merchantable and fit for the particular purposes described in the RFP. The Contractor further warrants and represents that all deliverables, materials, products or services delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using such deliverables, materials, products or services.

3. The Contractor warrants that all components or deliverables specified and furnished by or through the Contractor under the Contract meet the completion criteria set forth in the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
4. The Contractor represents and warrants that all services performed pursuant to the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, in accordance with the terms of the RFP and the standards of performance considered generally acceptable in the industry for similar services.
5. The Contractor represents and warrants that it shall, at its sole expense, secure 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, including those of the Department with regard to conduct on any premises under the Department's control and/or security for the Department's data, systems and networks.
6. Prior to award and during the Contract term and any renewals thereof, the Contractor must establish to the satisfaction of the Department that it meets or exceeds all requirements of the RFP, the Proposal, the Contract, and any related specifications associated with those documents or subsequently established, and with any applicable laws, including but not limited to those related to permit and licensing requirements, and shall provide such proof as required by the Department. Failure to comply or failure to provide proof 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. The Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.
7. The warranties regarding material defects, merchantability and fitness are for a period encompassing the Contract term plus one year. All other warranties will be continuing warranties, unless otherwise specified in this Contract. If any portion of the project fails to comply with these warranties, the Department will notify the Contractor in writing. The Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the project.
8. All warranties contained in this Contract shall survive the termination of this Contract, unless otherwise provided herein.
9. The Contractor must notify the Department in writing immediately upon the discovery of any breach of any of the warranties provided under this Contract.
10. The Contractor agrees to correct errors discovered in the design and installation of the system at no additional cost or expense to the Department.

11. Notwithstanding prior acceptance of deliverables by the Department, the Contractor will expressly warrant all delivered programs and documentation as properly functioning and compliant with the terms of the Contract. The Contractor must correct, at no additional cost or expense to the Department, errors and design deficiencies in the system and replace incorrect or defective programs and documentation within one (1) week of notification from the Department of such deficiencies, or within such period as may be necessary to make correction(s) using due diligence and dispatch as agreed upon between the Department and the Contractor.

12. If the Contractor fails to repair an identified error, deficiency or defect within such period, the Department may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Department for incurred costs. This warranty will be in effect throughout the term of the Contract and for one (1) year thereafter. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period also will be covered by this warranty. This provision shall not be construed as limiting rights or remedies provided for elsewhere in this Contract.

13. All warranties set forth in this Contract shall be expressly incorporated into all subsequent statements of work, deliverable specifications and change orders unless otherwise expressly disclaimed by the parties therein or such warranty is clearly inapplicable given the type of product or service provided.

17.2 INTELLECTUAL PROPERTY WARRANTIES

1. The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any products transferred to the Department under this Contract. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Contractor fully indemnifies the Department for any loss, damages or actions arising from a breach of said warranty without limitation.

2. The Contractor represents and warrants that it is the owner and has secured all applicable interests, rights, licenses, permits or other intellectual property rights in all concepts, materials, work products, systems and software, and any other intellectual property right developed and delivered under the Contract. The Contractor further represents and warrants that all concepts, materials, work products, systems and software, and any other intellectual property right developed and delivered under the Contract shall not misappropriate a trade secret or infringe any copyright, patent, trademark, trade dress or other intellectual property right of any third party. This warranty shall survive termination or expiration of the Contract. The State may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The State's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

3. The Contractor warrants that it has the right and ability to grant the license(s) required by the Contract with regard to any deliverable in which title does not pass to the Department.
4. The Contractor warrants that all deliverables provided by the Contractor do not and will not infringe or misappropriate any right of any third party based on copyright, patent, trade secret or other intellectual property rights, and that the exercise of license rights pursuant to this Contract will not infringe or invalidate any subsisting intellectual property right owned by persons other than the Department. The State may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The State's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty. In case the deliverables or any one or part thereof is held or alleged to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to the Contractor to be likely to be brought, the Contractor will, at its own expense, either:
    a. Procure for the Department the right to continue using the deliverables; or
    b. Modify or replace the deliverables to comply with the specifications so that no violation of any intellectual property rights occurs.

