

EXHIBITS TO
DES / PRIME VENDOR TECHNOLOGY AGREEMENT

- EXHIBIT 1 TLA SOLUTION PROJECT AGREEMENT**
- EXHIBIT 2 HOSTING SERVICES**
- EXHIBIT 3 SUBCONTRACTOR CONFIDENTIALITY AND NON-
DISCLOSURE AGREEMENT**
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EXHIBIT 1

TLA SOLUTION PROJECT AGREEMENT

TLA Solution Project Agreement Date: _____, 2013

This TLA Solution Project Agreement, including all Schedules and Attachments referenced herein (collectively, the "***TLA Solution Project Agreement***"), is a Project Agreement to that certain Technology Agreement, by and between DES and Prime Vendor, dated _____, 2013 (the "***Agreement***" or "***TA***"). Capitalized terms used herein shall have the meanings ascribed to them in the TLA Solution Project Agreement or, if not defined herein, such terms shall have the meanings ascribed to them in the Agreement.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this TLA Solution Project Agreement effective as of the date written above.

Approved
Washington State Department of
Enterprise Services

Approved
[Prime Vendor]

[Name, Title]

[Name, Title]

Approved as to Form
State of Washington
Office of the Attorney General

Suzanne Shaw, Assistant Attorney
General

Date: _____

[Prime Vendor] Information
[Prime Vendor] UBI Number:
Minority or Woman Owned Business Enterprise
Yes _____ No _____ (Certification Number)

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SCHEDULES

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Schedule 8.1	Equipment
Schedule 8.2	Optional Data Collection Devices and Services

TERMS AND CONDITIONS

1. TLA Solution Project Description.

The TLA Solution Project is a sub-project of the TLA Program with the objective of designing, installing, configuring, testing and deploying the TLA Solution. The TLA Solution will consist of an enterprise core system that will encapsulate the standard needs of the state of Washington as well as Agency specific design, configuration, testing and deployment for the Washington State Departments of Ecology (ECY) and Transportation (WSDOT).

The TLA Solution will accomplish the following objectives:

- Achieve the business and technical requirements of the state of Washington and provide the flexibility to make timely changes to the TLA Solution;
- Effectively manage business policies, processes, practices and functions within the TLA Solution; and
- Keep current with technology innovations and is improved over time.

Specific business goals for the TLA Solution include the ability to:

- Improve access to complete and accurate data;
- Improve implementation, tracking and enforcement of numerous collective bargaining agreements;
- Enable compliance with all applicable Laws, including the federal Fair Labor Standards Act;
- Automate and streamline manual processes, where possible, reducing risk of errors and eliminating duplication of efforts;
- Adopt standardized processes and procedures; and
- Support DES specific business and technical requirements through efficient and effective system configuration.

2. Summary of Fees and Costs. The following Tables set forth the summary of the fees for the TLA Solution Project:

One-Time Fees	Amount
Total One-Time Fees	

Annual Recurring Fees	Amount

Annual Recurring Fees	Amount
Total Annual Recurring Fees	

3. TLA Solution Project Schedules. The following Schedules are incorporated into and made a part of the TLA Solution Project Agreement:

Schedule 4	Payment Terms and Payment Milestones
Schedule 5.1	TLA Solution
Schedule 5.2	Third Party Software Terms and Conditions
Schedule 5.3	Design and Scalability Limitations
Schedule 5.4-A	DES Business and Technical Requirements
Schedule 5.4-C	DES Business and Technical Requirements – State Pay Practices
Schedule 5.5	Demonstrations and Demonstration Materials
Schedule 6.1	Statement of Work
Schedule 6.1(d)	Quality Credits and Incentives
Schedule 6.2	Key Personnel
Schedule 6.3	Project Schedule
Schedule 6.4	Joint Resource Plan
Schedule 6.5	Project Charter
Schedule 6.6	Critical Milestones; Delay Credits
Schedule 6.9	Optional Services and Fees
Schedule 7	Prime Vendor Tools and Utilities
Schedule 8.1	Equipment
Schedule 8.2	Optional Data Collection Devices and Services

4. Payment Terms and Payment Milestones. The Fixed Fee for the TLA Solution, Equipment and Services shall be payable in accordance with the payment milestones ("**Payment Milestones**") and other terms and conditions set forth in **Schedule 4**. Additionally, **Schedule 4** sets forth the fixed charges for the travel, out-of-pocket and related expenses.

