

ATTACHMENT 10
SUPPLEMENTAL GENERAL CONDITIONS
STATE OF HAWAII RFP-EFS-2025

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Supplemental Conditions

1.0 Definitions

"Acceptance" means a written notice from State to Contractor that a Deliverable or Service appears to satisfy the applicable Acceptance Criteria in accordance with the process described in this Attachment 10. Acceptance does not waive any rights by the State in the Contract to require the repair of later-discovered Defects (as defined below) in the Deliverable or Service.

"Acceptance Criteria" means the criteria against which each Deliverable shall be evaluated in accordance with the RFP Requirements, this Attachment 10 and the SLAs, warranties and other requirements described in the Contract, and any subsequent amendments and Change Orders, and to the State's satisfaction for Services which are not subsumed in a Deliverable.

"Acceptance Tests" means the tests or reviews that are performed to determine whether the Services or Deliverables appear to satisfy the applicable Acceptance Criteria in accordance with the process described in the Contract.

"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 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. "Annex" means any Attachment, Exhibit, Schedule, or other document appended to the Contract, the RFP Document or the Proposal and which are made part of the Contract.

"Business Day" means any day that is not a Saturday, Sunday, or public holiday in the State.

"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 the HRS or HAR.

"Change Order" means a written amendment to the Contract, executed by the Parties' authorized representatives, changing, or adding to the Services or Deliverables.

"Change Request" means a request by the Contractor or the State to enter into discussions for a Change Order.

"Confirmation" means Contractor's written notice to State, including full supporting and written documentation (including without limitation test results), that Contractor has, as

applicable: completed or pre-tested a Deliverable, Service, object or other work product in accordance with State's Acceptance Criteria and has confirmed it is Defect-free and ready for applicable Acceptance Tests.

“Contract” has the meaning provided in the RFP Document Section 3.1 Contract Execution. It includes the RFP Document, the Contractor’s proposal or BAFO, the State of Hawaii General Conditions (Attachment 9), the Supplemental General Conditions (Attachment 10), the Special Conditions (Attachment 11), Contractor’s pre-Contract representations to the State, and other terms as may be agreed to by the State and the Contractor.

“Contractor” means any person or entity that intends on submitting a Proposal; provided that after the deadline for submission of proposals, Contractor shall mean any person or entity that has submitted a Proposal.

"Contractor Assisting Entities" means Contractor Subcontractors and Affiliates, and employees, or agents of all Contractor Subcontractors and Affiliates providing or supporting or assisting in providing or supporting the EFS and such persons and entities themselves, which or who assist Contractor in providing the EFS, in whole or in part.

"Contractor Personnel" means any and all personnel, employees, Subcontractors, agents of Contractor, or Contractor Assisting Entities providing, supporting, or assisting in providing or supporting the Services, including the operation of the EFS.

"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. This includes, for avoidance of doubt: sub-subcontractors, independent contractors, or the equivalent under local Law, retained by a State-approved subcontractor or any one of the foregoing.

"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 or used by Contractor (including the Contractor Assisting Entities) in connection with the EFS. For purposes of clarity, Contractor Technology includes Upgrades and Enhancements thereto.

"Corrective Action Plan" means the detailed written plan required by the State to correct or resolve a Defect or Problem or breach by Contractor or event causing the assessment of liquidated damage against Contractor.

"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.

"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, 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 Enterprise Financial System Software and, if utilized as part of the EFS, the SaaS Software, used in connection with the Enterprise Financial System.

"Custom Software" means software, programming code or other objects, reports or Deliverables which are specially designed, developed or produced by Contractor for use in the Enterprise Financial System.

"Defect(s)" means a failure of Services or Deliverables (including the EFS as a whole) to meet the RFP Requirements or other applicable requirements hereunder, errors or gaps in the operation of the Services or Deliverables, or where Services or Deliverables cause unplanned negative upstream or downstream effects. Also referred to as a "Problem."

"Deliverable" means work product or services which are produced or prepared for the State as part of Contractor's performance under this Contract, including all deliverables set forth in RFP Document Section 4.4.2 Implementation Services or in accordance herewith, including each Phase and the EFS, 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.

"Disaster Recovery Plan" has the meaning ascribed thereto in the RFP Document Section 5.3.1 Hosting Services.

"DR" means disaster recovery.

"Documentation" means documentation and materials that describe in reasonable detail the specifications, functions, use, maintenance, and operation of the EFS and the components thereof, including operations and training manuals for installation, maintenance, operation, and use of the EFS, including the Software.

"Enhancements" means and includes all customizations, enhancements and additions made to the Software, data fields, coding schemes, report formats, user or application interfaces, data displays, computer dashboards and other similar features.

"EFS" means the Enterprise Financial System and the related implementation methodology together with the Services and all other functions required to implement and provide the EFS.

"EFS Software" means the enterprise planning Software used to provide the EFS.

"ETS" means the State Office of Enterprise Technology Services.

"Facilities" means the facilities used by the Contractor to house Purchased Equipment, Software, and State Information comprising the EFS, or that provide related functions.

“General Conditions” means the State of Hawaii General Conditions, which is Attachment 9 to the RFP Document.

"Go-Live" means the event(s) that occurs after Acceptance of a Phase when Contractor recommends and the State agrees to put the Phase, in whole or in part, into production to perform the State’s business operations.

"Good Faith Dispute" means that the State has made an initial determination in good faith that Contractor has failed to provide all or part of the Services or Deliverables, or that there are Defects in the Services or Deliverables, or that payment for invoiced Costs is not properly due.

