



## **Exhibit 3 – Supplemental General Conditions**

RFP-23-01-UI

## Table of Contents

1.0	Supplemental General Conditions Definitions.....	3
2.0	Ownership Rights.....	18
3.0	Services and Deliverables .....	23
4.0	Ability to Perform .....	29
5.0	Representations, Warranties and Covenants .....	30
6.0	Indemnification .....	43
7.0	Disclaimer of Warranties .....	46
8.0	Software Escrow .....	46
9.0	Subcontracting.....	47
10.0	Record Retention.....	48
11.0	Relief Available to State .....	49
12.0	Force Majeure <i>and</i> Business Continuity; Data Backup and Recovery. ....	54
13.0	Time is of the Essence.....	56
14.0	Integration. ....	56
15.0	Principles of Construction. ....	57
16.0	Sovereign Immunity.....	57
17.0	Changes Initiated by Contractor.....	57
18.0	Warranty Services and Maintenance Services .....	58
19.0	Conflicts of Interest.....	62
	SCHEDULE 1 TO EXHIBIT 3 .....	64
	SCHEDULE 2 TO EXHIBIT 3 .....	66
	SCHEDULE 3 TO EXHIBIT 3 .....	67

## **Supplemental General Conditions**

This Exhibit contains certain, but not all, of the provisions that will be included as part of the Contract between the State and the Contractor. Unless indicated otherwise, references to Sections are to Sections in this Exhibit. Certain definitions and provisions in this Exhibit are drafted to assist Offerors in preparing Offers and may change in the above referenced Contract.

\* \* \*

### **1.0 Supplemental General Conditions Definitions**

- 1.1 "Acceptance" means a notice from State to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in this Exhibit.
- 1.2 "Acceptance Criteria" means the RFP Requirements against which each Deliverable shall be evaluated in accordance with this Exhibit and the SLAs, warranties and other requirements described in this Contract, and any subsequent amendments and Change Orders, and State's satisfaction for Services which are not subsumed in a Deliverable.
- 1.3 "Acceptance Tests" means the tests or reviews that are performed by State to determine there are no Defects and Problems in the Services or Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 7.3, including without limitation User Acceptance Tests on the System and testing the Operational Readiness of the System.
- 1.4 "Affiliates" means any person, including any individual, corporation, subsidiary, affiliate, partnership, association, business, organization, or other entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Party and/or such entities. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of fifty percent (50%) or more of voting shares (or their equivalent), by contract or otherwise.
- 1.5 "Annex" means any Attachment, Exhibit, Schedule, or other document appended to the Contract, the RFP and/or the Offer and which are made part of the Contract.
- 1.6 "Availability" means the time that the UIS, in whole and in part, is Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis. Availability shall be as described in this Exhibit 3, except for mutually agreed upon scheduled Maintenance activities.

- 1.7 "Business Continuity Plan" has the meaning ascribed thereto in Section 12.1.
- 1.8 "Business Day" means any Day that is not a Saturday, Sunday, or public holiday in the State.
- 1.9 "Change" means one or more modifications to the Services or Deliverables agreed upon and made pursuant to the change process in accordance with the terms hereof, including, with respect to, or as set forth in HRS, HAR, "OF-9 Implementation Services Requirements" and "OF-8 Ongoing Services Requirements."
- 1.10 "Change Order" means a written amendment to the Contract, executed by the Parties' authorized representatives, changing, or adding to the Services and/or Deliverables.
- 1.11 "Change Request" means a request by the Contractor or the State to enter into discussions for a Change Order.
- 1.12 "Confirmation" means State's receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed or pre-tested through system testing a Deliverable in accordance with State's Acceptance Criteria or pretested the UIS through system testing for compliance with the RFP Requirements; and confirmed the Deliverable, including but not limited to the UIS System, is ready for applicable Acceptance Tests.
- 1.13 "Contractor" means the Offeror selected by the State pursuant to the RFP who enters into the Contract with the State.
- 1.14 "Contractor Assisting Entities" means Contractor Subcontractors and Contractor Affiliates, and employees, contractors, or agents of all their Contractor Subcontractors and Affiliates providing or supporting or assisting in providing or supporting the UIS and such persons and entities themselves, which or who assist Contractor in providing the UIS, in whole or in part.
- 1.15 "Contractor Personnel" means any and all personnel, employees, contractors or agents of Contractor or the Contractor Assisting Entities providing or supporting or assisting in providing or supporting the Services, including the operation of the UIS Services.
- 1.16 "Contractor Subcontractor" means a subcontractor approved by the State to provide or support the specific Services and Work Products approved by the State, together with independent contractors and agents (including, for avoidance of doubt, sub-subcontractors, or independent contractors (or the equivalent under local Law) retained by a State-approved subcontractor and/or any one of the foregoing).

- 1.17 "Contractor Technology" means the Pre-Existing Works, software (including, but not limited to, the "Software", as defined herein) and other Technology, that is owned, licensed and/or used by Contractor (including the Contractor Assisting Entities) in connection with the UIS. For purposes of clarity, Contractor Technology includes Upgrades and Enhancements thereto.
- 1.18 "Contract Records" has the meaning ascribed thereto in Section 10.2.
- 1.19 "Corrective Action Plan" means the detailed written plan required by State to correct or resolve a Defect and Problem or breach by Contractor or event causing the assessment of a liquidated damage against Contractor.
- 1.20 "Costs" means the amounts specified in accordance with the terms in the Contract, to be paid to Contractor for providing the Services and Deliverables, as set forth in the Contract.
- 1.21 "COTS" means commercial off-the-shelf equipment and software, including Third-Party Software, supplied on behalf of, at the request of, at the direction of, as specified by Contractor, and/or as otherwise set forth in the Contract, to the State pursuant to the terms hereof, whether by direct purchase or license to the State or by a sublicense by Contractor, including, for clarity of reference, the Unemployment Insurance System Software and, if utilized as part of the UIS, the SaaS Software, used in connection with the Unemployment Insurance System.
- 1.22 "Custom Software" means new software or programming code, which is specially designed, developed or produced by Contractor for the State as part of Unemployment Insurance System or which is subject to the provisions for the unanticipated tasks in the RFP Attachments, in binary and Source Code Form, but excluding Pre-Existing Works.
- 1.23 "Day(s)" means a calendar day or days.
- 1.24 "Defect(s)" means a failure of the Services or Deliverables, including the UIS, to meet the RFP Requirements (as such term is defined in the RFP Document) or other applicable requirements hereunder. Also referred to as a Problem.
- 1.25 "Deliverable" means Contractor's products which are produced or prepared for the State during the course of Contractor's performance under this Contract, including all deliverables set forth in "OF-9 Implementation Services Requirements" and "OF-8 Ongoing Services Requirements" or in accordance herewith, including each Phase and the UIS, Enhancements, work produced under the Project Plan and Change Orders including but not limited to Custom Software, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such

Deliverables.

- 1.26 "Deliverable Warranty Period" has the meaning ascribed thereto in Section 5.5 Deliverables.
- 1.27 "Derivative Works" has the meaning set forth in Section 101 of the Copyright Act, Title 17 of the United States Code.
- 1.28 "Disaster Recovery Plan" has the meaning ascribed thereto in Section 12.1.
- 1.29 "Documentation" means documentation and materials that describe in reasonable detail the specifications, functions, use, maintenance, and operation of the UIS and the components thereof, including operations and training manuals for installation, maintenance, operation, and use of the UIS, including the Software.
- 1.30 "DR" means disaster recovery.
- 1.31 "Enhancements" means and includes all customizations, enhancements and additions made to the Software, and/or data fields, coding schemes, report formats, user or application interfaces, data displays, computer dashboards and other similar features.
- 1.32 "UIS" means the Unemployment Insurance System and the related implementation methodology together with the UIS Services and all other Services required to provide the foregoing.
- 1.33 "UIS Service IT Environment" means the Technology, Software and network infrastructure used by, designed by, implemented by and/or provided by Contractor to provide the UIS Services.
- 1.34 "UIS Service Modifications" means the modifications to and Updates and Projects with respect to the UIS Services.
- 1.35 "UIS Services" means the Services set forth in "OF-9 Implementation Services Requirements" and "OF-8 Ongoing Services Requirements" including as defined in the RFP Document.
- 1.36 "UIS Software" means the enterprise planning Software used to provide the UIS.
- 1.37 "UIS System" has the meaning ascribed thereto in the RFP Document and the Technology, Equipment and Software, including modifications, configured so as to provide the UIS.
- 1.38 "Escrow Agent" means the independent Third-Party that has been appointed

pursuant to the Escrow Agreement to hold a copy of the Source Materials in accordance with the terms and conditions of the Escrow Agreement.

- 1.39 "Escrow Agreement" or "Software Escrow Agreement" means the agreement between and among State, Contractor, and the Escrow Agent, the form of which is attached hereto as Schedule 3 to this Exhibit.
- 1.40 "ETS" means the State Office of Enterprise Technology Services.
- 1.41 "Facilities" means the facilities used by the Contractor to house Purchased Equipment, Software, and State Information comprising the UIS and/or provide related activities hereunder.
- 1.42 "Force Majeure Event" has the meaning ascribed thereto in Section 12.2.
- 1.43 "Go-Live" means the event(s) that occurs after Acceptance of a Phase when State decides to put the Phase, in whole or in part, into actual, productive use and to perform its regular business operations.
- 1.44 "Good Faith Dispute" means that State has made an initial, reasonable determination in good faith that Contractor has failed to provide all or part of the Services or Deliverables in accordance with the terms hereof or that payment for invoiced Costs is not properly due in accordance with the terms hereof.
- 1.45 "Governmental Approvals" means all licenses, consents, permits, approvals and authorizations of any Governmental Authority, or any notice to any Governmental Authority, the granting of which is required by Law, for the consummation of the transactions and provision of the Services and Deliverables required under this Contract.
- 1.46 "Governmental Authority" means any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, international, or foreign.
- 1.47 "Government Records" has the meaning ascribed thereto in Section 10.1.
- 1.48 "HAR" means Hawaii Administrative Rules.
- 1.49 "HRS" means Hawaii Revised Statutes.
- 1.50 "Hosting Services" has the meaning ascribed thereto in the RFP Document and other related Services.
- 1.51 "Implementation Services" means the Implementation Services that Contractor is required to provide pursuant to the terms hereof, including those defined in

"OF-9 Implementation Services."

- 1.52 "Incident" means an issue, incident and/or failure to meet a Service requirement, and as further set forth in "Attachment A Service Level Agreements, OF-7 Service Level Agreement Requirements."
- 1.53 "Intellectual Property Rights" means (a) all rights under all copyright Laws of the United States and all other countries for the full terms thereof (and all rights accruing by virtue of copyright treaties and conventions), including all renewals, extensions, reversions or restorations of copyrights now or hereafter provided by Law and all rights to make derivative works and to make applications for and obtain copyright registrations therefor and recordation's thereof; (b) all rights to and under new and useful inventions, discoveries, designs, technology and art and all other patentable subject matter, including all improvements thereof and all know-how related thereto under the Laws in any jurisdiction, and all applications for and the right to make applications for Letters Patent in the United States and all other countries, all Letters Patent that issue therefrom and all reissues, extensions, renewals, divisional applications and continuations (including continuations-in-part) thereof, for the full term thereof; (c) all trade secrets under the Laws of any jurisdiction; (d) all know-how under the Laws of any jurisdiction; (e) all trademarks, service marks and trade names under the Laws of any jurisdiction; (f) all Internet domain names, domain registrations and the similar rights arising under Laws of or recognized in any jurisdiction; and (g) all other intellectual and industrial property and proprietary rights throughout the world not otherwise included in the foregoing, including all techniques, methodologies and concepts and trade dress.
- 1.54 "Key Personnel" means Contractor Personnel whose names and resumes were submitted in the Offer, and/or such other Contractor Personnel otherwise agreed upon by the Parties in writing.
- 1.55 "Laws" means HRS, HAR and all other statutes, regulations, legislative enactments, and declarations, decrees, directives, judgments, injunctions, regulatory decisions or orders, ordinances, rules, or other binding restrictions of or by any Governmental Authority, including opinions, policies and directions from the Department of the Attorney General.
- 1.56 "Letter of Credit" means a letter of credit securing Contractor's performance of its Contract obligations and other potential liabilities to State from the Effective Date during the term, as described in this Exhibit.
- 1.57 "Losses" means and includes any liabilities, claims, damages, costs (including the reasonable costs incurred in the enforcement of any indemnification obligations), reasonable legal fees (including reasonable attorneys' fees and



disbursements and costs of investigation, litigation, and settlement), penalties, sanctions, fees, or disallowances imposed by Law and expenses incurred by the applicable person or entity.

- 1.58 "Malicious Code" means one or more computer viruses, worms, trap doors, Trojan horses, Easter eggs, drop dead devices, spyware, adware, hoaxes, extraneous programming or harmful code (including code which has been identified as harmful for which a patch is available), unauthorized remote access or administration tool programming or similar unauthorized program that does or can disable, damage, corrupt, interfere with or delete any element of software, data, computer or electronic records or files, including, without limitation, that which allows or facilitates Contractor, a Contractor Assisting Entity or any Third-Party to access (including keystroke monitoring, activity monitoring and any other remote monitoring or auditing functions) the State Systems and/or other information systems without State's prior authorization or that may be reasonably expected to: (a) permit access to or use of State Information and databases (including, without limitation, PII) by any unauthorized person or entity; or (b) perform any other unauthorized action on or in connection with any aspect of the State Systems.
- 1.59 "M&O" means Maintenance and Operations.
- 1.60 "NOA" means the Nondisclosure Agreement by and between the Parties.
- 1.61 "Obsolete" (and any variations thereof) means a software and/or Technology product will be deemed "Obsolete" as of the effective date of an end-of service life announcement from the manufacturer/licensor with respect to a product. If no such announcement is published, then the software and/or hardware product will be deemed Obsolete as of (i) the date the manufacturer/licensor no longer maintains or supports the product or (ii) the date the manufacturer/licensor no longer includes it as part of its product and/or service offerings made generally available to its customers.
- 1.62 "Offer" means the Contractor's accepted proposal to provide the UIS as set forth in the Offeror Response Form and Offeror Response Form Attachments.
- 1.63 "Offeror" means any person or entity that intends on submitting a Proposal; provided that after the deadline for submission of proposals, Offeror shall mean any person or entity that has submitted a Proposal.
- 1.64 "Ongoing Services" means the Services defined in "OF-8, Ongoing Services Requirements."
- 1.65 "Operational" means the condition when the UIS is totally functional in accordance with RFP Requirements and usable for its purposes in the daily operations of providing the UIS.

- 1.66 "Party" means each of Contractor and State (and collectively, "Parties").
- 1.67 "Phase" means the combination of functions described as a Phase in the RFP, Offer, applicable Deliverables, and the Project Plan, including but not limited to payroll and time and attendance functions.
- 1.68 "PII" means any information relating to an identified or identifiable natural person, including, without limitation, government officials, employees, agents, citizens, and residents of, and visitors to, the State, and any other person or entity who provides such information to the State. Such information includes, without limitation, individuals' names, geographic addresses, telephone numbers, email addresses, Social Security numbers, driver's license numbers, credit or debit card numbers, and information concerning insurance, health, and other care and related information, insurance policy numbers (including, without limitation, medical and life insurance policy numbers), personal health information, medical records and financial information, stored in or accessed through (a) the State's information technology systems; (b) the information technology systems or other storage systems or means of Contractor arising out of or in connection with the UIS in whole or in part; and/or (c) the information technology systems or other technology systems or means of a vendor or provider of goods or services to the State.
- 1.69 "Pre-Existing Works" means computer software, tools and other technology owned by Contractor, or licensed by a Third-Party to Contractor or its Affiliates, and used by Contractor to provide or support the UIS as part of Contractor's day-to-day operations and that are not developed specifically for State pursuant to the terms hereof, including Contractor's proprietary methodologies, information, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines, and provided, that for the purposes of this definition, and without limiting any other provision hereof, the term Contractor includes all Contractor Assisting Entities.
- 1.70 "Problem" means a failure of the UIS to operate in accordance with the RFP Requirements hereunder, including as a result of an Incident. Also referred to as a Defect.
- 1.71 "Project" means the Services and Deliverables required for the implementation of a subset of the RFP Requirements as specified in the Attachments and Exhibits.
- 1.72 "Purchased Equipment" means all infrastructure, computer and telecommunications hardware, peripherals and related equipment, furniture, and other equipment (other than Software) that the State is required to

purchase, license, or use in accordance with the provisions of the Offer.