5. TLA Solution.

5.1 TLA Solution. The Software, including all Third Party Software, being licensed from or provided by Prime Vendor for the TLA Solution Project is set forth in **Schedule 5.1**.

5.2 Third Party Software. **Schedule 5.2** sets forth the terms and conditions for the Third Party Software that is licensed to DES by Prime Vendor for the TLA Solution Project. Such terms and conditions are in addition to, and not in lieu of, any of the rights of DES herein, and do not diminish any of Prime Vendor obligations set forth in the TA or this TLA Solution Project Agreement.

5.3 Design and Scalability Limitations. **Schedule 5.3** sets forth the design and scalability limitations of the TLA Solution.

5.4 DES Business and Technical Requirements. The DES Business and Technical Requirements for the TLA Solution shall be comprised of the following items:

(A) The Prime Vendor responses to the requirements set forth in **Schedule 5.4-A** and included therein is a mapping of the DES Business and Technical Requirements against the individual Solution Modules being implemented by Prime Vendor;

(B) The features and functionalities included in the Demonstrations and the responses to the Demonstrations Materials;

(C) The features and functionalities required to meet the State Pay Practices, including those set forth in **Schedule 5.4-C** and any Extensions and Interfaces required to be developed by Prime Vendor under **Sections 1.4 and 4.1.2** of the Statement of Work; and

(D) The enterprise data integration and extraction requirements developed by the parties under the Statement of Work.

5.5 Product Demonstrations. The recorded TLA Solution demonstrations are set forth in the DVD(s) enclosed with this Project Agreement, the dates of which are set forth in **Schedule 5.5**, based on the demonstration scripts attached thereto. Prime Vendor represents and warrants to DES that: (a) the Demonstrations were all based on the following version(s): _____; (b) all component of the TLA Solution are, as of the TLA Solution Project Agreement Date, made generally available by Prime Vendor to its customers; (c) _____ is the Version being provided to DES under this TLA Solution Project Agreement; and (d) the representations and warranties set forth in **Section 9.1.3** of the TA are hereby affirmed with respect to the Demonstrations.

5.6 Regulatory Requirements. Prime Vendor represents and warrants to DES that, as of the TLA Solution Project Agreement Date, the Solution is compliant with the Regulatory Requirements.

5.7 Support for Interfaces, Extensions and Software-Based Deliverables.

(a) **Developed During the TLA Solution Project To Meet DES Business and Technical Requirements Existing as of the Effective Date.** During the TLA Solution Project, in accordance with the terms of this TLA Solution Project Agreement and the Statement of Work Prime Vendor will develop and implement Interfaces, Extensions and software-based Deliverables in order to meet the DES Business and Technical Requirements existing as of the TLA Solution Project Agreement Effective Date. During the TLA Solution Project and through Project Completion, Prime Vendor shall provide Support and Maintenance Services for such Interfaces, Extensions and Deliverables including the retrofitting of such Interfaces, Extensions and Deliverables to, and the maintaining compatibility with Enhancements, all for the Fixed Fee.

(b) **Developed During the TLA Solution Project To Meet New DES Business and Technical Requirements.** If there are new DES Business and Technical Requirements or changes to the existing DES Business and Technical

Requirements made during the TLA Solution Project that require an Interface, Extension and/or software-based Deliverable to be developed, the parties will use the Change Order process to identify the scope change, the fees, if any, to develop the Interface, Extension and/or software-based Deliverable, and the Support and Maintenance Services Fee for the Interface, Extension and/or software-based Deliverable, which Support and Maintenance Services Fee shall not exceed twenty-two percent (22%) of the development cost, all in accordance with the terms of the TA. For purposes herein, a new DES Business and Technical Requirement shall not be deemed to include the changes resulting from a change in the State Pay Practices as set forth in **Section 5.4(c)** and applicable Sections of the Statement of Work. For Change Orders approved by DES, Prime Vendor shall provide Support and Maintenance Services for such Interfaces, Extensions and Deliverables including the retrofitting of such Interfaces, Extensions and Deliverables to, and the maintaining compatibility with Enhancements, all for the Fixed Fee as adjusted by the Change Order.

