

**Maintenance and Enhancement of the Web-Based  
New York State Immunization Information System**

**RFP No. 1212030151**

**AMENDMENT #1**

- 1) A new section V.C. shall be added to Attachment 12, State of New York Agreement:

*Contractor's liability for any claim, loss, or liability arising out of, or connected with the products or services provided, and whether based upon default or other liability such as breach of contract or warranty, negligence, misrepresentation, or otherwise, shall, unless otherwise set forth in the contract as being without limitation, in no case exceed damages in an amount equal to the contract value, excluding any amendments or extensions. Notwithstanding the foregoing, the Contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of the Contractor, its officers, employees or agents.*

- 2) The RFP document is amended to add sub-section E.18 Force Majeure:

**E.18 FORCE MAJEURE**

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the State or the Contractor, its subcontractors, or others under the Contractor's or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.

2. Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by

the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

3. Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may:

a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Department with respect to product, materials, or services; and/or

b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the product, materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department; or

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

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