"HAR" means Hawaii Administrative Rules.

"HRS" means Hawaii Revised Statutes.

"Hosting Services" has the meaning ascribed thereto in the RFP Document and other related Services.

"Implementation Services" means the Implementation Services that Contractor is required to provide pursuant to the terms hereof, including those defined in the RFP Document Section 4.4.2 Implementation Services.

"Incidents" means an issue or incident leading to, or any other event resulting in, failure to meet a Service level requirement in a Service Level Agreement.

"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.

"Key Personnel" means Contractor Personnel whose names and resumes were submitted in the Proposal along with any additional named personnel the Contractor commits to provide.

"Laws" means the 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.

"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.

"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 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.

"M&O" means Maintenance and Operations.

"Obsolete," and any variations thereof, means a software or Technology product will be deemed "Obsolete" as of the effective date of an end-of-service life announcement (via publication of any kind, including customer notices, website notices, press releases or announcements on company-sponsored message boards or forums) from the manufacturer or licensor with respect to a product. If no such announcement is published, then the software or hardware product will be deemed Obsolete as of (i) the date the manufacturer or licensor no longer maintains or supports the product or (ii) the date the manufacturer or licensor no longer includes it as part of its product or service offerings made generally available to its customers.

"Ongoing Services" means the Services defined in the RFP Document Section 5.3.3 Post-Production Support Services.

"Operational" means the condition when the EFS is totally functional in accordance with RFP Requirements and usable for its purposes in the daily operations of providing the EFS.

"Party" means each of Contractor and State and collectively, **"Parties."**

"Phase" means the combination of functions described as a Phase in the RFP Document, Proposal, applicable Deliverables, and the Project Plan, including but not limited to payroll and time and attendance functions.

"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 EFS in whole or in part; or (c) the information technology systems or other technology systems or means of a vendor or provider of goods or services to the State.

"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 EFS 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.

"Problem" means a failure of the EFS to operate in accordance with the RFP Requirements hereunder, including as a result of an Incident. Also referred to as a Defect.

"Project" means the Services and Deliverables required for the implementation of a subset of the RFP Requirements as specified in the Attachments and Exhibits.

"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.

"Proposal" means the Offeror's accepted proposal to the RFP.

"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.

"RFP" means the Request for Proposals issued by the State on March 31, 2025.

"RFP Document" means the RFP exclusive of the Exhibits and the Attachments.

"RFP Requirements" means the requirements incorporated into the Contract pursuant to RFP Document Section 3.1 Contract Execution.

"Services" means the EFS, the M&O services, and Hosting Services, if any, the unanticipated tasks, other services provided or required to be provided by Contractor or with the assistance of a Contractor Assisting Entity, and all other services needed to design, implement, or support the EFS. This includes but is not limited to services that produce Work Product and Deliverables, implementation and maintenance or any other service.

"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.

"Software" means COTS software, Contractor Technology software, Third-Party Software, Custom Software, Service Software, other software used in the EFS IT environment, and all other software used by Contractor in providing the Services and Deliverables, excluding State Third Party Software.

"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.

"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.

"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.

"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 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.

"SOW" means a Statement of Work.

"State" means the State of Hawaii, including the departments within the Executive Branch and all governmental bodies administratively attached to it, including the Department of Accounting and General Services (DAGS) and the Office of Enterprise Technology Services (ETS).

"State Data" means PII and all other data and information (including, without limitation, data relating to the Services, Deliverables, Images, Metadata, 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, 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; 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, Contractor's, 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.

"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.

"State IT Environment" means the IT environment used by the State (excluding EFS IT Environment), including the portion of the State System which accepts data, including State Data, from the EFS.

"State IT Environment Incompatible" means technically incompatible with the State IT Environment and the interoperating portions of the State IT Environment.

"State Property" has the meaning ascribed thereto in Section 4.0 Ownership Rights.

"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).

"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 EFS, and which is not Third-Party Software.

"Technology" means software and programming code (of any type), computers, hardware, equipment, and related systems and technology.

"Third-Party" means a person or entity other than State, Contractor or any Contractor Subcontractor or Contractor Affiliate.

"Third-Party Software" means Software that is supplied by a Third-Party to Contractor in connection with, or as a part of, the EFS 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).

"Updates" means error corrections, bug-fixes and software and modifications to Software, including those which cure a Defect or a Problem.

"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.

"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.

"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.

"Warranty Period(s)" means the one-year period(s): (i) which begins following Go-Live of the EFS or Acceptance of a Deliverable, whichever is later; and (ii) during which Contractor shall provide Warranty Services at no cost.

"Warranty Services" means all services necessary to meet Contractor's obligations during the Warranty Period(s).

"Work Product," other than Deliverables, means: (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 (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.

2.0 Licenses

2.1 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 or licensed (under the Software License pursuant to the terms of this Section) by Contractor, including any improvements, Updates 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. The State has the right to assign and sublicense its Software License, or any part thereof as it deems necessary to use, including Use, the EFS, 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, the Contractor Technology used in connection with, or as a part of, the EFS.

2.2 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 agreements 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 license agreements, Contractor shall replace the Third-Party Software with a functionally equivalent product and acceptable license agreement 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.

2.3 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.

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 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 licensed to State by Contractor, including any improvements, updates, and enhancements 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.

2.4 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 EFS without payment of additional Costs or other amounts.

2.5 Versions

Unless otherwise mutually agreed to in writing, 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 EFS 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. 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.

