



**Solicitation Information  
May 23, 2012**

**Addendum #4**

**RFP # 7449637**

**TITLE: Unified Health Infrastructure Project**

**Submission Deadline: June 8, 2012 @ 10:00 AM (EDT)**

- Please see attached Unified Health Infrastructure Project model agreement. The agreement includes the terms and conditions that will govern this project and is incorporated by reference into RFP # 7449637.
- The question period, especially for questions related to the terms and conditions contained in the model agreement, is now open until Tuesday, May 29<sup>th</sup> at noon. By this time, please email questions to [rfp.questions@purchasing.ri.gov](mailto:rfp.questions@purchasing.ri.gov).
- Please continue to monitor the website for any updates.
- The **tentative procurement schedule** is now as follows:
  - *Fri., May 25th. Vendor Letters of Intent Due*
  - *Tues. May 29th 2<sup>nd</sup> Batch of Questions Due*
  - *Week of May 29th Respond to Questions Batch 2*
  - *Fri., June 8. Bid Opening*  
**(Eval Team Scores Round 1 Bids)**
  - June 25-29. Vendor Oral Presentations
  - *Fri., July 6. Clarifications to Finalists—if necessary.*
  - *Wed., July 18. Round 2 Proposals Due—if necessary.*  
**(Eval Team Scores Round 2 Finalist Bids)**
  - *Fri., July 27. Eval Team completes review*
  - *Mon., Aug. 27. Contract Signed*

**This is a tentative schedule and the State reserves the right to modify further at its sole discretion.**

**DANIEL W. MAJCHER, ESQ.  
ASSISTANT DIRECTOR, SPECIAL PROJECTS**

Agreement Number: \_\_\_\_\_

AGREEMENT

Between the

STATE OF RHODE ISLAND AND

THE EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES AND

THE DEPARTMENT OF ADMINISTRATION

and

\_\_\_\_\_  
Name of Contractor: \_\_\_\_\_

Title of Agreement: Unified Health Infrastructure Project Agreement

Basis for Agreement: RFP #7449637

Agreement Award: \$ \_\_\_\_\_

Performance Period: \_\_\_\_\_

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
1. CONTRACT, ORDER OF PRECEDENCE. ....	2
1.1 AGREEMENT DOCUMENTS. ....	2
1.2 ORDER OF PRECEDENCE. ....	3
2. TERM OF CONTRACT, EXTENSIONS. ....	3
2.1 TERM. ....	3
2.2 EXTENSIONS. ....	3
3. PHASES, CRITICAL EVENTS DEADLINES ....	4
3.1 PHASES. ....	4
3.2 CRITICAL EVENTS DEADLINES. ....	4
4. PHASE 1: EXCHANGE, MAGI-BASED MEDICAID ELIGIBILITY. ....	4
4.1 PHASE 1 TASK ORDERS AND MILESTONES. ....	4
4.2 PHASE 1 CRITICAL EVENTS DEADLINES. ....	4
5. PHASE 2: INTEGRATION AND MIGRATION OF HUMAN SERVICES PROGRAMS (INCLUDING NON-MAGI BASED MEDICAID) TO THE HIX/IES SYSTEM. ....	5
5.1 PHASE 2 TASK ORDERS AND MILESTONES. ....	5
5.2 PHASE 2 CRITICAL EVENTS DEADLINES. ....	5
5.3 REMEDIES FOR FAILURE TO MEET MILESTONES AND CRITICAL EVENTS DEADLINES. ....	6
6. PAYMENTS AND RETAINAGE. ....	6
6.1 MILESTONE PAYMENTS. ....	6
6.2 MAINTENANCE AND OPERATIONS. ....	8
6.3 MAXIMUM PAYMENTS. ....	8
6.4 OTHER COSTS AND EXPENSES. ....	8
6.5 INVOICES. ....	8
6.6 ADVANCE PAYMENTS PROHIBITED. ....	9
6.7 OVERPAYMENTS TO CONTRACTOR. ....	9
6.8 CREDITS. ....	9
7. CONTINGENCIES. ....	9
8. PROJECT MANAGEMENT. ....	10
8.1 CONTRACTOR PROJECT MANAGEMENT. ....	10
8.2 PROJECT STAFF. ....	11
8.3 UHIP PROJECT COORDINATOR. ....	14
8.4 RECORDKEEPING. ....	14
8.5 SUBCONTRACTORS. ....	15
8.6 EXAMINATION AND AUDIT. ....	15
9. STATE PROPERTY. ....	19
9.1 OWNERSHIP. ....	19
9.2 USE OF PROPERTY. ....	19
9.3 SURRENDER OF PROPERTY. ....	19
10. SERVICES. ....	19

10.1	SYSTEM CERTIFICATION.....	19
10.2	HHS SANCTIONS.....	20
10.3	CONTINUITY OF SERVICES.....	20
10.4	FORCE MAJEURE EVENTS.....	20
11.	DELIVERABLES.....	21
11.1	GENERAL.....	21
11.2	DELIVERABLES.....	21
11.3	SOFTWARE SOURCE CODE.....	21
11.4	PROJECT PLAN.....	22
11.5	REPRESENTATION.....	23
11.6	DOCUMENTATION.....	23
11.7	QUALITY ASSURANCE.....	23
12.	COMMERICAL SOFTWARE AND DOCUMENTATION.....	24
12.1	LICENSE.....	24
12.2	[ <i>COMMERCIAL SOFTWARE INSTALLATION AND ACCEPTANCE TESTS</i> ].....	25
13.	CONTRACTOR PRE-EXISTING SOFTWARE AND DOCUMENTATION.....	25
13.1	GRANT.....	25
13.2	TITLE.....	25
13.3	DOCUMENTATION.....	25
13.4	COPIES.....	25
13.5	RESTRICTIONS.....	25
13.6	LICENSES AND SUPPORT AGREEMENTS.....	26
13.7	SOURCE CODE ESCROW.....	26
13.8	BANKRUPTCY.....	28
14.	CUSTOM SOFTWARE DEVELOPMENT.....	29
14.1	DESIGN, CONSTRUCTION, INSTALLATION AND TESTING.....	29
14.2	KNOWLEDGE TRANSFER.....	29
14.3	[ <i>CONVERSION SOFTWARE INSTALLATION AND ACCEPTANCE TESTS</i> ].....	29
15.	USER ACCEPTANCE TESTS.....	29
15.1	PERFORMANCE.....	29
16.	TRAINING SERVICES.....	29
17.	PRODUCTION HOSTING SERVICES (TASK ORDER 7 AS DESCRIBED IN THE RFP.....	29
18.	WARRANTIES.....	29
18.1	WARRANTY PERIODS.....	29
18.2	WARRANTIES.....	30
18.3	WARRANTY EXCEPTIONS.....	33
18.4	REMEDIES.....	33
19.	TECHNOLOGY, OPERATIONS AND MAINTENANCE (TASK ORDER 8 AS DESCRIBED IN THE RFP).....	35
20.	SERVICE LEVEL AGREEMENTS (SLAS).....	35
20.1	SLAS.....	35
20.2	PERFORMANCE MONITORING.....	35
20.3	MONTHLY REPORTING.....	35
20.4	CORRECTIVE ACTION.....	36
20.5	PERIODIC REVIEWS.....	36

20.6	SLA LIQUIDATED DAMAGES.....	36
20.7	EXCUSED PERFORMANCE.....	36
21.	CHANGE ORDERS.....	37
21.1	AGREEMENT.....	37
22.	SUBCONTRACTORS.....	37
22.1	USE OF SUBCONTRACTORS.....	37
22.2	SUBCONTRACTS.....	37
22.3	PROBITY INVESTIGATION OF SUBCONTRACTORS.....	38
22.4	RESPONSIBILITY FOR SUBCONTRACTORS.....	38
22.5	NO STATE RESPONSIBILITY.....	38
22.6	ASSIGNABILITY OF SUBCONTRACTS.....	39
22.7	REMOVAL/REPLACEMENT OF SUBCONTRACTORS.....	39
23.	INTELLECTUAL PROPERTY RIGHTS.....	39
23.1	WORK PRODUCT.....	39
23.2	CONTRACTOR OWNERSHIP.....	40
24.	ROYALTY-FREE RIGHTS TO USE SOFTWARE OR DOCUMENTATION DEVELOPED.....	41
25.	DATA PROTECTION, SECURITY AND CONFIDENTIALITY.....	41
25.1	HIPAA COMPLIANCE.....	41
25.2	OWNERSHIP OF DATA.....	41
25.3	SECURITY.....	42
25.4	CONFIDENTIALITY.....	44
25.5	PUBLIC RECORDS LAW.....	44
25.6	EXCLUSIONS.....	45
25.7	LEGALLY REQUIRED DISCLOSURES.....	45
25.8	NOTIFICATION AND MITIGATION.....	45
25.9	RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION.....	45
25.10	INJUNCTIVE RELIEF.....	46
25.11	NONDISCLOSURE OF OTHER STATE INFORMATION.....	47
25.12	SURVIVAL.....	47
26.	INDEMNIFICATION.....	47
26.1	CONTRACTOR GENERAL INDEMNIFICATION.....	47
26.2	CONTRACTOR INFRINGEMENT INDEMNIFICATION.....	49
27.	STATE’S LIMITATION OF LIABILITY.....	51
27.1	CAP ON STATE LIABILITY FOR DIRECT DAMAGES.....	51
27.2	LIMITATION ON NON-DIRECT DAMAGES.....	51
28.	INSURANCE AND RISK OF LOSS.....	51
28.1	REQUIRED INSURANCE COVERAGES.....	51
28.2	NO IMPLIED LIMITATION.....	52
28.3	RISK OF LOSS.....	52
29.	BOND.....	52
29.1	VALUE.....	52
29.2	PAYMENTS.....	53
29.3	PERFORMANCE.....	53
30.	ADDITIONAL RIGHTS AND REMEDIES.....	54
30.1	WITHHOLDING PAYMENTS.....	54

30.2	SLAS.....	54
30.3	RIGHT TO INSPECT.....	54
30.4	SUSPENSION DUE TO BREACH. ....	54
30.5	SUSPENSION FOR CONVENIENCE.....	55
30.6	CORRECTION OR REMOVAL.....	56
31.	REPRESENTATIONS, ADDITIONAL WARRANTIES AND COVENANTS. ....	56
31.1	CONTRACTOR’S POWER AND AUTHORITY.....	56
31.2	PERFORMANCE OF THE SERVICES.....	56
31.3	EFFICIENCY AND COST EFFECTIVENESS.....	56
31.4	COMPLIANCE WITH STATUTES AND REGULATIONS. ....	57
31.5	FINANCIAL CONDITION AND ACCURACY OF FINANCIAL INFORMATION. ...	57
31.6	NO LITIGATION.....	57
31.7	INFORMATION FURNISHED TO THE STATE.....	58
31.8	COVENANT REGARDING MALICIOUS CODE.....	58
31.9	COVENANT AGAINST GRATUITIES. ....	58
32.	FISCAL ASSURANCES.....	59
33.	TERMINATION OF CONTRACT. ....	59
33.1	TERMINATION FOR UNAVAILABILITY OF FUNDS.....	59
33.2	TERMINATION FOR DEFAULT.....	60
33.3	TERMINATION FOR CONVENIENCE OF THE STATE. ....	60
33.4	TERMINATION FOR CONFLICT OF INTEREST. ....	60
33.5	TERMINATION FOR CONTRACTOR’S BANKRUPTCY. ....	60
34.	TERMINATION PROCEDURE.....	60
35.	GENERAL CONDITIONS. ....	62
35.1	LEGAL AND REGULATORY COMPLIANCE.....	62
35.2	ANTITRUST VIOLATIONS. ....	62
35.3	CONTRACTOR ASSIGNMENT.....	63
35.4	AUTHORITY.....	63
35.5	AUTHORIZATION.....	63
35.6	COVENANT AGAINST CONTINGENT FEES.....	63
35.7	COOPERATION OF PARTIES.....	63
35.8	CONFLICT OF INTEREST.....	64
35.9	CERTIFICATIONS RELATED TO LOBBYING.....	64
35.10	DEBARMENT AND SUSPENSION.....	64
35.11	DISPUTE RESOLUTION.....	65
35.12	COST OF LITIGATION.....	65
35.13	EMPLOYMENT OF STATE EMPLOYEES.....	65
35.14	CONSTRUCTION.....	65
35.15	DUE DILIGENCE COMPLETE.....	67
35.16	INDEPENDENT CONTRACTOR.....	67
35.17	NEWS RELEASES. ....	68
35.18	CONTRACT MODIFICATION.....	68
35.19	WAIVER OF RIGHTS.....	68
35.20	NOTICE OF DELAY.....	68
35.21	NOTICES.....	68
35.22	REMEDIES.....	69

35.23 SEVERABILITY.....	69
35.24 SURVIVAL.....	69
35.25 THIRD PARTY BENEFICIARIES.....	69
35.26 WAIVER.....	70
35.27 APPLICABLE LAW.....	70
35.28 COMPLETE INTEGRATION.....	70

EXHIBITS

- Exhibit A: Definitions
- Exhibit B: Certification Regarding Drug-Free Workplace
- Exhibit C: Subcontractor Compliance
- Exhibit D: Certification Regarding Environmental Tobacco Smoke
- Exhibit E: Certification Regarding Debarment, Suspension and Other Responsibility Matters  
- Primary Covered Transactions
- Exhibit F: Business Associate Agreement
- Exhibit G: Escrow Agreement
- Exhibit H: Certification Regarding Lobbying
- Exhibit I: IRS Publication 1075 Information

## AGREEMENT

This Agreement (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the STATE OF RHODE ISLAND, acting by and through the EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (the "Executive Office") and THE DEPARTMENT OF ADMINISTRATION (the "Department"), and \_\_\_\_\_ ("Contractor").

## RECITALS

The Rhode Island Department of Administration, Division of Purchases (the "Division") issued Request for Proposals #7449637 dated April 16, 2012, as amended \_\_\_\_\_ 2012 ("the RFP" as more specifically defined in Exhibit A), on behalf of the State of Rhode Island Executive Office of Health and Human Services, the Department of Human Services, the Office of Health Insurance Commissioner, and the Rhode Island Health Benefits Exchange, to engage a contractor to design, develop, implement and operate a technology platform and system to support both new and existing health insurance initiatives under the Patient Protection and Affordable Care Act (the "ACA"), support existing human services programs, provide hosting services for the Rhode Island Health Benefits Exchange (the "Exchange" or "HIX" as defined in the RFP) and the Integrated Eligibility System (the "IES"), and potentially operate key business functions of the Exchange and the IES;

Contractor submitted a proposal in response to the RFP dated \_\_\_\_\_;

The Division and the Executive Office and the Department evaluated the proposal and identified Contractor as the successful bidder for the RFP;

Contractor desires to enter into a contract with the Executive Office and the Department to meet the needs of the State for such a system and associated services; and

The Executive Office, the Department and the Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor's furnishing all services necessary to satisfy all of the requirements set forth in the RFP.

THEREFORE, in consideration of the representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree to the foregoing and as follows:

### 1. CONTRACT, ORDER OF PRECEDENCE.

**1.1 Agreement Documents.** This Agreement consists of the following Documents:

- The Agreement;
- The RFP, incorporated herein by reference; and
- The Proposal, incorporated herein by reference.

## **1.2 Order of Precedence.**

**1.2.1** Except as expressly set forth in Section 8.2, in the event of any inconsistency or conflict between the various contract documents (this Agreement, the RFP, the Proposal, and other documents attached to any such documents) incorporated by reference within this Agreement or which incorporate this Agreement, the following order of precedence shall prevail:

- (a) the General Conditions of Purchase contained in Appendix A of the RFP (excluding Section 29 thereof);
- (b) this Agreement (including documents attached to this Agreement);
- (c) the RFP; and
- (d) the Proposal.

**1.2.2** In the event of any inconsistency or conflict between the RFP and its appendices, Appendix A shall have the highest order of precedence, followed by the main body of the RFP, followed by the remaining Appendices. Documents with a higher order of precedence shall govern over documents with a lower order.

## **2. TERM OF CONTRACT, EXTENSIONS.**

**2.1 Term.** The term of this Agreement shall begin on the Effective Date and shall end at the end of the day on the day prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date, unless earlier terminated or extended as provided herein.

**2.2 Extensions.** The term of this Agreement may be extended, at the sole discretion of the State, for three (3) additional periods, each of one (1) year duration. The State shall give written notice of the exercise of its right to extend the term at least ninety (90) days prior to the expiration of the then current term. Each such extension shall be upon all of the same terms and conditions of this Agreement, as applicable, unless otherwise agreed in writing by the State in its sole discretion.

### 3. PHASES, CRITICAL EVENTS DEADLINES

**3.1 Phases.** Contractor shall implement the HIX/IES System in two Phases. Each of the two Phases encompasses a series of Task Orders, Deliverables, Milestones, and Critical Events. Time is of the essence in Contractor's performance of its obligations under this Agreement. Contractor must complete performance in timely manner and achieve all Milestones and Critical Events in accordance with applicable Deadlines.

**3.2 Critical Events Deadlines.** Contractor's accomplishment of all Milestones in accordance with the requirements of this Agreement and by the applicable Deadlines is critical to the State's ability to accomplish its missions, including its ability to meet federally mandated Exchange implementation deadlines, operate its own State-based Exchange, secure federal funding, and also timely achieve its goal of serving individuals and families eligible for Medicaid/CHIP and commercial based plans through a consolidated, integrated, end-to end service delivery system. Each Phase contains certain Critical Events that Contractor must meet, and Contractor hereby agrees to, by the stated respective definitive Deadlines ("Critical Events Deadlines").

### 4. PHASE 1: EXCHANGE, MAGI-BASED MEDICAID ELIGIBILITY.

**4.1 Phase 1 Task Orders and Milestones.** Phase 1 consists of Task Orders 1-3, 5, and 7-9, and Milestones 1 through 15, as described in the RFP.

#### **4.2 Phase 1 Critical Events Deadlines.**

**4.2.1 Application/Approval for Operational Readiness.** No later than five (5) days before **OCTOBER 1, 2012**, Contractor shall provide the State or the applicable agency designated by the State, with all information, documentation, support and assistance required by the State (as determined by the State in its sole discretion) in connection with federal Exchange Operational readiness reviews and certification, including the following Gate Reviews:

- (a) FDDR Gate Review for Phase 1, in accordance with the Schedule;
- (b) PORR Gate Review for Phase 1, in accordance with the Schedule;  
and
- (c) ORR Gate Review for Phase 1, in accordance with the Schedule

**4.2.2 QHP Certification and Management Functionality.** Contractor shall ensure that the plan management functionality is fully Operational in

accordance with the requirements of this Agreement and fully ready to be launched no later than five (5) days before **NOVEMBER 15, 2012**.

**4.2.3 Anonymous Prescreening and Plan Browsing.** Contractor shall ensure that the Anonymous Prescreening and Plan Browsing functionality is fully Operational in accordance with the requirements of this Agreement and fully ready to be launched no later than fourteen (14) days before **JUNE 1, 2013**.

**4.2.4 Exchange.** Contractor shall ensure that the Exchange functionality is fully Operational in accordance with the requirements of this Agreement and fully ready to be launched no later than fourteen (14) days before **OCTOBER 1, 2013**.

**4.2.5 MAGI-based Medicaid Eligibility Determinations.** Contractor shall ensure that the MAGI-based Medicaid eligibility determinations functionality is fully Operational in accordance with the requirements of this Agreement and ready to be launched no later than fourteen (14) days before **OCTOBER 1, 2013**.

**5. PHASE 2: INTEGRATION AND MIGRATION OF HUMAN SERVICES PROGRAMS (INCLUDING NON-MAGI BASED MEDICAID) TO THE HIX/IES SYSTEM.** Phase 2 involves the incremental integration and migration of the Human Services Programs from the Legacy Eligibility System (including non-MAGI based Medicaid) to the HIX/IES System.

**5.1 Phase 2 Task Orders and Milestones.** Phase 2 consists of Task Orders 4 and 6 and Milestones 16 through 24, as described in the RFP.

**5.2 Phase 2 Critical Events Deadlines.**

**5.2.1 ORR Gate Review.** Contractor shall provide the State, or the applicable agency designated by the State, with all information, documentation, support and assistance required by the State (as determined by the State in its sole discretion) to successfully complete all applicable Gate Reviews for Phase 2 in accordance with the Schedule, including the ORR Gate Review, as described in the RFP.

**5.2.2 Anonymous Prescreener and Online Application.** Contractor shall ensure that the anonymous pre-screener and online application functionality is fully Operational in accordance with the requirements of this Agreement and ready to be launched no later than seven (7) days before **MARCH 31, 2014**.

**5.2.3 Medicaid Non-MAGI Eligibility.** Contractor shall ensure that the non-MAGI based Medicaid eligibility determinations functionality is fully

Operational in accordance with the requirements of this Agreement and ready to be launched no later than forty-five (45) days before **DECEMBER 31, 2015**.

**5.2.4 Human Services Programs Eligibility.** Contractor shall ensure that the Human Services Programs eligibility determinations functionality is fully Operational in accordance with the requirements of this Agreement and ready to be launched no later than forty-five (45) days before **DECEMBER 31, 2015**.