- 1.73 "Release Conditions" means the release conditions for the release of some or all of the Source Materials from escrow, as set forth in the Escrow Agreement.
- 1.74 "RFP" means the Request for Proposals issued by the State.
- 1.75 "RFP Document" means the RFP exclusive of the Exhibits and the Attachments.
- 1.76 "Services" means the UIS Services, the UIS, the M&O services, and Hosting Services, if any, the unanticipated tasks, other services provided or required to be provided by Contractor hereunder (including by or with the assistance of a Contractor Assisting Entity), and all other services, including but not limited to services that produce Work Product and Deliverables, including with respect to the implementation and maintenance, if applicable, of an UIS System to provide the UIS, provided or required of Contractor (including by or with the assistance of a Contractor Assisting Entity) under the Contract, or otherwise specified by Contractor in the Contract or by mutual written agreement of the Parties, including through a combination of the UIS Service, the UIS System and/or any other service.
- 1.77 "Service Level Agreements" and "SLAs" mean one or more of the service levels, performance standards, requirements and other criteria set forth in or referred to herein or in accordance herewith, and such other performance standards as the Parties may agree upon in writing from time to time hereunder, including, as described in "OF-7 Service Level Agreement Requirements."
- 1.78 "Software" means the COTS software, Contractor Technology software, Third-Party Software, Custom Software, the UIS Service Software, other software used in the UIS Service IT Environment, and all other software used by Contractor in providing the Services and Deliverables, excluding State Third Party Software.
- 1.79 "Software License" means a worldwide, non-exclusive, royalty-free, fully paid up, perpetual (or the longest period permitted by Law), irrevocable license and right (with the right to sublicense, except as may otherwise be agreed or limited by the Parties) under all of the licensor's Intellectual Property Rights (and in the case of software to be licensed or sublicensed by or on behalf of a Contractor Assisting Entity under all of the Contractor Assisting Entity's Intellectual Property Rights) to use, including Use, Software, other Contractor Technology, and other Pre-Existing Works subject to this Contract.
- 1.80 "Source Code" means and includes human-readable computer programming code, associated procedural code, listings, flow charts, logic diagrams,

software tools, executables, libraries, scripts and related and supporting Documentation corresponding to the Software, including all subsequent versions (including assembly, linkage and other utilities), suitable and sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology (i) to build, load, and operate a machine-executable object code version of the Software that is equivalent to the latest version of the Software furnished by the licensor, and (ii) to maintain, support, modify, improve and enhance the Software.

- 1.81 "Source Code Form" means the software in fully commented Source Code form together with all design, functional, procedural, technical, and other specifications and documentation therefor, test scripts, test data, diagnostic tools, root-cause analysis reports for software operational difficulties, and any libraries, file structures and other information and materials necessary for a reasonably skilled programmer to perform a successful compilation into executable form.
- 1.82 "Source Materials" means the then-current version of the Source Code for the Software to the extent available as Source Code, the object code for the Software to the extent the Source Code is not available, programmer notes, its database schema and architecture, the functional specifications of the Software, or the then-current license keys, if any, for the Software and any components thereof, and to the extent maintained by Contractor, object libraries, design documentation, statements of principles of operations, schematics, any Contractor's or administrator's guides, test data, test protocols, and, if any of the components of the Software are encrypted, the relevant decryption tools and keys for the Software and/or Source Code, together with the names and the then-current addresses, home telephone numbers and personal email addresses of the programmers who wrote the material aspects of the Software and its related documentation and other materials described in Schedule 3 to this Exhibit.
- 1.83 "SOW" means a Statement of Work.
- 1.84 "SPO" means the State Procurement Office.
- 1.85 "State" means the State of Hawaii, United States of America (and includes the departments within the Executive Branch and all governmental bodies administratively attached to it, including the Department of Education and the University of Hawaii, and related jurisdictions, i.e., the Judiciary, the Legislature, the Hawaii Health Systems Corporation, and the Office of Hawaiian Affairs.
- 1.86 "State Data" means State PII and all data and information (including, without limitation, data relating to the Services, Deliverables, Images, Metadata, and/or this Contract): (a) submitted to Contractor, by or on behalf of State; (b)

obtained, maintained, developed or produced by or on behalf of Contractor specifically for State in connection with the Services, Deliverables, and/or the Contract, including (i) State business data in any reports prepared by or on behalf of Contractor or provided to Contractor with respect to State, including any drafts thereof, and (ii) State data and information in any databases created or used by or on behalf of Contractor; and/or (c) to which Contractor has access in connection with the provision of the Services and Deliverables, including, but not limited to, in (a), (b) and (c) above, information relating to State's customers, suppliers, employees, contractors, agents, sales personnel, technology, operations, facilities, financials, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, and any data collected, generated or derived from all or part of the foregoing, and provided, that for the purposes of this definition, and without limiting any other provision hereof, the term Contractor includes all Contractor Subcontractors.

- 1.87 "State Information" means State Data, software, programming code, confidential information and other property owned by or licensed to the State or any of its departments or other governmental entities.
- 1.88 "State IT Environment" means the IT environment used by State (excluding UIS Service IT Environment) in connection with the Services, UIS and other Deliverables, and includes the portion of the State System which accepts data, including State Data, from the UIS.
- 1.89 "State IT Environment Incompatible" means technically incompatible with the State IT Environment and the interoperating portions of the State IT Environment.
- 1.90 "State Property" has the meaning ascribed thereto in Section 2.1.
- 1.91 "State System" means the computers, computer systems, computer networks and related equipment (including, without limitation, software installed thereon or operating in conjunction therewith and all portable and mobile devices, such as smartphones and tablets) of State whether or not used with respect to the Services and Deliverables, and including those of, or used by, State, including, without limitation, the State telecommunications systems and computer networks owned or operated by or for State, and all databases and records stored thereon (including, without limitation, PII).
- 1.92 "State Third-Party Software" means software which is licensed by the State other than through or at the request or direction of Contractor, which is used in connection with the UIS, and which is not Third-Party Software.
- 1.93 "Subject Materials" has the meaning ascribed thereto in Section 6.3.

- 1.94 "Technology" means software and programming code (of any type), computers, hardware, equipment, and related systems and technology.
- 1.95 "Third-Party" means a person or entity other than State, Contractor or any Contractor Subcontractor or Contractor Affiliate.
- 1.96 "Third-Party Software" means Software that is supplied by a Third-Party to Contractor in connection with, or as a part of, the UIS and other Services and Deliverables, and that is owned by a Third-Party. For clarity, Third-Party Software includes Third-Party COTS Software, and both of the foregoing (for all purposes hereof, except as otherwise specified herein) include Software provided by a Third-Party (that is by other than Contractor).
- 1.97 "Updates" means error corrections, bug-fixes and software and modifications to Software, including those which cure a Defect or a Problem.
- 1.98 "Upgrade" and all variations of the term means updates and upgrades to software, hardware, and other Technology (including software embedded in hardware or other Technology), including versions of Software written in different, new or alternative programming languages or for operation on other platforms.
- 1.99 "Use" means use, make, sell, install, operate, develop, compile, run, reproduce, deploy, distribute, transmit, display, perform, create Derivative Works of, make available on servers, provide or receive access to, integrate with software, including Software, make interoperable and perform tasks as necessary to utilize any item, creation, object, program, idea, concept, data, information, knowledge or any other tangible or intangible property and otherwise exploit same in any manner whatsoever. "Use" shall include creating Derivative Works with respect to Contractor or Contractor Assisting Entity-owned Intellectual Property Rights and, if Contractor is otherwise permitted to grant such rights on behalf of a Third-Party, with respect to such Third-Party Intellectual Property Rights.
- 1.100 "User Acceptance Tests" or "UAT" means any type of Acceptance Test identified by State or agreed upon between the parties to determine the functionality and compliance of Services and Deliverables provided by Contractor for Acceptance by State.
- 1.101 "Warranty Period(s)": The one year period(s): (i) which begins following Acceptance of each Deliverable and Service, following Go-Live of each Function and Release, and following Go-Live of the System, in whole and in part, including without limitation Functions, Releases, and other Deliverables and Services that previously received Acceptance and that are integrated into the System; and (ii) during which Contractor shall provide Warranty Services at no cost.

- 1.102 "Project Plan" means the overall plan of activities for the delivery of Services and Deliverables, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard thereto, as provided in accordance with this Contract.
- 1.103 "Work Product" has the meaning ascribed in "OF-9 Implementation Services Requirements" and "OF-8 Ongoing Services Requirements" and all (other than Deliverables): (i) work product, artifacts, data, information and writings (whether in electronic, written or other form) and materials created, generated, modified or made by or on behalf of Contractor or Contractor Personnel as part of or arising out of the Services; (ii) contributions made by or on behalf of Contractor or Contractor Personnel to the State requirements hereunder; and (iii) scripts, comments, production notes, product concepts, plans, proposals, outlines, design elements, forms, images, photos, screen shots, graphical user interfaces, sketches, drawings, text, works of authorship, works of art and documentation (including software documentation) and all edits and modifications to the foregoing items in subsections (i)-(iii) and Derivative Works thereof, and all elements contained therein, in any form whatsoever, and all revisions and other modifications created by Contractor (and/or Contractor Personnel), other works of authorship, technology, including, Technology, improvements, inventions, discoveries, know-how, work product, other deliverables and other material developed pursuant to this Contract, as any of the foregoing elements is created in whole or in part by or on behalf of Contractor or Contractor Personnel as part of the Services or as arising out of the Services, including any work in process.

### **Order of Precedence and Licenses**

- 1.104 Precedence. In the event of a conflict between or among any provisions of the Supplemental General Conditions and the General Conditions, the provision which provides the State with greater rights or greater protections, as determined by State in its sole determination in each case, shall control.
- 1.105 Contractor Technology, Third-Party Software, and Pre-Existing Works License. Except for Third-Party Software, including COTS Software, that is directly licensed to the State by a Third-Party, Contractor hereby does grant State a Software License to the Contractor Technology, Third-Party Software and Pre-Existing Works, including the Source Code Form thereof, and shall cause others to do the same to the extent required by the State, as necessary for State's use, including Use, thereof. As between State and Contractor, the Contractor Technology that is not developed for State pursuant to the terms hereof, will be deemed exclusively owned and/or licensed (under the Software License pursuant to the terms of this Section) by Contractor, including any improvements, Updates and/or Enhancements not developed for State pursuant to the terms hereof. For the avoidance of doubt, the foregoing Software

License shall survive the termination or expiration of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the Software License after such termination or expiration. State has the right to assign and sublicense its Software License, or any part thereof as it deems necessary to use, including Use, the UIS, in whole or in part, and other Deliverables and Services. For further avoidance of doubt, the Software License granted in this Section includes all versions of, and improvements, Updates and Enhancements to, the Contractor Technology used in connection with, or as a part of, the UIS.

- 1.106 Third-Party Software Licenses. Subject to any other approval rights of the State set forth herein, prior to utilizing any Third-Party Software that may be included as part of a Software Deliverable to the State and that could be used directly by the State if the Third-Party Software would be installed on the State System, Contractor shall provide to the State copies of any applicable license agreement from the licensor of the Third-Party Software to allow the State to pre-approve such license agreement. Further, Contractor in the performance of its Services shall comply with all licenses, requirements, rules, and policies of the Third-Party Software. If State does not approve any such agreements, Contractor shall replace such Third-Party Software with a functionally equivalent product and acceptable license agreement and/or maintenance agreement. Contractor shall assign to State applicable license agreements and maintenance agreements for the Third-Party Software upon expiration or termination of the Contract at no additional charge.
- 1.107 Documentation. Unless otherwise provided in the RFP Attachments, Exhibits or another Annex hereto or thereto, and subject to the same, Contractor shall provide two (2) sets of Documentation to the State for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and in written format in accordance with the terms of the Contract. Upgrades and revisions to this Documentation shall be provided by Contractor for as long as Contractor is providing Services under the Contract. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well-structured, current, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on an intranet or the Internet or other web-based service, Contractor may fulfill the obligations set forth in this Section by providing the State access to its web-based Documentation information, which obligation shall survive the termination of this Contract for as long as Contractor generally provides such access to its other customers. Contractor may also provide such information on CD-ROM or DVD. Except for Third-Party Software Documentation, including COTS Software Documentation, directly licensed to the State by a Third-Party in accordance with the terms hereof, Contractor agrees to and hereby does grant State a worldwide, perpetual (or the longest period permitted by Law in the applicable jurisdiction), irrevocable, royalty-free, fully paid-up, license under



all of Contractor's and Contractor's Assisting Entities' Intellectual Property Rights to use, including Use, the Documentation, and authorize others to do the same, as necessary for State's Use, including use, receipt and/or support of the Services. As between State and Contractor, the Documentation, other than with respect to Custom Software, or as otherwise assigned to State hereunder, will be deemed exclusively owned and/or licensed by Contractor, including any improvements, updates and/or enhancements thereto that do not constitute Enhancements that are not owned by the State. For the avoidance of doubt, the foregoing license shall survive the termination of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the license after such termination. State has the right to assign and sublicense its license, or any part thereof as it deems necessary to use, including Use, the Documentation. For further avoidance of doubt, the license includes all versions of, and improvements to, the Documentation used in connection with, or as a part of, the Services.

- 1.108 Replacements. The State is, and shall be, entitled to exercise all its rights hereunder with respect to Contractor Technology and Pre-Existing Works with respect to any replacement equipment or Software provided by, or on behalf of, Contractor, or approved or required by Contractor for use with the UIS hereunder without payment of additional Costs or other amounts.
- 1.109 Versions. Unless otherwise mutually agreed to in writing including in an Attachment or Exhibit to the RFP, Contractor shall, during the term of the Contract, maintain any and all Third-Party Software products provided as part of the Deliverables, the Services or UIS at their most current version or no more than one version back from the most current major version, in the determination of the State, unless otherwise mutually agreed by the Parties, at no additional Cost for such Software or Services. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent the State from using any functions or functionality, in whole or in part, in accordance with applicable RFP Requirements for the State's then-current version of the Deliverables or would cause Problems or Defects in the Deliverables, Services, or UIS. While performing Services hereunder, Contractor shall not be required to provide M&O Services or be subject to SLAs or damages for Third-Party Software that is Obsolete; however, in such event, such obsolescence must be resolved promptly, subject to Section 5.6 Non-Obsolescence. Any additional Costs that are charged by a Third-Party Software manufacturer for an Upgrade to a Third-Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by Contractor.
- 1.110 License Under Bankruptcy Code. All rights and licenses granted under or pursuant to this Contract by, or on behalf of, Contractor to State is, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, or replacement provision therefor (as used in this Section,

the "Code"), licenses to rights to "intellectual property" as defined in the Code. The Parties agree that State, as the licensee of such rights under the Contract, shall retain and may fully exercise all of its rights and elections under the Code. The Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor, a Contractor Assisting Entity, or the licensor thereof, under the Code, State shall be entitled to retain all of its rights under this Contract.

- 1.111 Licenses to Contractor. Subject to the terms hereof, the State hereby grants to Contractor, a non-transferrable (other than sublicenses to permitted Contractor Assisting Entities), non-exclusive, royalty-free, paid-up right and license within the United States during the term of the Contract, to Use the State Information, solely as necessary to perform Contractor's obligations pursuant to the Contract. For purposes of clarification, neither Contractor nor Contractor Assisting Entities shall provide any Third-Party with access to or Use of the State Information without the prior written consent of the State, and only to the extent of such consent.