2.6 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.

2.7 Licenses to Contractor

Subject to the terms hereof, the State hereby grants to Contractor 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.

3.0 Custom Software

3.1 Development

Contractor shall develop Custom Software as described in the RFP and Proposal, and as needed to satisfy the RFP Requirements. 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). Each Custom Software Deliverable shall be subject to testing and acceptance procedures agreed upon by the Parties and as described below.

3.2 Software Licensing

The State agrees to and hereby grants Contractor a Software License during the Contract 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 EFS.

4.0 Ownership Rights

4.1 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) (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 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 or any Contractor Assisting Entity or by Contractor or a Contractor Assisting Entity in combination with another person or entity (including State) (collectively, "State Property").

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

Contractor 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 (or cause to be delivered) to the 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 the 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 the 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 or any components thereof, or to contest or challenge or assist others in contesting or challenging the 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, Contractor agrees to comply with all requests from the State related to securing, protecting, enforcing, and defending the State's rights in State Property, State confidential information, State Information, and any Intellectual Property Rights owned by State, including executing additional documents or instruments as requested by State.

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.

4.3 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, and Contractor Technology.

4.4 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.

4.5 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.

5.0 Services and Deliverables

5.1 Performance Standards

Contractor represents and warrants that it will provide all Services with a team of sufficient size using appropriately qualified and experienced personnel whose work will meet or exceed the highest performance and ethical standards in the Contractor's industry.

5.2 Cooperation With Other State Providers

As necessary to provide the Services, Contractor shall cooperate with all other State contractors and all other Third Parties (including for purposes of this Section providing services to the State other than as a Contractor Assisting Entity) providing products, services, support, and assistance to the State which are used in connection with, or interact with, the Services and EFS, 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.

5.3 Scope of Services

Contractor shall provide the Services and Deliverables as described in the RFP, the Proposal, the Project Plan, and other parts of this Contract, to meet the RFP Requirements, or any additional Services and Deliverables as shall be mutually agreed in writing between Contractor and State.

Contractor shall utilize the RFP Requirements, the RFP, the Proposal, the Deliverables for which State has previously granted Acceptance, 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 in accordance with Section 17.0.

No requirements may be omitted from the RFP Requirements for a Service or Deliverable without the written consent of the State project lead.

5.4 Project Plan

5.4.1 Updated Project Plan

The Project Plan will be included in the Proposal. In accordance with RFP Document Section 5.3.2.1 Project Management and Project Governance, Contractor shall produce and provide to the State an update to the Project Plan as a Deliverable with input from the State within thirty (30) days of the Effective Date, unless the State agrees to a different date. The updated Project Plan shall provide detailed information, with a State approved project management tool such as Microsoft Project or similar, including but not limited to Deliverables, schedules, tasks and task dependencies, identification of resource requirements, and a payment schedule. The Project Plan shall also be inclusive of the mutual expectations and work to be performed by State and Contractor in order to successfully complete the EFS. In the event of a failure of the parties to agree on the updated Project Plan or in the event the State does not give its Acceptance thereof within thirty (30) days of receipt, the State may invoke its right to immediately terminate this Contract without liability for such termination.

5.4.2 Project Plan Oversight and Maintenance

The Contractor shall oversee and maintain the Project Plan. Contractor shall adhere to the Project Plan and shall immediately notify the State if the Contractor believes that specific components of the Project Plan are no longer achievable. Any 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, a schedule may, in the State's sole 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 Defects in accordance with the Acceptance process requires more time than provided in any schedule.

5.5 Project Plan Updates

Contractor shall provide the State with updates to the Project Plan monthly, as described in the RFP and Proposal, 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 lead. 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 the State shall be supported by a Change Order.

The Project Plan progress updates shall allow adequate time for the State to review and comment on the updates as well as any new or modified Deliverables, and for Contractor to revise or correct the Deliverables. The 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 under any unchanged terms of the most recent and agreed upon Project Plan. Contractor shall provide updated copies of its detailed Project Plans in Microsoft 365 or similar format and an online manner accessible and usable by the State. All updated versions of the Project Plan shall be subject to the State's Acceptance.

5.5.1 Project Plan Liability

If the EFS does not Go-Live by the date in the operative Project Plan, Contractor shall be liable for costs incurred by the State to continue operation of the current legacy systems in addition to applicable liquidated damages.

5.6 Testing and Acceptance Process

5.6.1 Test Plan

Contractor shall prepare a test plan Deliverable for State Acceptance and shall perform system testing as defined in that Deliverable and herein. The types of System Testing to be performed with Contractor support and training must include, but are not limited to, unit testing, integration testing, performance and stress testing, end-to-end testing, and regression testing. Acceptance dates must be incorporated in the testing schedule. State may perform an additional review of whether the EFS meets the RFP Requirements before the State puts the EFS into production. The test plan shall include Acceptance Criteria. All test results shall be documented by Contractor or with Contractor support and training, and all such documentation shall be provided promptly to State.

5.6.2 Testing Acceptance

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 RFP Requirements following Contractor's Confirmation testing, State will, with Contractor's direction and 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 it appears to conform to applicable RFP Requirements.

If Acceptance Tests do not reveal a Defect, the State will provide Acceptance. Acceptance shall not waive the State's right elsewhere in this Contract to require identification or correction of Defects discovered after Acceptance. Contractor shall remain responsible for correcting such Defects at no cost to the State.