**5.3 REMEDIES FOR FAILURE TO MEET MILESTONES AND CRITICAL EVENTS DEADLINES.** Contractor acknowledges and agrees that its failure to fully meet all Milestones and Critical Events Deadlines will cause substantial damages to the State, including loss of federal funds and other financial damages. If Contractor fails to achieve any Milestone or Critical Event by the applicable Deadline, the State may exercise its right to terminate this Agreement, in whole or in part, and declare Contractor in default as the State deems necessary, in its sole discretion, and Contractor shall be liable to the State for any and all damages incurred by the State including:

**5.3.1** Any difference (federal and/or State funding) between the maximum allowable enhanced federal financial participation and the amount actually received by the State, if any, including any losses due to an inability to obtain or loss of certification (or recertification, as applicable), any failure to obtain retroactive approval, or delays in readiness to support certification;

**5.3.2** Any federal financial participation penalty, sanction or other amounts or other claims assessed against the State; and

**5.3.3** Liquidated Damages, including Liquidated Damages applicable to the Performance Metrics.

**5.3.4** Contractor shall also forfeit all claims for reimbursement of monthly expenses or operational payments for that month and each month thereafter until the State approves Operational readiness; and

**5.3.5** Notwithstanding the foregoing or any provision of this Agreement to the contrary, the above remedies and liabilities are in addition to any other remedy and liability contained herein, and the State may pursue any other remedies available to it in equity and law.

## **6. PAYMENTS AND RETAINAGE.**

**6.1 Milestone Payments.** Except as otherwise provided herein, the State shall pay the Contractor the Milestone Payments listed below, less the Retainage, within

thirty (30) days of the State’s receipt of a correct and undisputed invoice, subject to: (a) the State’s Acceptance of all Deliverables required for the achievement and completion of the Milestone for which payment is sought; and (b) the Executive Office’s written agreement that the applicable Milestone has been fully and satisfactorily achieved or completed. The Retainage will be payable one (1) year after Acceptance of Milestone 22.

<b><u>Phase 1 Milestones</u></b>		<b><u>Payment (including the Retainage)</u></b>
1	Project Startup	\$
2	Project Planning	\$
3	Development Hardware/Software	\$
4	Phase 1 Requirements, Business Analysis and Functional High-Level Design and Detailed Design	\$
5	Phase 1 Data Conversion Design	\$
6	FDDR Gate Review (Critical Event)	\$
7	Phase 1 Code and Unit Test	\$
8	Production Hardware/Software	\$
9	Phase 1 Detailed Test Planning	\$
10	Phase 1 Testing	\$
11	PORR Gate Review (Critical Event)	\$
12	ORR Gate Review (Critical Event)	\$
13	Open Enrollment Launch (Critical Event)	\$
15	Phase 1 Warranty	
<b><u>Phase 2 Milestones</u></b>		<b><u>Payment</u></b>
16	Phase 2 Updated Project Planning	\$
17	Phase 2 Requirements, Business Analysis, and Functional High-Level Design and Detailed Design	\$
18	Phase 2 Technical Design	\$

19	Phase 2 Code and Unit Test	\$
20	Phase 2 Detailed Test Planning and Testing	\$
21	Phase 2 ORR Review (Critical Event)	\$
22	Phase 2 Cutover (Critical Event)	\$
23	Phase 2 Operations and Maintenance	\$
24	Phase 2 Warranty	\$
	Sum of all Milestone Payments	\$

**6.2 Maintenance and Operations.** The State shall pay Contractor the base annual price of \$\_\_\_\_\_ for Maintenance and Operations of the HIX/IES System. These costs shall be invoiced on a monthly basis, in arrears, in equal monthly payments, and will not be subject to Retainage.

**6.3 Maximum Payments.** Notwithstanding any provision of this Agreement to the contrary, the total maximum amount payable under this Agreement shall not exceed the sum of all Milestone Payments and the sum of all amounts due under Section 6.2 (the “Total Purchase Price”).

**6.4 Other Costs and Expenses.** Except for fixed Milestone Payments listed above in Section 6.1 (Milestone Payments), the State shall have no liability to Contractor for any payments or reimbursement, including any costs associated with transportation, delivery, drayage, parcel post, packing, cartage, insurance, license fees, permits, out of pocket expenses, salaries, benefits, employment taxes, travel, entertainment, lodging, meals, insurance, or bonds, unless otherwise provided in this Agreement. Contractor acknowledges and agrees that the State is exempt from taxes regarding performance of the scope of work under this Agreement, and that the State shall have no liability for payment of or reimbursement to Contractor for any taxes. All taxes levied in connection with this Agreement, shall be borne by Contractor.

**6.5 Invoices.** Contractor shall submit detailed and correct invoices to the Executive Office for all Milestone Payments and any other payments required of the State under this Agreement. The invoices and data underlying each invoice shall be delivered to the Executive Office electronically (if requested by the Executive Office) in a format compatible with the State’s accounting systems. All invoices submitted shall be subject to the approval of the UHIP Project Coordinator or his

or her designee. Invoices must be in a format acceptable to the State, and include the following information:

- (a) The Agreement Number;
- (b) Itemization of the Milestone for which payment is sought and requirements satisfied, and the applicable Acceptance date(s) triggering payment;
- (c) Retainage amounts, if applicable; and
- (d) Total amount due.

**6.6 Advance Payments Prohibited.** No advance payment shall be made pursuant to this Agreement.

**6.7 Overpayments to Contractor.** Contractor shall pay to the State the full amount of any erroneous payment or overpayment within thirty (30) days of Contractor's detection or receipt of notice from the State of any such erroneous or overpayment.

**6.8 Credits.** The State may, in its sole discretion, apply and offset any credits, Liquidated Damages and other amounts due to the State from Contractor under this Agreement against Contractor's invoices.

**7. CONTINGENCIES.** Contractor acknowledges and agrees that this Agreement is contingent upon both: (a) the availability of State and Federal funds; and (b) the continuance of applicable State and Federal Laws and Regulations in effect on the Effective Date. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State, including without limitation, the obligation to make any payments under this Agreement, are fully contingent upon the availability of State and federal funds in the current or any future State fiscal year, and in no event shall the State be liable for any payments in excess of such available funds. The State does not represent or guarantee, expressly or impliedly, that it will have available funds to make any payments pursuant to this Agreement. If any funding is delayed, reduced or eliminated in the current or any future fiscal year, or any change (including as a result of any changes to law, regulation, federal or State guidance, or resulting from decisional law) is made to any applicable State and Federal Laws and Regulations, including any change to the ACA, HIPAA or Medicaid in effect on the Effective Date, then the State may, at its sole discretion, terminate or suspend this Agreement, in whole or in part, as it deems appropriate or necessary, without any liability, penalty or damages owed to Contractor. The State may, at its sole discretion, determine which portions of the Project will continue and which will be terminated.

## 8. PROJECT MANAGEMENT.

**8.1 Contractor Project Management.** Contractor shall perform all Project management activities required in this Agreement, including the activities described in Section 4.1 of the RFP (Project Management Approach). Reporting and meetings may also include the following, at the State's discretion:

**8.1.1 Reporting and Meetings.** Contractor may be required to provide the Reports and participate in meetings described below.

(a) **Weekly Reports and Meetings.**

(i) Contractor Project Director and Key Staff may be required to attend weekly meetings following a preset agenda jointly prepared by Contractor Project Director and the UHIP Project Coordinator.

(ii) Prior to the weekly meetings, Contractor Project Director may be required to provide the UHIP Project Coordinator status reports in a level of detail as requested by the UHIP Project Coordinator that describes the previous week's activities, including any Deadlines that were not met.

**8.1.2 Monthly Meetings and Reports.** Contractor Project Director may be required to attend monthly meetings. No later than \_\_\_\_\_( ) days [*this left open, to be decided during contract discussions with successful bidder*] in advance of these meetings, Contractor Project Director will submit to the UHIP Project Coordinator a status Report that includes the following:

- (a) Overall status of the Project;
- (b) Status of Deliverables and Schedule for upcoming month's submittal of Deliverables for Acceptance Tests;
- (c) Problems and issues with proposed resolution;
- (d) Any changes proposed to the Project Plan; and
- (e) Each month's Services and performance against SLAs.

**8.1.3 Other Reports.** The Contractor Project Director shall prepare or assist the UHIP Project Coordinator with the preparation of any additional reports related to the Project as requested by the UHIP Project Coordinator, including Reports summarizing all contracts with the State, Deliverables completed, hours, and rates billed, any material issues during that period, and any reports required (as determined by the State in its discretion) for federal assessment reviews and certification of the Exchange.

**8.1.4 Annual Statistical Reports.** Within thirty (30) days after the end of each State fiscal year and also within thirty (30) days after the termination of this Agreement, the Contractor will submit to the State a statistical report utilizing Form DHS-1003, indicating the annual expenditures and outcomes. Contractor's failure to provide acceptable program and fiscal reports within the prescribed time frames may, at the State's option, result in a delay of monthly payments for Maintenance and Operations.

**8.2 Project Staff.** Contractor shall staff the Project in accordance with the requirements of the RFP, including Section 3.2.11 of the RFP (Approach to Project Staffing), and the Proposal. (To the extent there are any discrepancies in regard to Project Staff between the RFP and the Proposal, the Proposal shall govern). All work will be performed only by the specific individuals identified by Contractor and approved by the State, as applicable. Contractor shall not use any individual to perform work under this Agreement without the prior written consent of the State. Any breach of this Section 8.2 shall constitute a material default by Contractor, in the State's sole discretion.

**8.2.1 Contractor Project Director.**

- (a) Contractor shall assign the Contractor Project Director identified in the Proposal.
- (b) The Contractor Project Director shall be fully qualified to perform the tasks required of that position under this Agreement.
- (c) The Contractor Project Director shall devote his or her best efforts on the Project, and be on site as needed.

**8.2.2 Key Staff.** Key Staff shall consist of the individuals in the specific roles identified in the Proposal, including the key roles contained in Section 3.2.11 of the RFP (Approach to Project Staffing). All Key Staff shall be assigned to perform the Services on such basis (e.g., full time assignment or otherwise) as needed to ensure that the Services required hereunder are provided in an efficient and timely manner and in accordance with this Agreement. No re-deployment of any Key Staff may be made by Contractor without the prior written consent of the State. The Contractor agrees to supply the Key Staff proposed for the duration proposed, throughout the Term other than for just cause. "Just Cause" is defined as death, resignation, termination or military recall.

**8.2.3 Account Manager.** Contractor shall designate an Account Manager who shall be assigned to this Agreement and shall be deemed to be Key Staff. The Account Manager shall have the authority to enter into any modifications of this Agreement on behalf of Contractor and otherwise commit Contractor to any course of action, undertaking, obligation, or responsibility in connection with Contractor's performance of this

Agreement, and shall be responsible on behalf of Contractor for all contractual matters.

#### **8.2.4 Reassignment/Replacement of Contractor Personnel.**

- (a) During the Term, the State reserves the right to require Contractor to reassign or otherwise remove from the Project any Project Staff who are found to be unacceptable by the State. Upon being notified in writing by the UHIP Project Coordinator that an individual Project Staff member is unacceptable, Contractor shall immediately remove that individual from any assignments related to this Agreement, and follow the replacement process described herein.
- (b) No reassignment of any Project Staff may be made without the prior written consent of the State, except for Just Cause.
- (c) If any Project Staff becomes unavailable, Contractor, within ten (10) business days of Contractor's receipt of said individual's unavailability, shall provide the State the resume of three (3) proposed replacements and offer the State an opportunity to interview each person and select the most appropriate replacement candidate. If the State is not reasonably satisfied with the proposed replacement, it shall inform Contractor in writing within three (3) business days after the later of receiving the resumes or completing any interview of the proposed replacement. Such process shall be repeated until a proposed replacement is approved by the State. Contractor shall use best efforts to promptly make such replacement. Replacement of such Project Staff, if approved by the State, shall have equal or greater ability, experience, and training than the individual being replaced.
- (d) In the event of any replacement of the Project Staff, if circumstances permit, Contractor shall provide for an appropriate transition (overlap) period for the new individual and use best efforts to minimize any disruption such replacement may cause in the performance of Contractor's obligations under this Agreement.
- (e) Contractor may be liable, at the State's discretion, for all costs associated with any unplanned turnover of Project Staff, including, but not limited to, briefing and training any such new personnel.

**8.2.5 Supervision and Conduct of Project Staff.** Contractor shall be responsible for the performance of all Project Staff assigned to provide Services under this Agreement, and shall direct the management of such Project Staff. Contractor shall be exclusively responsible for determining and paying all applicable wages and salaries, including applicable

overtime and other premium pay, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance, and pension or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, and other applicable payments, and the filing of all necessary documents, forms and returns pertinent to all of the foregoing, including the following: (a) complying with applicable tax regulatory requirements, including income tax and employment tax withholding regulatory requirements; (b) complying with all applicable regulatory requirements governing the employment relationship between Contractor and Project Staff, including regulatory requirements, as applicable, relating to accommodation of disabilities, equal pay, provision of leave (e.g., FMLA, jury duty, etc.), unlawful discrimination, as well as wage and hour requirements; (c) complying with all applicable workers' compensation insurance coverage regulatory requirements; (d) ensuring that the Project Staff are appropriately licensed and/or supervised to perform their assigned duties in accordance with applicable regulatory requirements; and (e) maintaining all required employment records, including I-9, personnel and medical files consistent with applicable regulatory requirement and customary business practices.

**8.2.6 Compliance with State and Federal Laws and Regulations.** In performing the Services, Contractor, Project Staff and each Subcontractor, and its Project Staff shall comply with all applicable State and Federal Laws and Regulations. Contractor shall be responsible for the distribution of applicable State and Federal Laws and Regulations to Project Staff to the extent necessary and appropriate.

Contractor shall comply with the requirements of Title VI of The Civil Rights Act Of 1964 (42 USC 2000D et seq.); Section 504 of The Rehabilitation Act of 1973, as amended (29 USC 794); Title IX of The Education Amendments of 1972 (20 USC 1681 et seq.); the United States Department of Health And Human Services Regulations found at 45 CFR, Parts 80 and 84; and the United States Department of Education Implementing Regulations (34 CFR, Parts 104 and 106) which prohibit discrimination on the basis of race, color, national origin, handicap, or sex, in acceptance for or provision of services, employment, or treatment in educational or other programs or activities. Contractor acknowledges receipt of Appendix B of the RFP (Notice To Department Of Human Services Service Providers of Their Responsibilities Under Title VI of The Civil Rights Act of 1964), and Appendix C of the RFP (Notice To Department of Human Services Service Providers of Their Responsibilities Under Section 504 of The Rehabilitation Act Of 1973), incorporated herein by reference and made part of this Agreement. Contractor shall comply with all other provisions applicable to law, including The Americans with Disabilities Act of 1990, as amended; The Governor's Executive Order No. 96-14, which prohibits discrimination on

the basis of race, sex, age, national origin, sexual orientation, or disability; The Governor's Executive Order No. 95-11 relating to sexual harassment, and requirements of DHS for Safeguarding of Client Information.

**8.2.7 Probity Investigations by the State.** Contractor hereby acknowledges and agrees that the State shall have the right to conduct probity investigations of any Project Staff prior to and during the Term.

**8.2.8 Background Checks.** Contractor shall ensure that Project Staff are authorized to work in any jurisdiction in which they are assigned to perform Services and are not otherwise disqualified from performing the Services under applicable State and Federal Laws and Regulations. Contractor certifies to the State that it has obtained background checks required under this Agreement, including Section 2.21 of the RFP (Background Checks). All Project Staff shall be subject to security clearances as required by the State in its sole discretion.

**8.2.9 Substance Abuse Policies for Project Staff.** Contractor agrees to comply with the requirements of the Governor's Executive Order No. 89-14, the Federal Anti-Drug Abuse Act of 1988; the State's Drug-Free Workplace Policy and in accordance therewith has executed Appendix D: Drug-Free Workplace Policy Contractor Certificate of Compliance of the RFP which is attached hereto as Exhibit B. The State, in its sole discretion, may conduct drug test(s) on any Project Staff prior to or during the Term.

**8.2.10 Written Compliance Requirement.** Contractor shall require and cause all Project Staff assigned to work on this Project, to sign a written agreement, in a form reasonably satisfactory to the State, in which such person(s) agrees to comply with (a) applicable State and Federal Laws and Regulations, and (b) the confidentiality and security provisions of this Agreement.

**8.3 UHIP Project Coordinator.** The UHIP Project Coordinator will manage this Agreement on behalf of the State and will be the principal point of contact for Contractor concerning Contractor's performance under this Agreement.

**8.4 Recordkeeping.** With respect to the performance of the Services, Contractor shall, and require its Subcontractors to, maintain all Records in accordance with this Agreement, all applicable State and Federal Laws and Regulations, which are incorporated herein by this reference, and the requirements contained in Section 6.1.1 of the RFP (Accounting Requirements) and related retention and access requirements.

**8.4.1** All Records, including training records, shall be readily retrievable within three (3) business days for review at the request of the State, the federal government, and the State's internal and external auditors, regulators and

other representatives, including customers, clients, vendors, licensees and other Third Parties to the extent the State is legally or contractually obligated to submit to audits by such entities (all such Parties and entities, the "Permitted Auditors"). When an audit is in progress or audit findings are unresolved, records shall be kept for a period of five (5) years or until all issues are finally resolved, whichever is later.

**8.4.2** Contractor shall maintain Records for three (3) years after final payment under this Agreement, or the expiration or termination of this Agreement, whichever is later.

**8.4.3** Contractor shall keep Records relating to matters in litigation for six (6) years after the termination of the litigation, including all appeals.

**8.4.4** All Records shall be subject to examination, inspection, copying, or audit, at any time, by the State, including the UHIP Project Coordinator and/or his or her designee, and federal government officials so authorized by applicable federal laws or regulations. Access to Records shall be provided within Rhode Island to the State or federal government during the Term, the three (3) year period after the Term and the six (6) year period following any litigation. Such access shall be at no cost to the State or federal government.

**8.5 Subcontractors.** Contractor shall include the Records retention and review requirements, and the examination and audit requirements of this Agreement in any of its Subcontracts.

**8.6 Examination and Audit.**

**8.6.1** In connection with any and all examinations and audits conducted by the State or the Permitted Parties, the Parties shall, and Contractor shall require its Subcontractor to, follow the procedures set forth below in Sections (a) through (g).

(a) The State and the Permitted Auditors shall have the right to conduct, at any time, audits of Contractor and its Subcontractors of any type and nature, provided that the Permitted Auditors have agreed in writing to be bound by the confidentiality terms that are substantially similar to those in this Agreement.

(b) Contractor shall provide such cooperation and assistance as may be reasonably requested by the State and/or its Permitted Auditors in conducting any audit, and shall make requested Project Staff and Records available. In performing audits, the State shall give Contractor fifteen (15) days advance notice of audits; provided, however, the fifteen (15) day advance notice requirement shall not apply in connection with audits by or in connection with federal governmental authorities.

- (c) Upon the State's request, Contractor shall assist the State, in conducting and/or responding to any audit or audit request, including assisting in the State's attempts to obtain required certifications or other confirmations.
- (d) In performing any audits, the State and the Permitted Auditors shall use commercially reasonable efforts to avoid unnecessary disruption of Contractor's operations and unnecessary interference with Contractor's ability to perform the Services in accordance with this Agreement. Access for such audits shall be provided during normal business hours, except as may reasonably be required on an emergency basis or by applicable State and Federal Laws and Regulations.
- (e) Contractor shall provide to the State and the Permitted Auditors reasonable private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups and any other facilities or equipment reasonably requested for the performance of the audit.
- (f) Contractor acknowledges that the State and the Permitted Auditors may engage in unannounced physical or electronic audits, inspections and visitations of Contractor locations through which Services are performed under this Agreement if required by applicable State and Federal Laws and Regulations, or if the State determines in good faith that Contractor is not performing in compliance with this Agreement, then upon five (5) days advance notice.
- (g) Audits conducted by the State or the Permitted Parties as contemplated in this Agreement may be conducted during the Term and during the three (3) year period after the expiration or earlier termination of the Term, and as otherwise required or permitted under applicable State and Federal Laws and Regulations.

**8.6.2 Operations Audits.** The State and the Permitted Auditors shall have the right to conduct, at any time, any reasonable type of operations audit to verify that the performance of the Services are in compliance with this Agreement. Such audit shall, as determined by the State and the Permitted Auditors: (a) verify the integrity of the Data in Contractor's possession or under its control; (b) examine the systems that process, store, support and transmit that Data; (c) examine the internal controls (e.g., IT, finance and accounting, procurement, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) and the security, disaster recovery, business continuity and back-up practices and procedures; (d) examine Contractor's performance of the Services; (e) verify Contractor's reported performance against the applicable SLAs; (f) examine Contractor's measurement, monitoring and management tools; and (g) enable the State to meet applicable legal, regulatory and contractual requirements (including those

associated with the ACA and the Sarbanes-Oxley Act of 2002 and the implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board), in each case to the extent applicable to the Services.

**8.6.3 Financial Audits.** The State and the Permitted Auditors shall have the right to conduct, at any time, any type of reasonable financial audit to verify that Contractor's invoices have been calculated in compliance with the invoicing and pricing terms and conditions and the compliance of the foregoing with the terms and conditions of this Agreement. Such audit may, in addition, as determined by the State and the Permitted Auditors: (a) verify the accuracy and completeness of Records; (b) examine the financial controls, processes and procedures utilized by Contractor; and (c) enable the State to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the payments for such Services. The State and its Permitted Auditor may perform audits of the actual costs incurred by Contractor for all Agreement activities. Contractor shall maintain and apply a cost accounting system having the capability of accumulating all pertinent cost data in sufficient detail to facilitate this analysis.