## **Custom Software**

- 1.112 Contractor shall develop Custom Software Deliverables as described in the RFP and Offer. In addition, from time to time, the State may commission the development of Custom Software to be written by Contractor or, with the State's prior approval, by Contractor Subcontractor(s), pursuant to the applicable provisions governing unanticipated tasks in the Attachments and Changes in the Exhibits to the Contract. Each Custom Software Deliverable shall be subject to testing and acceptance procedures agreed upon by the Parties and as described below.
- 1.113 State shall own Custom Software from the moment of creation, unless the Parties otherwise agree in writing in an amendment to the contract, all worldwide right, title and interest, including all Intellectual Property Rights in and related thereto, in: (i) the Custom Software in Source Code Form, the object code and the Custom Software specifications and RFP Requirements (but excluding Contractor's Pre-Existing Works); and (ii) all Work Product and Deliverables, including those relating to the Custom Software. The Custom Software shall be State Property and shall be assigned to State in accordance with Section 2.2.
- 1.114 The State agrees to and hereby grants Contractor a Software License during the term to Use all or part of such Custom Software in development of other Custom Software to be owned by the State or as part of, or to support, the UIS.

## **2.0 Ownership Rights**

### **2.1 State Ownership.**

State shall own all worldwide right, title and interest, including all Intellectual Property Rights in and related thereto, in: (a) the Custom Software (unless otherwise agreed to in writing by the Parties in an amendment to the contract) (including, for the avoidance of doubt, the Source Code thereof) and Documentation therefor, the Custom Software specifications and RFP Requirements to the extent not included in the foregoing, and all UIS Service Modifications, Updates and Enhancements (including with respect to all of the foregoing, the Source Code thereof) thereto and the Documentation therefor; (b) all Work Product and Deliverables, and, in the event that Software is the subject thereof, the Source Code thereof and the Documentation and the specifications and RFP Requirements (however designated) therefor; and (c) all other Work Product and Deliverables created hereunder, whether or not, with respect to each of subsections (a), (b) and (c), created by Contractor and/or any Contractor Assisting Entity or by Contractor and/or a Contractor Assisting Entity in combination with another person or entity (including State) (collectively, "State Property").

## **2.2 Assignment.**

To the extent that ownership of any part of the State Property (including any of the Intellectual Property Rights in and thereto) does not vest in State by operation of Law in any jurisdiction, Contractor hereby assigns, grants and conveys (and shall cause any Contractor Assisting Entity to assign, grant and convey) all of Contractor's and/or any Contractor Assisting Entity's and their employees', contractors', subcontractors' and other agents' worldwide right, title and interest in the same to State without the necessity for any additional consideration. Each foregoing assignment, grant and conveyance to State shall be referred to as a "State Assignment," and Contractor acknowledges and agrees that such State Assignment shall be effective as of the moment of creation or development of any Work Product and/or

Deliverables, or portion thereof, or the Intellectual Property Right, which is the subject thereof.

Contractor hereby, without reservation, binds Contractor and the Contractor Assisting Entities and its and their employees, contractors, subcontractors, agents, successors, assigns and legal representatives to cooperate fully and promptly with State and to do all acts necessary or required to be done or requested by State to perfect the assignment to State, including, in and in connection with all proceedings before the U.S. Copyright Office, the U.S. Patent and Trademark Office and similar intellectual property governmental offices or agencies in other jurisdictions, without the necessity of further consideration from State, but at State's reasonable expense, subject to availability of funds.

Contractor shall also, from time to time, execute and deliver (and/or cause to be delivered) to State any and all lawful recordation and application

documents, including petitions, specifications, oaths, assignments, disclaimers, waivers and lawful affidavits in form and substance as may be requested by State. Contractor shall further provide State from time to time with all other assistance required to vest or perfect State's exclusive ownership of the State Property, and cooperate with State and do all acts requested by State to evidence, establish, apply for, procure, register, record, maintain, enforce and defend State's rights in the same on a prompt basis, but in any event within such time period(s) as required to enable State to timely preserve or assert its rights in any country or region of the world.

Contractor hereby appoints State as its agent and attorney-in-fact to act for and on Contractor's behalf in connection with the foregoing, which appointment is irrevocable and coupled with an interest. Contractor also agrees not to file any applications in any jurisdiction for any Intellectual Property Rights in or with respect to the State Property and/or any components thereof, or to contest or challenge or assist others in contesting or challenging State's ownership of or State's Intellectual Property Rights in the State Property. Contractor hereby expressly waives any "moral rights" or rights of "*droit moral*," if any, that Contractor may have in the subject matter of the assignment. Without limiting the foregoing provisions of this Section 2.2, Contractor agrees to comply with all requests from State related to securing, protecting, enforcing, and defending State's rights in the State Property, State confidential information, State Information and any Intellectual Property Rights owned by State, including executing additional documents and/or instruments as requested by State or its attorneys or agents.

Without limiting the other provisions of the Contract, Contractor shall not, and shall not permit any other Third-Party to, without the specific prior written approval of State in each instance, (a) create any Derivative Works of or (b) decompile, disassemble, or reverse engineer any State Property or any State confidential information, State Information or any other property or Intellectual Property Rights of State. Subject to the terms hereof, the State shall also own and retain all right, title, and interest in and to its confidential information, the State Information, the State's Intellectual Property Rights, the Purchased Equipment and Technology, licenses to the State Third-Party Software, and any other State property developed independently by the State or a Third-Party other than Pre-Existing Works.

### **2.3 Contractor Ownership**

Subject to the terms hereof, as between the State and Contractor, Contractor and its licensors, as applicable, retain all right, title and interest in and to the Contractor and Contractor Subcontractor confidential information, Contractor Technology and the Pre-Existing Works.

### **2.4 Title**

Subject to the terms hereof, as between Contractor and the State, Contractor

and its Contractor Assisting Entities hold all right, title and interest in any Contractor owned equipment, Contractor Pre-existing Works and other Contractor Technology, as well as Derivative Works thereof.

**2.5**

**Data**

Contractor shall provide the State with a complete copy of any and all State Data controlled or held by or for Contractor on the sixth (6th) Business Day of each January beginning on the first January after the execution of the Contract and additionally within five (5) Business Days at any time of a request from the State. Contractor shall provide such State Data, at no additional Cost to the State, on magnetic, optical, or other media in a format acceptable to the State, or by electronic transfer and in the form and manner requested by the State from time to time.

**2.6**

**Restrictions on Use**

Except as expressly permitted hereunder, Contractor shall not provide or in any manner disseminate any Work Product or Deliverables to any Third-Party, other than permitted Contractor Assisting Entities, or represent in any way Contractor ownership in any Work Product or Deliverables, without the prior written permission of the State and subject to the license rights applicable to any State Software embodied therein. Contractor shall not, and shall cause its agents, employees and Contractor Assisting Entities not to copy or disclose, transmit, provide, make available or permit access to, any Work Product or Deliverables or any portion thereof, in any form, to any Third-Party except as expressly permitted in the Contract.

**2.7**

**COTS Software**

All Software developed under, or pursuant to, the Contract shall be the property of the State, except to the extent it is Pre-Existing Work. All UIS data, including data created by Contractor and Contractor Assisting Entities, shall be the property of the State.

**Contractor Personnel**

**2.8**

**General Requirements**

Contractor shall provide the UIS using Contractor Personnel in accordance with the provisions hereof, and including, for convenience of reference, "Attachment B - Proposed Project Organization and Staffing" and the State Attorney General (AG) General Conditions.

**2.9**

**Background Checks**

As set forth in the RFP Attachments and/or requested by the State, and subject to the foregoing, before any Contractor Personnel begin performing any service, including Services, on behalf of State, Contractor shall conduct a background check for such Contractor Personnel (a) covering each such individual's criminal and arrest record, employment history and education

background, and (b) Contractor shall conduct (or caused to be conducted) a drug screening of each such Contractor Personnel. Contractor shall not permit any Contractor Personnel who does not pass the background check and drug screening in accordance with standards specified by State from time to time or required by Law to perform any part of the Services or have access to any State facility or information. State reserves the right to audit the records of such background checks from time to time. To the extent that State determines that a background check is inadequate for any Contractor Personnel, (x) Contractor shall perform a new or supplemental background check in accordance with the requirements of State, and (y) to the extent that State directs, Contractor shall not permit such Contractor Personnel to perform or support the Services until such time as State may so permit. Further, for all Contractor Personnel who will have access to State Information, the background check shall include a seven-year criminal investigation at the local and federal levels, Social Security Number verification, National Criminal Record Locator search, and Global Watch Alert (a check of numerous government watch lists that include individuals, organizations, and companies that have been placed on watch status by the United States Government, European Union, United Nations Security Council, World Bank or foreign governments) in each applicable country.

#### **2.10 Other Policies**

Contractor shall, and shall cause its Contractor Personnel, contractors (including Contractor Assisting Entities) and agents to abide by all State policies and procedures that may be established from time to time, and which are provided to Contractor, including, without limitation, rules and requirements for document and data retention, the protection of premises, materials, equipment and personnel and information assets. In addition to, but not by way of limitation of, any remedies available to State hereunder or pursuant to applicable Law, any violations or disregard of these rules shall be cause for denial of access by such personnel to facilities of State and/or immediate termination of this Contract.

#### **2.11 Exclusion of Specific Workers**

The State reserves the right to require the Contractor to remove any Contractor Personnel, agent, or volunteer from performing work under the Contract. The State Program Manager, as described in OF-12 Proposed Project Organization and Staffing, shall notify the Contractor in writing and the exclusion of a designated individual shall take effect as indicated on the notice. The Contractor may appeal the State's decision to the State Program Manager, in writing within ten (10) Business Days of receipt of the notice. Removal of the Contractor Personnel, agent or volunteer shall remain in effect pending the outcome of the appeal. The decision of the State Program Manager shall be final. This provision shall not infringe upon the right of the Contractor to employ the removed individual that does not require interaction with, or Services to, the State.

## **2.12 Changes in Contractor Key Personnel**

Subject to the RFP Attachments, Contractor will not remove any of the Key Personnel other than by legally required leave of absence, death, discharge, discipline, or resignation of the affected individual without prior written approval of the State, provided, however, that, notwithstanding the foregoing, Contractor shall immediately, and without the necessity of prior advance notice to or written approval from the State, discharge or remove from the performance or support of Services any one of the Key Personnel who Contractor knows or suspects has disclosed or may be likely to disclose State Information without authorization.

The successor employee proposed by Contractor for any Key Personnel position is subject to the State's prior written approval. Contractor shall provide the State with detailed information concerning the qualifications, experience, and expertise of the proposed successor together with any additional information requested by the State. The State shall have the right to interview the proposed successor. The proposed successor's qualifications should at least match those of the predecessor. The State shall have right to require the removal of any Contractor and Contractor Assisting Entity personnel. Contractor shall provide not less than thirty (30) days' advance notice before removing any Key Personnel for any permitted reason hereunder, other than for legally required leave of absence, death, discharge, discipline or resignation of the affected individual. In the case of any Key Personnel removed for legally required leave of absence, death, discharge, discipline or resignation, Contractor shall expeditiously propose a successor. If the State requests, Contractor shall appoint a qualified employee (subject to prior approval of the State except where time is of the essence) to serve in an interim capacity pending the State's approval of the proposed successor.

## **2.13 Contractor Responsibility**

Contractor, and not the State, shall bear any and all liability arising out of a claim (whether or not asserted in court or any other tribunal) asserted by any person or entity (including, for example, and without limitation, a Contractor Subcontractor or its employees or agents) arising out of, related to or in connection with his, her or its employment or retention or any asserted employment or retention (including, without limitation, claims involving disparate treatment, dismissal, failure to be hired or retained, discrimination and/or failure to receive employment or retirement benefits).

## **3.0 Services and Deliverables**

### **3.1 Attachments and Exhibits**

Contractor shall perform the Services and provide Deliverables as set forth herein subject to the terms and conditions set forth herein, including, for the avoidance of doubt any Attachments and Exhibits.

### **3.2 SLA Testing**

Subject to the RFP Attachments, Contractor and State will conduct tests for measuring and certifying the achievement of the SLAs as described in "OF-7, Service Level Agreement Requirements." Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Deliverables and Services against the applicable SLAs. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the SLAs and will be subject to audit by the State. Contractor will provide the State with information and access to all information and Work Product and Deliverables produced by such tools and procedures upon request for purposes of verification.

### **3.3 Cooperation With Other State Providers**

As part of the Services, Contractor shall cooperate with all other State contractors and all other Third Parties (including for purposes of this Section 3.3 providing services to the State other than as a Contractor Assisting Entity) providing products, services, support and/or assistance to the State which are used in connection with, or interact with, the Services and UIS and provide timely assistance, as required by State, and other State contractors and such Third Parties in order for Contractor, and other State contractors and such parties to provide services to and discharge their obligations to State and such other State contractors and Third Parties on an integrated basis.

**3.4** Contractor shall provide the Services and Deliverables as described in the RFP, the Response, the Project Plan, DEDs, and other parts of this Contract, and as shall be mutually agreed upon in writing between Contractor and State. Contractor shall utilize the Requirements, the RFP, the Response, the Deliverables for which State has previously granted Acceptance, DEDs, Contractor's professional knowledge, and this Contract as the basis of Services and Deliverables. Contractor shall retain backup copies in writing and on electronic media pertaining to Data and Deliverables until 180 days after termination or expiration of this Contract, unless otherwise required by this Contract, and shall provide State on its request with a copy thereof until that time. Deliverables shall be considered goods under this Contract and applicable law.

**3.5** All Services and Deliverables shall be subject to State's Acceptance, including without limitation Services and Deliverables which are provided pursuant to Change Orders. State's Acceptance of Services and Deliverables shall be in accordance with the time frames and terms therefor set forth in this Contract or in the Project Plan. For the term of the Contract, Contractor is not authorized to substitute any item for any Deliverable identified in the Contract without the prior written consent of the State Project Director.



**3.6** Contractor shall have no right to repossess any Deliverable which has received Acceptance. No Deliverables purchased, leased, or licensed in connection with the Contract shall be subject to any chattel mortgage, secured interest, or conditional sales or other agreement by which an interest is retained by Contractor, a lender, a lessor or any other party.

**3.7** Project Plan.

3.7.1 The Project Plan will be included in the Response. Contractor shall produce and provide to State an update to the Project Plan as a Deliverable with input from State within 30 Days of the Effective Date. The updated Project Plan shall provide detailed information, in a Microsoft Project (Version 2016 or later) document, including but not limited to Deliverables, Schedule, tasks and task dependencies, identification of resource requirements, and the Payment Schedule, and it shall also include the information described in Section 3.7.3. The Project Plan shall also be inclusive of the mutual expectations and work to be performed by State and Contractor in order to complete the Project successfully. In the event of failure of the parties to agree upon the update to the Project Plan and/or of State to give its Acceptance thereof within 60 Days of the Effective Date, State may invoke its right to immediately terminate this Contract without liability for such termination.

3.7.2 The Contractor shall maintain the Project Plan. Contractor shall adhere to the Project Plan and its associated Schedule. The Schedule in the Project Plan shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by State. However, the Schedule may, in State's discretion, be extended on a day to day basis to the extent that State's review of a Service or Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process is longer than described in the Schedule.

3.7.3 Contractor shall provide State with updates to the Project Plan monthly, as described in the RFP and Response, and as otherwise necessary throughout the term of this Contract to accurately reflect the status of activities, tasks, events, Services, Deliverables, and projected Schedule(s) for such activities, tasks, events, Services and Deliverables. Contractor will present the updated Project Plan at a time agreed to by the parties in writing, and the updated Project Plan will highlight changes made from the prior Project Plan. Any such update changes must be agreed upon in writing by the State Project Director before it receives Acceptance. Contractor agrees the Project Plan will become a part of this Contract by amendment upon Acceptance by State and agrees to execute any further documents necessary to accomplish this incorporation. Any Project Plan change request which would result in an increased cost to State shall be considered a Change Order. The Project Plan progress updates shall allow

adequate time, in State's reasonable judgment, for State to review and comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor. However, unless otherwise specifically agreed to in writing by the State Project Director or his or her designee in writing, State's agreement on a change to the Project Plan shall not relieve Contractor of liability for liquidated damages and other damages arising from such failures to perform its obligations as required herein under the original Project Plan. Contractor shall provide updated copies of its detailed Project Plans in Microsoft 2016 format and an online manner accessible and usable by State. All updated versions of the Project Plan shall be subject to the State's Acceptance.

