MEDICAID MANAGEMENT INFORMATION SYSTEM AGREEMENT

BETWEEN

SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES

AND

CLIENT NETWORK SERVICES, INC

DATED June 24 **, 2008**

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STATE OF SOUTH DAKOTA
VENDOR CONTRACT

Client Network Services, Inc. (Hereinafter referred to as "Vendor") Vendor EIN:52-1872098	and	**South Dakota Department of Social Services** 700 Governor's Drive Pierre, South Dakota 57501 (Hereinafter referred to as "DSS")

This Medicaid Management Information System Agreement (the "Agreement") is entered into as of the 24 day of June, 2008 (the "Effective Date"), by and between the South Dakota Department of Social Services ("DSS"), and Client Network Services, Inc., a Maryland corporation ("Vendor").

RECITALS

A. DSS issued Request for Proposals #22942 ("RFP"), dated December 1, 2006, to initiate a Project to acquire a new Medicaid Management Information System ("MMIS") to replace its current system;

B. Vendor submitted a proposal in response to the RFP, dated March 30, 2007; and response to DSS questions dated June 27, 2007 (the proposal and response to questions are referred to hereinafter as the "Proposal");

C. DSS evaluated the Proposal and identified Vendor as the apparent successful Vendor for the Project;

D. Vendor desires to enter into an agreement with DSS for provision of a new MMIS in accordance with the Specifications; and

E. DSS and Vendor have agreed that the terms and conditions of this Agreement shall govern Vendor's furnishing to DSS of the new MMIS and associated Services.

Based upon the foregoing and in consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Definitions.** In addition to other terms defined elsewhere in this Agreement, the following terms, as used throughout this Agreement, shall have the meanings set forth below.

1.1 "Acceptance": Notice from DSS to Vendor that a Deliverable or Service has conformed to the applicable Acceptance Criteria in accordance with the process described in Section 8.3.

1.2 "Acceptance Criteria": The Specifications against which each Deliverable shall be evaluated in accordance with Section 8.3 and the Performance Standards, warranties and other requirements described in this Agreement; and DSS' satisfaction with Services which are not subsumed in a Deliverable.

1.3 "Acceptance Tests": The tests or reviews that are performed by DSS to determine there are no Deficiencies in t he Deliverables which must be satisfied before Acceptance can occur as set forth in Section 8.3, including without limitation Operational readiness testing on the System.

1.4 "Application Software": The Transfer Software, Proprietary Software and Third-Party Software licensed or sublicensed to DSS from Vendor.

1.5 "Assumptions": The clarifications, constraints, conditions and related comments provided by Vendor and upon which the Vendor Proposal was predicated.

1.6 "BAFO": The best and final offer submitted by Vendor on October 31, 2007, and updated on November 16, 2007, attached hereto as Exhibit H.

1.7 "BIT": The South Dakota Bureau of Information and Telecommunications.

1.8 "Certification": CMS's written certification that the System meets all CMS legal requirements, including without limitation those set out in 42 C.F.R., Chapter IV, Part 433, Subpart C.

1.9 "Confirmation": DSS' receipt of Notice and full supporting and written Documentation (including without limitation test results) from Vendor that Vendor has, as applicable: completed a Deliverable in accordance with its Acceptance Criteria or pre-tested the System for compliance with the Specifications; or confirmed the Deliverable, including but not limited to the System, is ready for applicable Acceptance Tests.

1.10 "Change Order": A written form, in response to a Change Request, executed by DSS and Vendor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 16.

1.11 "Change Request": A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 16.

1.12 "Charges": The amounts to be paid for Services authorized under this Agreement and for computer hardware and software to be purchased under this Agreement, as set forth in Exhibits B and G.

1.13 "CMS": The Centers for Medicare and Medicaid Services.

1.14 "Confidential Information": Except as otherwise required by law, trade secrets and other information of each party that either Vendor or DSS desires to protect against unrestricted disclosure, including without limitation DSS nonpublicly available Data, nonpublic Specifications, the Software, DSS security Data, any nonpublic information or documentation concerning either party's business or future products or plans that are learned by the other party during the performance of this Agreement, and information that is designated as confidential by the disclosing party and that may be exempt from disclosure to the public or other unauthorized persons under Federal statutes. Subject to DSS' right to designate additional information, the following is hereby designated DSS Confidential Information: client and employee personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical Data and law enforcement records.

1.15 "Conversion": The Services performed by Vendor for converting historical and other Data for Processing by the Software and System as described in Section 7.6 of the RFP and of the Proposal.

1.16 "Converted Data": The Data successfully converted by Vendor for Processing by the System.

1.17 "Custom Software": The modifications and changes to the Application Software, and other software (including without limitation Interfaces), first designed, developed or produced by Vendor for use by DSS under this Agreement.

1.18 "Data": DSS' records, files, forms, data and other documents, including but not limited to Converted Data.

1.19 "Date Warranty": The warranty provided in Section 12.3.

1.20 "Days": Calendar days, unless otherwise indicated.

1.21 "DDI": Design, Development and Implementation.

1.22 "Deficiency": A failure of a Deliverable, or an omission, defect or deficiency in a Deliverable, that causes the Deliverable not to meet or conform to Specifications.

1.23 "Deliverable": Vendor's product which results from provision of the Services and which are prepared for DSS (either independently or in concert with DSS or third parties) during the course of Vendor's performance under this Agreement, including without limitation (i) Deliverables which are described in Exhibit B and in the RFP and Proposal; (ii) Reports; and (iii) all designs, structures, and models developed in the course of rendering the Services that are incorporated into such products.

1.24 "Delivery Date(s)": The dates described in the Project Plan for the delivery of the Deliverables and Services to DSS.

1.25 "Dispute Resolution": The process for resolving disputes as described in Section 15.

1.26 "Documentation": All documents (whether in paper form, electronic form or otherwise), that describe, explain or define matters relating to the development, maintenance, operation and support of the System, including but not limited to all operations, technical and user manuals used in conjunction with the System, in whole or in part, and further including, without limitation, manuals provided by licensors of the Transfer Software and Third-Party Software.

1.27 "DSS": The South Dakota Department of Social Services.

1.28 "DSS Project Director": The person designated in writing by DSS to be responsible for all matters regarding this Agreement, except the person with signature authority designated in Section 24.21 of this Agreement. Except as otherwise provided herein, the term includes any representative of the DSS Project Director acting within the limits of his/her authority as designated in writing by the DSS Project Director.

1.29 "Effective Date": The later of the date of execution of the Agreement by DSS or CMS's written approval of this Agreement.

1.30 "Enhancements": All updates, upgrades, additions, and changes to, and future releases for, the Application Software in whole or in part, including without limitation: (1) updated versions of the Application Software to operate on upgraded versions of firmware or upgraded versions of Equipment; and (2) updated versions of Application Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the Application Software supplied to DSS. In addition, Enhancements also includes changes to the Software as described in Section 14.

1.31 "Equipment": The computer hardware on which the software shall operate following its delivery, all operating system software for use with the Equipment and related telecommunications facilities and services.

1.32 "Federal Financial Participation": The Federal government's share of an expenditure made by DSS under this Agreement.

1.33 "Go Live Date": The date on which the production System is deployed and is fully Operational for DSS' normal business functions.

1.34 "Holdback": The payment amounts held back by DSS from the Charge for Deliverables, Services or other items provided by Vendor, as described in Exhibit B.

1.35 "Implementation": The process for making the System fully Operational on site for Processing the Data in DSS' normal business operations. Implementation shall only be deemed completed when Vendor has completed the Implementation Services according to the Implementation Plan.

1.36 "Implementation Assurance Support": The period during which the Implementation Plan is executed by Vendor.

1.37 "Implementation Plan": A plan prepared by Vendor as a Deliverable that details the transition from design and development of the System to full operation of the System by DSS in accordance with Specifications.

1.38 "Interfaces": Custom Software that is developed by Vendor for transmitting Data between the System and other systems.

1.39 "Key Staff": Vendor's key personnel as shown in the Proposal.

1.40 "Maintenance and Support": The 12 month period during which maintenance and support Services, as described in Section 13, subject to extensions for Deficiency correction periods, will be performed by Vendor following Acceptance of the System and which are described as such in the RFP and Proposal Section 3.

1.41 "Notice": A written document given by a party to the other in accordance with Section 24.26.

1.42 "Object Code": The binary code version of a Software program loaded into a computer's memory to enable it to perform a program function.

1.43 "Official Project Plan": The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as submitted with the Proposal and as updated from time-to-time in accordance with Section 8.2.3 of this Agreement.

1.44 "Operational": The condition when the System is totally functional in accordance with its Specifications and usable for its purposes in the daily operations of DSS, and all of the Data has been loaded into the System and is available for use by DSS.

1.45 "Performance Standards": The standards for judging the performance of the Vendor's Services, and the standards up to which the System shall perform during all phases of this Agreement, as described in the RFP and Exhibit E.

1.46 "Processing": The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

1.47 "Project": The planned undertaking regarding the DDI activities during all phases of the Project Plan, including, without limitation, the Implementation Assurance Support period and the Maintenance and Support Period.

1.48 "Property": All computer hardware, office equipment and other real and personal property owned by DSS or the State.

1.49 "Proposal": Vendor's response to the RFP, dated March 30, 2007 and Vendor's response to DSS' questions dated June 27, 2007, attached hereto collectively as Exhibit I.

1.50 "Proprietary Information": (i) with respect to Vendor, the Vendor Technology; (ii) with respect to DSS, Custom Software Source Code; and (iii) information that either party clearly identifies as its Proprietary Information excluding any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party's act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public. Proprietary Information does not include pricing or service elements, or information that either party is required by law to be disclosed to third parties.

1.51 "Proprietary Software": All computer programs which were developed and owned by Vendor or Subvendors prior to the Effective Date or which are developed during the term of this Agreement by Vendor Staff in performing work that is not for the Project and any modifications thereof and derivative works based therein, and the Documentation used to describe, maintain and use such Proprietary Software. The term "Proprietary Software" includes, but is not limited to, Rule IT and ReqTrace.

1.52 "Report(s)": Documents provided by Vendor to DSS regarding Project activities, events and Services provided.

1.53 "RFP": The Request for Proposals issued by DSS as "Solicitation # 22942, a copy of which is attached hereto as Exhibit J.

1.54 "Requirements Validation Phase": the phase of the Project described in Exhibit F during which time all Services related to requirements validation and the requirements traceability matrix are performed and until all related Deliverables have met Acceptance.

1.55 "Salting": The placement of deliberate errors and omissions in the Software or a database.

1.56 "Scope of Work": The description of the Work to be performed by the Vendor contained in Exhibit C.

1.57 "Self-Help Code": Any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance and Support or technical support.

1.58 "Services": The tasks and services to be performed by Vendor on the Project, as described in the Agreement, including without limitation Project management, testing, production and delivery of the Deliverables, Training and Maintenance and Support.

1.59 "Site(s)": The location(s) for DSS or Vendor equipment and software, as agreed to by DSS.

1.60 "Source Code": The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Object Code which then directs the computer to perform its functions.

1.61 "Specifications": The technical and other written specifications that define the requirements and Acceptance Criteria, as described in sections 7, 8, and 9 of the RFP; the Proposal; the BAFO; subsequent Deliverables which have received Acceptance; the Performance Standards; the Scope of Work and the Documentation. Such Specifications shall include and be in compliance with all applicable State and Federal policies, laws, regulations and usability standards.

1.62 "Staff": Vendor's employees, Subvendors and agents who may provide the Services on behalf of Vendor.

1.63 "State": The State of South Dakota.

1.64 "Subvendor": A person, partnership, or company, not in the employment of or owned by Vendor, which is performing Services under this Agreement under a separate Agreement with or on behalf of Vendor. Subvendor also includes "Subcontractor," as that term is used in the RFP.

1.65 "System": The complete collection of all Software, integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment.

1.66 "System Testing": Functional and integration testing performed on the System by Vendor after Vendor has completed design and development of the Custom Software and integrated the Application Software, Custom Software, Data and Equipment as the System so that Vendor can provide Confirmation of the System's readiness for Acceptance Tests by DSS.

1.67 "Third-Party Software": Software which is developed by third parties (not including Subvendors) and generally distributed for commercial use, and not specifically designed or developed for DSS, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software.