**8.6.4 Security Audit.**

- (a) Contractor shall perform a SAS level 2 or its equivalent every other year with results published to the State within \_\_\_\_ (\_\_) days of audit completion.
- (b) Contractor shall perform a network penetration test every year with results published to the State within \_\_\_\_ (\_\_) days of audit completion.
- (c) The State and the Permitted Auditors shall have the right to conduct, at any time, security audits in their sole discretion.
- (d) Any physical or Data breach will require a full disclosure of the breach to the State, a re-mediation plan, and will subsequently require a full security audit with results published to the State within \_\_ (\_\_) days of audit completion.

**8.6.5 Audit Results.**

- (a) **Results of Operations Audits.** If an operations audit reveals that Contractor is not in compliance with any applicable State and Federal Laws and Regulations or this Agreement, Contractor shall be responsible for and liable for, at Contractor's sole cost and expense, promptly taking any and all actions necessary to comply with such applicable State and Federal Laws and Regulations or this Agreement. In addition, Contractor shall promptly reimburse

the State for the actual cost of such audit and any damages, fees, fines or penalties assessed against or incurred by the State as a result thereof.

- (b) **Results of Financial Audits.** If a financial audit reveals an overcharge by Contractor, Contractor shall promptly pay to the State the amount of such overcharge, together with interest from the date of Contractor's receipt of such overcharge at the same rate of interest under applicable State law. In addition, if any such audit reveals an overcharge of more than three percent (3%) of the audited payments in any payment category, such as a Milestone Payment, Contractor shall promptly reimburse the State for the actual cost of such audit (including all fees of any Permitted Auditors) and any damages, fees, fines or penalties assessed against or incurred by the State as a result thereof.
  
- (c) **Audit Follow-Up.** Contractor and the State shall meet promptly upon the completion of a State audit (but in no event more than fifteen (15) days after completion) conducted pursuant to this Agreement (i.e., an exit interview) and/or the issuance of an interim or final report to Contractor and the State following an audit. Contractor shall develop for State approval an action plan for Contractor to take (within thirty (30) days, unless a shorter resolution time is mutually agreed to by the Parties in writing) any and all actions necessary for Contractor to rectify, at its own cost and expense, its non-compliance with the applicable State and Federal Laws and Regulations or this Agreement, or otherwise resolve any deficiencies, problems, concerns and/or recommendations identified in such exit interview and/or audit report.

**8.6.6 Governmental Audits of the State.** The State may be subject to regulation and audit by the federal government or standards organizations. Contractor shall provide all assistance reasonably requested by the State in responding to such audits or requests for information (including allowing the State to conduct an audit), and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

**8.6.7 Contractor Internal Audit.** If Contractor determines as a result of its own internal audit that it has: (a) overcharged the State, then Contractor shall (i) promptly pay to the State the amount of such overcharge, plus interest from the date of Contractor's receipt of such overcharge at the same rate of interest under applicable law, and (ii) Contractor shall investigate why such overcharge occurred and identify in writing to the State what actions Contractor is taking to ensure that such overcharge shall not occur again; and/or (b) failed to perform a task, activity or process in compliance with the applicable State and Federal Laws and

Regulations, or terms of this Agreement, then Contractor shall (i) investigate why such failure occurred and identify in writing to the State what actions Contractor is taking to ensure that such failure shall not occur again, and (ii) work with the State to identify the portion of the Services that may have been impacted and the State personnel affected by such failure.

**8.6.8 Contractor Response to External Audits.** If an audit by the federal government or by a standards organization having jurisdiction over the State or Contractor results in a finding that Contractor is not in compliance with any applicable State and Federal Laws and Regulations, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, Contractor shall, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by the federal government or standards organization.

**8.6.9 Audit Costs.** Contractor shall provide the audit-related Services and the audit assistance and compliance described in this Section 8 at no additional charge to the State.

## **9. STATE PROPERTY.**

**9.1 Ownership.** Except as otherwise provided in this Agreement, the State shall retain title to all Property furnished by the State and all Property purchased by Contractor in connection with this Agreement.

**9.2 Use of Property.** Contractor shall use all Property solely for the performance of its obligations under this Agreement, unless otherwise provided herein.

**9.3 Surrender of Property.** Contractor shall surrender to the State all Property upon expiration or termination of this Agreement.

**10. SERVICES.** Contractor shall begin to perform the Services on the Effective Date. Contractor shall at all times perform the Services in accordance with the requirements of this Agreement including the Project Plan, the Schedule, the SLAs, the Specifications, and applicable State and Federal Laws and Regulations. Contractor shall provide the personnel and all materials and resources necessary for the performance of the Services.

**10.1 System Certification.** Contractor shall ensure that the HIX/IES System satisfies all federal certification requirements and that approval for the maximum allowable enhanced federal financial participation for the UHIP is obtained retroactively to assumption at the Start of Operations under this Agreement, and is maintained throughout the Term. Should certification or re-certification of the

HIX/IES System be denied, or any component part of it, prior to expiration or termination of this Agreement, Contractor shall be liable for any damages resulting from its actions or inactions.

**10.2 HHS Sanctions.** Contractor must perform its obligations under this Agreement for the Medicaid portion of the Project according to the terms required by the State Medicaid Manual, Part 11. If at any time during the life of the development, operation, and Maintenance of the HIX/IES System, the federal government imposes fiscal sanctions against the State as a result of the Contractor's or any of its Subcontractor's action or inaction, Contractor shall compensate the State the amount of the sanctions.

**10.3 Continuity of Services.** Contractor shall maintain and adhere to the approved disaster recovery and business continuity plans (the "Continuity Plans"), which are attached to and incorporated in \_\_\_\_\_ *[this has been left open, to be determined during contract discussions with successful bidder].*

**10.4 Force Majeure Events.**

**10.4.1 Contractor.** Contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of this Agreement shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of Contractor and which by the exercise of reasonable diligence, Contractor is unable to prevent.

**10.4.2 State.** The State shall not be liable or responsible for delays or failures in performance if the failure in performance results from events beyond the reasonable control of the State which occurred without fault or negligence of the State. Such events shall include but not be limited to acts of God, the public enemy, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, or other disasters, whether or not similar to the foregoing.

**10.4.3 Duration and Notification.** If the Party claiming the benefit of the Force Majeure Event (the "Non-Performing Party") is not at fault due to a Force Majeure Event, the Non-Performing Party shall be excused from performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent reasonably possible without delay. Any Party so prevented, hindered or delayed in its further performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (and use commercially reasonable efforts to confirm in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the Force Majeure Event, the steps being taken to address such Force Majeure Event and the expected duration of such

Force Majeure Event. The occurrence of a Force Majeure Event shall not relieve Contractor of its obligation to implement [*Continuity Plans*], except to the extent such Force Majeure Event prevents such implementation.

**10.4.4 Disaster Recovery Execution.** In the event of an emergency, Service interruption or Force Majeure Event, Contractor shall implement, to the extent necessary, the applicable steps set forth in the Continuity Plans, subject to consultation with the State.

## **11. DELIVERABLES.**

**11.1 General.** Contractor shall provide the State with the Deliverables, including the Deliverables described in Appendix L of the RFP, according to the Work Plan, the Schedule and as required in this Agreement.

### **11.2 Deliverables.**

**11.2.1** The Deliverables described in Appendix L of the RFP shall be subject to the Acceptance Criteria described in \_\_\_\_\_ [*this has been left open, to be determined during contract discussions with the successful bidder*]. The Acceptance Process shall be in accordance with the time frames set forth in the Project Plan, unless otherwise provided in this Agreement.

**11.2.2** Except as otherwise provided in this Agreement, the State shall review Deliverables to determine whether any Deficiencies exist. If any Deficiencies are identified, the State shall give Contractor written notice of non-Acceptance and identify the Deficiencies. Contractor shall correct the Deficiencies, return the Deliverable to the State, and the State shall verify whether the Deliverable lacks Deficiencies and in writing shall either Accept or not Accept the Deliverable following such subsequent review. The State reserves the right, in its absolute discretion, to Accept or reject Deliverables, with an obligation to pay only for those Deliverables Accepted. The State may agree, in its absolute discretion, to pay a prorated amount of a Milestone Payment based on a percentage completion of the Deliverables required to be furnished with respect to such Milestone. The foregoing process shall in no manner be deemed or construed to extend dates by which any such Deliverables are due.

**11.3 Software Source Code.** Contractor shall provide the State with a copy of the Source Code for the Custom Software (including all necessary tools and compilers necessary to make use of the Source Code) and updated technical

Documentation for the Custom Software as described in the Project Plan, and at other times during the Project as requested by the State. Updates to such Source Code, if the Custom Software is modified during the Term, shall be provided to the State within five (5) days of each such modification.

#### **11.4 Project Plan.**

**11.4.1** The Project Plan shall be comprised of Contractor's Project Plan in the Proposal, as revised by Contractor with the prior written approval of the State, to reflect Project changes since Contractor's initial Proposal submission. The Project Plan shall provide detailed information, in a Microsoft Project document, including:

- (a) all Project activities to be performed for each Deliverable to be completed by Contractor, the significant components and subcomponents of each such activity or Deliverable and a complete Schedule for completion of each such activity or Deliverable, including the dates by which each such activity or Deliverable is to be completed;
- (b) all Project activities to be performed for each Milestone to be completed by Contractor, any increments and sub-increments of each Milestone and a complete Schedule for completion of each Milestone, including the Deadlines by which each Milestone, increment or sub-increment will be achieved;
- (c) an assessment of risks associated with the Project and the contingency or risk mitigation strategies to be employed by Contractor and the State (any State obligations in connection herewith shall be expressly set forth in the applicable Project Plan and subject to the approval of the State) in the event of disruption or delay; provided, however, that such assessment and plans shall not affect Contractor's obligation to meet the Milestones and Critical Event Deadlines or otherwise provide the Services;
- (d) the task dependencies and identification of resource requirements; and
- (e) the Milestone based payment Schedule.

**11.4.2** Contractor shall update the Project Plan on at least a monthly basis and as otherwise necessary to accurately reflect the status of activities, Task Orders, Deliverables, Milestones, Critical Events, Services, and other Project matters and the Schedule therefor. Any proposed updates or changes to the Project Plan, including the Schedule, by Contractor is subject to the State's written approval before such updates or changes may be incorporated into the Project Plan. Unless otherwise specifically

agreed to in writing, the State's agreement on a change to the Project Plan will not relieve Contractor of liability for Liquidated Damages and any other damages arising from such failures to perform its obligations as required under this Agreement. Further, the Schedule shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed in advance and in writing by the State.

**11.5 Representation.** By submitting a Deliverable, Contractor represents that it has performed the associated activities in a manner, which will, in concert with other activities, meet the objectives stated or referred to in this Agreement. To be effective, the State's Acceptance of any Deliverable must be in writing. By Accepting a Deliverable, the State represents only that it has reviewed the Deliverable and detected no errors or omissions of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding or denial of payment for the work completed. The State's Acceptance of a Deliverable does not discharge any of Contractor's contractual obligations with respect to that Deliverable, or to the quality, comprehensiveness, functionality, effectiveness, or certification of the HIX/IES System as a whole, or Contractor's meeting of the requirements of the RFP.

**11.6 Documentation.** Contractor shall provide to the State, at no charge, the nonproprietary and proprietary manuals and other printed materials relating to the HIX/IES System, related Software, Equipment and Enhancements, which are necessary or useful to the State in its use of the HIX/IES System, Equipment or Software provided hereunder. If Contractor is unable to perform Maintenance or the State desires to perform (itself or via a Third Party) maintenance on Equipment or Software procured under this Agreement, then, upon written notice by the State, Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment and/or Software based on Contractor's methodology. In addition to other rights granted herein, Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment and/or Software. Contractor agrees to license any contractor that the State may have hired to maintain the Equipment and/or Software to use the above noted Documentation. The State agrees to include Contractor's copyright notice of any such Documentation reproduced, in accordance with copyright instructions to be provided by Contractor.

## **11.7 Quality Assurance.**

**11.7.1** Contractor and its Subcontractors shall provide, maintain and adhere to a quality assurance system subject to the written approval of the State covering Deliverables and Services under this Agreement and will tender to the State only those Deliverables that have been inspected and found to conform to this Agreement's requirements.

**11.7.2** Contractor and its Subcontractors will keep records evidencing inspections and their results, and will make these records available to the State during the Term. Contractor and its Subcontractors shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's and its Subcontractors' quality assurance system or other similar business practices related to performance of this Agreement.

**11.7.3** All Deliverables may be subject to inspection and testing by the State or its authorized representatives in order to monitor and evaluate performance, compliance, and/or quality assurance.

**11.7.4** Contractor and its Subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

## **12. COMMERCIAL SOFTWARE AND DOCUMENTATION.**

**12.1 License.** The HIX/IES System shall integrate "best of breed" Commercial Software products as necessary to meet the requirements of this Agreement. Contractor shall perform all responsibilities required under this Agreement with respect to the Commercial Software, including those required in Section 6 of the RFP (Technical Requirements). Except as otherwise provided in this Agreement, the following terms shall govern the license of Commercial Software and Documentation.

**12.1.1 Grant.** Upon the Effective Date, Contractor hereby grants to the State a nonexclusive, perpetual, fully-paid up, irrevocable license to use, demonstrate, reproduce, and sublicense the Commercial Software and Documentation.

**12.1.2 Title.** Except for the rights granted herein, Contractor and its suppliers shall continue to hold all right, title and interest in the Commercial Software and Documentation.

**12.1.3 Documentation.** Contractor will provide copies of Commercial Software Documentation, including upgrades and revisions, in hard copy and electronic versions in such quantities as reasonably requested by the State for use in accordance with the terms of this Agreement.

**12.1.4 Copies.** The State will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Commercial Software or its Documentation.

**12.1.5 Restrictions.** Except as permitted in this Agreement, the State agrees not to otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any Third Party or lease the Commercial Software or any copy of it.

**12.1.6 Licenses and Support Agreements.** Terms in any Contractor provided Third Party Software licenses or support contracts for Software shall be consistent with the requirements of this Agreement. In the event of a conflict between the terms of any such licenses and support contracts, and this Agreement, this Agreement shall take precedence and supersede such license and support contract terms, unless otherwise agreed in writing by the State. The State shall have the right to review, approve and require changes consistent with these terms in all licenses and support contracts for Software prior to use by Contractor of such Software in the HIX/IES System. Contractor shall cause the State to be a third-party beneficiary of any support services provided under all Third Party licenses and support contracts relating to Third-Party Software such that the State can access such support services directly.

**12.2** [*Commercial Software Installation and Acceptance Tests*] [*this has been left open, to be negotiated with the successful bidder with reference to the Proposal*].

### **13. CONTRACTOR PRE-EXISTING SOFTWARE AND DOCUMENTATION.**

**13.1 Grant.** Contractor hereby grants to the State a nonexclusive, perpetual, irrevocable and fully-paid up license to use, demonstrate, reproduce, modify, prepare derivative works based on, itself maintain and support (or use Third Party maintenance and support) Contractor Pre-Existing Software and its Documentation.

**13.2 Title.** Except for the rights granted herein, Contractor retains all right, title and interest in Contractor Pre-Existing Software and its Documentation.

**13.3 Documentation.** Contractor will provide copies of Contractor Pre-Existing Commercial Software Documentation, including upgrades and revisions, in hard copy and electronic versions in such quantities as reasonably requested by the State for use in accordance with the terms of this Agreement.

**13.4 Copies.** The State will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Contractor Pre-Existing Software and its Documentation.

**13.5 Restrictions.** Except as permitted in this Agreement, the State agrees not to otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile,

disassemble, or distribute to any Third Party or lease Contractor Pre-Existing Software or any copy of it.

**13.6 Licenses and Support Agreements.** Terms in any Third Party support contracts for Contractor Pre-Existing Software shall be consistent with the requirements of this Agreement. In the event of a conflict between the terms of any such support contracts and this Agreement, this Agreement shall take precedence and supersede such support contract terms, unless otherwise agreed in writing by the State. The State shall have the right to review, approve and require changes consistent with these terms in all support contracts relating to Contractor Pre-Existing Software prior to use by Contractor of such Contractor Pre-Existing Software in the HIX/IES System. Contractor shall cause the State to be a third-party beneficiary of any support services provided under all support contracts relating to Contractor Pre-Existing Software such that the State can access said support directly.

**13.7 Source Code Escrow.**

**13.8.1** Within thirty (30) days of the completion and State Acceptance of Milestone 13, Contractor shall deposit with an established independent Third Party escrow agent selected by the State (the “Escrow Agent”) a copy of the Source Code and Documentation related to Contractor’s Pre-Existing Software to the extent and as then used (in any capacity) in the HIX/IES System as then existing, including any and all software tools, linkers and/or libraries necessary for a reasonably trained software engineer to repair, maintain, enhance and update such Source Code for Contractor’s Pre-Existing Software. At Contractor’s option, such Source Code and Documentation may include Source Code and Documentation for Custom Software to the extent and as then used in the HIX/IES System, it being understood that the Contractor will provide to the State directly the Source Code and Documentation for such Custom Software. (Such escrowed material, as it may be subsequently augmented, modified and updated, is referred to herein collectively as the “Deposit Materials”).

**13.8.2** Within thirty (30) days of the completion and State Acceptance of Milestone 22, Contractor shall deposit with the Escrow Agent, thereby augmenting the Deposit Materials, a copy of the Source Code and Documentation related to Contractor’s Pre-Existing Software to the extent then used (in any capacity) in the HIX/IES System as then existing, including any and all software tools, linkers and/or libraries necessary for a reasonably trained software engineer to repair, maintain, enhance and update such Source Code for Contractor’s Pre-Existing Software. Again, at Contractor’s option, such Source Code and Documentation may include Source Code and Documentation for Custom Software to the extent and as then used in the HIX/IES System, it being understood that the Contractor

will provide to the State directly Source Code and Documentation for Custom Software.

- 13.8.3** The Deposit Materials shall be deposited with the Escrow Agent pursuant to an escrow agreement substantially in the form of the Escrow Agent's standard three-party escrow agreement (a copy of which is attached hereto as Exhibit G, except as otherwise set forth in this Agreement (the "Escrow Agreement"). The Escrow Agreement shall be signed by the Contractor, the Executive Office and the Escrow Agent.
- 13.8.4** Contractor shall update the Deposit Materials within thirty (30) days of each change to the object code running in production (i.e., "live") on the HIX/IES System, to the extent such change affects the Contractor's Pre-Existing Software then operating in connection with the HIX/IES System, so that the Deposit Materials always reflect the object code of Contractor's Pre-Existing Software then operating in connection with the HIX/IES System. Contractor shall provide the State with written verification that the Deposit Materials have been updated (and such updates submitted to the Escrow Agent) in accordance with the provisions of this Section 13.1.8.
- 13.8.5** The Escrow Agreement shall provide that, in the event (i) Contractor (or any successor in interest) liquidates or dissolves, ceases to exist (other than as a result of a bona fide group restructuring, provided that the obligations of Contractor hereunder and pursuant to the Escrow Agreement shall be fulfilled following such restructuring, by an Affiliate acceptable to the State from a technical, operational, business and financial perspective), enters into receivership, suffers the appointment of a trustee or similar officer for its business or property, makes an assignment to or for the benefit of its creditors, files a bankruptcy petition or suffers the filing of an involuntary bankruptcy petition against it, or takes any corporate action authorizing any of the foregoing; or (ii) Contractor (or any successor in interest) ceases to conduct business on an on-going basis leaving no successor acceptable to the State from a technical, operational, business and financial perspective supporting Contractor's Pre-Existing Software then operating in connection with the HIX/IES System, or (iii) Contractor (or any successor in interest) fails in its obligation (hereunder or in any other agreement between Contractor and the State) to provide support services with respect to Contractor's Pre-Existing Software, the State, after giving Contractor written notice, shall be entitled to immediately obtain the escrowed Deposit Materials for the sole purpose of repairing, maintaining, servicing, modifying, enhancing, updating, further developing and otherwise supporting (by utilizing independent contractors or otherwise) Contractor's Pre-Existing Software. The parties agree that if the Deposit Materials are released to the State:

- (a) The State is hereby (without any further action or document) licensed to use the Deposit Materials (and/or have a Third-Party under contract with the State use the Deposit Materials) to repair, maintain, service, modify, enhance, update, further develop and otherwise support the Contractor's Pre-Existing Software, such that the Contractor's Pre-Existing Software will continue to support the State's business operations and the growth and development thereof. The State (and any third party hired by the State) shall use the Deposit Materials solely for such purpose and shall provide Contractor with copies of all changes, modifications, enhancements and improvements; and
- (b) The State's right to use the Deposit Materials (and/or have a Third-Party under contract with the State use the Deposit Materials) shall be non-exclusive, non-transferable, royalty-free and perpetual, notwithstanding any termination of this Agreement by either party.
- (c) Pursuant to the terms of the Escrow Agreement, the State shall be entitled to have the Escrow Agent perform any or all of the services described in Exhibit A to the form escrow agreement attached hereto as Exhibit G. During the Term of this Agreement, all costs arising under the Escrow Agreement other than those for the fourth through thirteenth services described on Exhibit A to the form escrow agreement, shall be borne by Contractor, and to the extent the State requests the Escrow Agent to perform any of the services described in the fourth through thirteenth services described on said Exhibit, the costs for such services shall be borne by the State. After the expiration or earlier termination of this Agreement, all costs arising under the Escrow Agreement shall be borne by the State; provided however, after the expiration or earlier termination of this Agreement the State shall have the right (and the Escrow Agreement shall so provide), to unilaterally terminate the Escrow Agreement by notice to the Escrow Agent.
- (d) The Escrow Agreement shall be governed by the laws of the State of Rhode Island, and the arbitrator under the dispute resolution procedure shall apply Rhode Island law. Any arbitration with respect to the Escrow Agreement shall take place in Rhode Island, unless that is not reasonably possible, in which event it shall take place in Boston, Massachusetts.