(c) Developed After Project Completion of the TLA Solution Project. If, after Project Completion of the TLA Solution Project, DES commissions a new Interface, Extension and/or software-based Deliverable, Prime Vendor shall comply with the terms of **Section 3.2.6** of the TA.

6. Implementation Services.

6.1 Statement of Work. The Statement of Work for the TLA Solution Project is set forth in **Schedule 6.1**. The Statement of Work sets forth the various assumptions, roles and responsibilities of each of the parties.

(a) Completeness of Services and Products. Prime Vendor represents and warrants to DES that, as of the Effective Date: (a) Prime Vendor identified in the Statement of Work all software, services and other items required to: (i) implement the TLA Solution; and (ii) achieve the DES Business and Technical Requirements and other requirements as set forth in this TLA Solution Project Agreement, and the Performance Standards; (b) all such software, services and other items are included in this TLA Solution Project Agreement; (c) there are no other products that are required to meet the DES Business and Technical Requirements or Performance Standards; and (d) the Services to be provided by Prime Vendor on a fixed-fee basis under the Statement of Work are the complete services required to meet DES' requirements as set forth herein, and there are no other services (*i.e.*, optional or needed additional services) that are omitted from the but necessary to meet such requirements. Without limiting the applicability or generality of the foregoing, Prime Vendor represents to DES that, with respect to this Project Agreement, it will have performed sufficient due diligence activities to properly determine, subject to the Assumptions set forth in the Statement of Work, the software, products and scope of services required to successfully meet the DES Business and Technical Requirements and Performance Standards. Prime Vendor acknowledges that, subject to the Assumptions, the above representations and warranties are a material factor influencing DES' decision to enter into, and that DES materially relied upon such representations and warranties when it entered into, the TA and this TLA Solution Project Agreement.

(b) Special Provisions Relating to Scope. The parties acknowledge that, given the complexities inherent in implementing the TLA Solution, there may be additional activities and tasks that may be required to implement the DES Business and Technical Requirements and the TLA Solution for DES that are not reflected in the TLA Solution Project Agreement, but are nonetheless advisable, necessary or required to successfully implement the DES Business and Technical Requirements and the TLA Solution. If there is a disagreement as to which party is responsible for a given activity, task or subtask, the matter shall be referred to the Prime Vendor Account Executive and the DES TLA Solution Project Director for resolution, and they will use as guidelines in resolving the matter whether the activity, task or subtask was reasonably related and/or linked to a party's stated responsibilities in the Statement of Work and/or Project Schedule.

In addition to the foregoing, the scope of implementation responsibilities includes incorporating changes to the TLA Solution to meet and accommodate changes to the DES TLA Practices and Policies as such changes occur during the pendency of the TLA Solution Project, all within the Fixed Fee and for no additional cost to DES. Prime Vendor acknowledges that it has factored into the Fixed Fee sufficient contingency to address these changes.

(c) Assumptions. The Assumptions set forth in the Statement of Work identifies the complete list of assumptions applicable to the TLA Solution Project (including the Statement of Work, Joint Resource Plan and Project Schedule) and relied on by the parties in developing the scope of work set forth in the Statement of Work. If an assumption is determined to be no longer valid, then a party may assert that the assumption will result in an out-of-scope activity or event, entitling that party to activate the Change Order procedures.

(d) Quality Credits and Incentives. The quality standards for the TLA Solution Project are set forth in the Statement of Work. The Quality Credits and Incentives are set forth in **Schedule 6.1(d)**.

6.2 Key Personnel. The Key Personnel for the TLA Solution Project are set forth in **Schedule 6.2**.

6.3 Project Schedule. The Project Schedule existing as of the Effective Date is set forth in **Schedule 6.3**. The commencement and completion dates for the TLA Solution Project are as follows: _____ to _____. The Project Schedule will be revised from time-to-time by the parties, and once revised shall become incorporated into and a part of the TLA Solution Project Agreement. Any change(s) to the Due Date of a Critical Milestone must be made pursuant to the Change Order procedures set forth in the TA to be effective.