If Acceptance Tests reveal a Defect, the State will notify Contractor in an e-mail or other document of Defects used as the grounds for State's decision not to give Acceptance. Contractor shall correct such Defects at no cost to the State. Contractor's times for correcting Defects shall be in accordance with the timeframes set in the Project Plan, or, if time periods for correcting Defects 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.

5.6.3 Defects

If Contractor is unable to correct all Defects within the number of Days described in the Project Plan, State may, within thirty (30) days from the date Contractor provides Confirmation: (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; or (c) terminate this Contract as described in the General Conditions.

5.6.4 Deliverable Repossession

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.

5.6.5 Production

Contractor shall put the Deliverable or Service into production after a determination by Contractor and State that the Deliverable or Service is ready for Go-Live. Such Go-Live decision shall be made subject to approval of appropriate federal agencies.

Contractor shall continuously protect all Deliverables and backups therefor while in Contractor's possession or control from damage, destruction, or loss resulting from or caused by the acts or omissions of Contractor.

5.7 Delivery

Contractor shall provide to the 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 the State, deliver to the State, upon the 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.

5.8 Representation

By submitting a Deliverable or delivering a Service, and/or providing Confirmation, Contractor presents and warrants that it has performed the associated tasks in a manner that will, in concert with other tasks, meet the RFP Requirements, obligations, and objectives stated or referred to in this Contract.

5.9 Knowledge Transfer

While constructing and developing the Deliverables and Services, as applicable, Contractor shall demonstrate and provide information to staff designated by the State about the functions and operations of all Services and Deliverables in accordance with the RFP Requirements, Contractor's Proposal, subsequent amendments, other parts of the Contract, and as otherwise agreed to by the Parties.

6.0 Ability to Perform

Contractor represents and warrants that:

6.1 Resources

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.

6.2 Financial Stability

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.

6.3 Funding of Capital Expenditures

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.

6.4 Financials of Subcontractors

Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract.

6.5 Contractor Method of Accounting

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.

7.0 Representations, Warranties and Covenants

7.1 Essential Warrants and Covenants

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

- a. Contractor is duly organized and validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation.
- b. Contractor 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.
- c. 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).
- d. 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.
- e. Contractor shall 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.
- f. Contractor has the full and absolute right to provide the Services to State contemplated hereunder.
- g. 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 Attachment 10 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.
- h. The EFS, 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.

- i. 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.
- j. All information provided by Contractor related to the discussions and preparation of the Contract, including in its Proposal, 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.
- k. 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.
- l. 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.
- m. Contractor, including, for avoidance of doubt, all Contractor Assisting Entities, has and shall have a team with 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 in accordance with the highest performance and ethical standards in the Contractor's industry; and that Contractor shall promptly and in accordance with this Attachment 10 to re-perform Services which are not in compliance with the foregoing warranty at no cost to the State;
- n. 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.
- o. 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 EFS), and the PII rights of any employee, visitor, resident or citizen of Hawaii.

- p. The Deliverables provided by Contractor and all Contractor Assisting Entities shall be free from defects in material and workmanship.
- q. Contractor and all Contractor Assisting Entities shall at all times comply and provide the Services, Deliverables, and the EFS IT Environment in compliance with the terms of the Contract 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.
- r. 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 audits of or relating to the Services hereunder and under the Contract.
- s. 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.
- t. 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.
- u. 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, Contractor shall immediately notify State, and State and Contractor shall meet or confer with respect to mitigating the impact of the same on State;
- v. No part of the Software, other Deliverables, Services, or the EFS IT Environment shall be State IT Environment incompatible.
- w. Contractor shall not modify or fail to conform with the State security standards or provide less protection than otherwise required in the Contract.

- x. Contractor shall 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.
- y. Contractor 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 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 licensors with respect thereto).
- z. Contractor 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.
- aa. 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.
- bb. Contractor 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 of the Contract at Contractor's expense;
- cc. Contractor shall deliver and implement the Services and Deliverables (whether performed in whole or in part by Contractor or Contractor Assisting Entities, 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.
- dd. The EFS, other Services, and other Deliverables shall comply with and operate in accordance with the RFP Requirements.
- ee. Contractor shall promptly and in accordance with the SLAs correct any Problem or Defect in the EFS, other Services, and other Deliverables at no cost to the State.
- ff. 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.

- gg. 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.
- hh. 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, through the end of Contract, plus one (1) year.

7.2 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 the 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.

7.3 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 lead of any Malicious Code in any of the foregoing if Contractor obtains knowledge thereof 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.

7.4 Compliance Reports

Contractor represents, warrants, and covenants to the State that Contractor shall 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.

7.5 Deliverables

All Deliverables are subject to the Warranty Period. 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 EFS 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 Attachment 10 repair or replace each of the Deliverables that does not meet its specifications and RFP Requirements during the 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 Attachment 10 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 for the Third-Party Software specified in the accepted Proposal for Contractor to meet this representation, warranty, and covenant, Contractor shall provide such Software licenses and Deliverables at no additional Cost to the State.

7.6 Non-Obsolescence

Contractor represents and warrants that, except as provided in this Section, the Software and Purchased Equipment provided under the Contract will not become Obsolete during the term of the Contract. The cost of replacement of Obsolete Software and Purchased Equipment through planned Obsolescence by the applicable manufacturer 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 or Purchased Equipment's end-of-service life occurs during the term of the Contract, Contractor will replace the affected Software or Purchased Equipment with like-functionally equivalent Software or equipment that is supported by the applicable manufacturer 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 or licensor's planned obsolescence after the Contract expires, Contractor will provide notice to the State.