**13.8 Bankruptcy.** With respect to all Intellectual Property licensed under this Agreement, the Parties intend that the State shall have all rights afforded to licensees under Section 365(n) of the U.S. Bankruptcy Code (and any successor thereto) in connection with any bankruptcy of Contractor.

**14. CUSTOM SOFTWARE DEVELOPMENT.**

**14.1 Design, Construction, Installation and Testing.** *[this has been left open, to be determined during contract discussions with the successful bidder].*

**14.2 Knowledge Transfer.** While constructing and developing the Software Deliverables, as part of and prior to certification of the Custom Software, and prior to the beginning of the User Acceptance Tests, Contractor shall demonstrate and provide information to staff designated by the State about the functions and operations of all such Software in accordance with the Specifications and the Project Plan.

**14.3 [Conversion Software Installation and Acceptance Tests]** *[this has been left open, to be determined during contract discussions with the successful bidder].*

**15. USER ACCEPTANCE TESTS.**

**15.1 Performance.** Contractor will provide the State with its certification after the HIX/IES System is complete and ready for User Acceptance Tests. User Acceptance Tests shall be in accordance with \_\_\_\_\_ *[this has been left open, to be determined during contract discussions with the successful bidder]* and the timeframes contained in the Project Plan. After receipt of such certification from Contractor, the State shall begin to perform User Acceptance Tests to determine whether the HIX/IES System performs without Deficiency in accordance with the Specifications. Contractor will assist the State as requested in performing such User Acceptance Tests. Such User Acceptance Tests will also be performed by the State, with Contractor's assistance at no additional cost to the State, on any replacement or substitute Software component added after completion of a successful User Acceptance Test.

**16. TRAINING SERVICES.** Contractor shall provide User and technical Training Services as described in the RFP, the Proposal, the Training Plan Deliverable, and *[this has been left open, to be determined during contract discussions with the successful bidder].*

**17. PRODUCTION HOSTING SERVICES (TASK ORDER 7 AS DESCRIBED IN THE RFP).** Contractor shall provide production hosting services, as described in the RFP, the Proposal and the *[this has been left open, to be determined during contract discussions with the successful bidder].*

**18. WARRANTIES.**

**18.1 Warranty Periods.** The following HIX/IES System Warranty Period and Phase Warranty Period (collectively, the “Warranty Periods”), apply to this Agreement:

**18.1.1 HIX/IES System Warranty Period.** The HIX/IES System Warranty commences upon Phase 2 Acceptance and continues through six (6)

months after the expiration of the Term (as it may be extended). The HIX/IES System Warranty Period shall be in addition to the Phase 1 Warranty.

**18.1.2 Phase 1 Warranty Period.** The Phase 1 Warranty commences upon Phase 1 Acceptance and continues through Phase 2 Acceptance.

## **18.2 Warranties.**

**18.2.1 HIX/IES System.** Contractor represents and warrants that the HIX/IES System, in whole and in part, shall operate in accordance with and be maintained by Contractor to conform to the Specifications, including any HIX/IES System Specifications agreed by the State, the RFP and the Proposal, during the HIX/IES System Warranty Period. Contractor further represents and warrants that: (a) HIX/IES System, in whole and in part, will conform in all respects to the requirements of this Agreement (including without limitation all descriptions, specifications, and drawings identified in the RFP); and (b) the HIX/IES System, in whole and in part, will be free from material defects in materials and workmanship. Where the Parties have agreed to design specifications (such as a business or detailed design document) and incorporated the same or equivalent in this Agreement, directly or by reference, Contractor represents and warrant that the HIX/IES System provides all material functionality required thereby. In addition to the other warranties set forth herein, where this Agreement requires delivery of Commercial Software or Contractor Pre-Existing Software, Contractor represents and warrants that such Software will perform in accordance with its license and accompanying its Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

**18.2.2 Phase Warranty.** Contractor represents and warrants that the portion of the HIX/IES System required under this Agreement to be Operational and fully ready to be launched during Phase 1 (including the Exchange and MAGI-based Eligibility Determination functionalities) (the "Phase 1 System"), shall operate in accordance with and be maintained by Contractor to conform to the Specifications, including any Phase 1 System Specifications agreed to by the State, the RFP and the Proposal, during the Phase 1 Warranty Period. Contractor further represents and warrants that: (a) Phase 1 System, in whole and in part, will substantially conform in all respects to the requirements of this Agreement (including without limitation all descriptions, specifications, and drawings identified in the RFP); and (b) the Phase 1 System, in whole and in part, will be free from material defects in materials and workmanship. Where the Parties have agreed to design Specifications (such as a business or detailed design document) and incorporated the same or equivalent in this Agreement,

directly or by reference, Contractor represents and warrant that the Phase 1 System provides all material functionality required thereby. In addition to the other warranties set forth herein, where this Agreement requires delivery of Commercial Software or Contractor Pre-Existing Software, Contractor represents and warrants that such Software will perform in accordance with its license and accompanying its Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

**18.2.3 Non-Infringement.** Contractor represents and warrants that the HIX/IES System (including all related and associated Software and Hardware), including the Services, Deliverables, and/or Work Product, and/or any portion thereof, (collectively, the "Materials"), and the use of the Materials for their permitted or intended purposes, shall not violate, infringe upon, or misappropriate any patent, copyright, trade secret, trade name, or other Intellectual Property rights, moral rights, or proprietary rights of any Third Party, or breach any contract by which Contractor is bound. Contractor further represents and warrants that the Materials are not the subject of any allegation or claim that, if true, would conflict with Contractor's obligations under this Agreement, the Materials are not subject to any agreements or licenses to or from Third Parties that impose any obligations on the State beyond the State's obligations under this Agreement, and Contractor has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer to a Third Party any right, title or interest in or to any technology or Intellectual Property right that would conflict with Contractor's obligations under this Agreement (collectively, any breach of this Section 18.2.3 shall be referred to hereinafter as "Infringement"). This non-Infringement warranty shall survive termination of this Agreement.

**18.2.4 Documentation.** Contractor covenants that:

- (a) Contractor will document the operation of the Software in a manner consistent with the best practices of the software development industry, and such Documentation shall accurately reflect the operation of the Software and HIX/IES System, including functional and operational characteristics, and enable a person reasonably skilled in computer programming and in possession of the source code to use, and maintain the Software fully and completely.
- (b) Contractor shall provide the State updated versions of all such Documentation when it provides the State with Enhancements. The covenants in this Section 18.2.4 shall remain in full force and effect for as long as the State continues to receive any Maintenance Services from Contractor.

**18.2.5 State and Federal Laws and Regulations.** Contractor represents and warrants to the State that all Software provided hereunder, including when installed and in “live” operation, will meet and satisfy all applicable State and Federal Laws and Regulations.

**18.2.6 Third Party Warranties and Indemnities.** Contractor shall cause the State to be a third-party beneficiary of all end-user warranties and indemnities relating to any Third Party Software so that the State can avail itself of remedies thereunder directly. If Contractor is not permitted to make the State a third-party beneficiary of such end-user warranties and indemnities, Contractor shall enforce such warranties and indemnities on behalf of the State to the extent Contractor is permitted under applicable Third Party agreements.

**18.2.7 Interface.** Contractor acknowledges and agrees that the State may be or in the future work with Third Parties to develop, maintain and support various State systems which may involve the development and/or use of application interfaces between the Third Party systems and the Software. Contractor shall fully cooperate and work with the State and Third Parties in connection with any such interfaces.

**18.2.8 No Viruses or Bombs.** Contractor represents and warrants that Deliverables furnished hereunder will be free, at the time of delivery, of harmful code (e.g., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, Data, or Software). Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Software delivered hereunder, Contractor will, upon the State’s request, provide a master copy of the Software for comparison and correction.

**18.2.9 Compatibility.** If the Software, in whole or in part, including but not limited to Commercial Software, is replaced or upgraded by Contractor with replacement or upgraded Software components provided by Contractor to correct Deficiencies or as an Enhancement, Contractor represents and warrants that the Software as upgraded shall operate with the rest of the Software, including without limitation the Commercial Software, the Custom Software, Contractor Pre-Existing Software, Third-Party Software and Enhancements thereto, without loss of any functionality, as provided in the Specifications. If the State decides to upgrade any of its Third-Party Software which is used with the Software with new versions or releases, Contractor shall install and maintain the Software to operate in accordance with its Specifications and to be compatible with the new versions or releases of the Third-Party Software. The State shall pay Contractor under the Change Order process for Services required by Contractor to make the Software compatible with the new releases or versions of such Third-Party Software.

**18.2.10 Four-Digit Date Compliance.** Contractor represents and warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or Services to the State. “Four Digit Date Compliant” Deliverables and Services can accurately process, calculate, compare, and sequence date data, including, without limitation, date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere herein.

**18.2.11 Power and Authority.** Contractor represents and warrants that it has the full power and authority to grant to the State the rights described in this Agreement. All warranties, including additional warranties specified in this Agreement, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables, Services and HIX/IES System.

**18.3 Warranty Exceptions.** Unless otherwise specified in this Agreement, Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly and in whole from (a) a modification made by the State, unless such modification is approved or directed by Contractor, (b) use of Software in combination with or on products other than as specified, recommended or approved by Contractor, or (c) misuse by the State.

#### **18.4 Remedies.**

**18.4.1** For any breach of any of the warranties provided in this Agreement, without limiting any other remedies to which the State may be entitled, the State’s remedies include the following: (a) re-performance, repair, or replacement (collectively, “Correct”) of any Deficiency in the HIX/IES System, in whole or in part, or Service (including without limitation any infringing Software or Hardware); or (b) should the State in its sole discretion consent, refund of all amounts paid by the State for the Deficient Deliverables or Services and payment to the State of any additional amounts necessary to equal the State’s cost to cover. “Cost to Cover” means the cost, properly mitigated, of procuring Deliverables or Services of equivalent capability, function, and performance.

**18.4.2** In the event the State requires, in its sole discretion, Contractor to Correct any Deficient Deliverable or Service noted during the applicable Warranty Periods, Contractor shall re-perform, repair or replace correct any such Deficiency in accordance with the following deficiency severity level (as assigned by the State) and its corresponding SLA, at no additional cost to the State. Failure of Contractor to satisfy any such SLA shall be subject to the corresponding Liquidated Damages listed below.

### Software Deficiency Severity Descriptions and Corresponding SLAs

Deficiency Severity Level	Deficiency Severity Criteria	SLA	Liquidated Damages
Severity 1 Fatal	Fatal Bug. HIX/IES System did not work. Significant parts of the HIX/IES System were inoperable. There was no viable workaround.	Deficiency rectified within 12 hours. If not fixed by then, Contractor must present the State with an emergency resolution plan.	<i>[To be inserted]</i>
Severity 2 Serious	Serious Bug. Primary business requirements could not be met with the HIX/IES System. There were no easily apparent viable workarounds. Performance, functionality, or usability was seriously degraded.	Deficiency rectified within 3 days. If not fixed by then, Contractor must present the State with a high priority resolution plan.	<i>[To be inserted]</i>
Severity 3 Normal	Normal Bug. Business requirements can be met with the HIX/IES System. Any needed workarounds are apparent. Performance, functionality, or usability is not seriously degraded.	Deficiency to be rectified at next scheduled release. Contractor must document the fix in a Comprehensive Issue Resolution Plan comprising known issues.	<i>[To be inserted]</i>
Severity 4 Minor	Minor Bug. Minor typos, wish list suggestions, a nice to have, but not required change. Would not impact release accuracy or usability in any significant way.	Deficiency to be rectified at a time and in a manner agreed to by the State. Contractor must document the defect status in a Comprehensive Issue Resolution Plan comprising known issues.	<i>[To be inserted]</i>

**18.4.3** The applicable Warranty Period shall automatically extend one day for each day required for Contractor to correct any Deficiency. All Deficiencies shall be documented by Contractor in a Comprehensive Issue Resolution Plan document (“Comprehensive Plan”) that is sortable by all column headings. The issue tracking tool chosen shall be readily accessible to appropriate Project personnel. The Comprehensive Plan shall include enhancements as well as Deficiencies. At a minimum, the Comprehensive Plan must contain a unique issue number, issue description, Deficiency/Enhancement code, Deficiency Severity Level, issue priority code, issue discovery person, issue discovery date, issue resolution date, resolution plan, and comments.

**18.4.4** Deficiencies noted before the expiration of any of the Warranty Periods shall be covered regardless of such expiration. HIX/IES System modifications and changes made during the Warranty Periods shall be covered by the warranties contained herein.

**19. TECHNOLOGY, OPERATIONS AND MAINTENANCE (TASK ORDER 8 AS DESCRIBED IN THE RFP).** Contractor shall provide technology, operations and Maintenance Services, as described in the Proposal, the RFP, and the [*this has been left open, to be determined during contract discussions with the successful bidder*].

**20. SERVICE LEVEL AGREEMENTS (SLAs).**

**20.1 SLAs.** During the Term, Contractor shall perform the Services so as to meet or exceed the SLAs contained in Appendix S of the RFP and in this Agreement which identify the performance levels expected by the State. Service Levels are identified within each SLA and are to be measured and reported each month by Contractor. To the extent the Parties have established a SLA for a specific Service, the obligations described in this Agreement shall not be construed to alter, expand, diminish or supersede such SLA. Contractor shall be responsible for meeting or exceeding the applicable SLAs even where doing so is dependent on the provision of Services by its Subcontractors.

**20.2 Performance Monitoring.** The State has identified the SLAs to be key indicators of Contractor’s operational performance. Failure to achieve a SLA may, at the discretion of State, result in the assessment of the Liquidated Damages contained in Appendix S of the RFP and in this Agreement.

**20.3 Monthly Reporting.** Contractor shall monitor performance against the State-specified SLAs in Appendix S of the RFP and in this Agreement, and develop operations reports to demonstrate compliance with applicable SLAs. Contractor shall submit a monthly performance report card on all SLAs, regarding the prior month’s performance, no later than the 10th of the month, with out-of-bounds metrics visually highlighted in the report. Contractor may include additional information regarding SLA compliance in its report. Contractor shall make

available to the State upon request all reports or data used in the determination of SLA compliance and calculation of SLAs. The automated reports shall be flexible and adaptable to changes in the performance measurements through a rules-based engine, or component of a rules-based engine, in the UHIP.

- 20.4 Corrective Action.** When a SLA is not met, Contractor shall provide the State with a written detailed corrective action report which describes: the missed SLA, a full description of the issue, the cause of the problem, risks related to the issue, the resolution, including any failed solution implemented prior to resolution, and the proposed corrective action going forward to avoid missing the SLA in the future. Upon receipt of the report, the State may request a meeting to further discuss issues. Contractor shall implement proposed corrective action only upon approval of State.
- 20.5 Periodic Reviews.** Prior to commencement of Maintenance and Operations, the State and Contractor will review all SLAs to determine if revisions are needed. After the Start of Operations, similar reviews will be held annually, upon the implementation of a change that impacts existing SLAs, or at the request of the State.
- 20.6 SLA Liquidated Damages.** Contractor recognizes that the State is paying Contractor to deliver the Services at specified SLAs and that it would be extremely difficult and impractical to ascertain and fix the actual damages the State would incur should Contractor fail to deliver the Services at such specified SLAs. Accordingly, if Contractor fails to meet any of the SLAs, then, in addition to other remedies available to the State, Contractor shall pay or credit (at the State's discretion) to the State the Liquidated Damages specified in Attachment S of the RFP and in this Agreement. The Parties agree that the Liquidated Damages reflect the diminished value of the Services as a result of any Contractor failure to provide the Services in accordance with the SLAs, and accordingly do not constitute nor shall be construed or interpreted as penalties.
- 20.7 Excused Performance.** The State's failure to perform any of its obligations or responsibilities under this Agreement shall not be deemed to be grounds for termination of this Agreement by Contractor. Contractor's failure to perform its obligations or responsibilities under this Agreement, including meeting or exceeding applicable SLAs, shall be excused if and only to the extent such Contractor non-performance is expressly excused under this Agreement or directly caused by or attributable to: (a) the fault of the State, (b) a Force Majeure Event; or (c) any act or omission by any Third Party not under the control of Contractor. Subsection (a) and (c) of the preceding sentence shall only be applicable if: (a) Contractor notifies the State in writing as soon as is reasonable (under the circumstances) of such action or failure to act or perform and Contractor's consequent inability to perform under such circumstances; (b) where applicable, Contractor provides the State with every reasonable opportunity to correct such action or failure to act or perform and thereby avoid such Contractor

non-performance; and (c) Contractor uses best efforts to perform notwithstanding the State's action or failure to act or perform.

**21. CHANGE ORDERS.** The State, with the approval of the Division, may permit changes in the scope of Services, time of performance or approved budget of Contractor to be performed hereunder in accordance with State Procurement Regulations, Section 8.7. No additional Contractor work shall proceed without issuance of an approved Change Order signed by the Division. Such changes are subject to the mutual written agreement of the Executive Office (or State Affiliate, as determined by the State to apply on a case-by-case basis) and Contractor, and shall be in the form of numerically consecutive amendments to this Agreement. The Change Order will specify the scope of the change and the expected completion date. Any Change Order shall be subject to the same terms and conditions of this Agreement, unless otherwise specified in the Change Order and agreed upon by the Parties. The Parties will negotiate in good faith and in a timely manner all aspects of the proposed Change Order. As soon as possible after receipt of a written change request from the State, but in no event more than thirty (30) days thereafter, Contractor shall determine if there is an impact on price with the change requested and provide the State a written statement to identify any price impact on this Agreement or to state that there is no impact. In the event that price will be impacted by the change, Contractor shall provide a description of the asserted price increase or decrease involved in implementing the requested change. No change shall be implemented by Contractor until such time as Contractor receives an approved written Change Order.

**21.1 Agreement.** The Parties shall negotiate in good faith and in a timely manner as to the price and the impact on the Schedule of any Change Orders. If the Parties reach an agreement in writing, the terms hereof shall be modified accordingly.

**22. SUBCONTRACTORS.**

**22.1 Use of Subcontractors.** Contractor may, subject to the terms of this Section 22, use Subcontractors. All Subcontractors, and Subcontracts, shall be subject to the prior express written approval of the State. Contractor is solely responsible for all work performed under this Agreement and shall assume prime contractor responsibility for all Services, Deliverables and other obligations required of Contractor under this Agreement. The State will consider Contractor to be the sole point of contact with regard to all contractual matters. Contractor shall submit to the Executive Office a list of all Subcontractors to be employed in the performance of any tasks under this Agreement and shall update such list promptly, as necessary.

**22.2 Subcontracts.** Contractor shall include in its Subcontracts a provision that the Services to be provided by the Subcontractor are for the benefit of the State as well as flow-down provisions, terms and conditions that are consistent in all material respects with the provisions of this Agreement to the extent applicable, including those provisions relating to termination provisions (except for, at

Contractor's option, termination for convenience, it being understood and agreed that Contractor shall be solely responsible for any obligations that arise under or with respect to such Subcontracts after the Term), personnel requirements, the State's Intellectual Property, the State's audit rights, privacy and Data safeguards, confidentiality, representations and warranties, certifications (including the certifications required under this Agreement), indemnification obligations and insurance. Without limiting the foregoing, Contractor shall require all of its Subcontractors to carry insurance of the types set forth in this Agreement at levels customary and appropriate for the types and volumes of services being provided by the Subcontractors. Contractor shall provide the State with access to all Subcontracts and other documents relating to the Subcontractors' performance of the Services and amounts charged to the State under the Agreement as reasonably necessary to satisfy the State's internal control requirements. Contractor certifies to the State that it has conducted background checks required under Section 2.21 of the RFP (Background Checks). All Subcontractor employees, agents and consultants assigned to perform work under this Agreement and at the site may be subject to security clearance at the sole discretion of the State.

- 22.3 Probity Investigation of Subcontractors.** Contractor hereby acknowledges and agrees that the State shall have the right to conduct probity investigations of any Subcontractor prior to and during the term of its Subcontract with Contractor. Contractor shall be responsible for notifying Subcontractors of the possibility of such probity investigations.
- 22.4 Responsibility for Subcontractors.** In no event shall Contractor be relieved of its obligations under this Agreement as a result of its use of any Subcontractors, including any failure by Subcontractor to perform its obligations to Contractor. Contractor shall supervise the activities and performance of each Subcontractor and shall remain wholly and fully responsible and liable for the actions and omissions of each Subcontractor and/or for any act or failure to act by such Subcontractor in connection with or related to this Agreement. Contractor shall ensure that each Subcontractor has obtained and maintains all governmental approvals and other Third Party licenses, authorizations, approvals and consents required in connection with the Services for which such Subcontractor is responsible. Contractor shall be the State's sole point of contact regarding the Services that are subcontracted, including with respect to payment. Contractor shall directly pay to all Subcontractors all amounts due in accordance with their respective Subcontracts.
- 22.5 No State Responsibility.** The State shall not be responsible to pay any Subcontractor or supplier to Contractor any amount due under its respective Subcontracts or supply contracts arising out of indemnity claims for which Contractor is responsible. No Subcontractor or supplier to Contractor shall have any right against the State for labor, services, materials or Equipment furnished for the Services. Contractor acknowledges that its indemnity obligations to its Subcontractors and suppliers under this Section 22 shall include all claims for payment or damages by any Subcontractor or supplier who furnishes or claims to

have furnished any labor, services, materials or Equipment in connection with the Services, except to the extent its Subcontract or supply contract has been assigned to the State as contemplated hereunder.