6.4 Joint Resource Plan. The Joint Resource Plan set forth in **Schedule 6.4** identifies the role, amount and timing of DES and Prime Vendor personnel resources assigned to the TLA Solution Project. Prime Vendor recommended the skill level, amount and timing of DES resources in the Joint Resource Plan and such plan is based on Prime Vendor's knowledge of the TLA Solution and the experience of Prime Vendor's

other similarly-situated customers who have installed the TLA Solution. Prime Vendor represents to DES that the amount and roles of DES resources described therein are reasonably adequate to perform the tasks assigned to DES in the Statement of Work within the applicable timeframes set forth in the Statement of Work and Project Schedule. Prime Vendor represents that, based on its experience and project planning undertaken at DES prior to the Effective Date, the Joint Resource Plan, Statement of Work and Project Schedule reference and contain sufficient hours in which to implement all of the TLA Solution Project. Prime Vendor shall track and report to DES resource utilization and the variance between actual resource utilization and the Joint Resource Plan.

6.5 Project Charter. The Project Charter for the TLA Solution Project is set forth in **Schedule 6.5**.

6.6 Critical Milestones. The Critical Milestones for the TLA Solution Project are set forth in **Schedule 6.6**. Upon certifying any Critical Milestone submitted by Prime Vendor, DES shall provide Prime Vendor with written certification of such Critical Milestone by signing the Certification Form set forth in **Schedule 3.2.4** of the TA by the DES Project Director, or her or his designee, and for Critical Milestones that create a payment obligation, the additional signature of the DES Chief Information Officer shall be required. No other form of certification, such as email communications, oral information or otherwise, shall be effective for purposes of certification, payment or otherwise, and shall not be effective against DES.

6.7 Use of Prime Vendor Implementation Methodologies. Prime Vendor has recommended using certain proprietary and non-proprietary methodologies for the TLA Solution Project ("**Prime Vendor Implementation Methodologies**", as further described in the Statement of Work). Prime Vendor represents to DES that, based on its further due diligence during the implementation planning study workshops conducted prior to the Effective Date, the Prime Vendor Methodologies are appropriate, sufficient and applicable to the Services required to complete the TLA Solution Project with quality Deliverables, on-time and within the Fixed Fee. Based on such representation, DES has agreed that such methodologies will be used in the TLA Solution Project. However, if DES or Prime Vendor determine that one or more of the Prime Vendor Methodologies are impeding the progress of the TLA Solution Project or are negatively impacting the quality of Deliverables, on-time performance or budgetary considerations, then Prime Vendor shall adjust, modify or change the Prime Vendor Methodologies to address the negative impact on the TLA Solution Project, and any such changes to the Prime Vendor Methodologies shall be subject to a no cost Change Order in order to make such changes effective.

6.8 SAP HCM Upgrade. During the TLA Solution Project, DES will be implementing a major upgrade to its SAP human resources management system. Prime Vendor shall cooperate and work with DES, SAP and other Third Parties as requested by DES, including attending telephonic and in-person meetings to facilitate resolution of any Issues which develop relating to the TLA Solution Project on the SAP HCM upgrade project, or vice-versa.

The SAP/HCM upgrade project is called "HRMS Technical Migration and Basic Time-sheet" and will be delivered in two phases.

The purpose of phase one will be to migrate the production HRMS Landscape from physical servers at Office Building 2 to a virtual environment at the State Data ter. As the hardware is refreshed, we will also be performing a software refresh by installing the SAP Landscape on an upgraded Windows 2008 server platform and Microsoft SQL 2012 as the backend database. As part of this hardware refresh, we will be installing the latest Enhancement Pack and Support Stack from SAP.

The purpose of phase two will be to enable and configure Enhancement Pack 6 features and functionality in order to integrate the Employee Self Service Leave application with the Timesheet. This integration will allow the users to enter their own timesheets and take the manual time entry rekeying out of the hands of DES and agencies. A proof of concept will be conducted in the testing environment. Once the results have been evaluated and approved by the business, we will deploy the functionality on our next available business cycle.