### **3.8 Testing and Acceptance Process.**

- 3.8.1 Contractor shall prepare a test plan Deliverable for State Acceptance and perform System Testing as defined herein. The types of System Testing to be performed, in conjunction with State personnel or third-party Contractors in the State's discretion, must include, but are not limited to, unit testing, integration testing, performance testing, end-to-end testing, and regression testing. Acceptance dates must be incorporated in the testing schedule. State may perform a System functional requirements review before the State puts the System into Production.
- 3.8.2 Contractor must give Confirmation for each Deliverable and Service before State shall begin performing Acceptance Tests thereon. Upon delivery of a Service or Deliverable and receipt of Confirmation from Contractor that the Service or Deliverable meets applicable Requirements following System Testing, State will, with Contractor's assistance as requested by the State, at no additional charge, and in accordance with the Project Plan, review or perform Acceptance Tests on the Service or Deliverable, as applicable, to determine whether it conforms to applicable Requirements. State will provide Acceptance for a Service or Deliverable if it has no Deficiencies. However, if a Deficiency is found, State will notify Contractor in an e-mail or other document of Deficiencies used as the grounds for State's decision not to give Acceptance. Contractor shall correct Deficiencies at no cost to State. State will review or perform Acceptance Tests to verify whether the Service or Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and State's review thereof shall be in accordance with the timeframes set in the Project Plan, or, if time periods for correcting Deficiencies by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Project Plan, each such time period shall be seven business days.
- 3.8.3 If Contractor is unable to correct all Deficiencies within the number of

days described in the Project Plan following the scheduled Acceptance Date, or if no such date is in the Project Plan, State may, within 30 days from such scheduled Acceptance Date, at its sole option: (a) continue reviewing or performing Acceptance Tests on the Deliverable or Service, and require Contractor to continue until Deficiencies are corrected or eliminated; (b) require Contractor to provide, at its expense, a replacement Deliverable or Service for further review or Acceptance Tests; (c) set-off from the Charges to the extent State determines the Deficiencies for the Service or Deliverable have not been corrected and provide Acceptance for the applicable Service or Deliverable; or (d) after completion of the process set forth in this Section 3.8 and providing Notice of default to Contractor, terminate this Contract in whole or in part as described in Section 14 of the General Conditions and Section 3.8.4.

- 3.8.4 Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on State from such winding down and cessation of Services. If this Contract is so terminated, State shall be liable only for payment in accordance with the terms of this Contract for Services satisfactorily rendered prior to the effective date of termination.
- 3.8.5 After Acceptance of a Deliverable or Service, State shall, with input from Contractor, make a Go/No Go decision to determine whether the Deliverable or Service, if applicable, is ready for Go-Live. Contractor shall put the Deliverable or Service into Production after State gives Contractor Notice that the Deliverable or Service is ready for Go-Live. Such Go-Live decision shall be made subject to approval of appropriate federal agencies. In addition, results of the UAT must also be submitted to DLIR before the System is put into the Production environment.
- 3.8.6 Contractor shall have the Solution fully Operational on the date agreed for full Operational status in the Project Plan. If, for any reason, Contractor does not fully meet the Operational start date approved in the Project Plan, then Contractor shall be liable for all costs incurred by State to continue operation of the current legacy systems in addition to applicable liquidated damages, if any. Contractor shall also forfeit all Maintenance and operations payments for that month and each month thereafter until State approves Operational readiness.

- 3.9** Protection from Damage. Contractor shall continuously protect all Deliverables and backups therefor prior to their receipt by State and while in Contractor's possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of Contractor in connection with the Deliverables. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession

of Contractor, its subcontractors and carriers prior to their receipt by State, Contractor and its insurers, if any, shall relieve State of responsibility for all risks of loss or damage thereto, unless such loss or damage are caused by the negligence or misconduct of State. After State is in receipt of a Deliverable, the risk of loss or damage shall be borne by State, except loss or damage attributable to Contractor's acts or omissions.

- 3.10** Delivery. Contractor shall provide to State Services and Deliverables pursuant to this Contract on or before the applicable Delivery Dates. All such Services and Deliverables made pursuant to this Contract must be complete. Contractor shall deliver hard copy and electronic versions, when required, of the Deliverables in formats agreed to by the parties. Contractor must, at no cost to State, deliver to State, upon State's request during the term or at the expiration or termination of all or part of Contractor's performance hereunder, a then-current copy of all Deliverables.
- 3.11** Interpretation of Deliverables. Any contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract shall be resolved in accordance with State's reasonable judgment and in favor of the latest State-approved Deliverable except in the case where a previously documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the Requirements or a DED for a Service or Deliverable without the written consent of the State Project Director.
- 3.12** Representation. By submitting a Deliverable or delivering a Service, Contractor represents and warrants that it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Requirements, obligations, and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable or Service, State represents only that it has reviewed the Deliverable or Service and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.
- 3.13** Source Code.
- 3.13.1 Contractor shall provide State with a copy of the Source Code and updated associated technical documentation for the Custom Software and for the Proprietary Software which is licensed by Contractor to State in Source Code form: (i) upon Acceptance of the System; (ii) when Contractor delivers an Enhancement to the System during the term of this Contract; (iii) as described in the Project Plan; and (iv) at other times during the Project and Maintenance as requested by State. Contractor shall provide such Source Code and Documentation on magnetic media in a format acceptable to State.

3.13.2 7.8.2 Contractor shall also use the terms of Schedule 3 to Exhibit 3 to allow State to obtain access to other Application Software Source Code, which is not available from Contractor for Implementation, and other “Source Materials” (as that term is defined in Schedule 3 to Exhibit 3) under conditions described in Schedule 3 to Exhibit 3. At its option and expense, State may request that the completeness and accuracy of any such Application Software Source Code and/or associated Source Materials be verified. Such verification will be conducted by the escrow agent or, upon at least ten business days’ prior notice to Contractor, a representative of State, after full disclosure to Contractor of information reasonably requested by Contractor about such representative. Unless otherwise agreed in writing by Contractor and State, verification will be performed on site at Contractor’s premises, utilizing Contractor’s equipment and software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification at no cost to State. In the event the Application Software Source Code and/or associated technical Source Materials in escrow are not accurate or complete, Contractor shall promptly correct such inaccuracies or incomplete escrow, but in all cases within 10 Business Days.

**3.14** Knowledge Transfer. While constructing and developing the Deliverables and Services, as applicable, Contractor shall demonstrate and provide information to staff designated by State about the functions and operations of all Services and Deliverables in accordance with the RFP Requirements, Contractor’s Response, subsequent amendments, other parts of the Contract, and as otherwise agreed to by the parties.

#### **4.0 Ability to Perform**

Contractor represents and warrants that:

- 4.1** Contractor has adequate resources to fulfill its obligations under this Contract and is of sufficient financial solvency to assure the State of its ability to perform the requirements of the Contract;
- 4.2** Contractor has the financial stability to carry out at least six (6) months of Services during any period of this Contract without reimbursement for the Services or expenses;
- 4.3** Contractor has the financial resources to fund the capital expenditures required under the Contract without advances by State or assignment of any payments by State to a financing source;
- 4.4** Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and

- 4.5 Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by phase, stage, segment, or cost objective in order to support Change Order accounting.

## 5.0 Representations, Warranties and Covenants

- 5.1 Contractor represents, warrants and covenants to State, as an essential part of the Contract, that:

- 5.1.1 It is duly organized and validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation.
- 5.1.2 It has full corporate power and authority to execute and deliver the Contract and perform its obligations hereunder and to grant the rights granted and intended to be granted hereunder.
- 5.1.3 The Contract constitutes a valid and binding agreement enforceable against it in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, or similar Laws related to or limiting creditors' rights generally or general principles of equity).
- 5.1.4 The execution and delivery of all other instruments and documents required to be executed pursuant hereto, and pursuant to the Contract and the consummation of the transactions contemplated hereby, and thereby do not and shall not (i) conflict with or result in a breach of any provision of its organizational documents, (ii) result in a breach of any agreement to which it is a party, or (iii) violate any Law.
- 5.1.5 It will maintain and not obscure the Intellectual Property Rights and proprietary rights, notices and legends of the State on or embodied in the State's Software, Technology and other materials, whether in print, electronic or other form.
- 5.1.6 It has the full and absolute right to provide the Services to State contemplated hereunder.
- 5.1.7 Contractor is the owner of the Contractor Technology, Third-Party Software and other Pre-Existing Materials licensed hereunder or otherwise has the right to grant, or shall have the full power and authority to grant to the State the rights and licenses described or set forth in the Contract and this Exhibit 3 without violating any rights of any Third-Party and that to the best of Contractor's knowledge there is no actual or threatened rightful suit by any such Third-Party based on an alleged violation of such rights by Contractor.

- 5.1.8 The UIS, in whole or in part, including Services, the Software, or Hosting Service to the extent provided by the Contractor, or any Work Product, Deliverables or material to be delivered by Contractor, any other software, or technology (including Contractor Technology) that is used or is contemplated to be used by Contractor (or any Contractor Assisting Entity (excluding State Data and State Property)) or delivered by or contemplated to be delivered by or on behalf of Contractor to State shall not infringe or violate, or has not infringed or violated, any Intellectual Property Right, confidentiality right, privacy right or other proprietary right of any Third-Party.
- 5.1.9 As of the Effective Date, there is no pending litigation, arbitration or other similar proceeding before any tribunal involving a claim of infringement or violation of any Third-Party's Intellectual Property Rights by Contractor (or any Contractor Assisting Entity) or by any technology (including Technology) that Contractor (or any Contractor Assisting Entity) intends to, or will, use to provide the Services and Deliverables, which if adjudicated against Contractor (or any Contractor Assisting Entity) would interfere with Contractor's ability to discharge its obligations hereunder or grant the rights intended to be granted to State hereunder, and Contractor is not aware of, and has not received notice of, any such claim.
- 5.1.10 All information provided by Contractor related to the discussions and preparation of the Contract, including in its Offer, is true and does not contain any untrue statement of a fact or omit to state a fact necessary or appropriate to make the statements and facts contained herein or in such information misleading.
- 5.1.11 The person executing the Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to the Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.
- 5.1.12 The Services and Deliverables shall be provided by Contractor in accordance with the Annexes, including the Attachments and the SLAs set forth therein, and the other terms of the Contract, free of all liens, claims, encumbrances and other restrictions.
- 5.1.13 Contractor, including, for avoidance of doubt, all Contractor Assisting Entities, shall have the requisite expertise and proper skill, training and background so as to be able to perform in such a manner with the qualifications agreed upon hereunder, and that it shall perform all Services required pursuant to the Contract in a professional, workmanlike manner, with the quality, knowledge and experience in business and systems integration, maintenance, support and operations which is consistent with

industry standards applicable to the performance of such Services and that Contractor shall promptly and in accordance with in this Exhibit 3 re-perform Services which are not in compliance with the foregoing warranty at no cost to the State;

- 5.1.14 Contractor shall have access to and shall access the State Software and the State Information only to the extent it is authorized to have such access in accordance with the terms of the Contract and hereof;
- 5.1.15 Contractor, including, for avoidance of doubt, the applicable Contractor Assisting Entities, and including, for further avoidance of doubt, the provider of Hosting Services shall continuously monitor the security of the Services, and the Hosting Services-to ensure that they are in compliance with the requirements of data security and data privacy (including, without limitation, physical and logical security), including with respect to State Information (and further including for avoidance of doubt, the State departments, agencies and other governmental units subject to the UIS), and the PII rights of any employee, visitor, resident or citizen of Hawaii;
- 5.1.16 the Deliverables provided by Contractor and all Contractor Assisting Entities shall be free from defects in material and workmanship;
- 5.1.17 Contractor and all Contractor Assisting Entities shall at all times comply, and provide the Services, Deliverables and the UIS Service IT Environment in compliance, with the terms of the Contract and hereof and obtain prior approval, consent or agreement with or from the State when and to the extent required hereunder or under the Contract in connection with physical and logical security obligations;
- 5.1.18 Contractor shall comply with all Laws, including, without limitation, HRS §103D-31O(c), as amended, in providing the Services and Deliverables, and preparing the Work Products and Deliverables, and discharging its obligations under the Contract and has obtained or will obtain all authorizations, approvals, consents and licenses from third parties (including Government Authorities) necessary or appropriate to provide the Services, Work Product and Deliverables, and grant the licenses and rights to State under the Contract or required of Contractor in connection with its obligations under the Contract and shall assist and cooperate with State, and any other Governmental Authority as necessary or requested by State, in connection with all inquiries, investigations, regulatory activities, regulatory requirements and/or audits of or relating to the Services hereunder and under the Contract;
- 5.1.19 the Services, Work Product, Deliverables, and Contractor-provided Facilities shall comply with all Laws applicable to Contractor's provision of the Services, Work Product, Deliverables and Contractor-provided



Facilities under the Contract;

- 5.1.20 in accordance with the terms of the Contract, Contractor will continue to provide the Services and Deliverables specified hereunder during the pendency of a Good Faith Dispute or any other dispute in connection with the Contract, including Services and Deliverables which are the subject of such Good Faith Dispute or dispute, in the same manner and at the same SLAs and other level(s) of service required under the Contract in accordance with the terms hereof;
- 5.1.21 Contractor shall at all times maintain sufficient financial resources to comply with the requirements of the Contract, provided, however, that if Contractor experiences a change in financial condition that may adversely affect its ability to perform under the Contract, it will immediately notify State, and State and Contractor will meet or confer with respect to mitigating the impact of the same on State;
- 5.1.22 no part of the Software, other Deliverables, Services or the UIS Service IT Environment shall be State IT Environment Incompatible;
- 5.1.23 Contractor shall not modify or fail to conform with the State security standards or provide less protection than otherwise required in the Contract;
- 5.1.24 it will provide notice promptly to State if a litigation, arbitration or other similar proceeding is commenced during the Term of the Contract before any tribunal involving a claim of infringement, misappropriation, violation or other breach or contravention of any Governmental Approvals or any Third-Party's Intellectual Property Rights by Contractor;
- 5.1.25 it assigns and shall assign to the State, or otherwise make the State a Third-Party beneficiary of, all of the Contractor's warranties and indemnities relating to the Software to the extent Contractor is permitted by the manufacturers and/or licensors to make such assignments to the State (such assignment or Third-Party beneficiary right is and shall be subject to all of the terms and conditions imposed by the manufacturers and/or licensors with respect thereto);
- 5.1.26 that it is not, and during the Term of the Contract, shall not be, suspended or debarred under federal law and regulations or any state's laws and regulations;
- 5.1.27 the UIS, Implementation Services, and Ongoing Services, including, for convenience of reference, as set forth in "OF-9 Implementation Services Requirements" and "OF-8 Ongoing Services Requirements," will comply with the SLAs, including, for convenience of reference, as set forth in "OF-7 Service Level Agreement Requirements" and "OF-8 Ongoing

Service Requirements;"

- 5.1.28 Contractor, and all Contractor Assisting Entities, are and shall be duly authorized to conduct business in and are and will be in good standing in each jurisdiction in which Contractor and all Contractor Assisting Entities will conduct business in connection with the Contract.
- 5.1.29 it, and all Contractor Assisting Entities, shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards which are applicable to its performance under the Contract, and each will maintain all required certifications, licenses, permits, and authorizations during the Term at Contractor's expense;
- 5.1.30 it has and shall have the financial stability to carry out at least six (6) months of Services during any period of the Contract without reimbursement for the Services or expenses;
- 5.1.31 it has the financial resources to fund the capital expenditures required under the Contract without advances by the State or assignment of any payments by the State to a financing source;
- 5.1.32 it will deliver and implement the Services and Deliverables (whether performed in whole or in part by Contractor and/or Contractor Assisting Entities, and/or by, or on behalf of, the provider of the applicable COTS Software), on an integrated and seamless basis, with different feature sets, functions, and data working and being processed together continuously and without adjustment or manual intervention.
- 5.1.33 the UIS, other Services and other Deliverables shall comply with and operate in accordance with the RFP Requirements; and
- 5.1.34 it shall promptly and in accordance with the SLAs correct any Problem or Defect in the UIS, other Services and other Deliverables at no cost to the State.