17.3 HARDWARE AND SOFTWARE WARRANTIES

1. Hardware and other equipment offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
2. If any computer hardware or telecommunications hardware (equipment) will be a part of any deliverable, the Contractor warrants that the equipment fully complies with all government environmental and safety standards applicable to the equipment. The Contractor also warrants for the Contract term that the equipment will perform substantially in accordance with specifications described in the RFP, the Proposal, the user manuals, technical materials and related writings published by the manufacturer for the equipment.
3. The Contractor further warrants and represents that hardware and software components or deliverables specified and furnished by or through the Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, the remaining term of the Contract, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("project warranty period"). During the project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through the Contractor shall be repaired or replaced by the Contractor at no cost or expense to the Department. The Contractor shall extend the project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the

possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees ("extended warranty").

4. Repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired product or parts and components of such product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new product standards may be permitted by the Department. Before installation, all proposed substitutes for the original manufacturer-installed parts or components must be approved by the Department. The part or component shall be equal to or of better quality than the original part or component being replaced.
5. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected so as to cause the equipment to perform as required. If such measures are not commercially practicable, then the Contractor shall grant the Department a refund equal to the amount the Department paid for the equipment, or, if such has not been individually priced, the manufacturer's suggested retail price for the equipment. All costs for labor and material and transportation incurred to repair or replace defective product during the warranty period shall be borne solely by the Contractor, and the State or the Department shall in no event be liable or responsible.
6. Except where the Contractor's breach of a warranty makes it impossible for the Department to do so, the Department will return the affected equipment to the Contractor in the case of a refund under the previous paragraph. The Contractor will be responsible for the cost of obtaining replacement equipment where such equipment is essential to the operation of the data warehouse.
7. Any part or component replaced by the Contractor under the Contract warranty shall be guaranteed for the greater of:
    a. One (1) year from the date the Department accepts the part or component;
    b. If a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component; or
    c. The warranty period applicable to the original part or component.
8. Where the Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth herein, the Contractor shall offer or pass through any such warranties to the Department.

17.4 ADDITIONAL SOFTWARE WARRANTIES

17.4.1 General Additional Software Warranties

1. The Contractor warrants that the software will be merchantable and fit for the particular purpose for which the Department acquired it. The Contractor agrees this warranty shall survive termination of the Contract.

2. The Contractor hereby warrants and represents that the software and all upgrades do not and will not contain any computer code that would disable the software or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). The Contractor agrees that in the event of a breach or alleged breach of this provision that the Department shall not have an adequate remedy at law, including monetary damages, and that the Department shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the Department shall be entitled. The Contractor agrees this warranty shall survive termination of the Contract.
3. The Contractor represents and warrants that no anti-use devices have been or will be installed in the software supplied pursuant to this Contract. The Contractor agrees this warranty shall survive termination of the Contract.
4. The Contractor warrants that the software will, at the time of its delivery under this Contract, be free of viruses, worms or other devices (collectively "Device") capable of halting or inappropriately altering operations or erasing or altering data or programs. Further, the Contractor shall employ industry standard measures to prevent incorporation of such Devices. If it is discovered that such a Deliverable does contain such a Device, then the Contractor shall take appropriate measures to remove such Device, assist the Department with restoration of data and replace such program with a Device-free version of the same program. The Contractor is not responsible for Devices introduced at the Department's site by the Department or its employees, agents or contractors not associated with the Contractor, or the Department's failure to employ industry standard measures to prevent incorporation of known Devices. The Contractor agrees this warranty shall survive termination of the Contract.
5. The Contractor warrants that all media on which the software is delivered to the Department will be free from defects. The Contractor agrees this warranty shall survive termination of the Contract.
6. During the warranty period, as well as any optional maintenance periods that the Department exercises, the Contractor must correct any material programming or other errors that are attributable to the Contractor within a reasonable period of time. However, when the Department becomes aware of a defect, the Department must notify the Contractor, either orally or in writing, of such defect and provide sufficient information for the Contractor to identify the problem.
7. Without lessening any warranty rights granted elsewhere in this Contract, with regard to any deliverable that includes or consists of software, the Contractor warrants as to all such software that on acceptance, and for the software manufacturer's warranty period, the software distributor's warranty period, the

remaining term of the Contract, or for a minimum of one (1) year, whichever is greater, that:

a. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's proposal, and the RFP;

b. The Contractor will deliver and maintain relevant and complete software documentation, commentary and source code;

c. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and

d. The software and all maintenance will be provided in a professional, timely and efficient manner.