1.68 "Training": The training Services to be provided by Vendor to DSS, as described in the RFP and Proposal.

1.69 "Transfer Software": Software that is transferred by Vendor from another party for use by DSS and that is provided by Vendor under this Agreement in Source Code form. Transfer Software includes, but is not limited to; software developed by Vendor for another state's MMIS and transferred to DSS pursuant to the terms of this Agreement.

1.70 "Unauthorized Code": Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or

otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

1.71 **"User(s)":** Parties who will have use of and access to the System.

1.71 **"Vendor":** Client Network Services, Inc., its employees and agents.

1.72 **"Vendor Project Manager":** The individual with management responsibilities for the Project chosen by Vendor and approved by DSS, as described in Section 5.2.

1.73 **"Vendor Project Plan":** The Project Plan developed by the Vendor that will, at a minimum, include the tasks, dates, durations, and dependencies that the Vendor will use to manage its work on the Project.

1.74 **"Vendor Technology":** Intellectual property owned by Vendor prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property developed under this agreement) including: Vendor's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines, the Proprietary Software, and Vendor's Proprietary Information, but excluding the Transfer Software.

1.75 **"Workaround":** A temporary solution that bypasses a problem and allows the User to continue working until a better solution can be provided.

2. **Term.** Vendor's Services under this Agreement shall commence on June 27, 2008 and end no later than April 8, 2012, unless terminated pursuant to the terms hereof.

3. **Incorporation by Reference – Delivery of Scope of Work.**

3.1 Exhibits. The following Exhibits are incorporated into this Agreement and made a part of hereof:

Exhibit A – Assumptions

Exhibit B – Payment Schedule

Exhibit C –Scope of Work

Exhibit D – Deliverable Approval Process

Exhibit E – Performance Standards

Exhibit F – Official Project Plan

Exhibit G – Equipment and Software Bill of Materials

Exhibit H - BAFO

Exhibit I - Proposal

Exhibit J - RFP

Exhibit K - DSS – Provided Resources

Exhibit L - HIPAA Business Associate Agreement

Exhibit M – Performance Bond

Exhibit N - Letter of Credit

Change Orders

3.2 Delivery of Scope of Work. Vendor shall prepare a proposed Scope of Work (Exhibit C) and deliver it to DSS within 30 Days of the Effective Date.

4. Financial Matters.

4.1 Charges. Except as otherwise provided herein and subject to DSS's receipt of an invoice that conforms to the terms of this Agreement, DSS shall pay Vendor the Charges for Services, computer hardware and software and other Deliverables as set forth in Exhibits B and G.

4.2 Payment Terms. Except as otherwise provided in this Agreement, and except for invoices submitted between June 10 and July 15 (inclusive) of any calendar year, upon DSS' receipt of an invoice that conforms to the terms of this Agreement, DSS shall pay the undisputed Charges incurred in the previous month within 30 Days of receipt of such an invoice. For invoices properly submitted between June 10 and July 15 of any calendar year (inclusive), the payment shall be made within 60 Days of receipt. For Charges listed in Exhibit B only, if payment is received by Vendor within 14 Days of receipt of the invoice by DSS, DSS shall be entitled to a discount of 1% of the total invoice amount, which discount may, at DSS' discretion, be applied to subsequent invoices as a credit or paid in cash. If any payment due to Vendor pursuant to this subsection 4.2 is not made when due, the unpaid portion shall bear interest at a rate of 1% per month (or any fraction of a month) until paid.

4.3 Value-Add Services. Vendor agrees that the prices set forth for Value-Add Services (as described in Section 8.7 of the RFP) in Section 4.7 of the Proposal shall remain valid through and including June 30, 2009.

4.4 Not to Exceed Amount. The total amount payable pursuant to the terms of this Agreement shall be $62,752,190. The amounts set forth in this subsection 4.4 may only be increased upon the written agreement of Vendor and DSS, which agreement shall make specific reference to this subsection.

4.5 Transportation and Insurance Charges. The costs associated with transportation, delivery, and insurance for each Deliverable, if any, shall be paid for by Vendor.

4.6 Vendor Expenses. Vendor shall pay Vendor's out-of-pocket expenses incurred in connection with providing the Services and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel, and per diem for its Staff.

4.7 Invoices. Vendor shall submit invoices to the DSS Project Director for all Charges to be paid by DSS under this Agreement. All invoices submitted must be approved by the DSS Project Director or his or her designee prior to payment. Vendor may only submit invoices for Charges as permitted by this Section 4.7. Incorrect or incomplete invoices will be returned to Vendor by DSS for correction and reissue. The Agreement and purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must reference this Agreement and provide detailed information and in a format as requested by DSS, including without limitation:

4.7.1 Vendor name, address, telephone number and Federal tax identification number;

4.7.2 An itemization of each Deliverable;

4.7.3 The Deliverable for which payment is sought, and the Acceptance date triggering payment;

4.7.4 Applicable Charges;

4.7.5 Date of delivery and/or date of installation, as applicable;

4.7.6 Any other Project costs with a detailed, itemization of such costs, if applicable;

4.7.7 Sales, use or excise taxes, if applicable;

4.7.8 Credits, if any; and

4.7.9 Total amount due.

4.8 Funding.

4.8.1 Availability of Funding. The parties acknowledge and agree that this Agreement is dependent upon the availability of Federal and State funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the Federal Government and/or the State for this Agreement, or is not allocated or allotted to DSS by the Federal Government and/or the State for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of DSS to make payments shall cease upon the terms and conditions established in Section 23.6.

4.8.2 Delayed or Reduced Funding. If funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced or is not allocated or allotted in full, then the obligations of DSS to make payments will be delayed or be reduced accordingly or DSS shall have the right to terminate the Agreement as provided in Section 23.6. If such funding

is reduced, DSS in its sole discretion may determine which aspects of the Agreement shall proceed, with Vendor's Charges determined in accordance with those in the Exhibits B and G. In these situations, DSS will pay Vendor in accordance with the terms of Section 23.4.3 and Section 23.6. Any obligation of DSS to make payment pursuant to this Agreement shall not extend beyond the end of DSS' then-current funding period, except as otherwise provided in Section 23.4 and Section 23.6.

4.8.3 Penalty for Availability, Delayed or Reduced Funding. Vendor expressly agrees that no penalty or damages shall be applied or accrue to DSS in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

4.9 Overpayments to Vendor. Vendor shall promptly, but in all cases within 30 Days, pay to DSS the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Vendor is not entitled. If Vendor fails to make such a timely refund, DSS shall charge Vendor one percent (1%) per month on the amount due until paid in full.

4.10 Advance Payments Prohibited. No advance payment shall be made for goods or Services furnished by Vendor pursuant to this Agreement.

4.11 Credits. Any credits due DSS under this Agreement may be applied against Vendor's invoices, but only upon Notice from DSS to Vendor requesting such application.

4.12 Taxes. Any federal, state or local income, sales, contractors' excise or other taxes payable or which may be payable by Vendor in connection with the performance of this Agreement are Vendor's sole responsibility.

5. Project Management.

5.1 Reports and Meetings.

5.1.1 Reports for Meetings. Vendor shall produce the Reports and the parties shall participate in the meetings described below, in the RFP, and Section 3.1 of the Proposal. The format of such meetings (i.e., in-person, teleconference, web conference, video conference, etc.) shall be determined jointly by the parties. All Reports shall be produced in formats approved by DSS and delivered in accordance with the Project Plan and the terms of this Agreement.

5.1.2 Weekly Status Meetings. The Vendor Project Manager and appropriate Key Staff as may be mutually agreed upon by DSS and Vendor shall attend weekly status meetings with the DSS Project Director and other members of DSS' Project team during the Project. These weekly status meetings shall follow a preset agenda jointly prepared by the Vendor Project Manager and DSS Project Director, but will also allow both Vendor and DSS to discuss other issues that may concern either party. Every other week, written status Reports shall be provided by Vendor as described in Section 7.2 of the RFP. Vendor's proposed format and level of detail for the status Reports shall be subject to DSS' approval.

5.1.3 Special Reports. As reasonably requested by DSS, the Vendor Project Manager shall assist the DSS Project Director in preparing and shall prepare special Reports and presentations related to Project management. The Vendor Project Manager shall also provide or produce such Reports or information as are reasonably requested by the DSS Project Director regarding the Project.

5.2 Vendor Project Manager.

5.2.1 Approval. Vendor shall assign a Vendor Project Manager. The Vendor Project Manager shall be of a management level sufficient to assure timely responses from all Vendor personnel. The Vendor Project Manager's resume and qualifications must be reviewed and approved by DSS prior to his or her appointment as Vendor Project Manager. The approval process may include, at DSS' discretion, an interview with the proposed Vendor Project Manager. DSS will not unreasonably delay or deny approval of the Vendor Project Manager. The Vendor Project Manager shall be responsible for acting as a liaison with the DSS Project Director.

5.2.2 Duties. Vendor agrees and represents that the Vendor Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. Except as otherwise provided in Section 24.21, the Vendor Project Manager shall function as Vendor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Vendor Project Manager shall be able to make binding decisions for Vendor related to this Agreement. The Vendor Project Manager or other substitute Project management personnel for Vendor shall be at the Site full-time during the DDI Services.

5.2.3 Change or Removal. The Vendor Project Manager may not be changed from the person named in the Proposal, except as approved by DSS. If the Vendor Project Manager is removed or replaced, Vendor will promptly provide Notice to DSS, submit a resume, and obtain approval of the replacement Vendor Project Manager from DSS, prior to his or her beginning work on the Project.

5.2.4 Commitment. Except as otherwise provided in Section 24.21, any written commitment by the Vendor's Project Manager and persons designated by him or her in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor.

5.3 Vendor Staff.

5.3.1 Descriptions. As part of the Proposal and pursuant to RFP Section 6, Vendor has provided to DSS an organization chart of Vendor's Staff, including names of Key Staff for the Project and positions during Operations and Maintenance. Vendor shall also provide to DSS job descriptions for Key Staff positions.

5.3.2 Changes. Except as otherwise provided in this Section 5.3.2 or in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff may not be changed during the Project from the people who were described in the Proposal. DSS reserves the right to approve or disapprove Vendor's Key Staff and any Subvendor's key staff assigned to the Project, to approve or disapprove any proposed changes in Key Staff, and to require the removal or reassignment of any Vendor or Subvendor

staff found unacceptable by DSS. Vendor shall provide DSS with a resume of any member of its Key Staff or a Subvendor's key staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to commencing any Services. If Vendor elects to promote, transfer or otherwise reassign a member of Key Staff, Vendor must give DSS 45 Days advance written Notice, including the name and resume of the replacement. Upon DSS approval of the replacement, the replacement must then accompany and work on site with the Key Staff member to be promoted, transferred or reassigned for period of not less than 30 business days. Following the onsite transition period, the outgoing Key Staff shall be available for consultation for an additional 60 Day period.

5.3.3 Replacement. All Staff proposed by Vendor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.

5.3.4 Vendor Responsibility. Vendor assumes sole and full responsibility for its acts and the acts of its personnel. Vendor understands and agrees that DSS has no liability for the actions of Vendor's Subvendors or agents.

5.3.5 Claims. Vendor agrees that any claim on behalf of any person arising out of employment or alleged employment by Vendor (including, but not limited to, claims of discrimination against Vendor, its officers, or its agents) are the sole responsibility of Vendor and are not the responsibility of DSS. Vendor will indemnify and hold DSS harmless from any and all such claims asserted against DSS. Any person who alleges a claim arising out of employment or alleged employment by Vendor will not be entitled to any compensation, rights, or benefits from DSS (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

5.4 DSS Project Director. The DSS Project Director will manage the performance of the terms of this Agreement on behalf of DSS and will be the principal point of contact for the Vendor Project Manager concerning matters of Project management. Except as otherwise provided in Section 24.21 Vendor may rely upon written commitments made by the DSS Project Director. The DSS Project Director will ensure performance by DSS and State staff and ensure suitable DSS and State staff are available to fully support Vendor as required in the Project Plan. In situations where DSS and State staff is unavailable, the Vendor and DSS will identify mutually agreeable alternative solutions in support of the Project Plan.