- 5.2 Disabling Code.** Contractor represents, warrants and covenants to State that, without the prior written consent of State, Contractor shall not insert into any Software any code that is intended to disable or otherwise shut down all or any portion of the Software, other Deliverables, or Services. Contractor further covenants that, with respect to any disabling code that may be part of the Software, Contractor shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of the Contract. Contractor also covenants that it shall not use Software containing disabling code without the prior written approval of State. For purposes of this Section, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Contractor will

learn from Third Parties whether such code is included in Third-Party software and shall notify State accordingly and obtain State's approval prior to installing such code in any Software or using it as part of the Services.

- 5.3 Malicious Code.** Contractor represents, warrants and covenants to State that it shall prevent the introduction and proliferation of Malicious Code into the State IT Environment, or any system used to provide the Services and Deliverables, including by continuously performing testing for Malicious Code, using one or more industry standard testing solutions, and to notify State promptly by notification to the State's Project Manager of any Malicious Code in any of the foregoing if Contractor obtains knowledge thereof and/or as soon as Contractor learns or is informed of the introduction of, or an attempt to introduce, Malicious Code into any of the foregoing, and shall comply with the security provisions herein and in the Contract. Without limiting Contractor's other obligations under the Contract, in the event Malicious Code is found in any Software, other Deliverables, or the Services, Contractor shall immediately, at no additional charge to State, eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code and, if such Malicious Code causes a loss of operational efficiency or loss of data (including State Information), mitigate such Losses and immediately restore such data and information. Contractor shall promptly assign at least one (or such number as is required to promptly remedy the situation) knowledgeable and qualified Contractor Personnel representative, who will begin work upon becoming aware of any Malicious Code. This representative will be dedicated to remedy any Defect or Problem related to the Malicious Code at no Cost to the State.
- 5.4 Compliance Reports.** Contractor represents, warrants and covenants to State that it will provide State with data and reports (including as can be generated by or from Contractor's computer system) necessary or appropriate for State to comply with all Laws and SLAs applicable to the Services.
- 5.5 Deliverables.** Notwithstanding any provision in the Contract, Contractor represents, warrants and covenants to the State, as an essential part of the Contract that during the Deliverable Warranty Period, each Deliverable, including the UIS and Hosting Services, in whole and in part, shall conform to and perform in accordance with its applicable specifications and RFP Requirements. Contractor shall promptly and in accordance with this Exhibit 3 repair or replace each of the Deliverables that does not meet its specifications and RFP Requirements during the Deliverable Warranty Period (which begins upon Go Live of UIS, in whole or in part, and Acceptance of each other Deliverable in accordance with the terms of the Contract and continues for one (1) year (the "Deliverable Warranty Period")) at no charge to the State. If a Deliverable includes any products provided by a Third-Party, such as equipment or Third Party Software or other software or Technology, Contractor shall fully cooperate with and coordinate the work with such Third-Party and the State to promptly and in accordance with Exhibit 3 repair and replace the Deliverables at no charge to the State during the

Deliverable Warranty Period. Contractor also warrants that it has and shall have the capability and capacity to produce the Deliverables it has agreed to provide to the State and that it shall procure those Software licenses necessary to provide the Deliverables to the State hereunder and under the Contract. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to the Third-Party Software specified in the accepted Offer for Contractor to meet this representation, warranty and covenant, Contractor shall provide such Software licenses and Deliverables at no additional Cost to the State.

**5.6 Non-Obsolescence.** Contractor represents and warrants that, except as provided in this Section, the Software and/or Purchased Equipment provided under the Contract will not become Obsolete during the term of the Contract. The cost of replacement of Obsolete Software and/or Purchased Equipment through planned Obsolescence by the applicable manufacturer and/or licensor is included in the Costs to be paid by the State pursuant to the terms hereof and of the Contract. In the case that any such Software and/or Purchased Equipment's end-of-service life occurs during the Term of the Contract, Contractor will replace the affected Software and/or Purchased Equipment with like-functionally equivalent Software and/or equipment that is supported by the applicable manufacturer and/or licensor without additional cost to the State. Any replacement is subject to State approval and deployment must be tested and accepted by the State. Notwithstanding the foregoing, in the event Contractor is made aware of a manufacturer and/or licensor's planned obsolescence after the Term expires, Contractor will provide notice to the State.

**5.7 Legal and Regulatory Compliance.** Contractor represents that, at the time of implementation, the UIS, in whole and in part, shall comply with all applicable State Laws as interpreted in writing by State in the RFP Requirements for Contractor to implement and with all Federal Laws. Contractor also warrants that, during the term, the UIS, in whole and in part, shall comply with State Laws as interpreted and provided in writing by State in the RFP Requirements and with all applicable federal Laws, subject to Change Orders that describe: (a) changes that shall be made to the UIS after its implementation to comply with such representation and warranty at no additional charge for federal changes and at amounts in the Change Order to design, develop and implement State changes; and (b) a plan for the Implementation Services to design, develop and implement such changes. Each such Change Order shall describe how the parties will design, develop and implement each such change to meet federal and/or State mandated schedules unless an Implementation will negatively impact the State or is infeasible, in which case the parties will negotiate in good faith a Change Order to address the implementation and schedule. The Change Order shall also describe a good faith Implementation process to protect the State's business operations. After Acceptance of Deliverables that include Software to comply with changes to applicable federal and State Laws as described above, including the UIS, Contractor shall correct failures to comply with those changes to applicable federal Laws and State Laws as interpreted and provided in writing by State at no

charge or as otherwise described in the applicable Change Order, and annual Charges for Maintenance Services for Software resulting from changes to federal and State Laws shall be limited to 10% of the Charges to design, develop and implement such changes, as described in the applicable Change Order.

- 5.8 Deliverables are Date/Time Independent.** Contractor represents, warrants and covenants that the Deliverables and all data-related output or results produced thereby: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates. (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by the State that may deliver date records from the Deliverables and Services or interact with date records of the Deliverables and Services.
- 5.9 Physical/Electronic Media Warranty.** To the extent applicable, Contractor represents, warrants and covenants (during the Term of the Contract) that each copy of the Custom Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy, or if electronically delivered, the electronic file transferred, during the Deliverable Warranty Period.
- 5.10 Compatibility.** Contractor represents, warrants and covenants that, throughout the Term of the Contract, if the UIS, in whole or in part, is replaced or Upgraded or subject to an Enhancement by or on behalf of Contractor with replacement or Upgraded Software (or Software subject to an Enhancement) components provided by or on behalf of Contractor, or Contractor provides Custom Software Deliverables, Updates, Upgrades and/or Enhancements, the Software as upgraded, replaced, and/or modified shall operate with the UIS Service IT Environment, other Technology used by the State, including the Software, State Third-Party Software, Purchased Equipment and State Data without loss of any functionality. If State decides to have Contractor produce Enhancements or to upgrade any of the Third-Party Software which is used as part of the System with new versions or releases as part of a Change Order, Contractor shall, at no additional cost to State beyond the Change Order Charges, if any, install, test, and maintain the Software to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions, Upgrades or releases of the Third-Party Software referred to in the Change Order.

Contractor warrants that if the Software, Equipment, Facilities, or Services, in whole or in part, are replaced or upgraded by Contractor with replacement or upgraded Software, Equipment, Facility or Service components provided by Contractor, or Contractor provides Custom Software Deliverables or Enhancements, the Custom Software shall be integrated into the rest of the System and the upgraded, replaced, and modified Software, Equipment, Facilities, and Services shall operate with the rest of the Software, Equipment, Facilities, and Data in the System or Services, including without limitation, Custom Software and Third-Party Software, and Enhancements, without loss of any

Functions, as provided in the Requirements, without Deficiencies, and in accordance with the RFP. By way of example but not limitation, all components or parts of the System must operate in accordance with their individual Requirements and the Requirements for the System, without Deficiency, including without limitation Enhancements for a Service, Function or Release that received Acceptance and Services, Functions and Releases that later receive Acceptance and that are integrated with specific Services, Functions, Releases or the System, in whole or in part. If State decides to produce Enhancements or to upgrade any of the Third-Party Software which is used as part of the System or which interfaces with the System with new versions or releases, Contractor will, at no additional cost to State, install and maintain the System, in whole and in part, to operate in accordance with its Requirements and to be compatible with the Enhancements and new versions or releases of the Third-Party Software. In addition, all of the technology-related components of the Solution will be backward and forward compatible among versions, and interoperable with other components and systems.

- 5.11 Written Commitments.** Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to State.
- 5.12 Registration.** Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation, and registration requirements and standards necessary in the performance of the Services.
- 5.13 Power and Authority.** Contractor represents and warrants that: (i) it has the full power and authority to grant to State the rights described in this Contract without violating any rights of any third party; (ii) there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor; (iii) nothing contained in the Contract or the performance of the Contract will cause Contractor to materially breach any other contract or obligation; and (iv) Contractor and its Subcontractors are sufficiently staffed and equipped to fulfill the Contractor's obligations under the Contract. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.
- 5.14 Unauthorized Code and Self-Help Code.** Contractor warrants to State that the

System, other Deliverables, and Contractor Technology provided to State, under this Contract do not contain and shall not contain Unauthorized Code or Self-Help Code. Contractor further warrants that it will not under any circumstances, including enforcement of a valid contract right, take any step which would in any manner interfere with State's use of the Deliverables and/or which would restrict State from accessing its data files or in any way interfere with the transaction of State' business. Contractor shall, in accordance with times in Exhibit 3, repair or replace the System and each of the other Deliverables, Services or Contractor Technology in breach of such warranties at no additional charge to State.

**5.15 Date/Time Compliance Warranty.**

5.15.1 Contractor warrants that the System and associated Deliverables and all data-related output or results produced by the Services or Deliverables: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by State that may deliver date records from the Software, or interact with date records of the Software.

5.15.2 Contractor shall immediately repair or replace the System and each of the other Deliverables and Services in breach of such representations and warranties at no additional charge to State.

**5.16 Intellectual Property Rights.**

5.16.1 Contractor warrants that it is and shall be the owner of the Work Products that are to be transferred and assigned to State in accordance with Section 2 State Ownership Rights, without infringing or violating any rights of any third party.

5.16.2 Contractor represents that, as of the Effective Date, there is no actual or threatened suit by any such third party based on an alleged infringement or violation of the rights granted or licensed by Contractor to State hereunder.

5.16.3 Contractor warrants that the Work Products shall not infringe or misappropriate any right of, and will be free of any rightful claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right.

5.16.4 Contractor represents and warrants to State that Contractor is the owner of the Contractor Technology licensed hereunder or otherwise has the right to grant to State the licensed rights to the Contractor Technology provided by Contractor through this Contract without violating any rights of any third

party and that State's exercise of the licenses within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology infringes any patents or copyrights, or misappropriates trade secrets or other rights of any third party, and (ii) Contractor has no actual knowledge that the Contractor Technology infringes upon or misappropriates any patents, copyrights, trade secrets or other rights of any third party. Contractor shall promptly provide State with Notice of each notice or claim of patent or copyright infringement, or infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to any Contractor or Technology delivered under this Contract.

5.16.5 If Contractor develops a Deliverable that Contractor agreed with a third party is subject to a separate shrink-wrap, click-wrap, or Third Party Software license, State's use and operation of such Deliverable (including, without limitation, opening the shrink wrapped package or clicking "accept" or "OK" or the like) shall not limit any of State's rights or Contractor's obligations under the Contract, except as specifically set forth in the Contract or in a writing signed by State and Contractor.

## **5.17 Deliverables, Functions, Releases, Services and System.**

5.17.1 Contractor represents and warrants that goods provided under this Contract shall be free of all liens and that each Deliverable and Service shall conform to and perform in accordance with applicable Requirements following its Acceptance by State. Such Deliverables shall include but not be limited to Functions, Releases, Services (such as Hosting Services) and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. Contractor shall in accordance with any and all Deliverables, Services, and work products promptly repair or replace each of the Services and Deliverables (including without limitation each Deliverable, each Function, each Release, each Service and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System) that does not meet applicable Requirements as part of the Warranty Services, including without limitation each Deliverable, each Function, each Release, Services, and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received



Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. Contractor shall absorb all costs associated with repairing or replacing each of the Services and Deliverables that does not meet applicable Requirements during its Warranty Period, including without limitation for each Deliverable, each Function, each Release, each Service, and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. If a Deliverable includes any products provided by third parties, such as Third-Party Software, Contractor shall fully cooperate with and coordinate the work with such third parties and State to promptly repair and replace the Deliverables in accordance with this contract at no additional charge.

5.17.2 Contractor also represents that it has and warrants that it will have the capability and capacity to produce the Deliverables it has agreed to provide to State, that it will secure all Third-Party Software licenses necessary to provide the Deliverables in accordance with the terms of the Contract, and that each Deliverable will be implemented into Production and supported by Contractor to meet the requirements in the Contract. If additional Software licenses or deliverables, including Enhancements, are needed to Third-Party Software for Contractor to meet this representation and warranty, Contractor must provide such Software licenses and Deliverables at no charge.

5.17.3 Contractor represents and warrants that:

5.17.3.1 It shall perform all Services required pursuant to this Contract in a professional, timely, and diligent manner, in accordance with applicable Requirements, the high professional or technical standards applicable by such Services with due care, and with quality, knowledge and experience in business and systems integrations, maintenance, support, and operations;

5.17.3.2 It shall perform the Services with qualified persons with the technical skills, training, and experience to perform such Services;

5.17.3.3 It shall give high priority to the performance of Services;

5.17.3.4 The Services and System shall comply with the Performance Standards;

5.17.3.5 Time shall be of the essence with respect to Contractor's performance under the Contract;

5.17.3.6 Any person assigned to perform Services hereunder meets the employment eligibility requirements of all immigration laws of the United States; and

5.17.3.7 At its own expense, and without limiting any other rights or remedies of the State hereunder, Contractor shall immediately correct or re-perform, as applicable, any Services that the State has determined to be unsatisfactory in its discretion, or that are not in compliance with such representations or warranties, or Contractor will refund that portion of the fees attributable to each such noncompliance.

5.17.4 Contractor represents and warrants that Deliverables provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

5.17.5 Contractor represents and warrants that Contractor may, only upon receipt of prior written approval by State, (a) incorporate any open source software into, or combine open source software with, the Deliverables or use open source software to provide the Deliverables; or (b) distribute open source software in conjunction with or for use with the Deliverables.

5.17.6 Contractor represents and warrants that Documentation provided by Contractor under the Contract shall be in sufficient detail so as to allow technical personnel of State to understand the operation of the Deliverables. Contractor shall promptly, at no additional cost to State, make corrections to any Documentation that does not conform to this warranty.

## **5.18 Authorization.**

Contractor represents and warrants that:

5.18.1 Contractor is a [corporation, validly existing, and in good standing under the laws of its state of incorporation], and Contractor has all requisite power and authority to execute, deliver, and perform its obligations under this Contract; and the execution, delivery, and performance of this Contract by Contractor has been duly authorized by Contractor;

5.18.2 The execution, delivery, and performance of this Contract has been duly authorized by Contractor, and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Contract and perform its obligations thereunder;

- 5.18.3 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Contract;
- 5.18.4 Contractor has obtained and shall obtain all licenses, certifications, permits, and authorizations necessary to perform the Services and deliver the Deliverables under this Contract, and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's provision of services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract, and shall provide them to the State Contract Administrator upon the Effective Date, and otherwise upon the State Contract Administrator's request at Contractor's own expense; and
- 5.18.5 There is no outstanding litigation, arbitrated matter or other dispute to which Contractor is a party which, if decided unfavorably to Contractor, would reasonably be expected to have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract.