8. Where the Contractor, the independent software vendor (ISV), or other third party manufacturer provides any project deliverable delivered by or through the Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the project warranty or extended warranty period(s), the Contractor shall be responsible for the coordination during the project warranty or extended warranty period(s) with the ISV or other third party manufacturer(s) for warranty repair or replacement of the ISV's or other third party manufacturer's such product.

17.4.2 Date/Time Warranty

1 The Contractor warrants that all hardware, software, firmware and similar devices and materials provided furnished pursuant to this Contract shall, when used in accordance with the product documentation, be able to accurately and without delay process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations, and the processing of dates occurring before and after the turning of a century. Where specific products or services must perform as a package or system, this warranty shall apply to the products as a system, including the requirement, at minimum, to accurately and without delay process, transfer, sequence data or otherwise interact with the other components or parts of the Department's system to exchange accurate data. The Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

2 In the event of any material decrease in functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede a deliverable from operating correctly as described in the preceding paragraph, the Contractor agrees to restore the deliverable to the same level of functionality as warranted herein, or to repair or replace the deliverable with a conforming

product so as to minimize interruption to the Department's ongoing business processes, it being expressly understood and agreed that time is of the essence in this regard. In the event that such warranty compliance requires the acquisition of additional software, the expense for any such associated or additional acquisitions which may be required (including, without limitation, data conversion tools) shall be borne exclusively by the Contractor.

3 These warranties shall survive beyond termination or expiration of this Contract through: a) one (1) year beyond termination or expiration of the Contract or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

17.5 WARRANTY EXCLUSIONS

1. The Contractor's warranties with respect to the software's performance in accordance with its documentation, fitness and merchantability do not cover any error caused by any change to the software made by any party other than the Contractor and not at the Contractor's request, or otherwise in accordance with this Contract.
2. The warranties set forth in this Contract do not cover damage to the software caused by accident, neglect or misuse of the software by any party other than the Contractor or other than anyone else acting on the Contractor's behalf, at the Contractor's direction, or in accordance with this Contract.

18 AUDIT AND ACCESS TO PREMISES AND RECORDS

1. The Contractor must cooperate and provide access, at no cost, to the system and records associated with this Contract when requested by the Department or other Federal and/or State oversight entities including, but not limited to, CMS, the Comptroller General of the United States and third parties acting on their behalf, including the Independent Verification and Validation (IV&V) Consultant. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.
2. The Contractor must provide assistance, at no cost, to the Department, and other Federal and/or State oversight entities, including but not limited to CMS, the Comptroller General of the United States, other appropriate State or Federal oversight entities, and third parties acting on the behalf of such entities, to evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed under this Contract. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.
3. In the event access to the Contractor's premises or records is requested under this subsection, the Contractor agrees to make staff available to assist in the audit or inspection effort at no cost.

4. The Contractor agrees to provide adequate space on the premises to reasonably accommodate the State or Federal representatives conducting an audit or inspection.
5. The Contractor, in accordance with 95 CFR Part 74, shall maintain accounting books, accounting records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues; all net costs, direct and apportioned; and other costs and expenses, of whatever nature, that relate to performance of contractual duties under the provisions of this Contract. The Contractor's accounting procedures and practices shall confirm to generally accepted accounting principles, and the costs properly applicable to this Contract shall be readily ascertainable therefrom. If, during the term of the Contract, work is performed on a cost-reimbursement basis, the allowability of direct and indirect costs shall be governed by 95 CFR Section 74.175.
6. The Contractor must ensure the cooperation of any subcontractor with the requirements of this subsection.