5.5 Reference Checks. Due to the confidential nature of the information and materials which will be accessible to Vendor, DSS reserves the right to conduct a reference check on Vendor Staff to be used to provide the Services. DSS reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks or other sources of information.

5.6 Employment of DSS or other State Personnel. Vendor may not knowingly contract with or hire on a full-time, part-time, or other basis during the term of this Agreement any employee, consultant, or employee of a consultant of DSS or State that exercised substantial decision-making responsibilities with respect to the award of this Agreement to Vendor; provided, however, that Vendor may contract with or hire any DSS or other State employee that

has not been employed with DSS or State for at least one year at the time of Vendor's offer to contract or employee.

5.7 Records Retention and Access Requirements.

5.7.1 Federal and State Regulations. Vendor shall comply with the conditions of all applicable State and Federal regulations, which regulations are incorporated herein by this reference, including but not limited to those regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical and other records. In addition, Vendor agrees to the terms in the remainder of this Section 5.7 regarding retention of records and access for DSS, State and Federal government officials. In the event of a conflict among applicable State and Federal regulations and the terms of this Section, Federal regulations shall take precedence over State regulations and the terms of this Section and State regulations shall take precedence over the terms of this Section.

5.7.2 Retention. Vendor and its Subvendors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to DSS during the performance of this Agreement and shall retain all such records for six years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for 18 months following the termination of litigation. The terms of this subsection 5.7.2 shall survive termination of this Agreement.

5.7.3 Inspection. Except as otherwise required by applicable law, all records retained pursuant to this Section 5.7 shall, upon 30 Days advance Notice, be subject to examination, inspection, copying, or audit by personnel so authorized by the DSS Project Director and/or DSS, State and Federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items shall be provided at Vendor's Maryland headquarters. During the six years following termination of this Agreement or one year term following the termination of any litigation arising out of related to this Agreement, whichever is longer, delivery of and access to such records shall be at no cost to DSS. If not already paid, DSS shall not be responsible to pay Vendor for any audit exceptions or disallowed costs incurred by Vendor or any of its Subvendors. If already paid, Vendor shall reimburse DSS for any audit exceptions or disallowed costs incurred by Vendor or any of its Subvendors.

5.7.4 Subcontracts. The records retention and review requirements of this section shall be included by Vendor in any of its subcontracts with Subvendors. Except as otherwise required by law, DSS personnel shall be accompanied by Vendor personnel at all times during any examination, inspection, review or audit. Vendor may make no charges for services rendered in connection with an audit requested by DSS.

5.7.5 Exclusions. Except as otherwise required by law, books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from DSS' review unless the cost or any other material matter under this Agreement is calculated or derived from these factors.

5.7.6 Access to Inspect. Except as otherwise required by law, Vendor shall upon 30 Days advance Notice provide right of access to its facilities to DSS, or any of DSS' officers or to any other authorized agent or official of DSS or the Federal government in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

5.8 Accounting Requirements. Vendor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and to the Charges and all other costs and expenditures made under this Agreement, and the costs properly applicable to this Agreement shall be readily ascertainable therefrom.

5.9 Supplemental Contracts. DSS may undertake or award supplemental contracts to BIT and other contractors for work related to this Agreement, or any portion thereof. Vendor shall cooperate with such other contractors and DSS in all such cases. Vendor shall ensure that all Subvendors abide by this provision. Vendor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Vendor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Vendor.

6. Services and Resources.

6.1 Performance. Vendor shall begin to perform the Services on the Effective Date. Vendor shall perform the Services as described in this Agreement in accordance with the Project Plan and to achieve the objectives described in this Agreement.

6.2 Necessary Resources. DSS shall provide Property and other resources as described in Exhibit K (DSS-Provided Resources). Vendor shall provide the personnel and all other materials and resources necessary for the performance by it of this Agreement.

6.3 Ownership. Title to all Property furnished by DSS or the State shall remain with DSS or the State. Title to all Property purchased by Vendor, for which Vendor has been reimbursed by DSS under this Agreement, shall pass to and vest in DSS upon the earlier of Acceptance of the applicable Deliverable in which the Property is included, or Acceptance of the System, unless otherwise provided in this Agreement.

6.4 Use of Property. Any Property furnished to Vendor shall, unless otherwise provided herein, or approved in writing by the DSS Project Director, be used only for the performance of its obligations under and subject to the terms of this Agreement.

6.5 Damage to Property. Vendor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Vendor's willful misconduct or negligent acts or omissions or from the failure on the part of Vendor to maintain and administer that Property in accordance with sound management practices. Notwithstanding anything to the contrary herein, Vendor shall be liable to DSS for any damages resulting from damage to Property, which damages result from or are caused by Vendor's willful misconduct or negligence. Vendor shall ensure that the Property is returned to DSS or the State in like condition to that in which it was furnished to Vendor, reasonable wear and tear excepted.

Vendor shall repair or make good any such damage, destruction or loss at any DSS Site, and shall do so without requesting contribution from DSS or assistance from DSS officers or employees.

6.6 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Vendor shall notify the DSS Project Director and shall take all reasonable steps to protect that Property from further damage.

6.7 Surrender of Property. Vendor shall surrender to DSS or State, as applicable, all Property upon the earliest of completion, termination, or cancellation of this Agreement.

6.8 DSS Property and Facility. DSS will provide Vendor access to DSS' South Dakota sites and use of the DSS Property for development, testing and Implementation of the System as described in Exhibit K. Vendor's use of the Property shall be subject to DSS' security, administrative and other requirements. DSS agrees to provide reasonable Site security and safeguards.

7. Equipment.

7.1 Vendor Equipment. Vendor shall provide Equipment at Vendor's Site(s) in accordance with the Project Plan and as described in Section 7.2 of the RFP, Section 3.2 of the Proposal.

7.2 DSS Equipment. DSS shall provide certain Equipment at DSS' Sites. If applicable, Vendor shall install Software on DSS' Equipment as indicated in the Project Plan.

8. Deliverables.

8.1 General.

8.1.1 Vendor shall provide DSS with the Deliverables according to the Project Plan, and as described in the Specifications, the RFP, the Proposal and this Agreement. Vendor shall utilize the Specifications, the Project Plan, Vendor's professional knowledge, and this Agreement as the basis of subsequent Deliverables. Vendor shall retain backup copies in writing and on electronic media of all Deliverables until 180 Days after termination or expiration of this Agreement and shall upon request provide DSS with a copy thereof until that time.

8.1.2 All Deliverables, including without limitation Deliverables provided pursuant to Change Orders, shall be subject to DSS' Acceptance in accordance with the Deliverable Approval Process set forth in Exhibit D. DSS' review of Deliverables shall be in accordance with the time frames therefore set forth in the Project Plan. Nothing in the Deliverable Approval Process shall relieve Vendor of its overall obligation to design and implement the System.

8.2 Project Planning. The Vendor shall submit to DSS a Vendor Project Plan that, at a minimum, includes the tasks, dates, durations, and dependencies that the Vendor will use to manage its work on the Project. The Vendor Project Plan will be updated from time-to-time to reflect the current status of the Project including actual versus planned dates. DSS will maintain

a similar project plan that reflects the overall project inclusive of DSS' tasks, the IV&V contractor tasks, and the Vendor tasks. The plan maintained by DSS will be the Official Project Plan and will be used as a measure of overall project progress. The Vendor Project Plan will be integrated into the Official Project Plan by DSS. In the event of a conflict between the Vendor Project Plan and the Official Project Plan, the conflicts will be addressed according to the project governance structure created for this project.

8.2.1 Official Project Plan. The Official Project Plan shall provide detailed information, in a Microsoft Project (Version 2005 or later) document, including but not limited to tasks, Deliverables, task dependencies, identification of resource requirements, and payment schedule. The Official Project Plan shall be inclusive of the mutual expectations and work to be performed by DSS and Vendor in order to complete the Project successfully. Vendor shall deliver the initial revised Vendor Project Plan to the DSS Project Director for DSS' review not later than 30 Days from the execution of this Agreement. Subsequent requests to revise the Official Project Plan shall be delivered to the DSS Project Director for DSS' review and possible integration into the Official Project Plan.

8.2.2 Changes to Deadlines. The deadlines established in the Official Project Plan shall not change as a result of time required by Vendor to correct Deficiencies, unless DSS otherwise agrees in advance and in writing. However, the deadlines established in the Official Project Plan may, in DSS' discretion, be extended on a day-to-day basis to the extent that DSS' review of a Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process and Acceptance Test Plan takes longer than described in the Official Project Plan.

8.2.3 Custodian of Plan. DSS shall be custodian of the Official Project Plan, as modified from time-to-time as provided in this Section 8. Vendor shall regularly (no less than weekly and as otherwise necessary throughout the Project) provide DSS with updates to the Official Project Plan to accurately reflect the status of activities, tasks, events, Services, and projected schedule for such activities, tasks, events and Services. Any such update that results in scope or schedule changes must be agreed upon by DSS in writing prior to their incorporation into the Official Project Plan. However, unless otherwise specifically agreed to in writing, DSS' agreement to a scope or other change to the Official Project Plan shall not relieve Vendor of liability for damages arising from failures to perform its obligations as required herein. Vendor shall maintain updated copies of its detailed work plans in the electronic project library provided for in the RFP.

8.3 Acceptance Process for Deliverables.

8.3.1 Review. Upon delivery of a Deliverable and receipt of Confirmation from Vendor that the Deliverable meets the Specifications, DSS will, with Vendor's assistance and in accordance with the Project Plan and the Deliverable Approval Process set out in Exhibit D, promptly review or perform Acceptance Tests on the Deliverable, as applicable, to determine whether the Deliverable conforms to the Acceptance Criteria. Unless otherwise specified in the Project Plan, DSS will review and provide Notice of Acceptance or grounds for rejection within ten business days of receipt of the Deliverable by DSS. Vendor shall from time-to-time (but no less often than weekly) provide DSS with an updated schedule of Deliverable delivery dates and

anticipated and existing deadlines to accept or reject. If Vendor submits a Deliverable earlier than previously contemplated and gives DSS three business days prior written Notice of the new expected Delivery Date, the time frame for DSS to review the Deliverable will remain the same number of business days established in the Project Plan. In the event DSS does not provide such Notice of grounds for rejection within the times provided for in this Subsection 8.3.1, the Deliverable will be deemed Accepted, which deemed Acceptance may be relied upon by Vendor. DSS will provide Acceptance for a Deliverable if it has no Deficiencies. However, if a Deficiency is found, DSS will notify Vendor in an email or other document of Deficiencies used as the grounds for DSS decision not to give Acceptance. Vendor shall correct Deficiencies and resubmit a corrected Deliverable to DSS, which will review or perform Acceptance Tests on the Deliverable to verify whether the Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Vendor's times for correcting Deficiencies and DSS' review of Deliverables shall be in accordance with the timeframes established in the Project Plan. If time periods for correcting Deficiencies by Vendor and reviewing and retesting corrected Deliverables are not established in the Project Plan, each such time period shall be ten business days. DSS' review of corrected Deliverables shall be limited to those portions previously rejected.

8.3.2 Correction of Deficiencies. If Vendor is unable to correct all Deficiencies within the number of business days indicated in the Project Plan following the Deliverable's scheduled Acceptance, or if no such date is in the Project Plan, within 60 Days from such scheduled Acceptance, DSS may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require Vendor to continue until Deficiencies are corrected or eliminated; or (b) request Vendor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests.

8.4 Protection from Damage. Vendor shall continuously protect all Deliverables and backups for such Deliverables from damage, destruction or loss caused by the acts or omissions of Vendor and its Staff. Vendor shall ship all Deliverables purchased pursuant to this Agreement, FOB DSS' designated Site. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of Vendor, its carriers or DSS prior to their Acceptance, Vendor and its insurers, if any, shall relieve DSS of responsibility for all risks of loss or damage thereto, unless such loss or damage is caused by the negligence or misconduct of DSS. Except as otherwise specifically provided herein, after DSS provides Acceptance for a Deliverable, the risk of loss shall be borne by DSS, except loss or damage attributable to negligence or willful misconduct of Staff. Nothing in this Section 8.4 shall limit Vendor's obligation to provide Deliverables in accordance with the Specifications and this Agreement and to correct Deficiencies in Deliverables.