**5.19 DISCLAIMERS. WARRANTIES EXPRESSLY MADE IN THIS CONTRACT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES, AND ANY WORK PRODUCT; AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.**

## **6.0 Indemnification**

### **6.1 Indemnification by Contractor.**

In addition to, and not by way of limitation of, the provisions of Sections 7 and 8 of the General Conditions, Contractor shall indemnify, defend, save and hold harmless State and its officers, authorized representatives, employees, agents, successors and permitted assigns (collectively, the "State Indemnified Persons") from any and all Losses arising from, in connection with, as a result of, caused by, or based on, any allegations, actions, demands or claims:

- 6.1.1 of any breach of any representation, warranty or covenant made by Contractor herein or in the Contract;
- 6.1.2 of any hacks with respect to, or attacks on, the State IT Environment, State Property or any State Information (whether or not hosted at the State IT Environment) by one or more of the Contractor Personnel or the willful interference with State's information technology operations by one or more of the Contractor Personnel during their employment or retention or

engagement (or thereafter using the knowledge obtained during their employment, retention or engagement) by Contractor, a Contractor Assisting Entity and/or any other party assisting in the performance or the support of the Services or provision of any Deliverable or Work Product, in performing or assisting in the performance or support of the Services or the provision of the Deliverables and/or Work Product;

- 6.1.3 resulting from the actions of Contractor, a Contractor Assisting Entity or any party performing or assisting in the performance of the Services and/or willful misconduct, fraud or negligence by any of the foregoing entities;
- 6.1.4 relating to the death or bodily injury of any agent, employee, invitee, visitor or other person caused by the tortious conduct of one or more of the Contractor or Contractor Assisting Entities arising from, in connection with, as a result of, caused by or based on the Contractor's or any Contractor Assisting Entity's (or any party performing or assisting in the) performance of or omission in the performance of, the Services;
- 6.1.5 relating to the damage, loss or destruction of any property caused by the conduct of Contractor, a Contractor Assisting Entity or any party performing or assisting in the performance of the Services or provision of the Deliverables and/or Work Product;
- 6.1.6 of a breach of any covenant or other obligation pursuant hereto or the Contract by Contractor, a Contractor Assisting Entity, or any party performing or assisting in the performance of the Services or provision of the Deliverables and/or any Work Product;
- 6.1.7 that the performance of Services or provision of the Contractor Technology, Deliverables and/or Work Product (including, for avoidance of doubt, as performed in whole or in part by one or more Contractor Assisting Entities, or any party performing or assisting in the performance of the Services or provision of the Deliverables) and/or the Service or Contractor Technology, Deliverables and/or Work Product, infringes, misappropriates or otherwise violates any Intellectual Property Right, confidentiality right, privacy right, database right or other proprietary right of any Third-Party;
- 6.1.8 that no part of the Deliverables, Work Product, Services or UIS Service IT Environment is State IT Environment Incompatible;
- 6.1.9 based on, any hacks with respect to, or attacks on, the State IT Environment, State Property or any State Information (whether or not hosted at the State IT Environment or at State) or other data breaches or confidentiality breaches directly or indirectly arising from, in connection

with, as a result of, or based on, the UIS System.

- 6.2 Indemnification Process Terms.** If any claim is made against the State or a State Indemnified Person, notice thereof shall be given by State to Contractor, but any failure to provide such notice shall not limit the Contractor's indemnification or defense obligations to the extent the Contractor is not prejudiced thereby. Contractor will assume, at its expense, the defense of such action on behalf of the State, provided that the State shall nonetheless have the right to participate in such proceedings and to be represented by counsel of its own choosing, and the cost and expense attributable to such counsel shall be borne solely by the Contractor. Notwithstanding the foregoing, the State shall have the right to file an answer or motion to prevent the entry of a default judgment against it. The State shall reasonably cooperate, at the cost of the Contractor, with the Contractor's defense of such claim and any appeal arising therefrom. The exercise by the State of its option to participate in the claim, action or proceeding and/or to select its own separate counsel shall in no way limit or modify Contractor's obligations set forth in this Section 6.2. Notwithstanding the foregoing, if any claim of infringement of Intellectual Property Rights could result in the entry of equitable relief against the State, the State shall have the option, in its sole discretion and cost, to assume the right to control and direct the investigation into such claim and the defense and settlement thereof for the State. Without limiting the foregoing, Contractor shall not agree to any settlement of any claim without the State's prior written consent. Further, without limiting the generality of the foregoing, Contractor may not, without the State's prior written consent, settle, compromise or consent to the entry of any judgment in any such commenced or threatened action, unless such settlement, compromise or consent: (a) includes an unconditional release of the relevant State Indemnified Person from all liability arising out of such commenced or threatened action; and (b) does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, the State or otherwise adversely affect the State.
- 6.3 Contractor Software or Services Infringement.** In the event (a) any part of the Services, the Deliverables, Work Product or the UIS Service IT Environment or other Software or technology (including Technology), methodology or other products or materials used by Contractor or any Contractor Assisting Entity ("Subject Materials") is found to infringe upon, misappropriate or violate any Intellectual Property Rights of any Third-Party in any country or (b) the continued use of any of the foregoing Subject Materials is enjoined, Contractor shall, in addition to defending, indemnifying and holding harmless State as provided in Section 6.1 Indemnification by Contractor, and to the other rights the State may have under the Contract, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to State's operations:
- 6.3.1 obtain for State at Contractor's sole expense a license or other right to continue using and receiving the benefits of such Subject Materials for the Services, Work Product and Deliverables.

- 6.3.2 modify such Subject Materials so that all or the relevant portion thereof is no longer infringing (provided that such modification does not degrade the performance, functionality or quality of the Services or adversely affect State's intended use as contemplated by the Contract); and/or
- 6.3.3 replace such Subject Materials or the applicable portion thereof with a non-infringing functional equivalent acceptable to State.

## **7.0 Disclaimer of Warranties**

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EACH EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED OR STATUTORY OR ARISING OUT OF CUSTOM OR COURSE OF DEALING OR USAGE OF OR IN THE TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, STATE DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE STATE IT ENVIRONMENT WILL BE ERROR-FREE OR WILL BE AVAILABLE TO CONTRACTOR ON AN UNINTERRUPTED BASIS.

## **8.0 Software Escrow**

- 8.1 Contractor shall provide the State with the Source Code Form of all Software and associated Source Materials for all Software licensed for Use by the State from Contractor or used by Contractor to provide the UIS including any Third-Party Software, if Contractor and/or its Contracting Assisting Entities make such Software available directly to State, and for the Custom Software. Contractor shall provide such Source Code and Source Materials at no additional cost on magnetic media, or other electronic format that is acceptable to the State.
- 8.2 If Contractor and/or its Contracting Assisting Entities do not directly provide the Software in Source Code Form to the State, Contractor shall provide the State through the Escrow Agent, pursuant to Schedule 3 of this Exhibit, with a copy of the Source Code, object code, and updated associated Source Materials for Contractor-owned or Contractor Assisting Entity-owned Software, including Pre-Existing Works, and any other Software, including Third-Party Software, which Contractor is permitted by its license agreements to provide to sublicensees (including the State), in its then-current condition and as Updated or Upgraded during the Term.
- 8.3 Within ten calendar days of acceptance of the applicable Deliverables with Software, or as otherwise specified herein or elsewhere in the Contract, including for the avoidance of doubt, an Annex, Contractor shall provide the State directly or shall place a copy of the Source Materials with the Escrow Agent pursuant to the Escrow Agreement. Contractor shall thereafter regularly update the Software Source Code, Software executable code, and Source Materials as required to keep

the Source Materials current with the then-existing Software, provided, that it shall do so at least on calendar quarterly basis and in any event within ten calendar days of a written request of State.

- 8.4** Upon State's request, but no more than once per year unless Contractor is not in compliance with its escrow obligations, Contractor will certify in writing its compliance with Section 8.2 and with the Escrow Agreement during the term thereof, which certification will be signed by an officer of Contractor. If the State obtains the Source Code, object code, and Source Materials from a release of these materials pursuant to the Escrow Agreement, Contractor hereby grants to State a non-exclusive, transferable, perpetual (or for the longest period permitted by applicable law), irrevocable, license to Use, execute, alter, adapt, create updates to, and modify, enhance and create derivative works based on the Software (all of which State shall own), reproduce, display, transmit, make available, perform and distribute the Source Materials and authorize others to do the same. Further, Contractor consents to, and shall cooperate with, State contacting and obtaining assistance from the programmers after it has received the Source Materials.
- 8.5** Contractor shall be responsible for payments due to the escrow company and for making each escrow deposit.

## **9.0 Subcontracting**

- 9.1** In addition to, and not by way of limitation of, the provisions of Sections 3 and the other provisions hereof and thereof:
- 9.1.1 no work or services, including Services or Deliverables, shall be subcontracted or assigned without the prior written approval of the State Program Manager, which approval is subject to the Contractor Subcontractor's continuing compliance with applicable Law;
- 9.1.2 no subcontract shall under any circumstances relieve Contractor of its obligations, responsibilities and liability under the Contract;
- 9.1.3 Contractor fully guarantees the performance of its Contractor Subcontractors and shall at all times be responsible for the obligations, actions (including failure to act) and performance and defaults of such Contractor Subcontractors as if they were the obligations, actions (including failure to act), performance and defaults of Contractor; and
- 9.1.4 all persons engaged in performing the work covered by the Contract shall be considered employees of the Contractor. All proposed Contractor Subcontractors must be approved in advance by the State pursuant to this Section 9. All proposed Contractor Subcontractors deemed approved pursuant to the contract shall be deemed approved hereunder. No

Contractor Subcontractor shall provide any Service or Deliverables other than that approved by the State.

- 9.2** With respect to each proposed Contractor Subcontractor, the Offeror/Contractor shall:
- 9.2.1 Identify the proposed Contractor Subcontractor, including by providing its full corporate name and the address of its headquarters and the address of its office providing the services and other contact information for that office, and its primary executives and its key personnel who are contemplated to provide and manage the Services;
  - 9.2.2 Specify with particularity the Services the proposed Contractor Subcontractor will perform; and
  - 9.2.3 Provide sufficient information for the State to conduct background checks on the proposed Contractor Subcontractor and its personnel and supplement such information from time to time at the request of the State.
- 9.3** The Contractor Subcontractors providing Services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. The Contractor shall manage the quality and performance, project management and schedules and timely start and completion of Services by each of its Contractor Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.
- 9.4** In addition to any rights the State has under Law, the State shall have the right to require the removal of a Contractor Subcontractor or any of its personnel providing or supporting services for good cause. In such case, the State shall specify the deadline for such removal after consultation with the Contractor. A subcontractor proposed by the Contractor to replace the removed Contractor Subcontractor shall be subject to the approval provisions of this Section 9.
- 9.5** The State shall have the right to directly retain any former Contractor Subcontractor, and any Contractor Subcontractor after the expiration, termination or suspension of the Contract, including any Contractor Subcontractor providing services subject to any part of the Contract that is terminated or suspended.

## **10.0 Record Retention**

- 10.1 Record Retention.** Contractor shall comply with, and shall cause the Contractor Subcontractors to comply with, all Law (including, for clarity, federal Law) regarding the retention of and provision of access to records relating to the Contract and its performance (including failure to perform or to satisfactorily perform an obligation in whole or in part) hereunder. The foregoing records are



referred to as "Government Records."

- 10.2 Contract Records.** Without limiting its obligations with respect to Government Records, Contractor shall maintain, and shall cause each Contractor Subcontractor to maintain, complete, accurate and up-to-date records and supporting documentation, including with respect to all transactions, authorizations, changes, implementations, electronic document accesses, reports, filings, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor in the performance of the Services and its obligations under the Contract (collectively, "Contract Records").
- 10.3 Retention Period.** Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records and Contract Records during the Term of the Contract, including extension and for a period of not less than three (3) years after expiration or termination (but not its suspension) of the Contract or for such longer period required by Law or the terms hereof with respect to the applicable Government Records and/or Contract Records.
- 10.4 Litigation Retention.** Without limiting the foregoing, Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records and/or Contract Records related to, arising out of, or connected to the Contract with respect to: (a) any litigation, (b) any dispute before any tribunal, (c) any claim that is not resolved for one (1) year, or (d) any other disputes or claims, for a minimum of six (6) years from the date of the last action with respect to such litigation, dispute, or claim of which Contractor is aware.

## **11.0 Relief Available to State**

- 11.1 Specific Remedies.** In addition to all rights and remedies available to the State provided in the Contract, including for clarity, the General Conditions, or otherwise provided by Law, if Contractor is not in compliance with Contract terms, the State may, without being considered in breach of the Contract:

11.1.1 *Suspend Payments.* Temporarily withhold or disallow all or part of the billing Cost/payments pending correction of a deficiency in or a non-submission of a required Deliverable or failure to meet scheduled delivery times and/or milestones by the Contractor or other nonperformance of Contractor's obligations.

11.1.2 *Receive Reimbursement.* Receive reimbursement from the Contractor or withhold future payments for any funds paid to the Contractor subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.

11.1.3 *Receive Market Value.* In the event the Contractor fails, refuses or neglects to perform the Services or provide Deliverables, including meeting

delivery times and/or milestones in accordance with the terms of the contract, the State reserves the right to purchase, in the open market, a corresponding quantity of the Services and Deliverables, and to deduct from any monies due or that may thereafter become due to the Contractor, the difference between the Cost set forth in the Contract and the actual cost to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand from the State. The State may also utilize all other remedies provided by Law.

11.1.4 *Reductions in Payments Due.* Amounts due State by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set off by State from any money payable to Contractor pursuant to this Contract.

11.1.5 *Change Orders, Contractor Termination.* If Contractor fails or refuses to: (i) negotiate a Change Order in good faith; or (ii) perform its Services pursuant to an agreed upon and executed Change Order, Contractor shall be in material breach of this Contract, and the State shall have the right to terminate the Contract for such a breach in accordance with Section 13 of the General Conditions without any further liability to the State.

11.1.6 *Termination for Rejection of Deliverables.* If Contractor is unable to correct Defects and Problems in a Deliverable or Service pursuant to this Exhibit, State shall have the right to immediately terminate this Contract, in whole or in part, immediately or at such other time indicated in a notice of termination without penalty or liability to State, with such a termination being deemed a termination due to the material breach of Contractor hereunder, and return the Deliverable, if applicable, to Contractor, and other Deliverables in State's judgment.

If State terminates this Contract under this Section, Contractor shall, within 20 days thereafter, refund to State all payments made to Contractor for the returned Deliverable and Services rendered therefor and other Deliverables in State's judgment, in whole or in part.

11.1.7 *SLAs.* If any Deliverable, including but not limited to the UIS, in whole or in part, fails to meet its SLAs during the term and while Contractor is providing Maintenance Services, Contractor shall modify, reconfigure, upgrade or replace UIS components, including but not limited to Software and Equipment at no additional cost to State in order to provide a solution that complies with such SLAs.

11.1.8 *Suspension for Convenience.* State shall have the right at any time to order the Services or Deliverables of Contractor fully or partially stopped for its own convenience for up to 45 consecutive days. Contractor will receive notice of the reasons for such an order. Contractor shall have the right to

submit claims as a result of stop work orders issued under this Section.

11.1.9 *Right to Assurance.* If State, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at State's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

11.1.10 *Corrective Action Plans. State Request for Corrective Action Plan.* State may require Contractor to submit to State a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Defect and Problem or breach or prior to assessment of a liquidated damage.

- (i) *Scope of the Corrective Action Plan.* The Corrective Action Plan required by State under this Section must provide:
  - (a) Contractor's detailed explanation of the cause or reasons for the cited Defect and Problem or breach.
  - (b) Contractor's assessment or diagnosis of the cause of the cited Defect and Problem or breach; and
  - (c) Contractor's specific proposal to cure or resolve the Defect and Problem or breach.
- (ii) *Submission and Approval of Corrective Action Plan.* The Corrective Action Plan must be submitted within ten business days following the request for the Corrective Action Plan by State or another date acceptable to State. The Corrective Action Plan shall be subject to the written approval by State.
- (iii) *Contractor Responsibility for Performance.* Notwithstanding Contractor's submission and State's acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all SLAs and compliance with all other obligations under this Contract. Further, State's acceptance of a Corrective Action Plan under this Section shall not:
  - (a) Excuse Contractor's prior performance.
  - (b) Relieve Contractor of its duty to comply with performance standards; or

- (c) Prohibit State from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

#### *11.1.11 Guaranty.*

- (i) *Submission.* Within 10 Days of the Effective Date of the Contract, Contractor shall provide State with a Guaranty in the form of Schedule 2 to this Exhibit, which is attached hereto and incorporated by this reference, executed by the ultimate parent company of its organization. Contractor shall take all actions necessary to ensure that, if Contractor is acquired by or merges with another party or there is otherwise a change in Control of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way, then the ultimate parent company of that other party shall execute the Guaranty within ten Days of such acquisition, merger or change in Control.
- (ii) *Failure to Comply.* Failure to comply with the obligations in this Section 11 Relief Available to State by Contractor shall entitle State to exercise its available remedies at law, in equity, and under this Contract. In addition, any such acquisition, merger, divestiture, spin-out, spin-off, or other change in Control of Contractor shall be null and void under this Contract, and State shall have the right to rescission of this Contract, and to exercise its license to the Software Source Code under Section 8 Software Escrow.