19 DISPUTES

Contract disputes will be handled in accordance with the following procedures:

1. Any dispute or controversy between the Department and the Contractor arising under or relating to this Contract which either party hereto feels is significant shall be reduced to writing by that party and delivered to the other party. The parties hereto shall then negotiate in good faith and use every reasonable effort to resolve such dispute and shall not resort to any formal proceedings to resolve such dispute until they have reasonably determined that a negotiated resolution is not possible.
2. Any dispute or controversy between the Department and the Contractor which cannot be disposed of through negotiation shall be decided by a designee of the Commissioner of the New York State Department of Health. Both the Department and the Contractor shall present written statements of issues and facts in dispute. The designee of the Commissioner shall make a determination and issue a written decision within fifteen (15) calendar days. Upon issuance of such decision, the parties shall proceed diligently with the performance of this Contract and shall comply with the provisions of such decision.
3. The decision of the designee of the Commissioner shall be final and conclusive unless the Contractor submits a written appeal to the Commissioner of the New York State Department of Health. Such appeal must be submitted within fifteen (15) calendar days of the date of the decision by the designee of the Commissioner. In the event of an appeal, the Commissioner shall promptly review the dispute resolution decision and shall confirm, annul, or modify it. The Contractor shall be afforded the opportunity to be heard *de novo* and offer evidence in support of its appeal. The decision of the Commissioner shall be final and conclusive.

4. During the time that the parties hereto are attempting to resolve any dispute in accordance with the provisions of the Contract, each of them shall diligently perform its duties hereunder.

20 LITIGATION/CLAIMS

1 The Contractor shall promptly notify the Department in the event that the Contractor learns of any actual litigation in which it is a party defendant in a case which involves or impacts services provided under this Contract. The Contractor, within fifteen (15) calendar days after being served with a summons, complaint, or other pleading which has been filed in any Federal or State court or administrative agency, shall deliver copies of such document(s) to the Contract Administrator. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

2 In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of the service or product under the Contract infringes any patent, copyright or proprietary right, and the Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, the Contractor shall immediately notify the Department and the New York State Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. The Contractor shall in such event protect the interests of the Department and secure a continuance to permit the Department to appear and defend its interests in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses the Department may have.

3 If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement or similar claim that is pending actually may succeed, the Contractor will do one of the following four (4) things as soon as reasonably possible to avoid or minimize any interruption of the Department's business:

a. Lawfully modify the offending software, source code or documentation so that it is no longer infringing;

b. Replace the offending software, source code or documentation with an equivalent or better item;

c. Acquire the right for the Department to use the infringing software, source code or documentation as it was intended for the Department to use under this Contract; or

d. Upon the Department's agreement that none of the above courses of action are preferable, remove the infringing software, source code or documentation and refund the amount the Department paid for the software and the amount of any other software or item that requires the availability of the infringing software, source code or documentation for it to be useful to the Department.

e. Nothing herein will preclude the Department from pursuing any other remedies available under the Contract or otherwise available under law.

4 The Department agrees to give the Contractor notice of any such claim as described in the preceding paragraphs as soon as reasonably practicable and to allow the Contractor to control the defense of any such claim, upon consultation with and upon the approval of the New York State Attorney General.

5 The Contractor shall, at the Department's expense so long as such expense is reasonable, provide such litigation support as the Department may reasonably request during the term of the Agreement, where factual issues regarding the subject matter of the Contract are implicated. This may include, but shall not be limited to, making appropriate personnel available to provide affidavits and/or testify in administrative or judicial proceedings. This does not contemplate the mandatory provision of expert testimony by the Contractor. Such testimony may be provided by the Contractor in its discretion and shall be subject to a separate agreement.

21 INDEMNIFICATION

1. The Contractor will release, protect, indemnify, defend and hold the Department harmless from and against any claims of infringement by any third party based on the software, source code or documentation licensed or otherwise provided under this Contract. Any defense of the Department requires and is subject to the approval and consent of the New York State Attorney General and will be at the Contractor's sole cost and expense.