8.5 Delivery. Vendor shall deliver the Deliverables pursuant to this Agreement on or before the applicable Delivery Dates established in the Project Plan. All such deliveries made pursuant to this Agreement must be complete. Vendor shall deliver hard copy and electronic versions of the Deliverables in formats agreed to by the parties in writing. All packages must be accompanied by a packing slip which identifies all items included with the shipment and shipments made directly from Vendor shall include DSS' purchase order number. For shipments directly from Subvendors and suppliers, Vendor shall provide DSS with written Notice prior to

shipment, including a copy of the purchase order. Vendor's and Subvendor's delivery receipts must be signed by an authorized representative of DSS for all deliveries made under this Agreement.

8.6 Interpretation of Deliverables. In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and the documents comprising this Agreement, including without limitation, a Deliverable that has already received Acceptance, the RFP and the Proposal, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest DSS-approved Deliverable.

8.7 Representation. By submitting a Deliverable, Vendor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications and the objective stated in Section 11.1 of this Agreement. By unconditionally giving Acceptance for a Deliverable, DSS represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

8.9 Knowledge Transfer. While constructing and developing the Deliverables, including without limitation for DDI and Operations and Maintenance of Software, Vendor shall demonstrate and provide information to staff designated by DSS as provided in the Scope of Work and the Project Plan.

9. Ownership of System Software and Documentation.

9.1 Software and Documentation

9.1.1 Grants. Vendor hereby grants to DSS a nonexclusive, perpetual, nonterminable, irrevocable license to use and demonstrate, modify, prepare derivative works based on, and reproduce the Vendor Technology and the Transfer Software, which Vendor provides to DSS in Source Code format, for DSS internal purposes and for processing data for other State agencies and other State tax-supported entities.

9.1.2 Term. The licenses provided for in this subsection 9.1 are granted as of the date of delivery of all or any portion of the Vendor Technology, the Transfer Software and the Documentation, and continue in perpetuity.

9.1.3 Title. Except for the licenses granted in this Section 9 and as otherwise required by applicable law, Vendor and its suppliers, as applicable, hold all right, title and interest in the Vendor Technology, Transfer Software and Third-Party Software.

9.1.4 Documentation. Vendor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available "Office" products and in written format in accordance with the terms of this Agreement. Upgrades and revisions to the Documentation shall be provided while Vendor is providing Services therefore. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Vendor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Vendor maintains its technical, maintenance and installation Documentation

on a web site, Vendor may fulfill the obligations set forth in this section by providing DSS access to its web-based Documentation information. Vendor shall also provide such information on CD-ROM.

9.1.5 Copies. DSS will include the copyright and other proprietary notices and product identifications provided by Vendor on all copies of the Vendor Technology, the Transfer Software, and Third-Party Software, whether such copy is of the whole or a part and on any form of the Application Software and its Documentation. DSS will maintain records of all copies it makes of the Proprietary Software.

9.1.6 Restrictions. Except as otherwise permitted in this Agreement or required by law or the conditions of Federal Financial Participation in the Project, DSS agrees not to: copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Third-Party Software or any copy of it which is provided in Object Code format.

9.1.7 Replacement Equipment. DSS shall be entitled to exercise its rights to Application Software on the Equipment or any replacement equipment used by DSS, and with any replacement Third-Party Software chosen by DSS without payment of additional Charges or other amounts.

9.1.8 Third-Party Software Licenses. Prior to utilizing any Third-Party Software that may be included as a part of a Deliverable, Vendor shall provide to DSS copies of all applicable license agreements with the licensor of the Third-Party Software for DSS' review and approval. Vendor shall assign to DSS applicable licenses for the Third-Party Software upon payment for such Third Party Software.

9.1.9 Versions. Unless otherwise mutually agreed to in writing, Vendor shall, during the term of this Agreement and through the Maintenance and Support Period, maintain any and all Third-Party Software products at their most current version, or no more than one version back from the most current version, and do so at no additional charge. However, Vendor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent DSS from using any functions, in whole or in part, or would cause Deficiencies in the System. If implementation of an upgrade to a Third-Party Software product requires personnel in addition to the Staff proposed in the Proposal, DSS and Vendor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, the additional Charges, if any, to be paid by DSS for such upgrade. Any costs that are imposed by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product that occur after the termination of this Agreement and that is not covered by such product's maintenance agreement shall be charged to and paid for by DSS.

9.2 State and Federal Governments. Anything in this Agreement to the contrary notwithstanding, to the fullest extent required by 45 C.F.R. 95.617, as it may be amended from time-to-time during the term of this Agreement, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for governmental purposes the Transfer Software,

the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with Federal Financial Participation under this Agreement.

9.3 License Grant From DSS To Vendor. DSS hereby grants to Vendor a nonexclusive, perpetual, nonterminable, irrevocable license to use and demonstrate, modify, prepare derivative works based on, distribute and reproduce the Custom Software. Vendor shall comply with all requirements relating to the import, export, or re-export of the Custom Software (including, but not limited to, the requirements under the U.S. Export Administration Act, Regulations of the Department of Commerce or its successors, executive orders, and other export controls of the United States of America). Vendor shall not export or re-export, or authorize or permit the export or re-export of, any such Custom Software to any restricted country without first obtaining the permission of the United States Bureau of Export Administration or its successors or other such party having legal authority to regulated export of software, unless otherwise permitted by applicable law. Vendor agrees that, if Vendor breaches or threatens to breach this Section in any manner, DSS will suffer irreparable damage and DSS shall be entitled to immediate preliminary injunctive relief and other injunctive relief by a court of competent jurisdiction against any breach or threatened breach by Vendor of this Section. Such injunctive relief may be in addition to, and in no way in limitation of, other remedies DSS may have under this Agreement or in law or equity for the enforcement of this Agreement.

9.4 DSS Ownership. Except for the license granted by DSS in this Section 9 and as otherwise required by law, DSS and the United States Department of Health and Human Services (USDHHS) shall own all right, title and interest in and to its Confidential Information, DSS' intellectual property, the Property, the Equipment and the other Deliverables (except as provided below), including without limitation the Custom Software, the Specifications, and the Documentation. Vendor shall take all actions necessary to transfer ownership of each Deliverables to DSS and the USDHHS upon its Acceptance. Except for the license granted by DSS in this Section 9 and as otherwise required by law, and in addition to the other transfers of ownership provided for in this Agreement, upon completion of the System, Vendor specifically agrees that DSS and USDHHS shall own all right, title and interest in and to the System; provided, however, that as to the Application Software, Vendor shall only be obligated to transfer a license for use as provided in this Agreement. As between the parties, all products of the Services, including without limitation the software (except for the Application Software, which for the purposes of this Section of this Agreement shall not be owned by DSS), and Data, shall be deemed works made for hire of DSS and USDHHS for all purposes of copyright law, and copyright shall belong solely to DSS and USDHHS. In the event that any such work is adjudged not to be a work made for hire, Vendor agrees to assign, and hereby assigns, all copyright in such work to DSS and USDHHS. Vendor shall, at the expense of DSS, assist DSS or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to DSS and USDHHS all right, title and interest in and to such works. Vendor also agrees to waive and not assert any moral rights it may have in any such works.

9.5 Default – Ownership. Anything in subsection 23.7.2.6 to the contrary notwithstanding, in the event of a material default by Vendor upon any term of this Agreement, Vendor shall in partial consideration of such breach be conclusively deemed to have transferred to DSS and the USDHHS all right, title and interest in and to all Deliverables in process or which have been delivered to DSS but not accepted. Nothing in this Section 9.5 shall prohibit DSS from terminating this Agreement on account of such material breach. The terms of this Section 9.5 shall survive termination of this Agreement by either party.

10. Compliance with Official Project Plan. Vendor shall provide the Deliverables and Services for the DDI activities, during Implementation, the Implementation Assurance Support period and the Maintenance and Support period within the times and upon the terms and conditions set out in the Official Project Plan, as said Project Plan may be revised from time-to-time as provided in this Agreement.

11. Federal Certification.

11.1 Primary Objective. DSS and Vendor agree that Certification of the System for Federal Financial Participation is a primary and material objective of this Agreement. Vendor acknowledges and agrees that the System shall be eligible for and capable of Certification within the time provided in Section 11.2 in accordance with CMS certification standards existing as of the date of completion by way of Acceptance of the Requirements Validation Phase by DSS. Vendor shall have no liability for failure to obtain Certification if Certification is denied only for reasons other than the failure of the System to comply with CMS certification standards existing at the time of completion of the Requirements Validation Phase.

11.2 Vendor Obligations. Pursuant to achieving this objective, Vendor agrees:

11.2.1 Services. To perform Services as described in this Agreement and the Specifications;

11.2.2 Milestones. To ensure that the development and Implementation of the System is completed in accordance with the following milestones:

11.2.2.1 Go Live Date: on or before July 8, 2010,

11.2.2.2 Eligible for Certification: on or before March 8, 2011, and

11.2.2.3 Certification: on or before July 8, 2011;

11.2.3 Requirements. To ensure the System meets the requirements of the CMS, as in existence upon completion of the Requirements Validation Phase, including all regulations that are published and that are incorporated by reference in the Agreement or associated Change Orders as of that date;

11.2.4 Federal and State Requirements. To ensure the System meets any other State and Federal law requirements which may be enacted, including regulations or other guidelines, and that are incorporated by reference in the Agreement or associated Change Orders, as of the time of application for Certification;

11.2.5 Timeliness. To provide on a timely basis, all information, data, forms, System modifications, Documentation, correspondence, consultation, and assistance in training as needed to assist DSS in obtaining Certification;

11.2.6 Program Regulations. To address the means of implementing program regulations which may be required following the application for Certification. Agreement on the

approach to, and cost, if any, of implementing these program regulations will be in accordance with Section 16 (Changes); and

11.2.7 Certification. To complete, test, and implement the changes required to bring the System into compliance with and be eligible for Certification should CMS determine that the System is not certifiable for Federal Financial Participation.

12. Representations and Warranties.

12.1 Deliverables.

12.1.1 Deliverables. Vendor represents and warrants that each Deliverable, including without limitation the System, shall meet the Specifications as provided herein following its Acceptance and during the Maintenance and Support Period. Vendor shall immediately repair or replace each of the Deliverables that does not meet its Specifications as provided herein.

12.1.2 Hardware and Software. Except insofar the standards and specifications for the hardware and software listed on Exhibit G are inconsistent herewith, Vendor represents and warrants that any Deliverable or Service provided under this Agreement shall be in compliance with BIT standards prior to Acceptance. BIT hardware and software standards may be found at:

http://www.state.sd.us/bit/MainFrame/MGMT/MGMTMain.htm

Any exceptions to the BIT hardware or software standards beyond those determinable from Exhibit G must be approved by BIT and reduced to writing as an amendment to Exhibit G. Any changes in BIT standards following Acceptance of the Requirements Validation RVPhase, as established in the Project Plan, may result in Vendor's issuance of a Change Request to address changes in cost, scope, or schedule.

12.2 Services.

12.2.1 Representations and Warranties: Vendor represents and warrants that:

12.2.1.1 It shall perform all Services required pursuant to this Agreement in a professional manner, with high quality;

12.2.1.2 It shall give highest priority to the performance of the Services; and

12.2.1.3 Time shall be of the essence in connection with performance of the Services.

12.2.2 Re-Perform. Vendor shall immediately re-perform Services which are not in compliance with such representations and warranties at no cost to DSS.

12.3 Date/Time Compliance Warranty.

12.3.1 Data-Related Output. Vendor warrants that the System and all data-related output or results produced by the System: (i) do(es) not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by DSS or any other State agency that may deliver date records from the Software, or interact with date records of the Software.

12.3.2 Breach. In the event of a breach of these representations and warranties, Vendor shall immediately after telephonic notice from DSS begin work on curing such breaches. If such problem remains unresolved after three Days, at DSS' discretion, Vendor may send, at Vendor's sole expense, at least one qualified and knowledgeable representative to DSS' Site where the System is located. This representative will continue to address and work to remedy the Deficiency, failure, malfunction, defect, or problem at the Site.