#### *11.1.12 Letter of Credit*

- (i) *Value.* The Letter of Credit shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the Project Plan and providing Deliverables in accordance with the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default in performance hereunder or liability caused by Contractor. Contractor may satisfy the obligation to provide a Letter of Credit through provision of one or more Letters of Credit on behalf of Contractor or from various sources.
- (ii) *Payments.* The Letter of Credit shall become payable to State for any outstanding damage assessments made by State against Contractor. An amount up to the full amounts of the Letter of Credit may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by State in

obtaining similar Software, Deliverables, other products and Services to replace those terminated as a result of Contractor's breach. State may seek other remedies in addition to this stated liability. It is understood and agreed that the form of the Letter of Credit shall be substantially similar to the form in Schedule 1 to this Exhibit.

- (iii) *Review and Acceptance by State.* Prior to acceptance of the Letter of Credit, the State reserves the right to review and give its acceptance of the Letter of Credit. If the Letter of Credit expires based on its terms, Contractor shall immediately renew or establish a new Letter of Credit during the term. Both the initial expense and the annual premiums on the Letter of Credit shall be paid by Contractor. Failure to provide an acceptance Letter of Credit within 30 days of the Effective Date and during the term shall be a material breach of this Contract.

## **11.2 Acceptance Process**

- 11.2.1 Contractor must give Confirmation for each Deliverable before State shall begin performing Acceptance Tests. Upon delivery of a Service or Deliverable and receipt of Confirmation from Contractor that the Service or Deliverable meets applicable Specifications, State will, with Contractor's assistance at no additional charge and in accordance with the Project Plan, review or perform Acceptance Tests on the Service or Deliverable, as applicable, to determine whether there is conformation to such Specifications. State will provide Acceptance for a Service or Deliverable if it has no Defects and Problems, except as noted below. However, if a Defect and Problem is found, State will notify Contractor in an e-mail or other document of Defects and Problems used as the grounds for State's decision not to give Acceptance. Contractor shall correct Defects and Problems at no cost to State and State which will review or perform Acceptance Tests to verify whether the Service or Deliverable lacks Defects and Problems (except as noted below) and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. State's times for providing notice of Defects and Problems, Contractor's times for correcting Defects and Problems and State's review thereof shall be in accordance with the timeframes set in the Project Plan, or, if time periods for providing notice of Defects and Problems, correcting Defects and Problems by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Project Plan, each such time period shall be ten business days.
- 11.2.2 If Contractor is unable to correct all Defects and Problems within the number of days described in the Project Plan following the scheduled Acceptance Date, or if no such date is in the Project Plan, State may,

within 30 days from such scheduled Acceptance Date, at its sole option: (a) continue reviewing or performing Acceptance Tests on the Deliverable or Service and require Contractor to continue until Defects and Problems are corrected or eliminated. (b) require Contractor to provide, at its expense, a replacement Deliverable or Service for further review or Acceptance Tests; (c) set-off from the Charges to the extent State determines the Defects and Problems for the Service or Deliverable have not been corrected and provide Acceptance for the applicable Service or Deliverable; or (d) after completion of the process set forth in this Section and providing notice of default to Contractor, terminate this Contract in whole or in part as described in Section 11.1.6 of this Exhibit.

- 11.2.3 After Acceptance of a Deliverable or Service, State shall, with input from Contractor, determine whether the Deliverable or Service, if applicable, is ready for Go-Live. Contractor shall put the Deliverable or Service into Production after State gives Contractor Notice that the Deliverable or Service is ready for Go Live.
- 11.2.4 Contractor shall provide to State Services and Deliverables pursuant to this Contract on or before the applicable Service or Delivery Dates. All such Services and Deliverables made pursuant to this Contract must be complete. Contractor shall deliver hard copy and electronic versions, when required, of the Deliverables in formats agreed to by the parties.
- 11.2.5 In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance from the State Project Manager, the RFP, the Response, and any future amendments to this Contract, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with State's judgment and in favor of the latest State approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the RFP Requirements for a Service or Deliverable without the written consent of the State Project Manager.

## **12.0 Force Majeure and Business Continuity; Data Backup and Recovery.**

- 12.1** *Business Continuity Plan.* Immediately upon the occurrence of a disaster (as such term may be defined in the Business Continuity Plan, which includes a disaster recovery plan ("Disaster Recovery Plan"), (developed from the requirements related to "DR" in "OF-8 Ongoing Services Requirements" and "OF-9 Implementation Services Requirements") (the "Business Continuity Plan") or other event covered by the Business Continuity Plan, Contractor shall implement the appropriate portions of its Business Continuity Plan and take whatever

additional steps are necessary or appropriate to limit any period of time in which the performance or provision of the Services, Deliverables, and/or the UIS is suspended or diminished. Following any such disaster, Contractor shall reinstate the Services, the Deliverables, and the UIS in accordance with the applicable time frames set forth in the Business Continuity Plan.

- 12.2** *Disaster Recovery.* Disaster Recovery - The Offeror's Cloud Services must use, subject to DLIR's approval, multiple geographically distinct regions for disaster recovery and business continuity. Protection from Extreme Weather and Natural Disasters: The Business Continuity Plan requires recovery facilities geographically distant from the facilities where the production applications operate. The goal is to have the SYSTEM meet required application recovery time and point objectives specified in the RFP Requirements (Attachment A – Service Level Agreements and OF-7 Service Level Agreement Requirements) at a low expense to the State. For example, these goals can be met by implementing anything from reserved space with a disaster recovery provider to the application running in lockstep for continuous availability at a geographically distant data center.
- 12.3** *Force Majeure.* Subject to the terms of Section 12.1 and the State's right to terminate the Contract for cause, if and to the extent a Party's performance of any of its obligations pursuant to the Contract is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party, excluding events provided for in the Business Continuity Plan (each, a "Force Majeure Event"), then the non-performing, hindered or delayed Party shall be reasonably excused for such nonperformance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, work-around plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail (a) the nature of the Force Majeure Event, (b) anticipated impacts, if any, on Services, SLAs, schedules and payments, and (c) mitigation plans through the use of alternate resources, workarounds and other means.
- 12.4** *Contractor Obligations.* The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect Contractor's obligation to provide either normal recovery procedures or services required under the Business Continuity Plan only to the extent execution of the Business Continuity Plan is itself prevented by the Force Majeure Event.
- 12.5** *No Payment for Unperformed Deliverables or Services.* If Contractor fails to

provide the Services or Deliverables in accordance with the Contract due to the occurrence of a Force Majeure Event, the Costs shall be adjusted in a manner such that the State is not responsible for the payment of any Costs for those Services and Services that Contractor fails to provide, or which are degraded.

- 12.6** *Allocation of Resources.* Whenever a Force Majeure Event or a disaster causes Contractor to allocate limited resources between or among Contractor's customers, Contractor shall provide the State with priority over other customers in the receipt of such resources.
- 12.7** *Business Continuity Plan for the State.* Contractor shall assist the State in developing and implementing a disaster recovery and business continuity plan for the State (which is referred to as "IT service continuity and DR strategies, policies and procedures" in accordance with "OF-9 Implementation Services Requirements, OF-8 Ongoing Services Requirements, " and "OF-4 Requirements Traceability Matrix").
- 12.8** *Data Backup and Daily Feeds.* Notwithstanding any other provision hereof and not by way of limitation of the provisions of "OF-8 Ongoing Services Requirements," State shall have the right to establish backup security for State Information.
- 12.9** *Data Recovery.* In the event that any State Information is lost or corrupted (including any loss of integrity), or if Contractor fails to deliver State Information to any Third-Party responsible for the storage of State Information in accordance with the governing backup procedures and there is no up-to-date replica or backup of such State Information from which such data and/or information can be replicated or restored, Contractor shall at its expense restore or correct, as applicable, the State Information, and pay for the State's costs associated with restoring or correcting the State Information.
- 12.10** *Confidentiality Requirements.* Contractor shall abide by all applicable federal and State confidentiality requirements, including, without limitation, providing at Contractor's expense all notices or other corrective or mitigating measures required by Law in the event of a breach of the security of the data for which breach Contractor is indirectly or directly responsible.

**13.0 Time is of the Essence.**

Time is of the essence with respect to Contractor's performance under the Contract. As used herein "Time is of the essence" shall be defined to mean that the Contractor will strictly adhere to the mutually agreed upon schedule and milestones for Services, Deliverables, and other Work Products, subject only to delays directly, and to the extent, caused by State that are not capable of cure.

**14.0 Integration.**

The Contract, including the Annexes (which, for clarity, include the RFP, the Offer, the



Exhibits, the Attachments, the General Conditions, the Supplemental General Conditions, and the NOA), constitutes the entire agreement of the Parties hereto with respect to its subject matter. The Contract supersedes any and all previous agreements between the Parties. There are no oral or written representations, agreements or understandings except as provided in the Contract.

**15.0 Principles of Construction.**

Except where specifically stated otherwise, all references to Sections are to Sections in the Contract. The headings used in the Contract have been inserted for convenience of reference only and do not constitute a part of the Contract or define, expand or limit the provisions thereof. The words "hereof," "herein" and "hereunder" and words of similar import when used in the Contract shall refer to the Contract as a whole, including the Annexes, and not to any particular provision of the Contract. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply. The word "including" (and with correlative meaning "include") means "including but not limited to."

**16.0 Sovereign Immunity.**

The State of Hawaii and Enterprise Technology Services do not waive sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns pursuant to HRS chapters 661 and 662 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract will not be strictly construed either against or for either party, except that any ambiguity as to sovereign immunity will be construed in favor of sovereign immunity.

**17.0 Changes Initiated by Contractor**

**17.1** Contractor must provide State with notice and a description of all Contractor-initiated changes to the UIS Services and UIS System, for any change that might affect or impact State; the notice must be 60 calendar days in advance when feasible and must include any known impacts the changes might have to State. If the change is determined by State to have an adverse impact when tested by State, Contractor shall not implement the change in the System without State's advance written consent. If the change is determined by State to have had an adverse impact after Contractor has implemented the change, Contractor shall, at no cost to State, promptly remove the change and/or correct the change which has had an adverse impact.

**17.2** Except for emergencies, Contractor must notify State 60 calendar days prior to non-remedial changes to the UIS Services or UIS System. Contractor will provide an opportunity for State testing and analysis of State systems and procedures.

Non-remedial changes with impact on State will be implemented at a time agreed upon with State.

- 17.3** Contractor shall absorb all costs associated with Contractor initiated changes to the UIS Services or UIS System.

## **18.0 Warranty Services and Maintenance Services**

- 18.1 General Responsibilities.** During the Warranty Periods, Contractor shall provide Services as described in this Section 18 and the RFP and Response as the Warranty Services at no charge and following the Warranty Periods as Maintenance Services. Such Service responsibilities shall include but not be limited to the following:

**18.1.1** Promptly repair in accordance with Supplemental Conditions or replace the System or other Deliverables and Services, or any portion thereof, that has Deficiencies;

**18.1.2** Maintain the System and Services in accordance with the Requirements and terms of this Contract;

**18.1.3** Execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies, subject to State's security and administrative requirements;

**18.1.4** Provide these Services 24-hours a day, Monday through Sunday, unless otherwise agreed to by the parties in writing; and

**18.1.5** The management and release of the Warranty Services fixes can be integrated with other Maintenance activities; however, from a financial perspective all costs associated with fixing the Deficiencies will be covered by the DDI portion of the Contractor's budget. Effort spent on Warranty Services fixes shall not be counted as Maintenance Services.

## **18.2 Specific Warranty Services Obligations.**

**18.2.1** Notwithstanding the expiration of the Warranty Period(s), Contractor shall, at no additional cost to State, be obligated to remedy all Deficiencies identified during the Warranty Period(s) for the System, in whole or in part;

**18.2.2** During the Warranty Periods, Contractor will remedy all Deficiencies, and resolve any data corruption issues, without cost to State. These Warranty Services must cover all components of the System, including but not limited to all Software, Equipment, Facilities, Services, programs, screens, reports, subroutines, utilities, file structures, documentation, integration,

conversions, or other items provided by Contractor or its Subcontractors. These Warranty Services will apply to the Software, including but not limited to any Custom Software, Equipment, Facilities, Services, screens, reports, subroutines, interfaces, conversions, utilities, file structures, Documentation, or other items proposed and delivered by Contractor specifically for this Contract;

18.2.3 Contractor must obtain and maintain, for itself, and for the benefit of State, warranty, support, and Maintenance coverage for all Software, Facilities, Hosting Services, and Equipment sufficient to enable it to perform all Services it is required to perform under the Contract; and Coordinate with State all tasks related to correcting Deficiencies.

**18.3 Inquiry and Assistance.** Contractor shall during business days, within the times described in Supplemental Conditions of receiving an inquiry from State related to the provision of Software, Equipment, Facilities, and Services, as applicable, respond to the inquiry with the following:

18.3.1 Responses to questions relating to the System and Services, including without limitation isolating problems to the Software, Services, Facilities, Data or Equipment;

18.3.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

18.3.3 Corrections and repairs of errors, problems or Deficiencies with the System and Services, to the extent technically feasible; and

18.3.4 Clarification of Documentation.

**18.4 Database.** Within 15 days of the Effective Date and the end of each calendar quarter thereafter, Contractor shall maintain and make available online to State a database of all Change Requests, Deficiencies, and other problems reported by State under Section 18.2 or known to Contractor in the Software, Equipment, Facilities, and Services. The database shall include, as a minimum, the following:

18.4.1 Date and time Contractor was notified or an inquiry was made;

18.4.2 Date and time of arrival at State Site or inquiry response;

18.4.3 Time spent for resolution of Deficiencies;

18.4.4 Description of Deficiencies;

18.4.5 Description of severity level of Deficiencies, e.g., emergency;

- 18.4.6 Description of Deficiency resolution;
- 18.4.7 Date and time of resolution; and
- 18.4.8 Names and titles of Staff who were dispatched to State and/or who resolved the Deficiency.

**18.5 Enhancements.**

- 18.5.1 Contractor shall produce Enhancements and associated Documentation requested by the State. Such Documentation shall be adequate to inform State of the problems and Deficiencies resolved, if any, by the Enhancements and new Functions. Contractor will provide its Confirmation that each such Enhancement has been tested and performs according to the Requirements before the Enhancement is implemented into the Software. Contractor agrees to correct corrupted Data and Deficiencies that may result from any Deficiency introduced by the Enhancement. Contractor shall absorb all costs associated with correcting such corrupted Data and Deficiencies.
- 18.5.2 Enhancements to correct any Deficiency shall be provided to State as part of the Services and without the need for additional Change Orders.
- 18.5.3 Contractor shall assist the State with installing all Enhancements in accordance with a Schedule mutually agreed to by the parties.
- 18.5.4 If Contractor develops a new Function for its System for another state, and if Contractor has rights to make it available to State for State's use, Contractor will make available the new Function to State at no additional cost for the Function. However, Contractor may charge State to customize, configure and implement the Function for State's specific version of the System. If new functionality for the System must be developed for multiple states and is core to multiple customers, Contractor will develop such functionality and allocate the cost for such functionality fairly and reasonably between State and the other states receiving or using the functionality, and State would pay for work specifically for State as described above. Contractor must pre-test each Function and give a Confirmation that it performs according to the Requirements as modified by written agreement of the parties. Contractor agrees to correct corrupted Data that may result from any Deficiency introduced by the Function.