2. The Contractor will indemnify the Department for all direct damages to the Department caused by the negligence or willful misconduct of the Contractor. The Contractor also agrees to indemnify, defend and hold the Department harmless from and against all claims, liabilities, demands, losses, expenses (including by way of example only, court costs and experts' and attorneys' fees), and causes of action of every kind and character in favor of any third party caused or arising out the activities or performance of the Contractor or the Contractor's personnel. The foregoing obligations do not apply to the extent such claims or damages are caused by the Department's actual negligence or willful misconduct, and are in addition to remedies otherwise available to the Department under this Contract. Any defense of the Department requires and is subject to the approval and consent of the New York State Attorney General and, except to the extent due to a claim arising from the Department's negligence or willful misconduct, will be at the Contractor's sole cost and expense.

3. Except as otherwise expressly provided in this Contract, neither Party will be liable for any damages other than direct damages. This exclusion of damages includes, by way of example only, indirect, incidental, exemplary, and consequential damages, including loss of profits, even if the Party knew or should have known of the possibility of such damages. Additionally, neither Party will be liable for damages in excess of two (2) times the total value of this Contract or three million dollars ($3,000,000), whichever is greater, except that liability shall not be limited in the case of claims under infringement or other

violation of intellectual property, or claims involving personal injury or death, regardless of the nature of the damages sought for any such claim. This limitation of liability will survive termination of this Contract.

22 CONTRACT AMENDMENT

1. This Contract may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This Contract may not be amended orally. The Contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and, where appropriate, approval of the Attorney General, the Office of the State Comptroller, and CMS, and without prior approval in writing of the amount of compensation for such changes. An approved contract amendment is required whenever a change affects the payment provisions, the scope of work, or the term of the Contract.
2. If any change in the scope of work affects costs or the time required to perform other work, an equitable adjustment may be made in the payment provisions or delivery schedule, or both. Failure of the Contractor to agree to an equitable adjustment shall be considered a dispute and resolved under the provisions described in Section (o) above. In general, changes requiring system modifications shall be performed as part of the Evolution Process and shall not require a contract amendment or additional funding.
3. If the Contractor is required to perform additional work based on new requirements, including changes in State or Federal regulations, the Contractor may submit an expansion of work request. Enhanced Federal funding support may be required to implement these changes. A formal proposal from the Contractor shall be submitted in response to a request to implement major system changes. That proposal will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget. The Contractor's proposal/response shall be submitted in writing by the date requested by the Department. The Department will either approve or reject the estimate or request more information. The price proposal submitted by the Contractor shall be prepared in the same format as the Pricing Schedules provided in Attachment N – Pricing Schedules, of the RFP. For example, if the Contractor is proposing a change in the Fixed Annual Operations Fee as a result of the contract amendment, the proposal format shall be the same as Pricing Schedule C - Operations Fixed Administrative Fee. Such proposal shall illustrate the proposed incremental price using the same rates, the same corporate allocation, and the same markup as was used in the Contractor's Proposal submitted in response to the RFP. The incremental prices shall be accompanied by sufficient documentation demonstrating, to the Department's satisfaction, that the changes in the Contractor's cost due to the change in the scope of work justifies the incremental price proposal.

23 ASSIGNMENT OF CONTRACT

1. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Department. Failure to obtain consent to assignment from the Department shall be grounds for the Department to revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Department and seek written agreement from the Department which will be filed with the Comptroller. The Department reserves the right to reject any proposed assignee at its discretion.
2. Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes the Department's responsibilities for the Contract.

24 ASSIGNMENT OF CONTRACTOR CLAIMS

1. Contractor hereby assigns to the State any and all of its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, including 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, including General Business Law Section 340, et. seq.

25 PROVISION RELATED TO CONSULTANT DISCLOSURE LEGISLATION

1 The Contractor shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each State fiscal year included in this Contract term. This report must be submitted to:

a. The NYS Department of Health, at the State's designated payment office address as specified by the Department; and

b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and

c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

26 PROVISIONS RELATED TO NEW YORK STATE PROCUREMENT LOBBYING LAW

1. The State and the Department reserve the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with

New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the State or the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

27 PROVISIONS RELATED TO NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT

1. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

28 TERMINATION

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this Contract, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor.
2. If, in the judgment of the Department, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this Contract, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.
3. By written notice, this Contract may be terminated at any time by the State for convenience upon thirty (30) calendar day's written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or purchase order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Department shall remain liable for all accrued but unpaid charges incurred through the date of the termination. The Contractor shall use due diligence and provide any outstanding deliverables.
4. The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor.
5. The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification

furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor.