12.4 No Surreptitious Code.

12.4.1 Transfer Software. Vendor warrants to DSS that the Transfer Software provided to DSS under this Agreement contain or shall contain neither Self-Help Code nor any Unauthorized Code. Vendor further warrants that Vendor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict DSS' use of or access to any of the software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of any software provided to DSS under this Agreement.

12.4.2 Third Party Software. Vendor warrants to DSS that to the best of Vendor's knowledge (after due inquiry), the Third Party Software provided to DSS under this Agreement contains or shall contain neither Self-Help Code nor any Unauthorized Code. Vendor further warrants that Vendor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict DSS' use of or access to any of the software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use limitations for any copy of any software provided to DSS under this Agreement.

12.4.3 Indemnification. Vendor shall defend DSS against any claim, and indemnify and hold DSS harmless from and against any loss or expense (including costs and reasonable attorney fees) arising out of any breach of this warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

12.5 Physical Media Warranty. Vendor warrants that each copy of the software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy. Vendor shall replace, at Vendor's expense (including shipping and handling costs), any Software provided by Vendor that does not comply with this warranty.

12.6 Power and Authority. Vendor represents and warrants that it has the full power and authority to grant to DSS the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Vendor. Vendor further represents and warrants that the person executing this Agreement for Vendor has actual authority to bind Vendor to each and every term, condition and obligation to this Agreement, and that all requirements of Vendor have been fulfilled to provide such actual authority.

12.7 Written Commitments. Any written commitment by Vendor within the scope of this Agreement is binding upon Vendor. Failure of Vendor to fulfill such a commitment shall constitute a material breach and shall render Vendor liable for damages under the terms of this Agreement. For purposes of this Section, a commitment by Vendor includes: (i) Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Proposal or contained in any Vendor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Proposal or used to effect the sale to DSS.

12.8 Authorization. Vendor represents and warrants that:

12.8.1 Incorporation. Vendor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

12.8.2 Approvals. The execution, delivery and performance of this Agreement has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Agreement and perform its obligations under this Agreement;

12.8.3 Good Standing. Vendor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Vendor will conduct business in connection with this Agreement; and

12.8.4 Licenses and Permits. Vendor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of the Services. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

12.9 Ability to Perform. Vendor represents and warrants that:

12.9.1 Financial Stability. Vendor has the financial stability to carry out at least six months of Services, including operations during any period of this Agreement, without reimbursement for the Services or expenses;

12.9.2 Financial Resources. Vendor has the financial resources to fund the capital expenditures required under the Agreement without advances by DSS;

12.9.3 Subvendors. Each Subvendor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement; and

12.9.4 Accounting Procedures. Vendor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by stage, segment, or cost objective in order to support Change Order accounting.

12.10 DISCLAIMERS. EXCEPT AS OTHERWISE PROVIDED IN SECTION 18.6, WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE VENDOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. Maintenance and Support Services.

13.1 General Responsibilities. During the Maintenance and Support Period, Vendor shall provide Services as described in this Section 13 at no additional cost to correct Deficiencies in the System and repair the System in accordance with the Specifications. Vendor's service responsibilities during the Maintenance and Support period shall include, but not be limited to, the following:

13.1.1 Promptly repair or replace the System, or any portion thereof, that has Deficiencies;

13.1.2 Upon request by DSS, re-perform any Service that fails to meet the Specifications of this Agreement at no additional cost;

13.1.3 Continue knowledge transfer to DSS and BIT staff concerning the technical platform;

13.1.4 Coordinate with DSS all tasks related to correcting problems and Deficiencies connected with the System; and

13.1.5 Execute on-line diagnostics from a remote Vendor location solely to assist in the identification and isolation of suspected Deficiencies.

13.2 Onsite Assistance. Vendor shall provide four full-time Staff onsite to assist DSS in the business operations functions of the System, participate in and assist with maintenance and enhancements of the System, assist in implementing a State-specific project management system and participate in System and application support. Sunday through Saturday, between the hours of 6:00 a.m. and 7:00 p.m., Central Time, Vendor shall, within 30 minutes for an emergency (in DSS' judgment) inquiry or within two hours of any other DSS inquiry, respond to the inquiry with the following, as applicable:

13.2.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

13.2.2 The development, on a best efforts basis, of a Workaround;

13.2.3 Corrections and repairs of errors, problems or Deficiencies with the software, to the extent technically feasible; and

13.2.4 Clarification of Documentation as it relates to a Deficiency or failure of the System to perform according to the Specifications.

13.3 Additional Assistance.

13.3.1 Vendor shall dispatch trained and qualified Staff to DSS' applicable Site in the event that: (i) such assistance as described above in Section 13.2 does not resolve Deficiencies or problems related to DSS' inquiries regarding Equipment or Software at such Site within 12 hours after Vendor's response to DSS; (ii) the System is non-Operational; and (iii) DSS requests additional assistance. If the System is non-Operational, such Staff shall remain at the Site on a 24-hour, seven-days-a-week basis repairing the System until it operates in accordance with its Specifications.

13.3.2 In the event that such assistance as described above in Section 13.3.1 does not resolve Deficiencies or problems related to DSS' inquiries regarding Equipment and Software at such Site for other types of conditions than described in Section 13.3.1 within 12 hours of Vendor's response to DSS, and DSS requests additional assistance, Vendor shall dispatch trained and qualified Staff to the Site and such Staff must be at Site within 48 hours of DSS' request for additional assistance.

13.3.3 Vendor shall provide a plan to resolve Deficiencies no later than eight hours after Notice by DSS to Vendor of such Deficiency or problems.

13.4 Database. Vendor shall maintain and make available online to DSS a database of all Deficiencies and other problems reported by DSS under Section 13.2 or known to Vendor in any of the software, and each visit by Staff as described in Section 13.3. The database shall include, as a minimum, the following:

13.4.1 Date and time Vendor was notified;

13.4.2 Date and time of arrival or inquiry response;

13.4.3 Time spent for resolution of Deficiencies;

13.4.4 Description of Deficiency;

13.4.5 Description of severity level of Deficiency, e.g., emergency;

13.4.6 Description of Deficiency resolution; and

13.4.7 Date of resolution.

13.5 Bug Reports. Vendor shall provide to DSS, within 15 Days of the Effective Date and the end of each calendar quarter thereafter, through and including the Maintenance and Support Period, a list and description of all potential or actual problems, bugs, errors and Deficiencies known by Vendor to be in any version of the Transfer Software, Proprietary Software and Third-Party Software used by DSS, along with a schedule for resolution thereof. Deficiencies, problems, errors and bugs causing crashes or corruption of the Data shall be reported by Vendor to DSS within eight hours of their becoming known to Vendor.

13.6 Exclusion. Vendor has no obligation or liability to DSS under this Section 13 to the extent that a Deficiency results from modifications to the System by DSS where such modification was not made pursuant to the Documentation or Vendor's guidance, instruction, Training or recommendation

14. Enhancements.

14.1 Vendor will notify DSS of the availability of Enhancements to the Transfer Software for a period of twenty years following the termination or expiration of this Agreement. Vendor shall, upon request, provide DSS with all Enhancements and associated Documentation that are provided as general releases to the Transfer Software, in whole or in part, at no additional cost. Such Documentation shall be adequate to inform DSS of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor certifies that each such Enhancement general release has been tested and performs according to the Specifications. Vendor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement, but only if the Enhancement is installed or implemented by Vendor. Vendor's obligations pursuant to this subsection 14.1 shall survive and continue for 20 years after termination of this Agreement.

14.2 In addition, Vendor shall produce any other Enhancements DSS requests in a commercially reasonable time and form at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Deficiency which occurs or is discovered during the Maintenance and Support Period shall be provided to DSS at no additional cost and without the need for a Change Order.

15. Dispute Resolution.

15.1 Good Faith Efforts. Except for the right of either party to apply to a court of competent jurisdiction (as provided herein) for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between the DSS Project Director and the Vendor Project Manager, or their designees, as established in writing for the specific purpose of attempting to resolve a dispute. If the dispute cannot be resolved within 30 calendar days of initiating such negotiations, either party may pursue its available legal and equitable remedies.

15.2 Continued Performance. Vendor and DSS agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

16. Changes.

16.1 Changing Government Programs.

16.1.1 The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Except as provided in this Section, Vendor has provided for or will provide for adequate resources to reasonably accommodate such changes, subject to the terms of the Change Order process provided for in this Section.

16.1.2 The Parties also acknowledge that Vendor was selected, in part, because of its expertise, experience, and knowledge concerning applicable Federal and/or State laws, regulations, policies, or guidelines that affect the performance of the Services and System.

16.2 Identifying Changes. In keeping with DSS' reliance on Vendor's knowledge, experience and expertise, Vendor is responsible for identifying changes in applicable Federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or DSS' use of the Services or Deliverables. Vendor must timely notify DSS of such changes and must work with DSS to identify the impact of such changes on how DSS uses the Services or Deliverables.

16.3 Noncompliance — Notice from DSS. Vendor is responsible for any fines, penalties, or disallowances imposed on DSS or Vendor arising from any noncompliance with the laws, regulations, policies and guidelines that affect the Services or Deliverables that are to be provided or that have been provided by Vendor, its Subvendors or agents. DSS will advise Vendor of applicable changes in State laws, regulations, policies, and guidelines, and Vendor shall have no liability for noncompliance if it is not given advance Notice by DSS of such changes. If in the ordinary course of business DSS becomes aware of any material changes in applicable federal law, regulation, policy, or guidelines affecting the Agreement, DSS will promptly notify Vendor of the changes.

16.4 Change Control Board. The Change Control Board shall consist of representatives designated in writing by DSS, FourThought Group and the Vendor. The Change Control Board will review proposed Change Requests to evaluate the impact of the proposed Change Request on the Project Plan and the overall cost of the Project.

16.5 Issuance of DSS Change Requests. DSS may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables or Services.

16.6 Vendor Response to Change Request. Vendor shall respond to Change Requests as follows:

16.6.1 If the Change Request has or could have a critical impact on the timely development or use of the System, Vendor shall respond in writing within 15 Days;

16.6.2 If the Change Request does not or will not have a critical impact on the timely development or use of the System but has or could have a material impact on one or more functions of the System, Vendor shall respond in writing within 15 Days;

16.6.3 If the Change Request would or could cause a component of the System not to function but a Workaround is available, Vendor shall respond in writing within 30 Days;

16.6.4 When there is a cost impact (i.e., increase or decrease in Charges), Vendor shall as a part of its response advise DSS in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Vendor and DSS personnel needed to effect this change.

16.7 Agreement on Change Order. The Vendor Project Manager and the DSS Project Director shall negotiate in good faith and in a timely manner as to the price for Change Orders and the impact on the Project Plan of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. All Change Orders must be executed as provided in Section 24.21. Vendor will incorporate all Change Orders affecting the Services and Deliverables into applicable System Documentation. In no event may the Charges or Purchase Prices be increased nor may the deadlines established in the Project Plan be extended in a Change Order to correct errors or omissions in the Proposal; provided, however, that Charges or Purchase Prices may be increased or deadlines extended if the Change Order is the result of a material error or omission in the RFP.

16.8 Disagreement. If Federal or State laws, rules, regulations, policies or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Agreement, the parties shall attempt to negotiate appropriate modifications or alterations to this Agreement and any appropriate Change Orders. If DSS submits to Vendor a Change Request to comply with such laws, rules, regulations, policies or guidelines and if the parties are unable to reach an agreement in writing within 15 Days of Vendor's response to such a Change Request, either party may invoke the dispute resolution provisions of Section 15 of this Agreement.

16.9 Termination. If Vendor fails or refuses to perform its Services pursuant to a Change Order, Vendor shall be in material breach of this Agreement, and DSS shall have the right to terminate this Agreement for such a breach.

16.10 Vendor Submission of Change Request. Vendor may also submit a Change Request to DSS to propose changes that should be made within the scope of this Agreement. Any such Change Request shall include proposed costs and deadline impacts, including a breakdown of the number of hours by level of Staff and DSS personnel needed to effect this change. DSS will attempt to respond to such Change Requests from Vendor within 20 Days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Agreement shall be

modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Vendor, the DSS Project Director will be deemed to have rejected the requested Change Request.