7.7 Legal and Regulatory Compliance

Contractor represents that at the time of implementation the EFS in whole and in part shall comply with all applicable State Laws as interpreted in writing by the State in the RFP Requirements for Contractor to implement and with all Federal Laws. Contractor also warrants that, during the term, the EFS, 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 EFS 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 Change Order shall describe how the parties will design, develop, and implement each such change to meet federal and 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 EFS, 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.

7.8 Deliverables are Date and 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.

7.9 Physical and 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.

7.10 Compatibility

Contractor represents, warrants, and covenants that throughout the term of the Contract, if the EFS 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, Updates, Upgrades or Enhancements, the Software as upgraded, replaced, or modified shall operate with the EFS 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 or Enhancements, the Custom Software shall be integrated into the rest of the EFS 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 EFS or Services, including without limitation, Custom Software and Third-Party Software, and Enhancements, without loss of any Functions, as provided in the RFP Requirements, without Defect, and in accordance with the RFP. By way of example but not limitation, all components or parts of the EFS must operate in accordance with their individual requirements and the requirements for the EFS, without Defect, 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 EFS 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 EFS or which interfaces with the EFS with new versions or releases, Contractor will, at no additional cost to State, install and maintain the EFS, 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 EFS will be backward and forward compatible among versions, and interoperable with other components and systems.

7.11 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 Proposal 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 Proposal or used to effect the sale to the State.

7.12 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.

7.13 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 Contractor shall 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 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 set forth pursuant to this Attachment 10 or any other portion of the Contract, repair or replace the EFS and each of the other Deliverables, Services or Contractor Technology in breach of such warranties at no additional charge to State.

7.14 Date and Time Compliance Warranty

- a. Contractor warrants that the EFS 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.

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

7.15 Intellectual Property Rights

- a. Contractor warrants that Contractor is and shall be the owner of the Work Products that are to be transferred and assigned to the State without infringing or violating any rights of any third party.
- b. 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.
- c. 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.
- d. 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 the 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.
- e. 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 the 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.
- f. 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.

- g. 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.
- h. 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.

8.0 Disaster Recovery, Force Majeure, Data Backup, and Data Recovery

8.1 Disaster Recovery

Disaster Recovery - The Contractor's Cloud Services must use, subject to State approval, multiple geographically distinct regions for disaster recovery and business continuity, with system backups made on a schedule agreed by the Contractor and State.

8.2 Force Majeure

Subject to the terms of the Contract, including 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.

8.2.1 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.

8.2.2 No Payment for Unperformed or Unaccepted 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.

8.2.3 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 Contractor's other customers.

8.3 Data Backup

Notwithstanding any other provision hereof and not by way of limitation of any other provisions of the Contract, the State shall have the right to establish backup security for State Information.

8.4 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 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.

9.0 Changes Initiated by Contractor

Contractor must provide the State with notice and a description of all Contractor-initiated changes (including but not limited to software patches, updates and fixes, including changes recommended by software manufacturers) to the Services and EFS in the production environment following Go-Live for any change that might affect or impact State. The notice must be sixty (60) calendar days in advance, or the maximum advanced notice possible if a sixty (60) day notice is impossible. The notice must include any known impacts the changes might have to the State, based on the Contractor's analysis and investigation of the changes, including testing where possible.

If the change is determined by the State or Contractor to have an adverse impact, Contractor shall not implement the change in the System without State's advance written consent. If the change is not initially determined to have an adverse impact, but is later determined by the State or Contractor to have had an adverse impact after Contractor has

implemented the change, Contractor shall, at no cost to State, promptly: (i) remove the change, (ii) correct the change which has had an adverse impact, or (iii) adjust related portions of the EFS or Service to address the adverse impact. Contractor shall absorb all costs associated with Contractor-initiated changes to the Services or EFS.

10.0 Warranty Services

10.1 General Responsibilities

During the Warranty Period(s), Contractor shall provide all Services pursuant to the Contract as the Warranty Services at no charge to the State. Such Warranty Services shall be performed by a team of sufficient size for the State's needs using appropriately qualified and experienced personnel whose work shall meet or exceed the highest performance and ethical standards in the Contractor's industry.

Contractor shall communicate accurately and promptly with the State about challenges, Defects and other issues that affect the timing, value, and readiness of the EFS;

10.2 Specific Warranty Services Obligations

During the Warranty Period(s), Contractor shall promptly investigate, document, and repair any Defects and fully document, test, and launch repairs to address those Defects, 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 are in addition to, and do not lessen in any way, Contractor's other obligations in this Contract to identify, correct, or otherwise address Defects; and shall 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.

Notwithstanding the expiration of the Warranty Period(s), Contractor shall at no additional cost to the State be obligated to remedy all Defects identified during the Warranty Period(s). Contractor must obtain and maintain, for itself, and for the benefit of the 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. Contractor must also coordinate with the State on all tasks related to correcting Defects.

11.0 Other Obligations

11.1 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, Defects, and other problems reported by State or otherwise known to Contractor in the Software, equipment, Facilities, and Services. The database shall include, as a minimum, the following:

- a. Date and time Contractor was notified or an inquiry was made;
- b. Date and time of arrival at the State site or inquiry response;
- c. Time spent for resolution of Defects;
- d. Description of Defects;
- e. Description of severity level of Defects;
- f. Description of Defects resolution;
- g. Date and time of resolution; and
- h. Names and titles of Contractor Personnel who were dispatched to resolve the Defect.