**22.6 Assignability of Subcontracts.** All Subcontracts and supply contracts entered into by Contractor with respect to this Agreement shall be assignable to the State, solely at the State's election and without cost or penalty (it being understood and agreed that in the event the State elects to have the rights and benefits under such Subcontracts and supply contracts assigned to it, it shall assume the obligations and liabilities under such Subcontracts and supply contracts).

**22.7 Removal/Replacement of Subcontractors.** The State shall have the right to require Contractor to replace a Subcontractor for any reason, including, but not limited to: (a) material non-performance of the applicable Services performed by such Subcontractor in the State's reasonable determination that is not cured within a reasonable amount of time in the State's discretion; (b) engagement by such Subcontractor in illegal activity or material violation of State and Federal Laws and Regulations that is not cured within a reasonable amount of time in the State's discretion; and (c) material violation of this Agreement attributable to such Subcontractor that is not cured within a reasonable amount of time in the State's discretion. Upon any occurrence of any of the preceding events, the State shall promptly notify the Contractor of such occurrence in writing, and, if required by the State, Contractor shall replace such Subcontractor (at no penalties, fees or damages to the State) with another Subcontractor as soon as reasonably possible after receipt of such notice from the State, and such replacement Subcontractor shall be subject to the prior written approval of the State and subject to all requirements applicable to Subcontractor(s) under this Agreement. At all times, notwithstanding the removal of the Subcontractor, Contractor shall continue to perform all of its obligations under this Agreement in compliance with all of the terms and conditions of this Agreement.

## **23. INTELLECTUAL PROPERTY RIGHTS.**

**23.1 Work Product.** Unless otherwise specifically agreed to in writing, the HIX/IES System, including the Custom Software, Custom Software Documentation, Specifications, and all Deliverables and any and all reports, computer programs, documentation, specifications, deliverables, products, work product, software, source code, algorithms, routines, graphics, files, software patches, enhancements, modifications, blueprints, diagrams, charts, functional descriptions, photographs, surveys, or other materials, writings, or works of authorship (and any drafts of the foregoing) created, developed, or prepared by Contractor, its employees, agents, or Subcontractors in the course of performing the Services under this Agreement (collectively, "Work Product") shall be deemed a "work for hire" for the sole benefit of and ownership by the State, and all right, title and interest in and to such Work Product shall belong exclusively to State and/or its Affiliates (regardless of whether the State or any of its Affiliates uses the Work Product).

Contractor and its Subcontractors hereby assign, and shall be deemed to have expressly disclaimed, any and all right, title, or interest in and to such Work Product. To the extent any Work Product is not deemed a "work for hire" by operation of law, Contractor (and its Subcontractors, if applicable) hereby irrevocably assigns, transfers and conveys to State all of its right, title and interest in such Work Product, including, but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such Work Product. Contractor (and its Subcontractors, if applicable) shall provide to State all reasonable assistance, execute such documents, and take all such other actions, which may be reasonably required to perfect the foregoing rights to the Work Product (including, but not limited to, directing its employees to execute all applications for patents and/or copyrights, assignments, and other papers necessary to secure and enforce State's rights to such Work Product). All work performed under this Agreement by Contractor and any of its Subcontractors, including without limitation, in connection with the design and development of the Custom Software, the HIX/IES System, and the Deliverables, shall be deemed "works made for hire" for the State for all purposes of copyright law, and all rights of copyright therein shall belong solely to and inure to the State, except as otherwise required by the Affordable Care Act or other applicable State and Federal Laws and Regulations. In the event that any such work is adjudged to be not a work made for hire owned by the State, Contractor agrees to assign, and hereby assigns (and to require its Subcontractors to assign), all copyright in such work to the State. Contractor shall, at the expense of the State, assist the State or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Contractor agrees to execute (and to require its Subcontractors 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 the State all the right, title and interest in and to such works. Contractor also agrees to waive and not assert any moral rights it may have in any such works.

## **23.2 Contractor Ownership.**

**23.2.1.** Except as otherwise provided herein, Contractor shall retain all right, title and interest in and to its the Commercial Software, Contractor Pre-Existing Software, and to Contractor's Intellectual Property. In the event and to the extent that the Work Product contains any Contractor Confidential Information, Contractor's Intellectual Property, and/or items, elements, tools, and/or scripting of Contractor or its Third Party licensors or Subcontractors, and to the extent any Contractor Confidential Information, Contractor's Intellectual Property and/or items, elements, tools, and/or scripting of Contractor or its Third Party licensors or Subcontractors are necessary for the operation of the HIX/IES System, Contractor shall specifically identify such items, elements, tools, and/or scripting, and Contractor (or its licensors or subcontractors, if applicable) shall be deemed to have granted to the State (including its Affiliates and

Third Party contractors, which contractors have signed confidentiality agreements with the State) a nonexclusive, perpetual, royalty-free, irrevocable, worldwide, and enterprise-wide license to use, reproduce, alter, adapt, modify, display, perform, repair, maintain, distribute, and make derivative works of such Contractor Confidential Information, Contractor's Intellectual Property, items, elements, tools, and/or scripting.

**23.2.2.** Contractor represents and warrants that: (a) Contractor has the right to grant to the State the licenses required under this Agreement and to transfer the Deliverables, Custom Software, HIX/IES System and Software licenses to the State as provided herein without violating any rights of any Third Party; and (b) there is currently no actual or threatened suit by any such Third Party based on an alleged violation of such rights by Contractor.

**24. ROYALTY-FREE RIGHTS TO USE SOFTWARE OR DOCUMENTATION DEVELOPED.** Notwithstanding any provision of this Agreement to the contrary, Contractor hereby grants the federal government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for government purposes, the copyright in any work developed under this Agreement, including the HIX/IES System, its components, Software, Deliverables, Documentation, business rules and any other work product developed under this Agreement.

**25. DATA PROTECTION, SECURITY AND CONFIDENTIALITY.**

**25.1 HIPAA Compliance.** Contractor shall comply with all applicable requirements of the Health Insurance Portability & Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and its implementing regulations, as amended from time to time, including HIPAA privacy and security rules, transaction standards and protocols adopted under Sections 1104 and 1561 of the ACA, and the requirements in the attached Exhibit F: Business Associate Agreement.

**25.2 Ownership of Data.** The Data is and shall remain the property of the State. Contractor shall promptly deliver the Data (or the portion of such the Data specified by the State) to the State in the format and on the media mutually agreed upon by the Parties: (a) at any time upon reasonable notice and at the State's reasonable request; and (b) at the end of the Term (except Records, which shall be retained by Contractor for the Record retention period, unless otherwise agreed in writing by the State). Thereafter, Contractor shall return or destroy (and with respect to Project Staff, shall ensure the return or destruction of), as requested and directed by the State, all copies of Data in the possession of or under the control of Contractor or Project Staff as soon as possible, but in no event later than thirty (30) business days, and shall upon the State's written request, deliver to the State written certification of such return or destruction signed by an authorized representative of Contractor or the applicable Project Staff. Contractor shall not withhold any of the Data as a means of resolving any dispute. The Data shall not

be utilized by Contractor for any purpose other than the performance of Services under this Agreement and Contractor shall at all times comply with any applicable State and Federal Laws and Regulations as may be amended from time to time. The Data shall not be sold, assigned, leased, encumbered, commercially exploited or otherwise provided to Third Parties by or on behalf of Contractor or any Project Staff without the State approval. Contractor shall promptly notify the State in writing if it believes that the Data has been used in a manner inconsistent with the foregoing.

### **25.3 Security.**

**25.3.1 Safeguarding Procedures.** Contractor shall establish and maintain physical, environmental, safety and facility procedures, Data security procedures and other safeguards against the destruction, loss, unauthorized access or alteration of the Data in the possession and/or control of Contractor or Project Staff which are: (a) no less rigorous than those maintained by the State prior to the Effective Date; (b) no less rigorous than those maintained by the State for its own information of a similar nature or for other customers of Contractor with respect to information of a similar nature; and (c) adequate to meet the requirements of the State's privacy, security and records retention policies and applicable State and Federal Laws and Regulations, including HIPAA and the ACA. With respect to the Data in Contractor's possession or direct or indirect control, Contractor shall provide the State with downloads of the Data in Contractor's possession, as requested by the State, to enable the State to maintain backup security or backup copies of the Data. Contractor shall remove all the Data from any media taken out of service and shall destroy or securely erase such media in accordance with applicable industry standards. No media on which the Data is stored may be used or re-used to store Data of any other customer of Contractor or to deliver Data to a Third Party, including another Contractor customer, unless securely erased. In the event Contractor discovers or is notified of a breach or potential breach of security relating to the Data in Contractor's possession or direct or indirect control, Contractor shall: (a) expeditiously notify the State's Chief Information Security Officer and the UHIP Project Coordinator in writing of such breach or potential breach in sufficient time to allow the State to comply with any applicable notification or other State and Federal Laws and Regulations; (b) investigate such breach or potential breach and perform a root cause analysis thereon and provide such root cause analysis report to the State; (c) remediate the effects of such breach or potential breach of security, provided that the State, its Third Parties or its Affiliates are not the direct cause of the breach or potential breach; (d) provide the State with such assurances as the State shall request that such breach or potential breach shall not recur, provided that the State, its Third Parties or its Affiliates are not the direct cause of the breach or potential

breach; (e) provide periodic updates of any investigations to the State; and (f) cooperate with the State with respect to any investigation by the State.

**25.3.2 Reconstruction Procedures.** As part of the Services, Contractor shall be responsible for developing and maintaining procedures for Data backup and restoration to the last back-up and/or restoration of lost the Data using other generally accepted Data restoration techniques which are no less rigorous than those maintained by Contractor, as modified by Contractor from time to time, for its own information of a similar nature, and no less rigorous than accepted industry standards.

**25.3.3 Corrections.** Contractor shall correct (including Data backup and restoration from scheduled backups or, if not available on such backups, using other generally accepted Data restoration techniques), at no charge to the State any unauthorized destruction, loss or alteration of any the Data in Contractor's possession or direct or indirect control, attributable to the failure of Contractor or Project Staff.

**25.3.4 Data Access.** Upon reasonable notice and the State's written request, the State shall have the right to access all computer or other files to the extent such computer or other files contain the Data, as well as all systems and network logs, system parameters and documentation to the extent such systems, logs, parameters and documentation contain the Data (collectively "Data Files"). At no time shall any of such files or other materials or information be stored or held in a form or manner not readily accessible to the State. Contractor shall provide to the State all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon the request of the State, including Equipment and Software keys and such information as to format, encryption (if any) and any other specification or information necessary for the State to retrieve, read, revise and/or maintain such files and information. Upon the request of the State, Contractor shall confirm in writing that, to the best of its knowledge, all the Data Files provided to the State are materially complete and that no material element, amount or other fraction of such the Data Files has been deleted, withheld, disguised and/or encoded in a manner inconsistent with the purpose and intent of providing the access to the State as contemplated by this Agreement.

**25.3.5 Advice on Best Practices.** Contractor and the State shall discuss, as appropriate at applicable meetings, Data security practices, procedures and safeguards in effect for other Contractor customers, subject to Contractor's confidentiality obligations, where such practices, procedures and safeguards are of a higher standard than those contemplated under this Agreement.

## **25.4 Confidentiality.**

### **25.4.1 Confidentiality Obligations.**

- (a) During the Term and at all times thereafter, Contractor and the State shall not disclose, and shall maintain the confidentiality of, all Confidential Information of the other Party. The Contractor shall each use at least the same degree of care to safeguard and to prevent disclosing to Third Parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. The identification of all the State's procedural requirements for protection of the State's Confidential Information from unauthorized use and disclosure shall be provided by the State in writing to Contractor. If the methods and procedures employed by Contractor for the protection of Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The State may require, in its sole discretion, Project Staff having access to the State Confidential Information to be execute a written non-disclosure agreement protecting the State Confidential Information, a form and substance satisfactory to the State. Upon the State's request, Contractor shall cooperate with, and enforce, such terms and conditions. Contractor shall ensure that Project Staff shall have access to the State Confidential Information only to the extent necessary for such Project Staff to perform his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such Project Staff's scope of responsibility, provided that such access is not in violation of any State and Federal Laws and Regulations.
- (b) Except as otherwise permitted in this Agreement, neither Party shall: (a) make any use or copies of the Confidential Information of the other Party except as contemplated and permitted by this Agreement; (b) acquire any right in or assert any lien against the Confidential Information of the other Party; (c) sell, assign, transfer, lease or otherwise dispose of Confidential Information to Third Parties or commercially exploit such information; or (d) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including copies thereof) to the other Party if requested to do so.

**25.5 Public Records Law.** Notwithstanding the above and any provision of this Agreement to the contrary, Contractor acknowledges that the State is subject to R.I.G.L. 38-2-2(5) and that: (a) this Agreement and all parts hereof, and all communications between the Parties hereunder shall be a public record as defined in R.I.G.L. 38-2-2(5); and (b) any and all information relating to the Software,

Deliverables, Services and the HIX/IES System may be a public record as defined in R.I.G.L. 38-2-2(5). Any specific information that is claimed by Contractor to be Confidential Information, must be clearly identified as such by Contractor. To the extent consistent with R.I.G.L. 38-2-2(5), the State shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Contractor's Confidential Information, the State will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the State will release the requested information on the date specified.

- 25.6 Exclusions.** Contractor shall not be required under the provisions of this paragraph to keep confidential any Data or information which is or becomes publicly available through no fault of Contractor, is already rightfully in Contractor's possession and which is not subject to prior contrary obligations of confidentiality, is independently developed by Contractor without the use of such confidential Data or information outside the scope of this Agreement, or is rightfully obtained from Third Parties and which is not subject to prior contrary obligations of confidentiality. Contractor and Project Staff may be required to sign a non-disclosure form. The Parties acknowledge and agree that Confidential Information that is not generally available to the public shall not be deemed public or subject to this exclusion merely because it is combined with information that is generally available to the public.
- 25.7 Legally Required Disclosures.** The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent disclosure is based on the good faith written opinion of the Receiving Party's legal counsel that disclosure is required by applicable State and Federal Laws and Regulations; provided, however, that the Receiving Party shall give advance notice of such requested disclosure and a legal opinion to the Disclosing Party prior to any such disclosure and shall use commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Disclosing Party reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this, the Parties' in-house counsel or law department may act as their respective legal counsel.
- 25.8 Notification and Mitigation.** In the event of any impermissible disclosure, loss or destruction of Confidential Information, the Receiving Party shall immediately notify the Disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.
- 25.9 Return/Destruction of Confidential Information.** Except as otherwise provided herein, upon the expiration or termination of the Term, and at any other time upon written request by the Disclosing Party, the Receiving Party shall

return to the Disclosing Party all applicable Confidential Information (including all documentation in any medium to the extent it contains, refers to, or relates to the Confidential Information) of the Disclosing Party then in its possession or control, in whatever form, or, in the case of a written request by the Disclosing Party, the Confidential Information specified in such request as then in the Receiving Party's possession or control, in whatever form, in any case within thirty (30) days (except Records, which shall be retained by Contractor for the Record retention period unless and to the extent Contractor is directed by the State to deliver such Records to the State prior to the expiration of such Record retention period). In addition, unless the Disclosing Party otherwise consents in writing, the Receiving Party also shall deliver to the Disclosing Party or, if requested by the Disclosing Party, shall delete or destroy, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Receiving Party. Notwithstanding the foregoing: (a) to the extent permitted under State and Federal Law and Regulations, Contractor may retain a reasonable number copies of documentation, excluding the Data, for archival purposes or warranty support; provided, however, that any subsequent disclosure of such archived data shall comply with this Section 25; and (b) the State may retain copies of Contractor Confidential Information to the extent required by applicable State and Federal Laws and Regulations, to the extent otherwise permitted under this Agreement and for legal archival purposes; provided, however, that any subsequent disclosure of such archived Data shall comply with this Section 25. Each Party shall deliver to the other Party written certification of its compliance with this Section 25 signed by an authorized representative of such Party.

#### **25.10 Injunctive Relief.**

**25.10.1** If the Receiving Party or anyone acting on its behalf or operating under its control, publishes, transmits, releases, discloses or uses any Confidential Information of the Disclosing Party in violation of this Section 25, or if the Disclosing Party anticipates that the Receiving Party may violate or continue to violate any restriction set forth in this Section 25, then the Disclosing Party shall have the right to have the provisions of this Section 25 specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation shall cause irreparable injury to the Disclosing Party and that monetary damages shall not provide an adequate remedy.

**25.10.2** Contractor will immediately report to the State any and all unauthorized disclosures or uses of the State's Confidential Information of which it or Project Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the State's Confidential Information to

others may cause immediate and irreparable harm to the State and the State. If Contractor should publish or disclose such Confidential Information to others without authorization, the State 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.

**25.10.3** Contractor shall indemnify and hold harmless the State from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's failure to protect the State's Confidential Information including any violation of applicable provisions of HIPAA or the ACA. As a condition to the foregoing indemnity obligations, the State shall provide Contractor with prompt notice of any claim of which the State is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with Contractor in connection with any such claim.

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

**25.12 Survival.** The provisions of this Section 25 shall remain in effect following the termination or expiration of this Agreement.

## **26. INDEMNIFICATION.**

**26.1 Contractor General Indemnification.** Contractor shall indemnify, defend and hold harmless the State Indemnitees from and against, and shall pay any and all Losses sustained or incurred by any of the State Indemnitees, based upon, relating to or arising from, any and all claims in connection with any of the following:

**26.1.1** Any actual or alleged injury or death, personal injury, loss or damage to any real, tangible or intangible personal or real property, notwithstanding the form in which any such action is brought (e.g., contract, tort or otherwise), to the extent such injuries or damages arise directly or indirectly from acts, errors or omissions that constitute negligence, willful misconduct by Contractor or any of its officers, agents, Subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement or any failure of Contractor and such officers, agents, Subcontractors, employees, suppliers, laborers or persons, firms or corporation to comply with State and Federal Laws and Regulations, including, but not limited to, labor and wage laws;

**26.1.2** Contractor's breach of any of the representations and warranties set forth in this Agreement;

- 26.1.3** Contractor's breach of any of its obligations under any Third Party contracts to which Contractor is a party and is used by Contractor to provide the Services or otherwise perform its obligations under this Agreement;
- 26.1.4** Any aspect of the employment of Project Staff (including transferred Project Staff solely with respect to Losses accruing on or after their applicable employment dates with Contractor), or the termination of such employment, including claims relating to: (a) any violation by Contractor or its officers, directors, employees, representatives and/or agents of State and Federal Laws and Regulations protecting persons or members of protected classes or categories and/or prohibiting discrimination or harassment on the basis of a protected characteristic; (b) payment or failure to pay any salary, wages or other compensation due and owing to any Project Staff; (c) payment or failure to pay any pension or other benefits of any Project Staff; (d) liability for (i) any social security or other employment taxes for Project Staff, (ii) workers' compensation claims and premium payments for Project Staff, and (iii) withholdings, contributions, taxes, social security taxes, and employer income tax returns including those applicable to the wages and salaries of such Project Staff; (e) claims by Project Staff for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or denial of severance or termination payments upon leaving their applicable place of employment; and (f) wrongful discharge of such Project Staff, claims for breach of express or implied employment contract of such Project Staff and claims that the State is an employer, co-employer or joint employer of any Project Staff;
- 26.1.5** Any improper disclosure, misuse or theft of Data by Contractor or its Subcontractors, including any violation of HIPAA or breach of the Business Associate Agreement attached as Exhibit F;
- 26.1.6** Any introduction by Contractor or its Subcontractors of Malicious Code in the State's environment, network or systems, to the extent Losses caused by such introduction arise from acts, errors or omissions of Contractor or Project Staff;
- 26.1.7** Contractor's breach of or failure to obtain, maintain or comply with any State or federal governmental approvals required to be maintained by Contractor under this Agreement, or to assist the State, as required under this Agreement, with obtaining any applicable federal or State governmental approvals, including certification of the Exchange.
- 26.1.8** Contractor's breach of or failure to obtain, maintain or comply with any Third Party consent or to comply with any Third Party consent;
- 26.1.9** Any failure by Contractor to pay applicable taxes, together with any interest and penalties, assessed or imposed against the State for which

Contractor has responsibility or applicable State and Federal Laws and Regulations; and

**26.1.10** Contractor or its Subcontractors asserting rights under this Agreement, or any entity to which Contractor assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from the State under this Agreement.

**26.1.11** Such defense and payment will be conditional upon the following:

- (a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time.
- (b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that: (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

## **26.2 Contractor Infringement Indemnification.**

**26.2.1** Contractor shall indemnify, defend, and hold harmless the State Indemnitees from and against all Third Party claims, and shall pay any and all Losses (including without limitation reasonable attorneys' fees), sustained or incurred by any of the State Indemnitees, based upon, relating to, or arising from, any and all actual threatened and/or alleged claims for violation of any U.S. Intellectual Property right, including any claims of infringement, misappropriation and/or violation of any patent, copyright, trademark, trade secret and/or other Intellectual Property, proprietary, moral or privacy rights of any Third Party, by any product, Service, Software, Deliverable, Contractor's Intellectual Property, Subcontractor Intellectual Property, and any other Contractor and/or Contractor Third Party services, technologies, techniques or products used to provide the Services, and/or the receipt or use by the State of any of the foregoing items (collectively referred to as "Contractor Items").