16.11 Fee for Response to Change Requests. There shall be no additional Charge or fee for work hours devoted to reviewing and responding to Change Requests, up to a maximum of 3,000 work hours each year (measured from the Effective Date of this Agreement). Responses to Change Requests resulting from the errors or omissions of Vendor or its Subvendors shall be free of charge and shall not act to reduce the maximum hours described in the immediately-preceding sentence. Thereafter, the Charges for reviewing and responding to Change Requests shall be equal to the hourly rates set for forth in the Proposal for the Staff reasonably necessary to review and respond to the Change Request multiplied by the number of hours reasonably necessary to review and respond to the Change Request.

17. Performance Securities.

17.1 Performance Security

17.1.1 Performance Bond. On or before the Effective Date, Vendor shall obtain, execute and deliver to DSS a Performance Bond in substantially the form attached hereto as Exhibit M. The Performance Bond shall be in amount not less than $4,500,000.00. The Performance Bond shall secure the performance by Vendor of its obligations pursuant to this Agreement, including without limitation performance of the Services in accordance with the Project Plan and providing Deliverables in accordance with the Project Plan and the Specifications. The Performance Bond shall also secure the payment of any damages, costs or expenses resulting from Vendor's default in performance hereunder or liability caused by Vendor or any Subvendor. Furthermore, the Performance Bond shall secure payment to DSS of the cost of obtaining similar software, deliverables and services from a substitute vendor and related administrative, staff or other costs incurred by DSS. The Performance Bond must be issued by a reputable surety company authorized to do business in the State of South Dakota and which is listed in U.S. Department of the Treasury Circular 570. The Performance Bond must provide that the issuer shall provide Vendor and DSS with 60 Days' prior written Notice of its intention not to issue a renewal bond. The term of the Performance Bond shall be no less than one year from the date of issue or renewal, but a Performance Bond or other performance security meeting the requirements of this Section 17.1 must be in place and enforceable throughout the term of this Agreement.

17.1.2. Substitute Performance Security. If the Performance Bond is not renewed for any reason, Vendor may provide Substitute Performance Security in at least the amount of $4,500,000.00, in the form provided for in this subsection 17.1.2. The Substitute Performance Security must be in the form of a cash deposit with DSS, an increase to the letter of credit described below in Section 17.2, a separate letter of credit or some combination of the foregoing. If all or any portion of the Substitute Performance Security is in the form of a cash deposit, it shall act to secure Vendor's performance upon the same terms and conditions as set forth in subsection 17.1.1 for the Performance Bond. If all or any portion of the Substitute Performance Security is in the form of a letter of credit, it must be issued by a financial institution subject to regulation or oversight by the Office of the Comptroller of the Currency or

the Federal Deposit Insurance Corporation, and must be in a form reasonably acceptable to DSS. Any such letter of credit must state on its face that it is irrevocable prior to September 30, 2011. Any such letter of credit shall secure the performance of Vendor of its obligations pursuant to this Agreement, including without limitation performance of the Services in accordance with the Project Plan and providing Deliverables in accordance with the Project Plan and the Specifications. Any such letter of credit shall also secure the payment of any damages, costs or expenses resulting from Vendor's default in performance hereunder or liability caused by Vendor or any Subvendor. Furthermore, any such letter of credit shall secure payment to DSS for any administrative, staff or other costs incurred by DSS in obtaining similar software, deliverables and services from a substitute vendor. In order to be effective as Substitute Performance Security for the purposes of Section 17, the Substitute Performance Security must be delivered to DSS no later than 30 Days prior to the expiration of the term of the Performance Bond.

17.1.3. Default. The failure, for any reason whatsoever, to maintain a Performance Bond or provide or maintain Substitute Performance Security as required by this Section 17.1 throughout the term of this Agreement shall constitute a material breach by Vendor and DSS may terminate this Agreement immediately upon the lapse of the Performance Bond upon written Notice to Vendor unless Vendor delivers Substitute Performance Security that complies with the provisions of subsection 17.1.2.

17.2. Letter of Credit. On or before 90 Days after the Effective Date, Vendor shall obtain and deliver to DSS an irrevocable letter of credit in an amount not less than $1,000,000.00 (the "Letter of Credit"). The Letter of Credit must be issued by a financial institution subject to regulation or oversight by the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, and must be in a form reasonably acceptable to DSS. The Letter of Credit must state on its face that it is irrevocable prior to September 30, 2011. The Letter of Credit shall secure the performance of Vendor of its obligations pursuant to this Agreement, including without limitation performance of the Services in accordance with the Project Plan and providing Deliverables in accordance with the Project Plan and the Specifications. The Letter of Credit shall also secure the payment of any damages, costs or expenses resulting from Vendor's default in performance hereunder or liability caused by Vendor or any Subvendor. Furthermore, the Letter of Credit shall secure payment to DSS for any administrative, staff or other costs incurred by DSS in obtaining similar software, deliverables and services from a substitute vendor.

17.3 Presumed Damages for Failure to Renew Performance Bond or Provide Substitute Security. The parties acknowledge and agree that if the Performance Bond is not renewed as provided for above in Section 17.1 or if Substitute Performance Security is not provided by Vendor, DSS shall suffer damages on account of such non-renewal including, but not limited to, damages associated with ascertaining the ongoing ability of Vendor to perform and/or damages associated with administrative, staff or other costs incurred by DSS in obtaining similar software, deliverables and services from a substitute vendor should DSS elect to terminate this Agreement as a result of Vendor not complying the with the terms of this Section 17 or other material breach of this Agreement. The parties acknowledge and agree that DSS' actual damages in such event would be impracticable or extremely difficult to fix, and further agree that DSS' damages shall be deemed to be no less than $1,000,000.00. In the event of non-

renewal of the Performance Bond for any reason and failure to Substitute Performance Security, regardless of whether DSS terminates this Agreement on account of such non-renewal, or in the event of any other material breach of this Agreement by Vendor, DSS may draw the entire amount of the Letter of Credit upon written Notice to Vendor and the issuer. Nothing in this Section 17.3 shall preclude an award to DSS of additional actual damages in the event of a material breach by DSS."

17.4. Increase in Amount of Performance Bond. So long as the total amount payable pursuant to the terms of this Agreement and Exhibit B for labor services, does not exceed $50,000,000, the amount of the Performance Bond or Substitute Performance Security shall be no less and no more than $4,500.000.00. If a Change Order or other amendment to this Agreement results in an increase in the total amount payable for labor services above $50,000,000, DSS may require an increase in the amount of the Performance Bond or Substitute Performance Security as a condition of agreeing to any such Change Order or amendment. The amount of such Performance Bond or Substitute Performance Security increase will not exceed ten percent of the amount by which the cost of such labor services exceeds $50,000,000.00.

18. Additional Rights and Remedies.

18.1 Withholding Payments. If Vendor fails to deliver Deliverables or to provide Services which satisfy Vendor's obligations under this Agreement, DSS has the right to withhold payments due hereunder, but only to the extent of the amount in dispute. DSS may withhold payments due hereunder to Vendor, as aforesaid, without penalty or work stoppage by Vendor, until such failure to perform is cured.

18.2 Reductions in Payments Due. Amounts due DSS by Vendor, including but not limited to damages, or claims for damages, may be deducted or set-off by DSS from any money payable to Vendor pursuant to this Agreement.

18.3 Cover. If, in the reasonable judgment of DSS (i), a default by Vendor is not so substantial as to require termination; (ii) reasonable efforts to induce Vendor to cure the default are unavailing; (iii) Vendor fails to cure such default within ten Days of receipt of Notice from DSS; and (iv) the default is capable of being cured by DSS or by another resource without unduly interfering with continued performance by Vendor, DSS may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Vendor shall reimburse DSS for the reasonable cost of the Services in default. In addition, Vendor must cooperate with these resources in allowing access to the Software.

18.4 Performance Standards. If the System fails to meet Performance Standards while the Vendor is providing Maintenance and Support Services, Vendor shall modify, reconfigure, upgrade or replace software and Equipment at no additional cost to DSS in order to provide a System solution that complies with the Performance Standards.

18.5 Suspension for Convenience. DSS has the right at any time to order the Services of Vendor fully or partially stopped for its own convenience for up to 15 consecutive days. DSS will provide Vendor with Notice of the reasons for such an order. The deadlines established in the Project Plan shall be delayed on a day-for-day basis to the extent DSS has issued a stop work order to Vendor and such stop work order is causing delays in completing Services in accordance with the Project Plan. Vendor has the right to submit claims in accordance with the terms of Section 24.6 as a result of stop work orders issued under this Section.

18.6 Vendor Liability for Failure to Meet Completion Deadline. Anything elsewhere in this Agreement to the contrary notwithstanding, if, due in whole or in part to the acts or omissions of Vendor or any of its Subvendors, the System is not fully Operational and certifiable as such by CMS on the date specified in the Official Project Plan and this Agreement, then Vendor shall be liable to DSS for the loss of any federal funding otherwise payable to DSS for the Project and for any federal funds which DSS is required to repay pursuant to 45 CFR 95.611, 45 CFR 95.612 or other applicable law. Nothing in this Agreement shall require Vendor to be responsible for such loss or damages if the delay is solely the result of the acts or omissions of DSS or another vendor (but not including any Subvendor of Vendor) or if the delay is a result of a failure or delay in funding provided by the State or the United States.

19. Insurance.

19.1 Liability and Auto Insurance. Vendor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of South Dakota and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Vendor shall include State, its boards, agencies, contractors, offices, employees, agents and volunteers as a named insured party in Vendor's insurance policy obtained under this section. If Vendor fails to buy and maintain the insurance coverage described in this Section, DSS may terminate this Agreement under Section 23.1 (Termination for Vendor's Material Breach). The minimum acceptable limits shall be as indicated below with no retention except as indicated below:

19.1.1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

19.1.2. Business Automobile Liability (owned, hired, or nonowned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than $1 million per accident;

19.1.3. Technology Errors and Omissions Liability in a form reasonably acceptable to DSS, with limits of liability of no less than $5,000,000.00 and retention of no greater than $100,000.00.

19.2 Worker's Compensation Coverage. Prior to providing Services under this Agreement, Vendor shall, in full compliance with State law, provide or purchase worker's compensation coverage for its employees. DSS is not responsible for payment of premiums or

for any other claim or benefit for Vendor, or any Subvendor or employee of Vendor or any Subvendor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Vendor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, DSS may deduct the amount of premiums owing from the amounts payable to Vendor under this Agreement and purchase or otherwise provide coverage on behalf of Vendor.

19.3 Subvendors. Vendor shall include all Subvendors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subvendor. Subvendor(s) shall comply fully with all insurance requirements stated herein. Failure of Subvendor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

19.4 Premiums. Premiums on all insurance policies shall be paid by Vendor or its Subvendors. Such insurance policies provided for DSS pursuant to this Section shall expressly provide therein that State, its boards, agencies, departments (including DSS), contractors, offices, employees, agents and volunteers be named as additional insured, and that it may not be revoked by the insurer until 30 Days Notice of intended revocation thereof may have first been given to DSS by such insurer.

19.5 Cancellation. None of Vendor's insurance policies may not be canceled, nonrenewed or limited or reduced in scope of coverage without provision for equivalent substitute insurance and such cancellation, nonrenewal or limitation or reduction in scope of coverage shall not take place until five business days' written Notice has been given to DSS, attention DSS Project Director, and Vendor has replacement insurance polic(ies) in place that satisfy the requirements set forth in this Section. Vendor's insurance policies shall not be reduced in scope without DSS' prior written consent.

19.6 Insurance Documents. Vendor shall furnish to DSS copies of certificates of all required insurance within 30 Days of the Effective Date, and copies of renewal certificates of all required insurance prior to the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by DSS for material breach.

19.7 Increased Coverage. Vendor must immediately provide DSS Notice if any aggregate insurance limit is exceeded and purchase additional coverage.

19.8 Subrogation. Vendor agrees to waive all rights of subrogation against State and its boards, agencies, departments (including DSS), officers, employees, agents, and volunteers for losses arising from Services performed by Vendor under this Agreement.

19.9 Cross-Liability. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DSS and shall include a severability of interests (cross-liability) provision.