- 18.6 Deficiency Reports.** Contractor shall provide to State, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors, and Deficiencies known by Contractor to be in any version of the System used by State, along with a schedule for resolution thereof. Deficiencies, problems, errors, and bugs causing

crashes or corruption of the Data shall be reported by Contractor to State within eight hours of their becoming known to Contractor.

- 18.7 Continuous Improvement.** Contractor shall, at no additional cost to State: (a) be proactive in identifying opportunities to implement new technologies that will improve and support the System; (b) work together with State, to identify opportunities to implement new technology which may be advantageous with respect to the System; (c) maintain a level of currency, knowledge, and technology that allows State to take advantage of technological advances with respect to the System; (d) meet with State periodically to inform State of any new technology or technology trends that Contractor is developing or is otherwise aware of that could reasonably be expected to have an impact on the System; and (e) provide State, upon receipt of State's prior written approval, with the benefit of any improvements made to the technology for the System.
- 18.8 Performance Standards.** Contractor represents and warrants that it will maintain the System and provide Services, in whole and in part, to meet the DLIR Performance Standards.
- 18.9 Project Warranty.** The Contractor warrants that each Deliverable under this Project Agreement shall conform to any applicable Specifications and/or Performance Criteria set forth under this Project Agreement and be free from Errors for a period of six (6) months from the date of Final Acceptance or deemed acceptance ("Warranty Period") as such date of Final Acceptance by DLIR. During the Warranty Period, Errors in Deliverables under warranty shall be corrected at no cost to the Customer and without delay of Contractor being notified thereof. Minor Errors in the Deliverables shall be corrected pursuant to this contract.
- 18.10 Service Warranty.** For the contract term the Contractor warrants and represents that:
- 18.10.1 it has full right and power to enter into the Contract and to perform its obligations according to the terms of the Contract and that such performance will not violate any applicable laws, the contractor's articles of association or any other such document or articles, which would otherwise materially jeopardise the Contractor's existence or ability to perform all obligations under the Contract;
  - 18.10.2 it has obtained relevant approvals, licences and/or authorisations from: (i) governmental or regulatory authorities; and (ii) its board or other relevant corporate body, required to enter into, be bound by and to perform the Services and other obligations under the Contract;
  - 18.10.3 it shall maintain such approvals, licences and/or authorisations, and obtain such new approvals, licences and/or authorisations as may be

required from time to time to be bound by and perform the obligations under the Contract;

- 18.10.4 it has acquired all Intellectual Property Rights, licence rights or similar rights materially necessary for providing the Services required by the State; and it shall procure and uphold all intellectual property rights necessary and fundamental for the contractor's provision of the Services throughout the Term;
- 18.10.5 it has established and executed and shall maintain all relevant contractual relationships with Subcontractors as required; and such contracts are enforceable according to their terms under applicable law;
- 18.10.6 all design methods, programming languages and development tools utilized in performance of the Service are in compliance with Best Industry Practices (including in respect of using standard tools and Software to the extent possible) so that: (i) future upgrades, maintenance and further development of State's systems can be executed in a technically expedient manner without incurring disproportionate resource consumption; and (ii) operational execution of the States systems by any Third Party is in no unreasonable manner way prevented;
- 18.10.7 the Applications, connectivity and State Data are duly protected against unauthorized access and use, and that the contractor has delivered and will maintain complete documentation of all security aspects and Services; and
- 18.10.8 the contractor complies with State's security policies and security requirements on the date of this Contract and will continue with the life of the Contract, to include the end of contract period plus 1 year.

## **19.0 Conflicts of Interest**

- 19.1** Contractor represents that neither Contractor, nor any Staff, as of the Effective Date has any interest, and warrants that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with Contractor's performance under this Contract.
- 19.2** In the event that Contractor or its Staff hereafter acquires such a conflict of interest, it shall immediately disclose such interest to State and take action immediately to eliminate the conflict or to withdraw from the Contract, as State may require.
- 19.3** During the term of this Contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships, including without

limitation with Staff who have any such interests, which conflict in any way with Contractor fully performing its obligations under this Contract.

- 19.4** Additionally, Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to State under the terms of the Contract, without the prior written approval of State.
- 19.5** In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to State a full disclosure statement setting forth the relevant details for State's consideration and direction.

**SCHEDULE 1 TO EXHIBIT 3**

**LETTER OF CREDIT**

Bank \_\_\_\_\_  
[Month Date], 20XX

Irrevocable Letter of Credit

Number: \_\_\_\_\_  
Amount: US\$ \_\_\_\_\_

To whom it may concern:

At the request and for the account of \_\_\_\_\_, Inc. we hereby establish our Irrevocable Letter of Credit Number \_\_\_\_\_ in your favor, available by draft(s) at sight on Bank \_\_\_\_\_, up to the aggregate sum of \$ \_\_\_\_\_, inclusive of any banking charges effective as of today's date and expiring on [Month Date], 20XX.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by a purportedly authorized representative of the State of Hawaii to the effect that the amount drawn represents funds due and payable to you because of the following reason:

- Nonperformance of the Contractor [Contractor Name] pursuant to Contract PSCXXXXX dated as of [Month Date], 20XX (the "Contract") for designing, developing, implementing, operating and maintaining the new UIS (as defined in the Contract), in whole and in part.
- Contractor has made an assignment for the benefit of creditors; or
- Contractor institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or
- A receiver or similar officer has been appointed to take charge of all or part of Contractor's assets; or
- Contractor is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-



out, spin-off, or any other way; or

- Contractor terminates its maintenance and support services for State for the UIS Services or UIS System or breaches its support and maintenance obligations for State, whether due to its ceasing to conduct business generally or otherwise.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication Number 600, as modified from time to time.

Yours faithfully,

For and on behalf of:

Bank \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 2 TO EXHIBIT 3**

**GUARANTY**

In consideration of the execution by the \_\_\_\_\_ ("State") of the Contract dated \_\_\_\_\_, 2023 (the "Contract") with \_\_\_\_\_ ("Affiliate"), \_\_\_\_\_ ("Parent") unconditionally and irrevocably guarantees to the State, on the terms and conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

If Affiliate fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Affiliate failed or refused to complete, or be considered to be in breach of the Contract to the same extent as Affiliate, pursuant to the terms and conditions of the Contract.

Parent agrees that it shall not be necessary for the State, or its successors or assigns to exercise their rights against Affiliate, before proceeding to enforce their rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by the State affecting Affiliate's rights or obligations under the Contract; (c) notice of any breach or claim of breach by Affiliate; and (d) the benefit of suretyship defenses generally.

Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

Notices to Parent shall be sent to the address set forth below.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE 3 TO EXHIBIT 3

### SOFTWARE ESCROW AGREEMENT

THIS SOFTWARE ESCROW AGREEMENT (the "Agreement") is made as of this \_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), among ("ESCROW AGENT"), \_\_\_\_\_ ("LICENSOR" or "DEPOSITOR"), and \_\_\_\_\_ ("LICENSEE" or "BENEFICIARY") (hereafter, each a "Party" or collectively "Parties").

#### RECITALS

LICENSOR and LICENSEE have entered into a Contract dated \_\_\_\_\_ (the "Main Contract") to license certain Software (as defined in the Main Contract) (collectively, the "Software") upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code, object code, and certain documentation therefor.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

- 1 Deposit in Escrow.
  - 1.1 Within 30 days of the Effective Date of the Main Contract, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the Source Materials in Schedule 3 to Exhibit 3, which is attached hereto and incorporated herein by this reference (collectively, the "Source Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Such package shall also indicate whether the Source Materials are owned by LICENSOR, one of its Contracting Assisting Entities (as defined in the Main Contract) or a COTS (as defined in the Main Contract) Software provider.
  - 1.2 Escrow Agent will conduct a visual deposit inspection upon receipt of any Source Materials provide notice by electronic mail, telephone, or regular mail to the Depositor and Beneficiary of all Source Materials that is accepted and deposited into the escrow account under this Agreement. If Escrow Agent determines that the Source Materials does not match the description provided by Depositor represented in Schedule 3 to Exhibit 3 attached hereto, Escrow Agent will provide Depositor with notice by electronic mail, telephone, or regular mail of such discrepancies. Escrow Agent will work directly with the Depositor to resolve any such discrepancies prior to accepting Source Materials.

- 1.3 OTHER THAN ESCROW AGENT'S INSPECTION OF **THE SOURCE MATERIALS**, AS DESCRIBED ABOVE, ESCROW AGENT SHALL HAVE NO OBLIGATION REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NONPERFORMANCE OF THE SOURCE MATERIALS.
  - 1.4 LICENSOR shall deliver revisions of the Source Materials, including if available the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Software are made available to LICENSEE in accordance with the Main Contract. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.
  - 1.5 Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.
- 2 Release From Escrow.
- 2.1 ESCROW AGENT shall, within seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described below if:
    - 2.1.1 LICENSOR has made an assignment for the benefit of creditors; or
    - 2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or
    - 2.1.3 A receiver or similar officer has been appointed to take charge of all or a part of LICENSOR's assets; or
    - 2.1.4 LICENSOR is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or
    - 2.1.5 LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or

- 2.1.6 LICENSOR, a COTS Software provider, or a Contractor Assisting Entity is adjudged insolvent or suffers execution of any legal or debt enforcement process over its assets; provided that in the event of any of the foregoing with respect to a Contractor Assisting Entity or a COTS Software provider, only the Source Materials with respect to the Contractor Assisting Entity, or the COTS Software provider shall be released; or
  - 2.1.7 LICENSEE has the right to terminate the Main Contract for convenience pursuant to the State Attorney General (AG) General Conditions, and for breach (which for the avoidance of doubt shall include, LICENSOR's failure to meet any requirements, timetables, milestones or other requirements herein or in the Main Contract, including, for the further avoidance of doubt, in any Annex) in accordance with its terms, whether or not it has done so; or
  - 2.1.8 LICENSOR refuses to do, or does not perform, any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software in accordance with the terms hereof or the Main Contract; or
  - 2.1.9 LICENSOR's proposed or actual charges associated with any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software are in excess of industry standard costs. Industry standard costs shall be determined by multiple bids (to the extent feasible) for requested work with reputable and established production companies, or by other commercially reasonable standards are not practical; and/or
  - 2.1.10 LICENSOR's Services or Deliverables, including delivery times as reasonably requested by LICENSEE, do not meet or will not meet commercially reasonable industry standards.
- 2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via commercial express mail.
- 2.3 Upon receipt of such notices in accordance with Section 2.2, LICENSOR shall have 30 calendar days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.
- 2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 calendar days provided in Section 2.3 that LICENSEE's request for release

from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the Main Contract and solely for support and maintenance for the Software within the provisions of the Main Contract. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

2.5 If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to litigation for resolution in accordance with the terms of this Agreement.

2.5.3 In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

2.6 Each party shall bear its own costs incurred in any litigation as set forth in Section 2.5 above.

### 3 Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

3.2 ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the Supplemental General Conditions and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

- 4 Storage and Security.
  - 4.1 ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.
  - 4.2 The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.
  - 4.3 Except as provided in this Agreement, ESCROW AGENT agrees that:
    - 4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials.
    - 4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement.
    - 4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and
    - 4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.
  - 4.4 ESCROW AGENT shall, upon LICENSEE's request and in accordance with Section 1.2, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver.
  - 4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.
  - 4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree,

ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any Third-Party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

5 Termination.

- 5.1 The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year to year unless (a) LICENSOR and LICENSEE jointly instruct ESCROW AGENT in writing that the Agreement is terminated; or (b) ESCROW AGENT instructs LICENSOR and LICENSEE in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2. ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing LICENSOR and LICENSEE 90 calendar days' written notice of its intent to terminate this Agreement. Upon ESCROW AGENT's receipt of LICENSEE's (or LICENSOR's, if LICENSOR is paying ESCROW AGENT's fees) request for a refund, ESCROW AGENT shall refund the pro rata portion of the annual renewal fee attributable to the period from the date of such termination by resignation to the next successive anniversary date. If the Source Materials are subject to another escrow agreement with ESCROW AGENT, ESCROW AGENT reserves the right, after the initial one-year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements. This Agreement may also be terminated in accordance with the terms of Section 2.
- 5.2 In the event of the nonpayment of fees owed to ESCROW AGENT, ESCROW AGENT shall provide written notice of delinquency to all Parties to this Agreement. Any Party to this Agreement shall have the right to make the payment to ESCROW AGENT to cure the default. If the past due payment is not received in full by ESCROW AGENT within one (1) month of the date of such notice, then ESCROW AGENT shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. ESCROW AGENT shall have no obligation to take any action under this Agreement so long as any payment due to ESCROW AGENT remains unpaid.
- 5.3 LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 calendar days' notice to ESCROW AGENT.
- 5.4 Good Faith Reliance. ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.

6 Indemnification.



- 6.1 LICENSOR and ESCROW AGENT shall defend, indemnify and hold harmless the other, its corporate affiliates and its officers, directors, employees, and agents and its successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.
- 6.2 If there is a claim brought against ESCROW AGENT that the Source Materials infringes intellectual property rights or any other rights of a Third-Party and such claim includes a threat of liability for ESCROW AGENT (as reasonably determined by ESCROW AGENT) in the event of release of the Source Materials by ESCROW AGENT to Beneficiary (an "IP Infringement Claim"), then ESCROW AGENT shall notify Beneficiary of same, and Beneficiary shall release ESCROW AGENT from its obligation to provide to Beneficiary the Source Materials as set forth in this Agreement pending resolution of such IP Infringement Claim, except that ESCROW AGENT shall comply with the order of a court of competent jurisdiction to release the Source Materials.

## 7 Fees.

- 7.1 ESCROW AGENT is entitled to be paid its standard fees and expenses applicable to the services provided. LICENSOR shall pay the ESCROW AGENT's fees and expenses. ESCROW AGENT shall notify LICENSOR at least 60 calendar days prior to any increase in fees.
- 7.1.1 ESCROW AGENT shall not be required to perform any service, including release of any Source Materials under Section 2, unless the payment for such service and any outstanding balances owed to ESCROW AGENT are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Source Materials whichever is earliest. Payments on all renewal and services invoices are due net 30 calendar days from date of invoice. If invoiced fees are not paid, ESCROW AGENT may terminate this Agreement in accordance with Section 5.2. Any service fees not collected by ESCROW AGENT when due shall bear interest until paid at a rate of 1% per month (12% per annum) or the maximum rate permitted by law, whichever is less. Delinquent accounts may be referred to a collection agency at the sole discretion of ESCROW AGENT.

- 8 Entire Agreement. As between LICENSOR and LICENSEE this Agreement incorporates by reference specific sections of or definitions from the Main Contract. With respect to ESCROW AGENT, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall

supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Agreement is intended to be and shall be treated as an agreement separate and distinct from the Main Contract.

- 9 Notice. All notices regarding Section 2 shall be sent by commercial express mail. All other correspondence, including invoices, payments, and other documents and communications, shall be sent by certified, registered or regular mail to the Parties at the addresses specified on another Exhibit (if any) which shall include the individual(s) authorized to receive notices. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of physical or e-mail addresses. Any Party shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or undeliverable by postal authorities by mail, through messenger or commercial express delivery services.
- 10 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Hawaii. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The exclusive venue of any action hereunder shall be in Honolulu, Hawaii.
- 11 Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.
- 12 Headings. The headings in this Agreement do not form a part of it but are for convenience only and shall not limit or affect the meaning of the provisions.
- 13 Main Contract Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the Main Contract. However, to the extent this Agreement is in conflict with the Main Contract, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ESCROW AGENT:

By:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

LICENSEE:

Print Name:

\_\_\_\_\_

Print Title:

\_\_\_\_\_

NOTICE ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn:

\_\_\_\_\_

Title:

\_\_\_\_\_

Fax:

\_\_\_\_\_

LICENSEE:

Print Name:

\_\_\_\_\_

Print Title:

\_\_\_\_\_

NOTICE ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn:

\_\_\_\_\_

Title:

\_\_\_\_\_

Fax:

\_\_\_\_\_