**26.2.2** With respect to claims arising from computer hardware or Software manufactured by a Third Party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such Third Party ("Third Party Obligation") and will

cooperate in enforcing them; provided that if the Third Party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 26. The provisions of the preceding sentence apply only to Third Party computer hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 26 will be conditional upon the following:

- (a) The State will notify Contractor of any such claim in writing and Contractor shall the defense thereof within a reasonable time.
- (b) Contractor will have sole control of the defense of any action and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- (c) Should the Deliverables or Software, or the operation thereof, become the subject of a claim or infringement or violation of the U.S. Intellectual Property right, be enjoined, or appear likely to be enjoined, the State shall permit Contractor, at its option and sole cost and expense, either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing with identical functionality. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Agreement, the State shall then have the option of terminating this Agreement, or applicable portions thereof, without penalty. Without limiting the State's remedies, Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor.

**26.2.3** Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

- (a) The combination or utilization of Deliverables furnished hereunder with equipment or devices not made, recommended, approved, or furnished by Contractor;
- (b) The operation of equipment furnished by Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software;
- (c) The unauthorized modification by the State of the Equipment furnished hereunder or of the Software; or
- (d) The combination or utilization of Software furnished hereunder with non-contractor supplied Software unless such Software is approved or recommended by Contractor.

**26.2.4** Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer Software in violation of copyright laws and other Intellectual Property rights. Contractor further certifies and warrants to the State that it has the legal title to any Software or has obtained the right from the legal owners to use and to license to use to the State.

## **27. STATE'S LIMITATION OF LIABILITY.**

**27.1 Cap On State Liability for Direct Damages.** The State's liability for damages for any cause, claims, events or occurrences whatsoever, and regardless of the form of action, whether in contract or in tort, or otherwise, shall be limited to the Total Purchase Price. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

**27.2 Limitation on Non-Direct Damages.** THE STATE SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY AND/OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS OR LOSS OF BUSINESS, LOST GOODWILL, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT.

## **28. INSURANCE AND RISK OF LOSS.**

**28.1 Required Insurance Coverages.** During the Term, at its sole expense, Contractor, and its Subcontractor, provide and maintain insurance required under

the RFP. The fact that Contractor has obtained the insurance required in this Section 28 shall in no manner lessen nor otherwise affect Contractor's other obligations or liabilities set forth in this Agreement including its obligations to defend, indemnify and hold the State Indemnitees harmless in accordance with Section 26 (Indemnification). If Contractor retains any Subcontractors, Contractor shall require all such Subcontractors to carry the coverages that are commensurate with the Services being performed by each such Subcontractor.

**28.2 No Implied Limitation.** The obligation of Contractor and its Subcontractors to provide the insurance specified in this Agreement shall not limit in any way any obligation or liability of Contractor provided elsewhere in this Agreement.

**28.3 Risk of Loss.**

**28.3.1 General.** Each Party shall be responsible for risk of loss of, and damage to, any Equipment or Software in its possession or control, and such Party shall be responsible for the cost of any necessary repair or replacement of such Equipment or Software due to an Event of Loss (defined below). Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft or government taking of any item of the other Party's Equipment or Software ("Event of Loss") in its possession or control. For Events of Loss for which the State is responsible, such repair or replacement shall not be considered part of Contractor's Service obligations, but Contractor shall, if requested by the State, coordinate and oversee repair or replacement performed by a Third Party as an expense of the Stat.

**28.3.2 Waiver.** Each Party waives all rights to recover against the other Party for damage, destruction, loss, theft or government taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent: (a) covered by insurance required to be maintained by such Party under this Agreement, including their respective deductibles or self-insured retentions; and (b) insurance proceeds are actually received by such Party for such loss. Contractor and the State shall cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies required to be maintained by each Party.

**29. BOND.**

**29.1 Value.** At Contractor's cost, Contractor shall furnish the State with a Performance Bond in an amount equal to fifty (50) percent of the Total Contract Price on the Effective Date. Such Performance Bond shall be issued on annually renewable bond forms to be provided by Contractor's surety bond broker. Any change or renewal of time, or termination of this Agreement shall in no way release Contractor or any of its sureties from any of their obligations under the Performance Bond. Such Performance Bond shall contain a waiver of notice of

any changes to this Agreement or the Deliverables or the Specifications, or any Change Orders. The Performance Bond shall be subject to reduction, upon the anniversary of the Effective Date (when the annually renewable bond is to be renewed), based upon the ratio of the aggregate price of the Milestones completed and accepted by the State during such contract year to the aggregate price of the first 23 Milestones, as those Milestones are described in the RFP. The result when this ratio is multiplied by thirty (30) shall be the absolute number by which bond percent of the Total Contract Price is to be reduced. For example, if at the first anniversary of the Effective Date, Milestones have been accepted which have an aggregate price equal to 20% of the aggregate price of the first 23 Milestones, then, effective on and after the first anniversary of the Effective Date, the Performance Bond would be reduced from 50% of the Total Contract Price to 44% of the Total Contract Price. ( $20\% \times 30 = 6$ , and  $50 - 6 = 44$ .) Then, for example, if at the second anniversary of the Effective Date, Milestones have been accepted (including those accepted during the first contract year) which have an aggregate price equal to 35% of the aggregate price of the first 23 Milestones, then, effective on and after the second anniversary of the Effective Date, the Performance Bond would be reduced to 39.5% of the Total Contract Price. ( $35\% \times 30 = 10.5$ , and  $50 - 10.5 = 39.5$ .) If each of the first 23 Milestones have been accepted before an annual anniversary of the Effective Date, then, effective on and after such anniversary of the Effective Date, the Performance Bond shall be reduced to 20% of the Total Contract Price ( $100\% \times 30 = 30$ , and  $50 - 30 = 20$ .) Upon the later of the completion and acceptance of Milestone 24 and six (6) months after the expiration of the Term of this Agreement (as such Term may be extended), the State will release the Performance Bond.

**29.2 Payments.** No payments shall be due Contractor unless the Performance Bond is in place and approved by the State in writing. The Performance Bond shall be issued by surety companies with the Rhode Island Department of Treasury, Fiscal services, Circular 570 (Latest Revision published by the Federal Register), and be made payable to the State. The Agreement number and dates of performance shall be specified in the Performance Bond. In the event that the State exercises an option to extend this Agreement for any additional period(s), Contractor shall extend the validity and enforcement of the Performance Bond for said periods.

**29.3 Performance.** The Performance Bond shall secure the performance of Contractor, including without limitation performance of the Services and providing Deliverables in accordance with the Project Plan and the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default in performance hereunder or liability caused by Contractor. In the event of termination for default, the Performance Bond shall become payable to the State for any outstanding damage assessments made by the State against Contractor. An amount up to the full amounts of the Performance Bond may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by the State in obtaining similar Software, Deliverables, other products and

Services to replace those terminated as a result of Contractor's default. The State may seek other remedies in addition to this stated liability.

### **30. ADDITIONAL RIGHTS AND REMEDIES.**

#### **30.1 Withholding Payments.**

**30.1.1** If Contractor fails to deliver Deliverables or to provide the Services, the State shall have the right to withhold any and all payments due hereunder, but only to the extent of the amount in dispute. The State may withhold any and all such payments due hereunder to Contractor, as aforesaid, without penalty or work stoppage by Contractor, until such failure to perform is cured.

**30.1.2** The State may also withhold from any amount due Contractor such sums as the State determines to be necessary to protect the State against potential loss or liability, without penalty to the State, but only up to the amount of such sum of the potential loss or liability. The State may only withhold such sums until the potential loss or liability is resolved.

**30.1.3** The State may withhold all or any such monies due and payable to Contractor as described in this Section 30, without penalty, to the extent amounts are in dispute or potential loss or liability exists and until such failure to perform is cured or otherwise adjudicated, or the potential loss or liability ceases.

**30.2 SLAs.** If the HIX/IES System fails to meet SLAs, Contractor shall modify, reconfigure, upgrade or replace Software at no additional cost to the State in order to provide a HIX/IES System solution that complies with such SLAs.

**30.3 Right to Inspect.** The Deliverables and Services being provided by Contractor, pursuant to this Agreement shall be available for inspection and review at any reasonable time by representatives of the State. In addition, the State shall have the right to audit and inspect Contractor's use of its Software design and development methodology.

**30.4 Suspension Due to Breach.** In the event the State determines that a breach of Agreement has occurred in Contractor's compliance with the conditions of this Agreement or if the State has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of Contractor under this Agreement, and the situation is deemed by the State to merit corrective action, the following sequential suspension procedure may be implemented by the State:

**30.4.1** The State will notify Contractor in writing of a perceived compliance breach describing the State's concerns.

**30.4.2** Contractor will respond to the State's concerns by letter describing proposed corrective actions and proposing completion dates for bringing this Agreement into compliance. Such response will be so as to be received by the State within ten (10) days of the date of receipt of the State's letter.

**30.4.3** The State will notify Contractor in writing by registered mail to Contractor's last known address with a return receipt to the State as to the State's final disposition of the State's concerns.

**30.4.4** Upon receipt of notice of final disposition by Contractor, the State reserves the right to suspend all, or part of, this Agreement, and to withhold further payments, or to prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by Contractor or a decision by the State to terminate in accordance with Section 33.2 (Termination for Default).

**30.5 Suspension for Convenience.** The State may, at any time, by written stop work order to Contractor, require Contractor to stop all, or any part, of the work called for by this Agreement for a period up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the Parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to Contractor, or within any extension of that period to which the Parties shall have agreed, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided for in Section 33.3 (Termination for the Convenience of the State) of this Agreement.

If a stop work order issued under this Section 30 is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the applicable Milestone Payment(s), or both, and this Agreement shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance Section 33.3 (Termination for the Convenience of the State), the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. The State shall not

be liable to Contractor for loss of profits because of a stop work order issued under this Section 30.

**30.6 Correction or Removal.** The State may correct such Deficiencies or nonconformities or cure any Contractor default under this Agreement without prejudice to any other remedy it may have if Contractor fails to correct Deficiencies in the HIX/IES System as required in this Agreement or if Contractor otherwise defaults or fails to perform any provision of this Agreement within ten (10) business days of receipt of notice from the State of such defaults or failures to perform.

### **31. REPRESENTATIONS, ADDITIONAL WARRANTIES AND COVENANTS.**

**31.1 Contractor's Power and Authority.** Contractor represents and warrants that: (a) it has full power and authority to grant the rights herein granted and the execution, delivery and performance of this Agreement by Contractor have been duly authorized by all necessary corporate action; (b) it will not enter into any arrangement with any Third Party, which might abridge any rights of the State under this Agreement; (c) is qualified and registered to transact business in the State of Rhode Island; (d) the execution and performance of this Agreement by Contractor shall not breach any agreement, court order, judgment or decree to which Contractor is a party or by which it is bound; and (e) has, and promises that it shall maintain in effect, all governmental approvals necessary for it to provide the Services contemplated by this Agreement.

**31.2 Performance of the Services.** Contractor represents and warrants to the State that Contractor, directly and/or through its Subcontractors, has the skills, resources and expertise to provide and covenants that it shall perform all Services required under this Agreement in a professional manner, with high quality and in accordance with the standards of care and diligence and the level of skill, knowledge and judgment normally practiced by nationally recognized IT services firm in performing services of a similar nature. If this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance; Without limiting the generality of the foregoing, Contractor represents and warrants to the State that all Services provided under this Agreement shall be provided in a timely, professional and workmanlike manner consistent with the industry standards of quality and integrity; provided, however, that where this Agreement specifies a particular standard or criteria for performance, including applicable SLAs, this warranty is not intended to and does not diminish that standard or criteria for performance.

**31.3 Efficiency and Cost Effectiveness.** Contractor covenants to the State that Contractor shall use best efforts to provide the Services in a cost-effective manner consistent with the required levels of quality and performance. Without limiting the generality of the foregoing, such actions shall include: (a) making

adjustments in the timing of actions and the performance of non-critical functions (consistent with the State priorities and schedules for the Services and Contractor's obligation to meet the Critical Event Deadlines, Milestones and SLAs); (b) scheduling usage of State system resources to low utilization periods where practicable and in Contractor's control; and (c) efficiently using the processes and resources for which the State is charged hereunder, consistent with industry norms.

- 31.4 Compliance with Statutes and Regulations.** Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable State and Federal Laws and Regulations, including statutes, rules, regulations and orders of the United States and the State of Rhode Island and agrees to indemnify the State against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
- 31.5 Financial Condition and Accuracy of Financial Information.** Contractor represents and warrants to the State that Contractor now possesses, and covenants that it shall maintain throughout the Term, sufficient financial resources to comply with all of the requirements of Contractor under this Agreement, including but not limited to any contingent obligations under any Subcontract or vendor contract. If Contractor experiences a change in its financial condition that would materially and adversely affect its ability to perform under this Agreement, then it immediately shall notify the State of such change. Contractor further represents and warrants to the State that all financial statements, reports and other information furnished by Contractor to the State as part of the Proposal or otherwise in connection with the award of this Agreement fairly and materially accurately represent the business, properties, financial condition and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports or other information. Since the respective dates or periods covered by such financial statements, reports or other information, there has been no material adverse change in the business, properties, financial condition or results of operations of Contractor. The State may, at its discretion require Contractor to provide additional and periodic information at any time to demonstrate the continued financial responsibility of Contractor.
- 31.6 No Litigation.** Contractor represents and warrants to the State that as of the Effective Date there is no pending or, to its knowledge, anticipated claim, suit or proceeding that involves Contractor that would materially and adversely affect Contractor's ability to perform its obligations under this Agreement including actions pertaining to the proprietary rights described in Section 18.2.3 (Non-Infringement). At all times during the Term, Contractor shall notify the State, within a reasonable period of time after Contractor's knowledge of any such claim, suit or proceeding initiated by or against Contractor that would materially adversely affect Contractor's ability to perform under this Agreement.

- 31.7 Information Furnished to the State.** Contractor represents and warrants to the State that to the best of its knowledge after due inquiry: (a) the Proposal; (b) all written clarifying responses and other written information submitted by or on behalf of Contractor as part of the RFP process; (c) all pricing information and disclosures; and (d) all the information provided by Contractor made a part of this Agreement contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading.
- 31.8 Covenant Regarding Malicious Code.** Contractor shall cooperate with the State and shall take commercially reasonable actions to prevent the introduction and proliferation of Malicious Code into the State's networks, environments and/or systems (including all subcomponents thereof) or networks, environments and/or systems (including all subcomponents thereof) used by Contractor to provide the Services. Without limiting Contractor's other obligations under this Agreement, in the event Malicious Code is found in any Contractor Intellectual Property, Deliverables, Equipment, Software, networks, environments and/or systems (including all subcomponents thereof): (a) managed, supported and/or provided by Contractor hereunder; (b) used or accessed by Contractor to provide the Services; and/or (c) used or accessed by the State to receive the Services, then in any such case Contractor shall, at no additional cost or charge to the State, eliminate and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of Operational efficiency or loss of Data, to mitigate such losses and restore such Data with generally accepted Data restoration techniques; provided that in the case of clauses (b) or (c), Contractor's obligations shall apply only if such Malicious Code was introduced by Contractor, Contractor's its Subcontractors.
- 31.9 Covenant Against Gratuities.** Contractor represents and warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, its Subcontractors, or any of their agents or representatives, to any officer or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this warranty, the State shall have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items or Services which Contractor is required to furnish under this Agreement shall be borne and paid for by Contractor. The rights and remedies of the State provided in this Section 31 are not exclusive and are in addition to any other rights and remedies provided by law or in equity. For breach or violation of this Section 31, the State shall have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any Deliverables or Services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of the State provided in this Section 31 shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**32. FISCAL ASSURANCES.**

Contractor agrees to segregate all receipts and disbursements pertaining to this Agreement from recipients and disbursements from all other sources, whether by separate accounts or by utilizing a fiscal code system.

Contractor assures a system of adequate internal control will be implemented to ensure a separation of duties in all cash transactions.

Contractor assures the existence of an audit trail which includes: cancelled checks, voucher authorization, invoices, receiving reports and time distribution reports.

Contractor assures a separate subsidiary ledger of Equipment and property will be maintained.

Contractor agrees any unexpended funds from this Agreement are to be returned to the State at the end of the time of performance unless the State gives written consent for their retention.

Contractor shall comply with the following:

OMB Circular A-21: Cost Principles for Educational Institutions

OMB Circular A-87: Cost Principles For State, Local and Indian Tribal Governments

OMB Circular A-102: Grants to and Cooperative Agreements with State and Local Governments

OMB Circular A-110: Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

OMB Circular A-122: Cost Principles for Nonprofit Organizations

If Contractor expends federal funds during the Contractor's fiscal year of \$300,000 or more, then OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations shall apply.

This Agreement may be funded in part with federal funds under CFDA 93.525 and 93.778.

**33. TERMINATION OF CONTRACT.** This Agreement may be terminated by the State as follows, at the State's sole discretion, for any reason listed herein

**33.1 Termination for Occurrence of Contingency.** The State may, in its sole discretion, at any time terminate this, in whole or in part at the State's sole

discretion, in the event of the occurrence of any contingency specified in Section 7 (Contingencies), including if funding is delayed, reduced or eliminated in the current or any future fiscal, by notice of such termination specifying the extent of termination and the effective date thereof (“Notice of Termination”).

- 33.2 Termination for Default.** If Contractor materially breaches this Agreement, then the State shall give Contractor written notice of such default (“Notice of Default”). Contractor shall correct the default within thirty (30) days of its receipt of the Notice of Default or as otherwise required by the State. If the default is not corrected, this Agreement may be terminated, in whole or in part at the State’s sole discretion, immediately by written notice from the State to Contractor. The option to terminate shall be at the sole discretion of the State.
- 33.3 Termination for Convenience of the State.** The State may terminate performance of work under this Agreement for its convenience, i.e., for any reason or no reason, in whole or in part, from time to time, by Notice of Termination. Termination shall be effective as of the close of business on the date specified in the Notice of Termination, which shall be at least thirty (30) days from the date of receipt of the Notice of Termination by Contractor.
- 33.4 Termination for Conflict of Interest.** The State may terminate this Agreement, in whole or in part at the State’s sole discretion, by written notice to Contractor if it is found, after due notice and examination, that there is a violation by any of the Parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Agreement is terminated as provided herein pursuant to a violation by Contractor, the State shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a material breach of this Agreement by Contractor.
- 33.5 Termination for Contractor’s Bankruptcy.** In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets, or shall avail itself of, or become subject to, any proceeding under the federal Bankruptcy Act or any other statute of any State relating to insolvency or the protection of the rights of creditors, the State may, at its option, terminate this Agreement in whole or in part. In the event the State elects to terminate this Agreement under this Section 33, it shall do so by sending Notice of Termination. The date of termination shall be the close of business on the date specified in such notice to Contractor. In the event of the filing of a petition in bankruptcy by or against a principal Subcontractor, Contractor shall immediately advise the State.

#### **34. TERMINATION PROCEDURE.**

Upon termination of this Agreement, in whole or in part, the State, in addition to any other rights provided in this Agreement, may require Contractor to deliver to the State

any property, including Software and Deliverables, for such part of this Agreement as has been terminated and for which Contractor has or will receive payment.

Unless otherwise provided herein, the State shall pay to Contractor the agreed upon price, if separately stated, for the Milestone completed by Contractor and Accepted by State. However, if the State retains part of the Software following termination of this Agreement, including without limitation due to the failure of Contractor to receive Acceptance for such Software, the State shall pay Contractor the reasonable value of such Software as determined by the State in its reasonable judgment; provided that, in no event shall the State pay to Contractor an amount greater than Contractor would have been entitled to for such Software if this Agreement had not been terminated. Failure to agree with such determination shall be a dispute. The State may withhold from any amounts due Contractor for such completed work, Software, other Deliverables or Services such sum as the UHIP Project Coordinator determines to be necessary to protect the State from potential loss or liability.

After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:

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

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;

As soon as practicable, but in no event longer than thirty (30) days after 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 the State to the extent required, which approval or ratification shall be final for the purpose of this Section 34;

Complete performance of such part of this Agreement as shall not have been terminated by the State;

Take such action as may be necessary, or as the UHIP Project Coordinator may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor and in which State has an interest;

Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the UHIP Project Coordinator, any property which is required to be furnished to State and which has been Accepted or requested by the State; and

Provide written certification to the State that Contractor has surrendered to the State all said property.

At the State's option, termination for any reason listed herein may also be considered termination for convenience.

## **35. GENERAL CONDITIONS.**

**35.1 Legal and Regulatory Compliance.** Contractor shall comply with all applicable federal, State and local laws, regulations, policies, procedures, rules, codes, standards and other requirements during the Term, including those described in this Agreement, the RFP, and the following:

**35.1.1** the Affordable Care Act;

**35.1.2** the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations;

**35.1.3** the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

**35.1.4** Internal Revenue Service, Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies including the requirements contained in the certification attached as Exhibit I;

**35.1.5** the Business Associate Agreement attached as Exhibit F;

**35.1.6** requirements contained in Appendix F of the RFP (Certification Regarding Environmental Tobacco Smoke);

**35.1.7** any specific safety requirements contained in this Agreement or as required by applicable State or Federal Laws and Regulations. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with Section 33.2 (Termination for Default); and

**35.1.8** all applicable State and federal manuals, policies, procedures, directives, guidance and other requirements, including the State Medicaid State Medicaid Manual, with all related Action Transmittals (AT) and Information Memoranda (IM), as well as any modifications or changes thereto, and any changes to 42 CFR, 45 CFR, and 95 CFR as they refer to the UHIP and its operations and the use of Contractor's Services under this Agreement.

**35.2 Antitrust Violations.** Contractor recognizes that overcharges resulting from antitrust violations are in actual economic practice usually borne by the State. Therefore, Contractor hereby assigns to the State 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 the State resulting from

antitrust violations commencing after the date of the bid, quotation, or other event establishing the prices under this Agreement.