20. Confidential Information and Proprietary Information.

20.1 Protection Obligations.

20.1.1 Access and Protection. During the term of this Agreement, Vendor and DSS will have access to and become acquainted with each party's Confidential Information and Proprietary Information. Except as otherwise required by law, DSS and Vendor, and each of their officers, employees and agents, shall, maintain (a) all Confidential Information of the other party in strict confidence, and (b) all Proprietary Information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party may at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties may take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable Federal and State law and regulation and this Section, the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Except as otherwise required by law, each party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section with respect to the Proprietary Information and Confidential Information. In addition to the requirements expressly stated in this Section, Vendor and its Subvendors will comply with any policy, rule, or reasonable requirement of Federal or State law that relates to the safeguarding or disclosure of information relating to Medicaid applicants and recipients, Vendor's operations, or the Services performed by Vendor under this Agreement, including without limitation the terms of Exhibit L which is incorporated herein by this reference.

20.1.2 Security Require ments. Each party, and its officers, employees, subvendors, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of DSS (which security standards, practices, and procedures shall be provided to Vendor in writing) and which the other party may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Proprietary Information and Confidential Information.

20.2 Audit. DSS reserves the right to monitor, audit or investigate Vendor's use of DSS Confidential Information collected, used, or acquired by Vendor under this Agreement. Such monitoring, auditing or investigative activities may include without limitation Salting databases.

20.3 Return. Subject to record retention laws and to DSS' rights under Section 9, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information and Proprietary Information, including copies thereof.

20.4 Injunctive Relief and Indemnity.

20.4.1. Vendor shall immediately report to DSS any and all unauthorized disclosures or uses of DSS Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Vendor acknowledges that any publication or disclosure of DSS' Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to DSS. If Vendor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, DSS shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Vendor shall indemnify, defend, and hold DSS harmless from and against all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Vendor's failure to protect DSS' Confidential Information or Proprietary Information. As a condition to the foregoing indemnity obligations, DSS will provide Vendor with prompt Notice of any claim of which DSS becomes aware and for which indemnification may be sought hereunder, and shall cooperate in all reasonable respects with Vendor in connection with any such claim.

20.4.2 DSS will immediately report to Vendor any and all unauthorized disclosures or uses of Vendor's Confidential Information or Proprietary Information of which DSS becomes aware. DSS acknowledges that any publication or disclosure of Vendor's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Vendor. If DSS should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Vendor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

20.5 Nondisclosure of Other DSS Information. The use or disclosure by Vendor of any DSS information not necessary for, or directly connected with, the performance of Vendor's responsibility with respect to Services is prohibited, except upon the express written consent of DSS.

20.6 Exceptions. The following information may not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

20.7 Survival. The provisions of this Section 20 shall remain in effect following the termination or expiration of this Agreement.

21. Indemnifications.

21.1 Intellectual Property.

21.1.1 Vendor shall, at its expense, defend, indemnify, and hold harmless DSS and its employees, officers, directors, contractors and agents from and against any third-party

claim or action against DSS which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Vendor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. DSS shall promptly give Vendor Notice of any such claim.

21.1.2 I n case the Deliverables, or any one or part thereof, are held in such action to constitute an infringement or misappropriation, or the exercise of DSS' rights thereto is enjoined or restricted, Vendor shall, at its own expense and in the following order of priorities: (i) procure for DSS the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of Notice from DSS and refund the Purchase Price of each Deliverable, as applicable. Notwithstanding anything to the contrary herein, the refunds that are provided under this Section are not included under the amounts of the direct damages limits set forth in Section 22.3.

21.1.3 V endor shall not be liable to the extent claims of misappropriation of infringement arise from Vendor's compliance with any designs, Specifications or written instructions of DSS and Vendor could not have avoided such claims through alternative products, or from modifications made by any party other than Vendor. Anything in this subsection 21.1.3 to the contrary notwithstanding, Vendor shall remain liable to indemnify DSS under this Section 21.1 unless Vendor provides DSS with Notice that DSS' designs, Specifications or written instructions are likely to give rise to claims of misappropriation or infringement; provided, however, that such Notice need only be given if Vendor knows or reasonably should have known of the likelihood of a claim of misappropriation or infringement.

21.2 General. Vendor shall, at its expense, indemnify, defend, and hold harmless DSS, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for Property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, or Subvendors. DSS shall promptly give Vendor Notice of such claim.

22. Damages Disclaimers and Limitations.

22.1 DSS' Disclaimer of Damages. DSS IS NOT LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES.

22.2 DSS Limitation of Liability. IN NO EVENT SHALL DSS' AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT

LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

22.3 Vendor's Limitation of Liability. Vendor shall have no liability for punitive damages. In addition, Vendor is not liable to DSS to the extent of any loss, damage, or liabilities:

22.3.1 Caused b y the failure of DSS, another State agency, or a State contractor to perform in connection with this Agreement and such nonperformance prevented Vendor from performing in accordance with this Agreement;

22.3.2 Resulting from Vendor acting prudently in accordance with instructions given by authorized representatives of DSS or other authorized State agencies; or

22.3.3 That, in the a ggregate, exceeds one and one-half times the "not to exceed" amount set out in Section 4.3, as it may be amended from time-to-time.

23. Termination.

23.1 Termination for Vendor's Material Breach. If Vendor materially breaches this Agreement, then DSS shall give Vendor written Notice of such breach. Except as otherwise required by this Agreement, Vendor shall correct the breach within 30 Days of receipt of such Notice. If the breach is not capable of cure, or if the breach is not corrected, this Agreement may be terminated immediately, in whole or in part, by Notice from DSS to Vendor. The option to terminate shall be at DSS' sole discretion.

23.2 Termination for Rejection of Deliverables. If Vendor is unable to correct Deficiencies in a Deliverable, as described in Section 8.3, in a reasonable and timely manner, DSS shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to DSS, with such a termination being deemed a termination due to the default of Vendor under this Agreement, and DSS may return the defective Deliverable to Vendor. If DSS terminates this Agreement under this Section, Vendor shall, within 20 Days thereafter, refund to DSS all payments made to Vendor for any returned Deliverable and Services rendered therefore. Anything in this Section 23.2 to the contrary notwithstanding, DSS may retain possession and ownership of any Deliverable previously received and accepted by DSS, and for which DSS has issued payment to the Vendor.

23.3 Termination Remedies.

23.3.1 I n the event of termination of this Agreement by DSS under Sections 23.1-23.2, DSS has, in addition to its other available remedies, the right to procure the Services and Deliverables that are the subject of this Agreement on the open market and, subject to the provisions of Section 22.3, Vendor is liable for all damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Software and/or Services and the replacement costs of such Software and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

23.3.2 I f it is determined for any reason the failure to perform is not within the Vendor's control, fault, or negligence, the termination by DSS under Sections 23.1-23.2 shall be deemed to be a termination for convenience under Section 23.4.

23.4 Termination for Convenience.

23.4.1 I n addition to its other rights to terminate, DSS may terminate this Agreement, in whole or in part, for DSS' convenience, by 30 days Notice to Vendor. Invocation of Section 23.5 (Termination for Withdrawal of Authority), or Section 23.6 (Termination for Non-allocation of Funds), shall be deemed a Termination for Convenience and, except as may be impracticable given the circumstances, shall also require 30 Days Notice to Vendor.

23.4.2 During th e 30 Day Notice period, Vendor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on DSS from such winding down and cessation of Services. If this Agreement is so terminated, DSS shall be liable only for payment in accordance with the terms of this Agreement for Services satisfactorily rendered prior to the effective date of termination.

23.4.3 I n case of such termination for convenience, DSS will pay to Vendor (i) the agreed upon Charge, if separately stated, for Deliverables for which Acceptance has been given by DSS; (ii) amounts for Services provided prior to the effective date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given; and (iii) amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Vendor therefore, as based on the hourly rates in Exhibit B, but such costs may be no greater than the Charge for each Deliverable. In addition, DSS agrees to compensate Vendor for reasonable and necessary costs that were incurred by Vendor on the Project, as a result of DSS' termination for convenience, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary Project-related expenses, subject to DSS' reasonable judgment, the availability of State and Federal funds and receipt of supporting documentation from Vendor.

23.5 Termination for Withdrawal of Authority. If the authority of DSS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, DSS may terminate this Agreement under Section 23.4 (Termination for Convenience), in whole or in part. This Section may not be construed so as to permit DSS to terminate this Agreement solely in order to acquire similar Services from a third party.

23.6 Termination for Nonallocation of Funds. If funds are not allocated to continue this Agreement, DSS may terminate this Agreement under Section 23.4 (Termination for Convenience). DSS is not obligated to pay any further Charges for Services or Purchase Prices for such unfunded period, but DSS shall make payments for Services, Deliverables and Vendor's costs as provided in Section 23.4.3, subject to the availability of funding therefore. DSS agrees

to give Vendor Notice of such nonallocation at the earliest possible time. No penalty shall accrue to DSS in the event it exercises its rights under this Section.

23.7 Termination Procedure.

23.7.1 Upon termination of this Agreement for any cause other than a material breach by Vendor, Vendor shall deliver to DSS any Property, including but not limited to Deliverables and Data for such part of this Agreement as has been terminated, and for which DSS has issued payment to Vendor. Upon termination of this Agreement on account of a material breach by Vendor, Vendor shall deliver to DSS all Equipment and Property to which it is entitled pursuant to the terms of this Agreement.

23.7.2 After r eceipt of a Notice of termination, and except as otherwise directed by DSS, Vendor shall:

23.7.2.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

23.7.2.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

23.7.2.3 As soon as practicable, but in no event longer than 30 Days after Notice of termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DSS to the extent required, which approval or ratification shall be final for the purpose of this Section;

23.7.2.4 Complete performance of such part of this Agreement as may not have been terminated by DSS;

23.7.2.5 Take such action as may be necessary, or as the DSS Project Director may direct, for the protection and preservation of the Property related to this Agreement which is in the possession of Vendor and in which DSS has an interest;

23.7.2.6 Transfer title to DSS and deliver in the manner, at the times, and to the extent directed by the DSS Project Director, any Equipment or Property which is required to be furnished to or by DSS and which has, as applicable, been accepted or requested by DSS; and

23.7.2.7 Provide written certification to DSS that Vendor has surrendered all such Equipment and Property to DSS.

23.7.3 Upon the expiration of this Agr eement or the termination of this Agreement for any reason, DSS' rights to the Vendor Technology will be as follows:

23.7.3.1 Unless otherwise agreed to between the parties as part of a turnover plan, Vendor shall provide DSS or its designee a license to use and reproduce for the

DSS' internal purposes Vendor Technology and provide technical and professional support and maintenance at rates negotiated between the parties;

23.7.3.2 DSS shall have use of the Vendor Technology at no cost to DSS during the negotiations of the rates, with the negotiated rates applicable back to the date of termination;

23.7.3.3 Vendor's rates for the technical and professional support and maintenance services addressed above may not exceed the lesser of:

(i) Reasonable and customary rates for such Services; or

(ii) Vendor's rates for comparable services for other customers.

23.7.4 Upon expiration of the Agreement or Vendor's receipt of Notice of termination of the Agreement by DSS, Vendor shall provide any turnover assistance Services necessary to enable DSS or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work itself. Within ten Days of receipt of the Notice of termination, Vendor shall provide, in machine readable form, an up-to-date, usable copy of the Data in a format prescribed by DSS and a copy of all documentation needed by DSS to utilize the Data. Vendor shall ensure that all consents or approvals to allow Vendor and Subvendors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to DSS.

24. General Conditions.

24.1 Anti-Trust Violations. Vendor and DSS recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by DSS. Therefore, Vendor hereby assigns to DSS any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to DSS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Charges under this Agreement.

24.2 Assignment. Vendor may not assign or transfer this Agreement or any of its rights under this agreement, or delegate any of its duties under this agreement, without the prior written consent of DSS, provided that any permitted assignment may not operate to relieve Vendor of any of its duties and obligations under this Agreement, nor may such assignment affect any remedies available to DSS that may arise from any breach of the provisions of this Agreement or warranties made herein including but not limited to, rights of setoff. DSS may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of South Dakota. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

24.3 Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

24.4 System as a "Good". For the purposes of this Agreement, the System, in whole and in part, is considered a "good under applicable provisions of the Uniform Commercial Code as adopted in the State of South Dakota.