11.2 Enhancements

11.2.1 Enhancement Documentation

Contractor shall produce Enhancements and associated Documentation needed to satisfy and support the RFP Requirements. Such Documentation shall be adequate to inform State of the problems and Defects resolved, if any, by the Enhancements and new functions. Contractor will provide its Confirmation that each such enhancement has been tested and performs properly before the Enhancement is implemented into the software. Contractor is responsible for any corrupted Data or Defects that may result from the Enhancement.

11.2.2 Enhancements for Deficiencies

Enhancements to correct any Defect shall be provided to State as part of the Services and without the need for additional Change Orders.

11.2.3 Enhancement Installation

Contractor shall assist the State with installing all Enhancements in accordance with a schedule mutually agreed to by the Parties.

11.2.4 New Enhancements

If Contractor develops a new function for another state, and if Contractor has rights to make the function available to the State for State's use, Contractor will make available the new

function to State at no additional cost for the function. However, the Contractor may charge the State to customize, configure, and implement the function for the State's EFS. If new functionality for the EFS must be developed for multiple states and is core to multiple customers, the Contractor will develop such functionality and allocate the cost for such functionality fairly and reasonably between the State and the other states receiving or using the functionality, and the State shall pay for work specifically for the State as described above. Contractor must pre-test each function and give a confirmation that it performs according to the RFP Requirements as modified by written agreement of the Parties. Contractor agrees to correct corrupted data that may result from any Defect introduced by the function.

11.3 Deficiency Reports

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.

11.4 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 the 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 the State to take advantage of technological advances with respect to the System; (d) meet with the State periodically to inform the 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 the State, upon receipt of the State's prior written approval, with the benefit of any improvements made to the technology for the System.

11.5 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.

12.0 Relief Available to State

12.1 Specific Remedies

In addition to all rights and remedies available to the State provided in the Contract 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:

12.1.1 Suspend Payments

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

12.1.2 Reimbursement

Demand reimbursement from the Contractor or withhold equivalent future payments for any funds paid to the Contractor that were later determined to be unauthorized, fraudulently obtained, inappropriately billed, or related to defective or otherwise deficient Deliverables or Services.

12.1.3 Receive Market Value

In the event the Contractor fails, refuses, or neglects to perform the Services or provide Deliverables, including meeting delivery times 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 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.

12.1.4 Reductions in Payments Due

Amounts due to the 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.

12.1.5 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 the General Conditions without any further liability to the State.

12.1.6 Termination for Unresolved Defects In Deliverables or Service

If Contractor is unable to correct Defects in a Deliverable or Service in the time set forth in the Contract, 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 as described in the General Conditions.

If the State terminates this Contract under this Section, Contractor shall, within twenty (20) days' thereafter, refund to the 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.

12.1.7 SLAs

If any Deliverable, including but not limited to the EFS, 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 EFS 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.

12.1.8 Right to Assurance

If the 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 gives 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.

12.2 Corrective Action Plans

- a. 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 or Problem or breach before assessment of liquidated damages. The Corrective Action Plan shall provide:
 - i. Contractor's detailed explanation of how the cited Defect or Problem or breach was discovered, the nature of it, and its effect on other EFS functions.
 - ii. Contractor's assessment or diagnosis of the cause of the cited Defect or Problem or breach; and
 - iii. Contractor's specific proposal to cure the Defect or Problem or breach, and to test the cure to ensure it does not affect other EFS functions.
- b. 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 the State.
- c. 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 the Contract. State's acceptance of a Corrective Action Plan shall not:
 - i. Excuse Contractor's prior non-performance;

- ii. Relieve Contractor of its duty to comply with performance and ethical standards; or
- iii. Prohibit the State from assessing additional remedies or pursuing other appropriate remedies for non-performance.

13.0 Invoices

13.1 Proper Statement

In accordance with section 103-10, HRS, the State shall not be obligated to pay any invoice or any interest on any invoice unless and until the Contractor has submitted a "proper statement" to the satisfaction of the State. A proper statement is an invoice that meets the requirements of this section and contains the date, invoice number, contract reference number, breakdown of services provided, billing period covered, and other items indicated in this section and other items as requested by the State. The invoice shall be detailed and formatted to clearly separate implementation fees, subscription fees, and maintenance and operation (M&O) fees.

13.2 Implementation Fees

Implementation fees shall include all costs associated with the initial configuration, system setup, data migration, integration services, user acceptance testing support, training, documentation, project management, and any deliverable-based milestones outlined in the Contract. The Contractor shall, on each invoice, indicate and account for the applicable retainage on deliverables.

13.3 Subscription Fees

Subscription fees shall be itemized by user type, module, and service. Any usage-based fees must be clearly documented and justified. Where applicable, tiered pricing or discounts must be reflected in each invoice. Any SLA-related penalties due to non-performance shall be deducted from the invoice amount. Invoices must detail the licensing model, number of licenses and users, feature-based pricing, renewal, term length, and any pricing adjustments. Payment for subscriptions shall align with agreed upon billing cycles and service levels.

13.4 Maintenance and Operations

M&O fees must specify the scope of the maintenance, support tier and SLA compliance, and any additional services that requires pre-approval, and shall include ongoing application support, routine system updates and patches, security monitoring, system performance monitoring, technical support and troubleshooting, periodic system health checks, scheduled maintenance activities, SLA compliance reporting, and any other items as requested by the State.