- 35.3 Contractor Assignment.** Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion thereof or of any right, title, or interest therein without written consent of the Executive Office. Any such purported assignment or transfer shall be void. If approved, any assignee shall be subject to all terms and conditions of this Agreement. No approval by the Executive Office of any assignment may be deemed to obligate the State beyond the provisions of this Agreement. This provision includes reassignment of this Agreement due to change in ownership of Contractor. The Executive Office shall at all times be entitled to assign or transfer all or a portion of its rights, duties, and/or obligations under this Agreement to another governmental agency in the State of Rhode Island upon giving prior written notice to Contractor.
- 35.4 Authority.** Contractor shall have no authority to bind, obligate or commit the State by any representation or promise without the prior written approval of the State.
- 35.5 Authorization.** Contractor represents and warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any Losses arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any Third Party which might abridge any right of the State under this Agreement. Contractor further represents and warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been properly authorized and empowered to enter into this Agreement and to bind Contractor to each and every one of the terms, conditions and obligations set forth herein.
- 35.6 Covenant Against Contingent Fees.** Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Contractor. In the event of breach of this Section 35 by Contractor, the State shall have the right to either annul this Agreement without liability to the State, or, in the State's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.
- 35.7 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. Contractor shall provide all reasonable assistance to, and cooperation with, all other contractors of the State that are providing goods or services to or on behalf of the State relating to the Project or otherwise providing services to the State, including its agents and/or any contractor or contractors as

may be engaged by the State to monitor, validate or verify Contractor's performance. Contractor shall be liable to the State for the actual additional costs incurred due to its failure to cooperate with other contractors of the State. If reasonably requested to facilitate such cooperation, Contractor and any other contractor of the State shall enter into written contract(s) that reasonably limit(s) their disclosure and use of each other's Confidential Information in the course of their performance of services for the State.

**35.8 Conflict of Interest.** Contractor certifies that its officers, members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance of any Services hereunder. Contractor further certifies that in the performance of this Agreement, Contractor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the State.

**35.9 Certifications Related to Lobbying.** Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement Contractor shall complete and submit a disclosure form to report the lobbying. Contractor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers, including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this Agreement was made and entered into. Contractor shall provide certification of compliance with 45 C.F.R. § 93 regulations which restrict lobbying attached as Exhibit H. Contractor shall also provide required disclosure information if Contractor participates in lobbying activities during the Term.

**35.10 Debarment and Suspension.** Contractor certifies to the State that it is not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or state government contracts. Contractor certifies that it will not contract with a Subcontractor or supplier that is so debarred or suspended. Section 15 of

Appendix A of the RFP is incorporated herein by reference with the same effect as if here set forth in full.

**35.11 Dispute Resolution.** In the event of any dispute arising during the Term concerning performance of this Agreement, either Party shall serve notice of such dispute on the other Party, and the dispute shall be decided by the UHIP Project Coordinator, who shall reduce his decision to writing and serve a copy on Contractor. The decision of the UHIP Project Coordinator shall be final and conclusive. The UHIP Project Coordinator's decision in the event of any written notice of dispute shall be final subject to Contractor's right to relief under applicable law.

**35.12 Cost of Litigation.** In the event that the State deems it necessary to take legal action to enforce any provision of this Agreement, Contractor shall bear the cost of such litigation, as assessed by the court, in which the State prevails. The State shall not bear any of Contractor's cost of litigation for any legal actions initiated by Contractor against the State regarding the provisions of this Agreement. Legal action shall include administrative proceedings. Contractor agrees to pay reasonable attorney fees incurred by the State in enforcing this Agreement or otherwise reasonably related thereto.

**35.13 Employment of State Employees.** Contractor shall not knowingly engage on a fulltime, part-time, or other basis during the period of this Agreement, any professional or technical personnel who are or have been at any time during the Term in the employ of the State without the written consent of the State. Further, Contractor shall not knowingly engage in this Project, on a fulltime, part-time, or other basis during the Term, any former employee of the State who has not been separated from the State for at least one (1) year, without the written consent of the State. Contractor shall give priority consideration to hiring interested and qualified adversely affected State employees at such times as requested by the State to the extent permitted by this Agreement or State law.

#### **35.14 Construction**

**35.14.1 Captions and References.** Captions, titles and headings to articles and Sections of this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. Any reference herein to a particular Section number (e.g., "Section 2") shall be deemed a reference to all Sections of this Agreement that bear sub numbers to the number of the referenced Section (e.g., Sections 2.1, 2.1.1, etc.). The terms "this Agreement", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular article, Section or other portion hereof. Unless otherwise specified, "days" means calendar days and the word "dollar" and the symbol "\$" refer to United States Dollars. Any

use of the term “including” in this Agreement shall be construed as if followed by the phrase “without limitation” or “but not limited to”.

**35.14.2 Plurality.** Words importing the singular number mean and include the plural number and vice versa.

**35.14.3 Persons.** Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

**35.14.4 References to Contractor.** As used in this Agreement relating to the provision of Services hereunder, references to “Contractor” also shall apply to Subcontractors, and Project Staff in accordance with the following: (a) a reference to Contractor shall mean at all times that Contractor is responsible for ensuring and causing the compliance of Subcontractors, Affiliates of Contractor and Project Staff with the terms and conditions of this Agreement; (b) with regard to complying with the terms and conditions of this Agreement, references to Contractor include Affiliates of Contractor and Subcontractors to the extent that such Affiliates of Contractor and/or Subcontractors are providing the Services; and (c) with regard to complying with the terms and conditions of this Agreement, references to Contractor include the applicable Project Staff who are providing the Services. Notwithstanding the foregoing, under no circumstances shall Affiliates of Contractor, Subcontractors or Project Staff be eligible for or exercise, use or enjoy any rights or benefits of Contractor under the terms and conditions of this Agreement, unless otherwise explicitly stated in the applicable term or condition of this Agreement.

**35.14.5 References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

**35.14.6 Interpolation.** If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

**35.14.7 Accounting and Financial Terms.** All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

**35.14.8 Imputation of Knowledge to the State.** The State will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Executive Office) who have responsibilities in connection with the conduct of the performance of this Agreement.

**35.14.9 Knowledge Deemed Held by Contractor.** Without limiting the extent of its actual knowledge, Contractor shall for all purposes of this Agreement be deemed to have such knowledge with respect to the Services as is held (or ought reasonably to be held) by all persons involved in carrying out the Services including Contractor, the Affiliates of Contractor, Subcontractors, and the agents, employees or workers of any of them.

**35.14.10 Statutory Rights.** Nothing in this Agreement affects any statutory rights granted or terms required, in either case, by mandatory statutory law that cannot be waived or limited by contract. If there is a conflict between the terms in this Agreement and mandatory statutory law, mandatory statutory law shall prevail.

**35.14.11 Neither Party Considered Drafter.** Despite the possibility that one Party may have prepared the initial draft of this Agreement or played the greater role in the preparation of subsequent drafts, the Parties agree that neither of them shall be deemed the drafter of this Agreement, and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other Party.

**35.15 Due Diligence Complete.** Contractor hereby acknowledges and agrees that it has reviewed the State's requirements set forth in this Agreement, reviewed the States Policies and Rules, and has completed all due diligence it deems necessary to perform and manage the Services for the State in conformance with the terms of this Agreement. Contractor hereby acknowledges that Contractor has obtained, through the State or otherwise, all information and documents that Contractor deems necessary for Contractor to negotiate the terms and conditions of this Agreement and to enter into and perform its obligations under this Agreement in accordance with its terms (collectively, the "Due Diligence Information"). Contractor shall not be relieved of any of its obligations under this Agreement nor shall the payments, Services or SLAs, or any other terms and conditions of this Agreement be adjusted, as a result of: (a) Contractor's failure to review the Due Diligence Information; (b) any inaccuracies, errors, or omissions contained in the Due Diligence Information; and/or (c) Contractor's failure to request any information or documents from the State.

**35.16 Independent Contractor.** Contractor, Project Staff, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an

independent capacity and not as officers, employees, agents or servants of the State. Contractor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Contractor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance, and pension or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Contractor shall not assign, convey, transfer, or delegate any of its responsibilities and obligations under this Agreement to any person, corporation, partnership, association or entity without expressed written consent of the State.

**35.17 News Releases.** Contractor shall not issue any news releases without the prior written approval of the State.

**35.18 Contract Modification.** No amendment, modification, waiver, or variation of this Agreement shall be effective or binding made in writing, signed by authorized representative of the Parties, and approved as required hereunder. No oral understanding or agreement not incorporated in this Agreement is binding on any of the Parties.

**35.19 Waiver of Rights.** Any action or inaction by the State or the failure of the State on any occasion to enforce any right or provision of this Agreement, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

**35.20 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 (5) business days, give notice thereof, including all relevant information with respect thereto, to the other Party.

**35.21 Notices.** Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be 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 and return receipt requested, to the Parties at the following addresses:

Contractor at:

Contractor Name] Attention: [Name] [Street Address] [City]

[State and Zip]

[Phone and fax numbers]

To State at:

State of Rhode Island

Attention: [*Name*]

[*Street Address*]

[Cranston]

[Rhode Island, *zip*]

[*Phone and fax numbers*]

The notice address as provided herein may be changed by notice given as provided above.

**35.22 Remedies.** No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, 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.

**35.23 Severability.** Contractor and the State agree that if any provision of this Agreement is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

**35.24 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 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 Section 26 (Indemnification), Section 27 (Limitation of Liability), Section 25 (Confidentiality), and Section 23 (Intellectual Property) shall survive the termination of this Agreement.

**35.25 Third Party Beneficiaries.** The State and its agencies shall be considered as Third Party beneficiaries for purposes of this Agreement. Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the Parties hereto and not for any other person:

- 35.26 Waiver.** Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the Parties hereto.
- 35.27 Applicable Law.** This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of Rhode Island; venue of any action brought with regard to this Agreement shall be in Providence County, Providence, Rhode Island, and Contractor accepts the personal jurisdiction of such courts.
- 35.28 Complete Integration.** Contractor acknowledges that it has read this Agreement and the attachments and documents incorporated herein, understands them and agrees to be bound by their terms and conditions. The terms and conditions of this Agreement are intended by the Parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior contemporaneous agreement unless such agreement is signed by both Parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions, and no extrinsic evidence whatsoever may be introduced in any judicial proceeding, which may involve this Agreement. This Agreement may not be modified, except by mutual consent executed in writing by both Parties as described in Section 35.20 (Contract Modification).

[Signature Page Follows]

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 Execution Date.

THE EXECUTIVE OFFICE OF  
HEALTH AND HUMAN SERVICES

CONTRACTOR

By:

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

THE DEPARTMENT OF ADMINISTRATION

By:

Printed Name: Richard Licht

Title: Director

Date:

## EXHIBIT A

### Definitions

Capitalized terms used in this Agreement, including in any schedules, exhibits, attachments, addenda and other documents attached to or otherwise made a part of this Agreement shall be given the meaning shown below, unless context requires otherwise or a unique meaning is otherwise specified. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings ascribed to them therein. The terms defined below include the plural as well as the singular.

**"Acceptance"**: A notice from the State to Contractor that, as applicable: the Deliverables, Services, Software, Equipment, and the HIX/IES System have satisfied their applicable Acceptance Tests.

**"Acceptance Criteria"**: The measures against which Deliverables, Services Software, Equipment, Milestones and the HIX/IES System shall be evaluated and the grounds for the State's Acceptance or rejection thereof.

**"Acceptance Test Plan"**: The written plan or process that describes in detail the Acceptance Tests to be performed with corresponding Acceptance Criteria.

**"Acceptance Tests"**: Tests performed during the Performance Testing Period which are intended to determine compliance of the Deliverables, Services, Equipment, Software and the HIX/IES System with the Specifications and all other attachments incorporated herein by reference and to determine the reliability of the Equipment.

**"Account Manager"**: The account manager designated by Contractor, as described in Section 8.2.3 (Account Manager).

**"Affiliate"**: An entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with another entity. As used herein, "control" means the power to, directly or indirectly, direct the management or affairs of an entity, and "own" or "ownership" means the beneficial ownership, directly or indirectly, of a majority or minority of the voting equity securities or other equivalent voting interests of the entity. With respect to the Executive Office, the term "Affiliate" shall be deemed to include each and every federal, state and/or local agency which is intended to receive any of the benefits of this Agreement as set forth herein or as described in the RFP.

**"Agreement"**: This Unified Health Infrastructure Agreement, the and all schedules, appendices, addenda and other documents attached to this Agreement, the RFP, and the Proposal which are all incorporated herein by reference.

**"Application Program"**: A computer program that is intended to be executed for the purpose of performing useful work for the user of the information being processed.

**“Attachment”:** A mechanical, electrical, or electronic interconnection to the vendor-supplied Machine or HIX/IES System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the vendor.

**“Business Associate Agreement”:** The business associate agreement signed by Contractor and attached as Exhibit F.

**"Change Order":** A written form used by the Parties to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 22 (Change Orders).

**“Children’s Health Insurance Program” or “CHIP”:** Rhode Island’s Medicaid and Children’s Health Insurance program.

**“Claims”:** Any civil, criminal, administrative or investigative suit, action or proceeding brought by a Third Party against the State and State Indemnitees.

**“Commercial Software”:** Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Agreement; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Agreement.

**“Confidential Information” :** Information of each party, regardless of its form, that is not subject to public disclosure under applicable State and Federal Laws and Regulations, including, but not limited to, R.I.G.L. 38-2-2(5). In the case of the State, Confidential Information also shall include State Intellectual Property, the Data, attorney-client privileged materials, attorney work product, information prohibited from disclosure under HIPAA, financial, statistical, personal, technical, and other data and information relating to the State's operation which are designated confidential by the State and made available to Contractor in order to carry out this Agreement, or which become available to Contractor in carrying out this Agreement,

**"Contractor":** The entity identified in the preamble of this Agreement performing Services under this Agreement on behalf of Contractor, including any of its officers, agents, Subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement as the context may require.

**“Contractor’s Intellectual Property”:** Except as otherwise provided herein, collectively, the Intellectual Property used in connection with the Services that was owned, acquired or developed by or on behalf of Contractor prior to the Effective Date. Contractor’s Intellectual Property does not include Custom Software.

**“Contractor Pre-Existing Software”:** Software owned, acquired or developed by or on behalf of Contractor prior to the Effective Date that is provided or used by Contractor in connection with the HIX/IES System, incorporated in any manner in the HIX/IES System, or necessary for operation, repair, maintenance and support of the HIX/IES System. For the avoidance of doubt, any modifications, stored procedures, notes, triggers, user roles and the like to Contractor’s Pre-Existing Software developed by Contractor, any Subcontractor or any Third Party under or in connection with this Agreement shall constitute Custom Software, and not Contractor Pre-Existing Software.

**"Contractor Project Director":** The individual chosen by Contractor and approved by the State with management responsibilities for Contractor, as described in Section 8.2.1.

**"Critical Event(s)":** The critical events Contractor must achieve by the stated Deadlines as described in Sections 4 and 5 of this Agreement (Phases, Critical Events Deadlines).

**"Custom Software":** Software that doesn’t meet the definition of Commercial Software or Contractor Pre-Existing Software, including custom programming, stored procedures, notes, triggers, and user roles developed by Contractor or any Third Party pursuant to this Agreement, any modifications and changes to the Commercial Software or Contractor Pre-Existing Software by Contractor, any Subcontractor or any Third Party under or in connection with this Agreement, all intermediate and partial versions thereof, and all specifications, flow charts, notes, outlines and similar material created in connection therewith.

**"Data":** The State's records, files, forms, data and other documents that will be converted by Contractor for Processing by the Software.

**"Data Processing Subsystem":** A complement of Contractor- furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

**"Data Processing HIX/IES System (HIX/IES System)":** The total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group. This term includes without limitation all tangible and/or intangible assets used to perform the services to be rendered by Contractor under this Agreement.

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

**“Deadline(s)”:** The dates described in this Agreement, the RFP, the Project Plan and Schedule for the delivery of the Deliverables to the State, or achievement of Milestones or Critical Events, as applicable.

**"Deficiency" or "Deficient":** A failure of the HIX/IES System to conform to its Specifications, including the RFP and the Proposal, or any failure of Contractor to perform the Services in accordance with the Service Level Standards.

**"Deliverable(s)":** The deliverables which result from the Services including the deliverables described in Appendix L of the RFP, Goods, Software, Information Technology, telecommunications technology, Documentation, Software code, tangible outcomes, and other items (e.g. reports) to be delivered pursuant to this Agreement, including any such items furnished incident to the provision of the Services. This term includes all tangible and/or intangible assets used to perform the Services to be rendered by Contractor under this Agreement.

**"Department of Administration":** The Rhode Island Department of Administration.

**"Department of Human Services" or "DHS":** The State of Rhode Island Department of Human Services.

**"Disclosing Party":** The Party that has disclosed Confidential Information to the other Party.

**"Division":** The Rhode Island Department of Administration, Division of Purchases.

**"Documentation":** All information that describes the installation, operation, and use of the Software, the Equipment, the HIX/IES System, either in printed or electronic format, including, without limitation, operations, technical and User manuals.

**"Effective Date":** The effective date of this Agreement as set forth in the preamble hereto.

**"Enhancements":** Updates, additions, and changes to, and new releases for the Software or Equipment.

**"Equipment":** An all-inclusive term which refers either to individual Machines or to a complete Data Processing HIX/IES System or subsystem, including its Hardware and Operating Software (if any).

**"Equipment Failure":** A malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

**"Execution Date":** The latest of the date the Parties execute this Agreement, and the Division approves this Agreement.

**“Executive Office of Health and Human Services” or the “Executive Office”:** The State of Rhode Island Executive Office of Health and Human Services.

**“Force Majeure Event”:** The events described in Section 10.4.1 pursuant to which Contractor may be excused from performance; and the events described in Section 10.4.2, pursuant to which the State may be excused from performance.

**“Gate Review”:** Federal government assessment of the State’s readiness of the HIX/IES System and ability to implement the Exchange by applicable federal deadlines.

**“Goods”:** All types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

**"Hardware":** Refers to computer Equipment and is contrasted with Software. See also Equipment.

**“HIPAA”:** The Health Insurance Portability & Accountability Act of 1996, Public Law 104-191 Public Law 104-191 and its implementing regulations.

**"HIX/IES System" or “Health Insurance Exchange/Integrated Eligibility System”:** The complete collection of Hardware, Software, Deliverables and Services as described in this Agreement, integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment, and performing in accordance with this Agreement.

**“Human Service Programs”:** Non-MAGI based Medicaid and other human programs administered by the State including Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families (Rhode Island Works), Child Care, General Public Assistance, and State Supplemental Payments for SSI.

**"Information Technology":** All electronic technology systems and services, automated information handling, HIX/IES System design and analysis, conversion of Data, computer programming, information storage and retrieval, telecommunications which include voice, video, and Data communications, requisite HIX/IES System controls, simulation, electronic commerce, and all related interactions between people and Machines.

**"Installation Date":** The date specified in the Project Plan by which Contractor must have the ordered Equipment ready (certified) for use by the State.

**“Intellectual Property”:** Any (a) formulae, algorithms, methodologies, processes, process improvements, procedures, designs, ideas, concepts, research, discoveries, work product, materials, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, and technology; (b) software, databases, tools, and machine-readable texts and files; and (c) literary work or other work of authorship, including documentation, reports, drawings, charts, graphics and other written documentation, together with all patents, copyrights, trademarks, service marks, trade secrets and other Intellectual Property rights in or appurtenant to any of the foregoing.

**“Key Staff”:** Contractor's officers, agents, employees, suppliers, laborers, consultants and any other person performing a key role in the Project on behalf of Contractor.

**“Legacy Eligibility System”:** The existing system which is used by the State and which will be replaced by the HIX/IES System.

**“Liquidated Damages”:** The liquidated damages assessable against Contractor for failure to meet Milestones, Critical Events Deadlines, warranties or SLAs, including the SLAs specified in Appendix S of the RFP and this Agreement.

**“Losses”:** Settlements, judgments, awards, fines, penalties, sanctions, interest, liabilities, losses, costs, damages and expenses, including reasonable attorney’s fees and disbursements and court costs.

**“Machine”:** An individual unit of a Data Processing HIX/IES System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

**“Machine Alteration”:** Any change to a Contractor -- supplied Machine which is not made by Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.

**“MAGI”:** Modified Adjusted Gross Income.

**“Malicious Code”:** Any (a) virus, worm, code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt disable or interfere with operation of the Software, code, program, or sub-program, itself; (b) device, method, or token that permits the circumvention of the normal security of the Software or the system containing the code; or (c) any adware, spyware, Internet bots, malware, bugs, web bugs or other surreptitious code.

**“Maintenance and Operations” or “Maintenance”:** The maintenance and operations to be performed by Contractor under this Agreement.

**“Milestone(s)”:** The Milestones described in this Agreement and the RFP.

**“Milestone Payment(s)”:** The price(s) to be paid by the State for each Milestone as described in Section 6.1 (Milestone Payments).

**“Notice”:** A written document given by a party to the other in accordance with Section 35.23 (Notice).

**“Office of the Health Insurance Commissioner” or “OHIC”:** The State of Rhode Island Office of the Health Insurance Commissioner.

**"Operational":** The condition when the HIX/IES System (or portion thereof as applicable) is totally functional in accordance with its Specifications and usable for its purposes in the daily operations of the State, and all of the Data has been loaded into the HIX/IES System and is available for use by the State.