24.5 Binding Effect. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, representatives, successors and assigns.

24.6 Claims. Vendor must submit claims for payment upon the following terms and conditions:

24.6.1 Claims for pa yment for Charges for Services or Deliverables must be submitted on an invoice within the earlier of 45 Days of the date upon which the Vendor knew or should have known of the claim or 45 Days after the termination or expiration of this Agreement. If a final invoice cannot be submitted within 45 Days, then written Notice and an explanation of such need may be provided to DSS for consideration of an extension;

24.6.2 All other claims of an y sort, including but not limited to claims for personal injury, property damage or breach of contract, must be filed within the time and manner required by SDCL Ch. 3-21.

24.6.3 No claim shall be allowed unless Notice of such claim has been given within the above-described time periods. Such claims must be submitted to the DSS Project Director by Vendor in the form and with the certification prescribed by the DSS Project Director. Upon failure of Vendor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims shall be Vendor's sole and exclusive remedy in the event that DSS breaches this Agreement.

24.6.4 Nothing in this Section 24.6 is intended as a waiver of the provisions of SDCL 21-32-2.

24.7 Compliance With Civil Rights and Other Laws. During the performance of this Agreement, Vendor shall comply with all applicable Federal and State nondiscrimination and other laws, including but not limited to Executive Order 11246; ;Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; Drug Abuse Office and Treatment Act of 1972; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; Age Discrimination Act of 1975; Americans with Disabilities Act of 1990; Pro-Children Act of 1994; Hatch Act; Health Insurance Portability and Accountability Act (HIPAA) of 1996; and other applicable laws prohibiting, limiting or otherwise related to Lobbying Activity, Equal Employment Opportunity, Debarment and Suspension, Drug-Free Workplace and Charitable Choice Provisions and Regulations. Vendor hereby certifies that it does not discriminate in its employment practices on the basis of race, color, creed, religion, age, sex, ancestry, national origin or disability. Vendor further certifies that it maintains a drug free workplace to ensure worker safety and workplace integrity. Vendor shall provide a copy of its drug free workplace policy at any time upon the written request of DSS.

24.8 Conflicts Among Documents; Order of Precedence. If there is a conflict among the documents comprising the Agreement, the conflict shall be resolved utilizing the following order of precedence:

24.8.1 Applicable Federal and State laws, regulations and policies;

24.8.2 Change Orders

24.8.3 The terms and conditions in the body of this Agreement;

24.8.4 Assumptions (Exhibit A)

24.8.5 Payment Schedule (Exhibit B);

24.8.6 Scope of Work (Exhibit C);

24.8.7 Deliverable Approval Process (Exhibit D);

24.8.8 Performance Standards (Exhibit E);

24.8.9 Official Project Plan (Exhibit F);

24.8.10 Equipment and Software Bill of Materials (Exhibit G)

24.8.11 BAFO (Exhibit H);

23.8.12 Proposal (Exhibit I);

24.8.13 RFP (Exhibit J);

24.8.14 DSS-Provided Resources (Exhibit K);

24.8.15 HIPAA Business Associate Agreement (Exhibit L)

24.8.16 Performance Bond (Exhibit M);

24.8.17 Letter of Credit (Exhibit N); and

24.8.18 All Vendor publications, written material and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to DSS and used to affect the sale of Deliverable and Services to DSS.

24.9 Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall for all purposes be deemed an original copy of this Agreement.

24.10 Covenant Against Contingent Fees.

24.10.1 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.

24.10.2 In the event of a breach of this Section 24.10 by Vendor, DSS has the right to either annul this Agreement without liability to DSS, or, in DSS' discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

24.11 Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

24.12 Debarment and Suspension. Vendor certifies to DSS that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise excluded from or ineligible for, participation in Federal or DSS government contracts. Vendor certifies that it has no contract with a Subvendor that is so debarred or suspended.

24.13 Entire Agreement; Acknowledgement of Understanding. DSS and Vendor acknowledge that they have read the Agreement and the attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, DSS and Vendor agree that the Agreement and the Exhibits are the complete and exclusive statement of this Agreement between the parties relating to the subject matter of this Agreement and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of this Agreement.

24.14 Force Majeure. Neither Vendor nor DSS is liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

24.15 Governing Law - Venue. This Agreement is governed in all respects by the law and statutes of the State of South Dakota, without reference to conflict of law principles. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota. Vendor accepts the personal jurisdiction of such courts.

24.16 Headings. The headings throughout the Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

24.17 Independent Status of Vendor. The parties hereto, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

24.18 Legal and Regulatory Compliance. The Services and System shall comply with all applicable Federal and State laws, regulations, codes, standards and ordinances during the term of this Agreement. In the event that any Services performed or the System provided by Vendor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it is the sole responsibility of Vendor to bring the Services and System into compliance at no additional cost to DSS.

24.19 Licensing Standards. Vendor shall comply with all applicable State and Federal licensing requirements and standards necessary in the performance of this Agreement.

24.20 Lobbying Activities. Vendor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

24.21 Modifications and Amendments.

24.21.1 No Change Order or modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an corporate executive of Vendor and the Secretary of DSS or his or her designee (to be designated in writing prior to action).

24.21.2 Only the Secretary of DSS or his or her authorized designee (to be designated in writing prior to action) has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of DSS.

24.21.3 Vendor shall notify DSS of the names of individuals who have authority to bind Vendor to modifications to this Agreement and of the limits of such authority at the time Vendor executes this Agreement and at such other times as required.

24.22 Nonwaiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under this Agreement may not be deemed a waiver of any such right, power, or privilege under this Agreement. Any waivers granted by DSS for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. DSS' pursuit or nonpursuit of a remedy under this Agreement for Vendor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that DSS may have at law or equity for any other occurrence of the same or similar breach, nor prevent DSS from pursuing such remedy.

24.23 Notice of Delay. When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party

shall, within five business days, give Notice thereof, including all relevant information with respect thereto, to the other party.

24.24 Notice of Litigation. If and when Vendor has knowledge that they are party to any material litigation, Vendor shall, within five business days, give Notice thereof, including all relevant information with respect thereto, to DSS. For the purposes of this Section 24.24, "material litigation" means any judicial proceeding or arbitration proceeding in which the amount in controversy exceeds $50,000.00.

24.25 Notice of Injuries. Vendor shall immediately upon discovery report to DSS any event occurring during the performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Vendor, DSS or any other State agency to liability. Vendor's obligations pursuant to this Section shall only be to report the event to DSS and to make any other report required under applicable law. Vendor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under applicable law. Making a report to DSS pursuant to this Section shall not excuse or satisfy Vendor's responsibility to make reports to appropriate law enforcement entities or as otherwise required by applicable law.

24.26 Notices.

24.26.1 Any Notice or demand or other communication required or permitted to be given under this Agreement or applicable law is effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and e-mail addresses provided in this Section.

To **Vendor** at:

Matthew Hoffman
Vice President and Corporate Counsel
Client Network Services, Inc.
Mailing Address:
702 King Farm Blvd
2nd Floor
Rockville, MD 20850
Telephone: (301) 634-4600
Fax: (301) 634-4666
E-mail: mhoffman@cns-inc.com

To **DSS** at:

State of South Dakota
Department of Social Services
Hon. Deborah Bowman, Secretary
Mailing Address Pierre, SD 57501
Street Address 700 Governors Drive
Pierre, SD, 57501
Telephone: 605-773-3165
Fax: 605-773-4855

cc: Contracts/Legal Specialist
MMIS Reprocurement Project
State of South Dakota
Department of Social Services
700 Governors Drive
Pierre, SD 57501

24.26.2 Notices given by mail are effective four business days after mailing. All other forms of Notice are effective upon receipt. The Notice address as provided herein may be changed by Notice given as provided above.

24.27 Publicity. The award of this Agreement to Vendor is not in any way an endorsement of Vendor or Vendor's Services by DSS and may not be so represented by Vendor in any advertising or publicity materials. Vendor agrees to submit to the DSS Project Director all advertising, sales promotion, and other publicity matters relating to this Agreement wherein DSS name is mentioned or language used from which the connection of DSS' name therewith may, in DSS' judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of DSS. Vendor may not in any way contract on behalf of or in the name of DSS, nor may Vendor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Project without obtaining the prior written approval of DSS.

24.28 Prompt Payment Act Waiver. Vendor acknowledges that it would be inconsistent with the Project Plan and difficult or impracticable for DSS to provide the notice of disagreement provided for by South Dakota Codified Law section 5-26-5 within the ten days provided by that section. Accordingly, Vendor hereby waives the application of that section to this Agreement.

24.29 Remedies. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this agreement, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

24.30 Security Interest. In order to further secure Vendor's obligations to DSS as provided in this Agreement, Vendor hereby grants DSS a security interest in any software, hardware or other Deliverable in which Vendor has an interest and for which DSS has provided payment. Vendor hereby authorizes DSS to file all one or more Financing Statements to perfect the security interest granted herein. For the purposes of Article 9 of the Uniform Commercial Code, Vendor warrants that its location is within the state of Maryland. Vendor agrees to provide DSS with 30 Days prior Notice of any change in Vendor's location.

24.31 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity does not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

24.32 Sovereign Immunity. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by DSS or the State of South Dakota of any immunities from suit or from liability that DSS or the State of South Dakota may have by operation of law.

24.33 Subvendors.

24.33.1 Vendor may, with prior written permission from the DSS Project Director, which consent may not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. Subject to the other provisions of this Section 24.33, DSS expressly consents to Vendor's use of the Subvendors designated in its Proposal for the provision of the Services specified in the Proposal. Any such approval may be rescinded at any time in DSS' sole discretion. Vendor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subvendors. In no event may the existence of a subcontract operate to release or reduce the liability of Vendor to DSS for any breach in the performance of Vendor's duties. In addition, Vendor's use of any Subvendor shall not cause the loss of any warranty from Vendor. All subcontracts will be made in writing and copies provided to DSS upon request. DSS has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement. For purposes of this Agreement, Vendor agrees to indemnify, defend, and hold DSS harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Vendor's Subvendors, their agents, or employees. At DSS' request, Vendor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts. For any Subvendor, Vendor shall:

24.33.1.1 Be responsible for Subvendor compliance with the Agreement and the subcontract terms and conditions;

24.33.1.2 Ensure that the Subvendor follows DSS' reporting formats and procedures as specified by DSS;

24.33.1.3 Include in the Subvendor's subcontract substantially similar terms as are provided in this Agreement;

24.33.2 Upon expiration or termination of this Agreement for any reason, DSS will have the right to enter into direct agreements with any of the Subvendors. Vendor agrees that its arrangements with Subvendors will not prohibit or restrict such Subvendors from entering into direct agreements with DSS.

24.34 Subpoena. Except as otherwise required by law, in the event that a subpoena or other legal process commenced by a third party in any way concerning the software or Services provided pursuant to this Agreement is served upon Vendor or DSS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and DSS further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Vendor for DSS.

24.35 Rule of Construction. Each party has engaged the services of competent, experienced counsel to assist in the negotiating and drafting of the terms of this Agreement. Accordingly, the parties specifically agree that the rule of construction that provides that ambiguities are to be construed against the drafter shall have no application to this Agreement.

24.36 Survival. All Services performed and Deliverables delivered pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive. In addition, the terms of the following Sections and subsections shall survive termination of this Agreement: 5.3.4, 5.3.5, 5.7, 5.8, 9, 11.1, 12, 15, 18.3, 18.6, 19.8, 19.9, 20, 21, 22, 24.1, 24.6, 24.11, 24.15, 24.25, 24.26, 24.29, 24.30, 24.32, 24.33, 24.34, 24.35 and 24.36.

[SIGNATURES ON FOLLOWING PAGE]

The parties hereto, having read this Agreement in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Effective Date.

SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES

By: _____
Printed Name: Deborah K Bowman
Title: Secretary
Date: June 24, 2008

CLIENT NETWORK SERVICES, INC.

By: _____
Printed Name: B. Chatterjee
Title: President
Date: June 17, 2008

APPROVED:

SOUTH DAKOTA
BUREAU OF ADMINISTRATION

By: _____
Printed Name: Jeff Bloemberg
Title: Commissioner
Date: 6/24/08

SOUTH DAKOTA
BUREAU OF INFORMATION AND
TELECOMMUNICATION

By: _____
Printed Name: Denise M Luckhurst
Title: Development Director
Date: 6/24/2008