The following matrix further describes DES' intentions for the upgrade as of the TLA Solution Project Agreement Date:

Upgrade Planning Matrix						
Component / Usage Type	Current level	Planned Level	Planned SPS	OS/DB Current	OS/DB planned	Comments
ECC	6.0 / NW 7.0 NUC	6.0 EHP6 /NW 7.31 NUC	731/SP06	Win' 2003 / MSSQL' 2008	Win' 2008 R2 / MSSQL' 2012 SP1	Planned SAP kernel 720 #401
BW	7.0 UC	7.0 UC EHP3 or 7.3 UC (if CR Approval)	730/SP09			Planned SAP kernel 720 #401
Portals	NW 7.0	NW 7.3 (if CR Approval)	SP09			Still considering the possibility to stay with 7.0
SolMan	NW 7.0 EHP1	N/A	N/A			

UC = Unicode
NUC = Non-Unicode

6.9 Optional Implementation Services. Schedule 6.9 sets forth the optional implementation Services that DES may elect to purchase from Prime Vendor. Immediately following or in connection with DES' notice to purchase any or all of such optional Services, the parties shall develop a Project Agreement for such optional Services,

which Project Agreement shall be based on the TLA Solution Project Agreement. DES' rights under this Section shall survive completion of the TLA Solution Project.

7. Prime Vendor Tools and Utilities. The Prime Vendor Tools and Utilities associated with the TLA Solution Project are set forth in **Schedule 7**.

8. Equipment.

8.1 General. **Schedule 8.1** sets forth the Equipment to be provided by Prime Vendor to DES for the TLA Solution Project.

8.2 Optional Data Collection Devices and Services. **Schedule 8.2** sets forth the data collection devices Prime Vendor supports with the TLA Solution, along with associated Support and Maintenance Services Fees.

SCHEDULE 4

PAYMENT TERMS AND PAYMENT MILESTONES

[TO BE DEVELOPED BY THE PARTIES]

Solution Fees

#	Payment Milestones	Expected Date	Amount

Implementation Fees

Description of Invoicing Milestone	% of Total Implementation Fees ¹
Project Kick-off Event	5%
Completion of Design	10%
Completion of Build	10%
Completion of Systems Integration Testing #1	15%
Completion of User Acceptance Testing	5%
Completion of Training and Education	5%
Go-Live	20%
Completion of Stabilization	10%
Completion of Optimization/Project Completion	20%

¹If there are multiple implementation tracks (e.g., an implementation track for each Solution Module): (1) 20% of the total implementation fees will be allocated to Project Completion; and (2) the remaining 80% of the total implementation fees will be allocated among the implementation tracks, and these percentages (excluding the percentage allocated to Project Completion) will apply to the portion of the total implementation fees that have been allocated to the applicable implementation track.

SCHEDULE 5.1

TLA SOLUTION

[PRIME VENDOR TO PROPOSE]

SCHEDULE 5.2

THIRD PARTY SOFTWARE TERMS AND CONDITIONS

[PRIME VENDOR TO PROPOSE]

SCHEDULE 5.3

DESIGN AND SCALABILITY LIMITATIONS

Prime Vendor represents and warrants to DES that there are no software design or scalability limitations that would restrict the transaction volumes of DES presently and for a period of fifteen (15) years assuming a compounded growth rate of five percent (5%) per year. Prime Vendor further represents and warrants to DES that it has performed such due diligence as is required to ensure that none of these TLA Solution limitations are reasonably expected to be exceeded by DES.

SCHEDULE 5.4-A

DES BUSINESS AND TECHNICAL REQUIREMENTS

[TO BE ATTACHED FROM PRIME VENDOR RFP RESPONSE]

SCHEDULE 5.4-C

DES BUSINESS AND TECHNICAL REQUIREMENTS – STATE PAY PRACTICES

The information below provides brief descriptions on certain State Pay Practices. This overview does not provide information on other practices and policies applicable to the state of Washington, including personnel codes, executive orders, regulatory requirements, administrative, employment and benefits policies, and the like.