14.0 Contractor Personnel

14.1 General Requirements

Contractor shall implement the EFS using Contractor Personnel in accordance with the RFP, including but not limited to RFP Section 4.5 OFFEROR'S EFS Project Team

14.2 Background Checks

As set forth in the RFP Attachments 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.

The 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: (a) Contractor shall perform a new or supplemental background check in accordance with the requirements of State, and (b) 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.

14.3 Other Policies

Contractor shall, and shall cause its Contractor Personnel, 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 the 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 the State or immediate termination of this Contract.

Contractor shall provide the State with current versions of all employee handbooks, codes of ethics or conduct, or other Contractor policies related to personnel conduct and standards.

14.4 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 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.

14.5 Changes in Contractor Key Personnel

Subject to the RFP Attachments and Section 4.5 OFFEROR'S EFS Project Team of the RFP Document, 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 State shall have the 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, the 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.

14.6 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 or failure to receive employment or retirement benefits).

15.0 Subcontracting

15.1 Subcontracting Provisions

In addition to and not by way of limitation of any other provisions of the Contract:

- a. No work or services, including Services or Deliverables, shall be subcontracted or assigned without the prior written approval of the State project lead, which approval is subject to the Contractor Subcontractor's continuing compliance with applicable Law and the Contract.
- b. All Contractor Subcontractors shall be bound by all terms of the Contract, and no subcontract shall under any circumstances relieve Contractor of its obligations, responsibilities, and liability under the Contract.
- c. 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 all persons engaged in performing the work covered by the Contract shall be considered employees of the Contractor. Proposed Subcontractor Submission Requirements

15.2 Proposed Subcontractor Submission Requirements

With respect to each proposed Contractor Subcontractor, the Contractor shall:

- a. 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.
- b. Specify with particularity the Services the proposed Contractor Subcontractor will perform.

- c. 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.

15.3 Subcontractor Performance

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.

15.4 Subcontractor Removal

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. Subcontractor Retention

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.

16.0 Conflicts of Interest

- a. Contractor represents that neither Contractor nor any Contractor Personnel, 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.
- b. In the event that Contractor or Contractor Personnel hereafter acquires such a conflict of interest, including any business or personal activities or practices or relationships which conflict in any way with Contractor fully performing its obligations under this Contract, Contractor 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.
- c. Contractor acknowledges that in governmental contracting even the appearance of a conflict of interest is harmful to the interest of the State. Contractor agrees to refrain from any practices, activities, or relationships that could reasonably be considered to be in conflict with Contractor's fully performing its obligations to the State under the terms of the Contract.

- d. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for State's consideration and direction.

17.0 Records

17.1 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."

17.2 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").

17.3 Project Records

Without limiting its obligations with respect to Government Records and Contract Records, Contractor shall maintain, and shall cause each Contractor Subcontractor to maintain, complete, accurate and up-to-date archives of communications concerning the Deliverables and Services. This includes emails, instant messages/texts, and messages on third party platforms (e.g. Slack). This also includes all performance reviews of personnel assigned to work on, or who performed work on, the Deliverables and Services.

17.4 Retention Period

Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records, Contract Records, and Project 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 Contract Records.

17.5 Litigation Retention

Without limiting the foregoing, Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records and 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.

18.0 Insurance

18.1 Insurance Coverage

Prior to the execution of the Contract, Contractor shall procure and maintain at its sole expense insurance coverages indicated below in full force and effect throughout the term of the Contract. The minimum insurance required shall be in full compliance with HRS §431 - Hawaii Insurance Code, throughout the entire term of the Contract, including supplemental Contracts. Contractor shall be responsible for payment of any deductibles. Required insurance:

- a. A fidelity bond, commercial crime policy, or other equivalent insurance that provides insurance coverage or similar protection for third party protection to the State against forgery, theft, robbery, fraud, dishonest, and criminal acts committed by any of the Contractor's employees or officers that causes the State to sustain monetary loss. The limits of such bond or policy shall be \$5,000,000.00 per occurrence and in the aggregate.
- b. Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by Contractor, its employees, officers, and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal and advertising injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. Contractor
- c. Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 per accident.
- d. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.
- e. Professional Liability Insurance covering all activities under the Contract with a minimum of \$100,000,000 per claim and with an aggregate limit of at least \$200,000,000.
- f. Cyber Liability Insurance with limits not less than \$10,000,000 per claim/incident and \$20,000,000 aggregate. Coverage shall be sufficiently broad in response to the duties and obligations as is undertaken by the Scope of Work within this Contract and shall

include, but not be limited to, claims involving infringement of intellectual property, including but not limited to, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall also provide coverage for breach response costs and regulatory fines and penalties and credit monitoring expenses.

If Contractor maintains broader coverage or higher limits than the minimums shown above, the State requires and shall be entitled to the broader coverage or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State.

Any and all other insurance that is required by applicable law and that is reasonably necessary in order for Contractor to perform the work and services required under the Contract. The insurance policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the State, as measured by what a reasonably prudent trustee would require of Contractor in similar circumstances.

The adequacy of the coverage afforded by Contractor's insurance shall be subject to review by the State, from time to time, and if it appears that a reasonably prudent person overseeing a project similar to one specified by this RFP would require an increase in the limits of liability of such insurance, Contractor shall, to that extent, take all necessary actions to increase such limits.

All required insurance shall be carried with insurance carriers that have a general policyholder's rating of no less than "A-" and a financial rating of no less than VII in the most current A.M. Best's Insurance Reports. If the A.M. Best's ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies.