6. Any such termination, other than for convenience, shall be at the Contractor's expense. In such event, the Department may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
7. Upon termination of the Contract, the following shall occur:
    a. The Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
    b. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

29 REMEDIES

1. It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law. (OGS-AppB65)
2. In the event of a breach of the media warranty provided for elsewhere in this Contract, the Contractor must replace the defective media expeditiously and without charge to the Department.
3. In the event that a warranty provided for under this Contract is breached and such breach results in the corruption or loss of data, the Contractor shall at its sole expense correct the defect(s) and reload and reprocess the data through the MDW. The Contractor shall be responsible for maintaining up to date back-up copies of all data. The Contractor's project personnel will also provide reasonable assistance to the Department, at the Contractor's expense, to recollect any data not contained in the Contractor's back-up copy because it was submitted to the MDW after the last correct back-up run and before the occurrence of the Defect(s).
4. At the Department's discretion, in the event of the Contractor's material breach, in lieu of the above the Department may, with or without formally bidding: (i) Purchase from other sources; or (ii) When the Department is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Department may acquire acceptable replacement product of lesser or greater quality. Such purchases may, at the discretion of the Department, be deducted from the Contract quantity and payments due the Contractor.
5. In any case where a question of non-performance by the Contractor arises, payment may be withheld in whole or in part at the discretion of the Department. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred. Such amounts as they relate to Federal certification requirements may be deducted during the entire

period that CMS certification is lacking for the Medicaid Data Warehouse system. Should Federal certification and the associated Federal funds subsequently be granted and provided retroactively, the Department will reimburse the Contractor for amounts withheld back to the date of certification.

6. The Department may, at its sole discretion, return all or a portion of collected damages as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.
7. In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Department the amounts owed by the Contractor arising out of the same transactions.
8. The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.
9. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Department promptly by the Contractor or deducted by the Department from payments due or to become due the Contractor on the same or another transaction.
10. Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. The Department reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.
11. The Contractor shall be liable for the difference between the maximum allowable enhanced Federal Financial Participation (FFP) and the amount actually received by the State, including any losses due to delays in meeting the Department-approved schedule, in meeting Federal certification (retroactive to the beginning date of operations) or re-certification requirements, or failure to meet minimum SPR standards if attributable to the Contractor. Damage assessments shall not be made until CMS has notified the State of its decision in writing.

30 NO WAIVER

1. No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed

by the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Contract shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

31 CHOICE OF LAW

1. Except where the Federal Supremacy Clause requires otherwise, this Contract shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict or choice of laws principles. All disputes, controversies or claims arising out of or in connection with, this Contract shall be litigated in a court of competent jurisdiction within New York State. The parties agree to waive any right to a trial by jury.

32 SEVERABILITY

1. If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

33 FORCE MAJEURE

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the State or the Contractor, its subcontractors, or others under the Contractors or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.
2. Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.
3. Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may:
    a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Department with respect to product, Materials, or services; and/or
    b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the product,

Materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department; or

c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relevant part thereof.

4. In addition, the Department reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of the Contractor; (ii) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects the Contractor's performance that continued performance of the Contract would result in a substantial loss.

34 CAPTIONS

1. Captions and headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract. The singular includes the plural and vice versa. Any reference to gender shall be deemed to include the masculine or feminine. Font size, italics, underlining, bolding, etc., shall not be construed to increase the importance of that particular text beyond that of any other text. Should any term or condition be deemed void or unenforceable, the remaining provisions of this Contract shall remain in full force and effect.

35 ENTIRE AGREEMENT

1. This Contract, including the documents identified above, constitutes the entire Agreement between the parties with respect to the subject matter. All prior agreements, representations, statements, negotiations and undertakings are superseded. The terms, provisions, representations and warranties contained in this Contract shall survive performance hereunder.