Washington State's Compensation Plan Components

The following apply to all non-represented and Washington Management Services employees:

<http://hr.wa.gov/CompClass/Compensation/Pages/CompensatioPlanComponents.aspx>

Washington State Rules for Non-Represented Employees

The following apply to all non-represented and Washington Management Services employees:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=357-28>

Collective Bargaining Agreement Pay Practices

Applicable pay practices are contained within each collective bargaining agreement set forth in:

<http://www.ofm.wa.gov/labor/agreements/11-13/default.asp>

SCHEDULE 5.5

DEMONSTRATIONS AND DEMONSTRATION MATERIALS

[TO BE ATTACHED]

(SEE ATTACHED)

SCHEDULE 6.1

STATEMENT OF WORK

[TO BE FINALIZED DURING IPS]

(SEE ATTACHED)

SCHEDULE 6.1(D)

QUALITY CREDITS AND INCENTIVES

Quality Measurement Factors The quality measurement factors for the TLA Solution Project shall include:

1. The degree to which a configuration, Interface, Extension, user report, Deliverable tendered by Prime Vendor to DES, whether in draft or other form, is complete and meets the applicable Certification Criteria;
2. The number of times, including turnaround and resolution times, a configuration, Interface, Extension, user report or Deliverable needs to be re-worked because of incomplete analysis, incorrect assumptions made by or lack of understanding on the part of Prime Vendor;
3. Whether written Deliverables are clearly written, understandable, and devoid of typographical and formatting errors;
4. Whether proper quality assurance for the configuration, Interface, Extension, user report and/or Deliverable has been undertaken by Prime Vendor, and if prior quality assurance reviews have resulted in deficiencies, whether Prime Vendor has addressed those deficiencies to ensure the deficiencies do not reoccur;
5. For the Defects and Issues Log, whether any Defects or Issues were omitted, dropped, or written in a manner as to not fully disclose the context of how the Issue or Defect arose;
6. Whether Prime Vendor undertakes proper testing prior to delivery to DES, and is prepared in a manner to avoid regression testing failures;
7. Whether training and education courses cover all the applicable materials needed to adequately train the various categories and constituencies of DES personnel as specified in the Statement of Work, and are delivered by highly-skilled instructors who are able to convey the subject matter in a manner that is understandable by DES personnel;
8. Whether the training and education materials are complete and comprehensively support the changes needed to adapt to the future state of business processes;
9. Whether Prime Vendor personnel communicate to DES in a timely manner, clearly identify and articulate Issues as they arise in a comprehensive manner, provide thoughtful approaches to solving Issues and addressing problems as they arise, and generally engage in and promote a healthy, non-adversarial, working relationship;
10. Whether Prime Vendor provides knowledgeable staff who can maximize the transfer of Knowledge to DES personnel;

11. The number of times, including the resolution time, data conversion or migration needs to be re-worked because of incomplete analysis, incorrect assumptions by or lack of understanding on the part of Prime Vendor; and
12. The degree to which data conversion or migration tendered by Prime Vendor to DES is complete and meets applicable Certification Criteria.

Quality measurement factors shall include reference to the applicable Test Scenario or case and Defect severity, if applicable.

Quality Credit / Incentive Amounts

Overall Quality Score	Quality Credit	Quality Incentive
Above 98%	None	5%
95.1 – 98%	None	2.5%
95%	None	None
92.1 to 94.9%	5%	N/A
90.1 to 92%	7.5%	N/A
90% or Below	10%	N/A

Scorecard

The parties will use the scorecard attached to this Schedule.

TLA Solution Project Quality Scorecard

Scorecard Control #: _____

Date: _____

Scorecard Issuer: _____

Quality Measurement Factor	Score (1-10)*	Notes/Comments
Meeting Certification Criteria		
Amount of Re-work		
Clear, Understandable		
Quality Assurance Reviews		
Accuracy of Defects and Issues Log		
Low Regression Testing Failures		
Data Conversion		
Defect Severity		

1 = lowest score; 10 = highest score

SCHEDULE 6.2

KEY PERSONNEL

[TO BE DEVELOPED BY THE PARTIES]

Each of the following individuals constitutes Key Personnel under the terms of the Agreement:

Position	Full Time	Part Time	Percentage On-Site
Prime Vendor Executive Sponsor* –		X	
Prime Vendor Account Executive* –		X	
Prime Vendor Information Security Officer* –			
Project Director –			
Project Manager–			
Quality Assurance Lead -			
Functional Lead –			
Security Lead –			
Hosting Services Lead –			
Integration/Interface Lead –			
Reports and Reporting Lead –			
Technical Lead –			
Training Lead –			
Knowledge Transfer Lead –			
Migration/Conversion Lead –			
Testing Lead –			
Performance Standards Management Lead -			
[ADD MAJOR THIRD PARTY SOLUTION LEAD(S)]			

Other Prime Vendor personnel shall be considered Key Personnel as agreed to in writing by the parties.

On-site personnel generally shall adhere to the work schedule of Monday – Fridays, 8:00 a.m. to 5:00 p.m., Pacific time, provided that the work schedule will not limit Prime Vendor personnel from working additional hours during the work week and during the weekend. The hours of certain Prime Vendor on-site personnel may be staggered or flexible hours instituted provided the DES Program Director agrees that TLA Solution Project needs are not being compromised.

* The Prime Vendor Executive Sponsor, Prime Vendor Information Security Officer and Prime Vendor Account Executive shall not be chargeable to DES.

SCHEDULE 6.3

PROJECT SCHEDULE

[TO BE DEVELOPED DURING IPS]

(SEE ATTACHED)

TLA Solution Project Schedule Requirements Checklist

To complete the TLA Solution Project Schedule, the following items need to be included or addressed:

- Specify the overall start and completion dates for the TLA Solution Project.
- Include all Critical Milestones, milestones, major and key Deliverables (by name), activities, and tasks and, where helpful, subtasks:
 - ✓ The TLA Solution Project Schedule should include any activities required of Third Parties, and be designated as such; and
 - ✓ All other activities should designate whether the Prime Vendor or DES is the lead or responsible party.
- When identifying Critical Milestones:
 - ✓ Lead off the entry by the Phrase: "Critical Milestone". If there is an ID associated with the Critical Milestone, include the ID reference in the line item.
 - ✓ Set forth the exact name as used in the Statement of Work or Project Agreement. Using the "Find" function, a user should be able to type in the exact name of the Critical Milestones to locate the entry in the TLA Solution Project Schedule;
 - ✓ The Critical Milestone Due Dates must match the Critical Milestone Due Dates set forth in the Statement of Work and TLA Solution Project Agreement;
 - ✓ Color-code the Critical Milestone entries so that they stand out when viewed or printed; and
 - ✓ Identify all major dependencies and interdependencies in a separate column.
- When identifying Deliverables:
 - ✓ Include the Deliverable ID in a separate column;
 - ✓ The Deliverable ID must match the ID in the Statement of Work;
 - ✓ Identify all major dependencies and interdependencies in a separate column (can be the same column used for Critical Milestones).
- Include a reference to the Project Performance (Status) Meetings, Executive Sponsor meetings, quality review meetings, contract compliance meetings and other recurring meetings. Since these are recurring activities, reference to these meetings can be stated in one place and does not need to be repeated throughout the TLA Solution Project Schedule.
- Train the Trainer and end user training and education activities all need to be sequenced at the correct time in preparation for the cutover to Production.

- Testing activities need to reflect the agreed to time intervals for the various testing activities. Also, testing processes must be sequential and not concurrent. Accordingly, unit testing (for a particular Solution Module) must start and be completed prior to systems integration testing for that module. Testing activities must include:
 - ✓ Pre-Live Testing must be at least 65 days long and must precede Production Use, the Stabilization Period and Optimization Period;
 - ✓ The Stabilization Period must be at least 90 days long and precede the Optimization Period;
 - ✓ The Optimization Period must be at least 90 days long; and
 - ✓ The Production Use Period must be at least 13 months from the date of the last go live event.