Each insurance policy required by this Contract, including a subcontractor's policy, shall contain the following phrases:

- a. "This insurance shall not be canceled, limited in scope of coverage, or non-renewed until after thirty (30) days' written notice has been given to Department of Accounting and General Services (DAGS), Kalanimoku Building, 1151 Punchbowl Street, Room B-10, Honolulu, Hawaii 96813."
- b. "The State of Hawaii is added as an additional insured with respect to operations performed for the State of Hawaii."
- c. "It is agreed that any insurance maintained by the State of Hawaii or DAGS will apply in excess of, and not contribute with, insurance provided by this policy."

18.2 Waiver of Subrogation

A Waiver of Subrogation shall apply to the General Liability, Auto, and Workers' Compensation policies in favor of the State of Hawaii. When required by an insurer, or should a policy condition not permit to enter into a pre-loss agreement to waive subrogation without an endorsement, Contractor shall notify its insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis.

18.3 Certificates of Insurance

Upon to Contractor's execution of the Contract, Contractor shall provide State with certificates of insurance necessary to satisfy the State that Contractor has complied with the insurance provisions of the Contract. have been complied with and agrees to keep such insurance in effect and the certificates therefore on deposit with the State during the entire term of this Contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of Contractor to provide and keep in force such insurance shall be regarded as a material default under this Contract, entitling State to exercise any or all of the remedies provided in this Contract.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.

19.0 Indemnification

19.1 Indemnification by Contractor

In addition to and not by way of limitation 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:

- a. Of any breach of any representation, warranty, or covenant or other obligation of the Contract made by Contractor a Contractor Assisting Entity, or any other party;
- b. Of any intrusions into the State IT Environment, State Property, or any State Information (whether or not hosted at the State IT Environment) by or with the assistance of, or through

the negligence of, Contractor Personnel, or willful interference with State's information technology operations by or with the assistance of, or through the negligence of, 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, or any other party assisting Contractor;

- c. Resulting from the actions of Contractor, a Contractor Assisting Entity, or any party performing or assisting in the performance of the Services or willful misconduct, fraud or negligence by any of the foregoing entities;
- d. 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;
- e. 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 or Work Product;
- f. That the performance of Services or provision of the Contractor Technology, Deliverables 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) or the Service or Contractor Technology, Deliverables 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;
- g. That no part of the Deliverables, Work Product, Services or EFS IT Environment is State IT Environment incompatible;
- h. That any part of the Deliverables, Work Product, Services or EFS IT Environment is incompatible with, or causes damage to, the State IT Environment.

19.2 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 or to select its own separate counsel shall in no way limit or modify Contractor's obligations set forth in this Section. 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.

19.3 Contractor Software or Services Infringement

In the event (a) any part of the Services, the Deliverables, Work Product or the EFS IT Environment or other Software or technology (including Technology), methodology or other products or materials used by Contractor or any Contractor Assisting Entity (collectively the "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 herein, , promptly and at its own cost and expense and in such a manner as to minimize any disturbance to State's operations, including performing any or all of the following:

- a. Obtain for the State at Contractor's sole expense a license or other right to continue using and receiving the benefits of such Subject Materials.
- b. Modify such Subject Materials so that all or the relevant portion thereof is no longer infringing, after conducting all necessary testing to ensure 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 subject to Contractor's continuing obligation to cure any subsequently discovered problems or Defects with the modified material.
- c. Replace such Subject Materials or the applicable portion thereof with a non-infringing functional equivalent acceptable to State, after conducting all necessary testing to ensure that such replacement does not degrade the performance, functionality, or quality of the Services or adversely affect State's intended use as contemplated by the Contract, and

subject to Contractor's continuing obligation to cure any subsequently discovered problems or Defects with the replacement materials.

20.0 Transition Procedures

At no cost to the State, upon receipt of a notice of termination or upon expiration of the Contract, Contractor shall transfer title and deliver to State any and all completed or partially completed goods, materials, reports, information, data, or other work product of Contractor that were made under the Contract or as part of Contractor's performance of the Contract.

The Contractor must disclose any fees for data migration or transition to another vendor at contract termination. The State must retain access to all stored data and logs for at least ninety (90) days after contract termination. The State reserves the right to audit software licenses, usage, and compliance with agreed-upon licensing terms.

21.0 Contradiction, Conflict, Ambiguity, or Inconsistency

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 lead, the RFP, the Proposal, and any future amendments to this Contract, any such contradiction, conflict, ambiguity, or inconsistency shall be resolved in favor of the State. No requirements may be omitted from the RFP Requirements for a Service or Deliverable without the prior written consent of the State project lead.

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 the State in its sole determination in each case, shall control.

22.0 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."

23.0 Sovereign Immunity

The State of Hawaii does not waive sovereign immunity by entering into this Contract and specifically retains all immunities and defenses available to the State 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.

24.0 Guaranty

24.1 Guaranty of Parent

Within ten (10) days of the Effective Date of the Contract, Contractor shall provide the State with a Guaranty in the form provided at the end of this Attachment, 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 (10) days of such acquisitions, merger, or change in Control.

Failure to comply with this section 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 the State shall have the right to rescission of this Contract.

24.2 Form Guaranty

Guaranty

In consideration of the execution by the State of Hawaii, Department of Accounting and General Services (State) of the Contract dated _____, (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 obligations that Affiliate failed or refused to complete or Parent shall be considered to be in breach of the Contract to the same extent as Affiliate pursuant to the terms 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.

Name of Parent: _____

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____

END