**“Operating Software”:** Routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

**“Party” or “Parties”:** Individually or collectively, the Executive Office and/or Contractor.

**“Patient Protection and Affordable Care Act” or the “Affordable Care Act” or “ACA”:** The Patient Protection and Affordable Care Act consolidating the amendments made by title X of the Act and the Health Care and Education Reconciliation Act of 2010 (“HCERA”; Public Law 111–152)

**“Performance Bond” or “Bond”:** A bond securing Contractor's performance of its Agreement obligations and other potential liabilities to the State from the Effective Date until HIX/IES System Acceptance, as described in Section 29 (Bond).

**"Performance Testing Period":** A period of time during which the State, by appropriate tests and production runs, evaluates the performance of the Deliverables, Software, Equipment, and the HIX/IES System prior to its Acceptance by the State.

**"Phase”:** The two phases during which the HIX/IES System will be implements, as described Section 3 (Phases, Critical Events Deadlines) and in the RFP.

**"Principal Period of Maintenance”:** Any nine consecutive hours per day (usually between the hours of 7:00 AM and 6:00 PM) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

**"Programming Aids”:** Contractor-supplied programs and routines executable on Contractor’s Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines (e.g., tape-to-disk routines, disk-to-print routines, etc.).

**"Program Product”:** Programs, routines, subroutines, and related items which are proprietary to Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

**"Project"**: The planned undertaking regarding the entire subject matter of this Agreement and the activities of all Parties related hereto.

**"Project Staff"**: Contractor's and Subcontractor's project staff assigned to work on this Project including Contractor Project Director, Key Staff, employees, representatives, contractors and agents, consultants and other individuals.

**"Property"**: All State real and personal property, including as described in Section 9 (State Property).

**"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. The Project Plan, as it may change from time to time, is incorporated herein as part of this Agreement.

**"Proposal"**: Contractor's written proposal submitted in response to the RFP.

**"Receiving Party"**: The Party that has received Confidential Information from the other Party.

**"Records"**: Contractor's and Subcontractor's records of and supporting documentation for all payments, all Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor during the course of the performance of its obligations under this Agreement.

**"Report(s)"**: Documents provided by Contractor to the State regarding Project activities, events and Services provided.

**"Request for Proposals"**: The Request for Proposals #7449637 for the Unified Health Infrastructure Project dated April 16, 2012, and any addenda thereto.

**"Retainage"**: The fifteen percent (15%) retainage to be retained by the State for each Milestone Payment (except for Maintenance and Operations which shall not be subject to Retainage) payable upon one (1) year after Acceptance of Milestone 22.

**"Rhode Island Health Benefits Exchange", "Exchange" or "HIX"**: The Rhode Island Health Benefits Exchange established pursuant to Executive Order 11-09 signed by Governor Lincoln Chafee.

**"Schedule"**: The dates described in the Project Plan for deadlines for performance of Services and other Project events and activities, including Milestones and Critical Events Deadlines.

**"Services"**: The tasks and services to be performed by Contractor on the Project.

**“SLA(s)”**: The service levels agreements contained in Appendix X of the RFP and in this Agreement.

**"Software"**: An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by Contractor, including Operating Software, Custom Software, Commercial Software, Contractor Pre-Existing Software, Programming Aids, Application Programs, and Program Products, all in source code and object code formats. Enhancements provided by Contractor during Operations and Maintenance, if any, in object code and source code formats will be included as part of the Software.

**"Source Code"**: Computer software programs, scripts, routines and sub-routines written in human readable form (although it may also be written in a software programming language) intelligible to trained software programmers, and which may be used by itself or through use of a compiler to create executable software code, including but not limited to any tools, such as linkers and libraries, that may be used in producing the executable software code.

**"Specifications"**: The written specifications that define the requirements and Acceptance Criteria, as described in: the RFP; the Proposal; the Documentation; all applicable State and Federal Laws and Regulations; State technical standards; and subsequent State-approved Deliverables. The Specifications are, by this reference, made a part of the Agreement.

**“Start of Operations”**: \_\_\_\_\_

**“State”**: The government of the State of Rhode Island, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Rhode Island.

**“State and Federal Laws and Regulations”**: All applicable federal and State laws, rules, regulations, ordinances, guidance, directives, orders, policies, practices, controls, procedures, standards, as promulgated, supplemented and/or amended from time to time, including the ACA and HIPAA.

**“State Indemnitees”**: The State, each of its agencies, its officers, employees, agents, attorneys, representatives, consultants, successors and assigns.

**“State Intellectual Property”**: Collectively (a) the Intellectual Property, that is (i) owned, acquired or developed by the State prior to or after the Effective Date, or (ii) licensed or leased by the State from a Third Party prior to or after the Agreement Effective Date.

**"State Project Manager"**: The individual chosen by the State with overall management responsibilities for the Project for the State.

**"Subcontractor"**: A person, partnership, company, or other entity not in the employment of or owned by Contractor, which is performing Services under this Agreement with or on behalf of Contractor.

**“Task Order”:** The task orders described in the RFP.

**“Term”:** The term of this Agreement as specified in Section 2, including any extensions thereof.

**“Third Party”:** Persons, corporations and entities other than the State, Contractor or any of their Affiliates.

**“Total Purchase Price”:** The Total Purchase Price shall have the meaning given to it in Section 6.3.

**“UHIP”:** Unified Health Infrastructure Project.

**“UHIP Project Coordinator”:** Plays the pivotal role in the management of the integrated Project. Reporting to the Department of Administration and responsible to the UHIP Leadership Team, the coordinator will ensure that Contractor complies with this Agreement and acts responsively in accordance with the designated task leads from the participating agencies. The UHIP Project Coordinator will also ensure that Project resources are appropriately managed, will facilitate Project communication, mitigate Project team and Contractor issues, and ensure appropriate governance and structures are in place. The UHIP Project Coordinator must serve the role of liaison, navigating the implications of the leadership team’s guidance as it pertains to the work of the Project team and Contractor.

**“U.S. Intellectual Property Rights”:** Intellectual Property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

**"Year 2000 Compliance":** The Software operates accurately in accordance with its Specifications and in the manner in which it was intended as it relates to date-related operations when given a valid date containing century, year, month and day. For purposes of Section 14.3 of the Agreement, the term "accurately" shall be defined to include: 1) calculations using dates must execute using a four-digit year; 2) functionality: on-line/batch, including but not limited to entry, inquiry, maintenance and updates must support four-digit year processing; 3) interfaces and reports must support four-digit year processing; 4) successful translation into year 2000 with the correct system date (e.g., 1/1/2000) without human intervention; 5) processing with a four-digit year after transition to any beyond the year 2000 without human intervention; 6) providing correct results in forward and backward date calculation spanning century boundaries; 7) leap year must be calculated correctly; and 8) processing correct results in forward and backward date calculations spanning century boundaries must be provided, including the conversion of previous years currently stored as two digits.

**EXHIBIT B**

**Certification Regarding Drug-Free Workplace**

**[See Attached Certificate]**

## **Appendix D. Drug-Free Workplace Policy and Contractor Certificate of Compliance**

### **Drug-Free Workplace Policy**

Drug use and abuse at the workplace or while on duty are subjects of immediate concern in our society. These problems are extremely complex and ones for which there are no easy solutions. From a safety perspective, the users of drugs may impair the well-being of all employees, the public at large, and result in damage to property. Therefore, it is the policy of the state that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace. Any employee(s) violating this policy will be subject to discipline up to and including termination. An employee may also be discharged or otherwise disciplined for a conviction involving illicit drug behavior, regardless of whether the employees conduct was detected within employment hours or whether his/her actions were connected in any way with his or her employment. The specifics of this policy are as follows:

Any unauthorized employee who gives or in any way transfers a controlled substance to another person or sells or manufactures a controlled substance while on duty, regardless of whether the employee is on or off the premises of the employer will be subject to discipline up to and including termination.

The term "controlled substance" means any drugs listed in 21 USC, Section 812 and other federal regulations. Generally, all illegal drugs and substance are included, such as marijuana, heroin, morphine, cocaine, codeine or opium additives, LSD, DMT, STP, amphetamines, methamphetamines, and barbiturates.

Each employee is required by law to inform the agency within five (5) days after he/she is convicted for violation of any federal or state criminal drug statute. A conviction means a finding of guilt (including a plea of nolo contendere) or the imposition of a sentence by a judge or jury in any federal or state court.

The employer (the hiring authority) will be responsible for reporting conviction(s) to the appropriate federal granting source within ten (10) days after receiving notice from the employee or otherwise receives actual notice of such conviction(s). All conviction(s) must be reported in writing to the office of personnel administration (OPA) within the same time frame.

If an employee is convicted of violating any criminal drug statute while on duty, he/she will be subject to discipline up to and including termination. Conviction(s) while off duty may result in discipline or discharge.

The state encourages any employee with a drug abuse problem to seek assistance from the Rhode Island Employee Assistance Program (RIEAP). Your department personnel officer has more information on RIEAP.

The law requires all employees abide by this policy.

### **Contractor Certificate of Compliance**

I, \_\_\_\_\_, a contractor doing business with the State of Rhode Island, hereby acknowledge that I have received a copy of the State's Policy regarding the maintenance of a Drug-Free Workplace. I have been informed that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance (to include but not be limited to such drugs as marijuana, heroin, cocaine, PCP, and crack, and may also include legal drugs which may be prescribed by a licensed physician if they are abused), is prohibited on the State's premises or while conducting state business. I acknowledge that my employees must report for work in a fit condition to perform their duties.

As a condition for contracting with the State, as a result of the Federal Omnibus Drug Act, I will require my employees to abide by the State's policy. Further, I recognize that any violation of this policy may result in termination of the contract.

\_\_\_\_\_  
Authorized Agent/Signature Provider

\_\_\_\_\_  
Date

**EXHIBIT C**

**Subcontractor Compliance**

**[See Attached Certificate]**

**Appendix E. Subcontractor Compliance**

**Subcontractor Compliance**

I, \_\_\_\_\_, a contractor doing business with the State of Rhode Island, hereby certify that all approved subcontractors performing services under the terms of this agreement will have executed written contracts with this agency, and all contracts will be maintained on file and produced upon request. All contracts must contain language identical to the provisions of this agreement as follows:

- Par. \_\_\_\_\_ Non-liability for Personal Injuries
- Par. \_\_\_\_\_ Non-discrimination in Employment and Services
- Par. \_\_\_\_\_ Drug-free Workplace Policy

---

Authorized Agent/Signature Provider Date

**EXHIBIT D**

**Certification Regarding Environmental Tobacco Smoke**

**[See Attached Certificate]**

## **Appendix F. Certification Regarding Environmental Tobacco Smoke**

### **Certification Regarding Environmental Tobacco Smoke**

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-grantees shall certify accordingly.

---

Authorized Agent/Signature ProviderDate

**EXHIBIT E**

**Certification Regarding Debarment, Suspension and Other Responsibility  
Matters Primary Covered Transactions**

**[See Attached Certificate]**

## APPENDIX G

### **Instructions for Certification Regarding Debarment, Suspension, and Other Responsibility Matters — Primary Covered Transactions and Certification**

By signing and submitting the proposal, the prospective primary participant is providing the certification set out below.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the department's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification of explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Department. The Department may terminate this transaction for cause or default.

The prospective primary participant shall provide immediate written notice to the Department if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of the rules implementing executive order: 12549: 45 CFR Part 76.

The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department. The prospective primary participant further agrees by submitting this proposal that it will include the clause title "Certification regarding debarment, suspension, ineligibility and voluntary exclusion - lower tier covered transactions, provided by DHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement list (of excluded parties).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department may terminate this transaction for cause of default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transaction**

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (B) of this certification; and

Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Authorized Agent/Signature

Provider Date

**EXHIBIT F**

**Business Associate Agreement**

**[See Attached Business Associate Agreement]**

**[Insert Executed Business Associate Agreement]**

**EXHIBIT G**

**ESCROW AGREEMENT**

**[See Attached Escrow Agreement]**



## Three-Party Escrow Service Agreement

Iron Mountain provides flexible, comprehensive escrow services that generate the type of agreement that gives our customers the right level of protection in each unique situation. Iron Mountain is different from other providers in the industry because of our customer-driven approach to technology escrow. With Iron Mountain, the customer's experience is focused on defining his or her own unique needs for a comprehensive service—not on studying and struggling to comprehend the terms, options and add-ons of a variety of pre-packaged agreements.

The benefit of this approach is that it can adapt to meet the needs of a single customer or application today, as well as future ones with requirements that may be quite different. With Iron Mountain, one set of comprehensive escrow services with elective components suited for every situation, covers all the key issues for technology escrow.

At Iron Mountain, we take intellectual property protection seriously and deliver our services with the integrity you and your clients would expect – and, in fact, demand, from a trusted and neutral third party. We don't just vault technology. We provide complete intellectual property management services.

### Purpose

*Iron Mountain's Three-Party Escrow Service Agreement is generally used when:*

- Both parties agree that the highest level of escrow protection is needed.
- The beneficiary needs to sign the agreement.
- The beneficiary needs to negotiate the terms of the agreement and the unique release conditions.
- The beneficiary wants technical verification of the deposit materials.

### Key Features

*Iron Mountain's Three-Party Escrow Service Agreements may include any of the following:*

- Secure real-time online account management with Escrow Management Center 24x7x365.
- When elected, verification of deposit materials. This includes documentation of the hardware, software environment, utilities, compilers and operating systems needed to access the deposit materials.
- Electronic Depositing of materials.
- Additional advanced types of technical verification including build and usability testing.
- Deposit Tracking Notification – periodic notices to depositors and beneficiaries related to deposit material.
- Escrow Expert consulting services.

*(PLEASE DELETE THIS COVER PAGE BEFORE EXECUTING THE AGREEMENT)*

**This template will be accepted until December 31, 2009, after that date,  
Iron Mountain reserves the option to update terms and conditions.**



EFFECTIVE DATE: \_\_\_\_\_

DEPOSIT ACCOUNT NUMBER: \_\_\_\_\_

### THREE-PARTY ESCROW SERVICE AGREEMENT

#### 1. Introduction.

This Three Party Escrow Service Agreement (the "**Agreement**") is entered into by and between \_\_\_\_\_ (the "**Depositor**"), and by \_\_\_\_\_ (the "**Beneficiary**") and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("**Services**"). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("**Work Request**") via written instruction or the online portal maintained at the website located at [www.ironmountainconnect.com](http://www.ironmountainconnect.com), or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "**Iron Mountain Website**").
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement ("**License Agreement**") conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

#### 2. Depositor Responsibilities and Representations.

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("**Deposit Material**") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term (as defined below) of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.
- (d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

#### 3. Beneficiary Responsibilities and Representations.

- (a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Iron Mountain's obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than Iron Mountain's inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.
- (b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and consents to Iron Mountain's use of a subcontractor if needed to provide such Services. Beneficiary

warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

**4. Iron Mountain Responsibilities and Representations.**

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.
- (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by all the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.
- (g) Should transport of Deposit Material be necessary in order for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

**5. Payment.**

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Iron Mountain all fees as set forth in the Work Request ("**Service Fees**"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). The Paying Party is liable for any taxes (other than Iron Mountain income taxes) related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

**6. Term and Termination.**

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") (collectively the "**Term**"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.
- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. Unless otherwise directed by Depositor, Iron Mountain will use a commercially recognized overnight common carrier such as Federal Express or United Parcel Service to return the Deposit Material to the Depositor. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.

- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 9) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

**7. Infringement Indemnification.**

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend and hold Beneficiary and Iron Mountain (the "Indemnified Party") fully harmless against any claim or action asserted against the Indemnified Party (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's proper administration of this Agreement or Beneficiary's use of the Deposit Material, within the scope of this Agreement, infringes any patent, copyright, license or other proprietary right of any third party. When the Indemnified Party has notice of a claim or action, it shall promptly notify Depositor in writing. At its option, Depositor may elect to control defense of such claim or action and may elect to enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of the Indemnified Party without such Party's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

**8. Warranties.**

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH THE MEASURES IRON MOUNTAIN TAKES TO PROTECT ITS OWN INFORMATION OF A SIMILAR NATURE, BUT IN NO CASE LESS THAN A REASONABLE LEVEL OF CARE. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.
- (b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.

**9. Confidential Information.**

Iron Mountain shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any Party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

**10. Limitation of Liability.**

EXCEPT FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (IV) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 7, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS.

**11. Consequential Damages Waiver.**

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

**12. General.**

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (e) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("Authorized Person" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement.
- (f) Right to Rely on Instructions. With respect to Release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person(s). In all other cases, Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) Notices. All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or through messenger or commercial express delivery service.
- (i) No Waiver. No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any other right under this Agreement.
- (j) Assignment. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of Parties.
- (k) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes

applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the other Parties.

- (l) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) Attorneys' Fees. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (o) Disputes. Any dispute, difference or question relating to or arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party hereof will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If however, Depositor or Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Beneficiary.
- (p) Regulations. All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import, export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the Parties hereto.
- (r) Entire Agreement. The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of all the Parties.
- (s) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) Survival. Sections 6 (Term and Termination), 7 (Infringement Indemnification), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability), 11 (Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

(balance of this page left intentionally blank – signature page follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

**DEPOSITOR**

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

**BENEFICIARY**

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	<a href="mailto:ipnclientservices@ironmountain.com">ipnclientservices@ironmountain.com</a>

**NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW**

**DEPOSITOR -- AUTHORIZED PERSON(S)/NOTICES TABLE**

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

**BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE**

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

All notices should be sent to [ipmclientservices@ironmountain.com](mailto:ipmclientservices@ironmountain.com) OR

Iron Mountain Intellectual Property Management, Inc., Attn: Client Services  
2100 Norcross Parkway, Suite 150  
Norcross, Georgia, 30071, USA.  
Telephone: 800-875-5669  
Facsimile: 770-239-9201

**BILLING CONTACT INFORMATION TABLE**

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

**DEPOSITOR**

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

**BENEFICIARY**

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

**MUST BE COMPLETED EXHIBIT A - Escrow Service Work Request - Deposit Account Number:**

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE- TIME FEES	ANNUAL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
<input checked="" type="checkbox"/> Setup Fee	Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.	SXXX		<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Deposit Account Fee- including Escrow Management Center Access	Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee of SXXX USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.		SXXX	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Beneficiary Fee including Escrow Management Center Access	Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.		SXXX	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.	N/A	SXXX	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add File List Test	Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited FTP.	SXXX	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.	SXXX or based on SOW if custom work required	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 2 - Compile Test	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 3 - Binary Comparison	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 4 - Full Usability	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remote Vaulting	Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.	N/A	SXXX	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Material" the Escrow Service Agreement.	SXXX	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	SXXX/hour	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Custom Contract Fee	Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	SXXX	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

**EXHIBIT B**  
**DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: \_\_\_\_\_ DEPOSIT ACCOUNT NUMBER: \_\_\_\_\_

DEPOSIT NAME \_\_\_\_\_ AND DEPOSIT VERSION \_\_\_\_\_

(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Electronic Deposit			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted?  Yes or  No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
PRINT NAME:	PRINT NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

**Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:**

Iron Mountain Intellectual Property Management, Inc. Telephone: 800-875-5669  
 Attn: Vault Administration Facsimile: 770-239-9201  
 2100 Norcross Parkway, Suite 150  
 Norcross, GA 30071

FOR IRON MOUNTAIN USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)	

## EXHIBIT C

### RELEASE OF DEPOSIT MATERIAL

Deposit Account Number: \_\_\_\_\_

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(h) Notices.

1. Release Conditions. The Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as "**Release Conditions**"):
  - (i) Depositor's breach of the license agreement or other agreement between the Depositor and the Beneficiary regulating the use of the Deposit Material covered under this Agreement; or
  - (ii) Failure of the Depositor to function as a going concern or to operate in the ordinary course; or
  - (iii) Depositor is subject to voluntary or involuntary bankruptcy.
2. Release Work Request. A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor's Authorized Person(s).
3. Contrary Instructions. From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor Authorized Person(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured ("**Contrary Instructions**"). Contrary Instructions shall be on company letterhead and signed by a Depositor Authorized Person. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary's Authorized Person(s). Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Person(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary with instructions to release the Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.
4. Release of Deposit Material. If Iron Mountain does not receive timely Contrary Instructions from a Depositor Authorized Person, Iron Mountain is authorized to release Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.
5. Termination of Agreement Upon Release. This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.
6. Right to Use Following Release. Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

**EXHIBIT Q**  
**ESCROW DEPOSIT QUESTIONNAIRE**

**Introduction**

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

**Purpose of Questionnaire**

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

**Instructions**

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain to the attention of [verification@ironmountain.com](mailto:verification@ironmountain.com)

**Escrow Deposit Questionnaire**

**General Description**

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

**Requirements for the Execution of the Software Protected by the Deposit**

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

**Requirements for the Assembly of the Deposit**

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

*Please provide your technical verification contact information below:*

<b>COMPANY:</b>	
<b>SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>ADDRESS 1:</b>	
<b>ADDRESS 2:</b>	
<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE:</b>	
<b>EMAIL ADDRESS:</b>	

For additional information about Iron Mountain Technical Verification Services, please contact  
Manager of Verification Services at **800-875-5669** or by e-mail at <mailto:verification@ironmountain.com>

**EXHIBIT H**

**Certification Regarding Lobbying**

[See Attached Certificate]

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *section 1352, title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such failure.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by *section 1352, title 31, U.S. Code*. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such failure.

---

By:  
Printed Name:  
Title:  
Date:

## **EXHIBIT I**

### **IRS Publication 1075 Information**

#### **I. PERFORMANCE**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- (10) (Include any additional safeguards that may be appropriate.)

#### **II. CRIMINAL/CIVIL SANCTIONS:**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein,

and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION:**

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.