SCHEDULE 6.4

JOINT RESOURCE PLAN

[TO BE DEVELOPED DURING IPS]

(SEE ATTACHED)

TLA Solution Joint Resource Plan Requirements Checklist

The Joint Resource Plan must be prepared in Microsoft Excel and reflect the resources required for both Prime Bidder and DES for the TLA Solution Project. The data in the Excel spreadsheets must be exportable by DES. The Joint Resource Plan must accommodate DES' administrative calendars and allow for resource constraints that occur within the business cycle for such things as fiscal year end close. The Joint Resource Plan must reconcile with resource loading details in the Project Schedule, provide specific details regarding FTE personnel resources committed to the project and differentiate between functional and technical personnel resources.

The Joint Resource Plan must contain two types of resource information (in two separate Excel spreadsheets), as described below, which must contain the following elements:

Joint Resource Plan by Implementation Stage

One spreadsheet must show the number of resources for both Prime Bidder's and DES' personnel by application grouping (*i.e.*, leave vs. scheduling) for each stage or phase of the implementation. This spreadsheet must be based on the implementation methodology agreed by the parties.

Resource Plan by Month

The second spreadsheet must show the number of resources for both Prime Bidder's and DES' personnel containing the following information and elements:

- A. The number of hours by resource category by month for each of DES and Prime Bidder. This information must be presented side-by-side so DES can readily discern how many of its resources are required during any given month against the number of resources Prime Bidder will provide.
- B. For Prime Bidder's personnel, the location (on-site or off-site) of the resource.
- C. Total hours for each of Prime Bidder's and DES' personnel by month and overall for the TLA Solution Project.

SCHEDULE 6.5

PROJECT CHARTER

[TO BE DEVELOPED DURING IPS]

(SEE ATTACHED)

SCHEDULE 6.6

CRITICAL MILESTONES; DELAY CREDITS

[TO BE DEVELOPED BY THE PARTIES]

#	Critical Milestones	Due Date
1	Project Kickoff	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16	Project Completion	

Delay Credits

Delay Credits equal _____ Dollars (\$_____) per day.

SCHEDULE 6.9

OPTIONAL SERVICES AND FEES

[TO BE DEVELOPED BY THE PARTIES]

(SEE ATTACHED)

SCHEDULE 7

PRIME VENDOR TOOLS AND UTILITIES

[TO BE DEVELOPED DURING IPS]

Tool	Type	Description

SCHEDULE 8.1

EQUIPMENT

[TO BE DEVELOPED DURING IPS]

(SEE ATTACHED)

SCHEDULE 8.2

OPTIONAL DATA COLLECTION DEVICES AND SERVICES

[TO BE DEVELOPED BY THE PARTIES]

Data Collection Device	List Price	DES Price	Support and Maintenance Services Fees

EXHIBIT 2

HOSTING SERVICES

[PROVIDED AS PART OF THE DES RFP]

(SEE ATTACHED)

EXHIBIT 3

SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Subcontractor Confidentiality and Non-Disclosure Agreement ("***Subcontractor NDA Agreement***") is executed this ____ day of _____, 20__, by _____ ("***Subcontractor***").

WITNESSETH:

WHEREAS, Prime Vendor, a _____ corporation with a place of business at _____ ("***Prime Vendor***"), and the Washington State Department of Enterprise Services, an agency of the state of Washington, with a principal place of business at 1500 Jefferson Building, 1500 Jefferson Street SE, Olympia, Washington 98501 ("***DES***"), entered into that certain Technology Agreement, dated _____, 2013 ("***Technology Agreement***");

WHEREAS, with DES' prior written consent, Prime Vendor and Subcontractor entered into an agreement ("***Subcontract Agreement***") under which, among other things, Subcontractor will provide certain of the services and/or deliverables that Prime Vendor is obligated to provide to DES under the Technology Agreement; and

WHEREAS, Subcontractor may have access to certain confidential and proprietary information of DES, and Prime Vendor and DES want to protect the confidentiality of any such confidential and proprietary information that may be disclosed by Prime Vendor or DES to Subcontractor.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subcontractor agrees to the foregoing and as follows:

1. CONFIDENTIAL INFORMATION

The following terms shall have the meaning as described in the Technology Agreement: Law(s), OWASP and DES Confidential Information.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

2.1 Nondisclosure and Restricted Use. At all times during and after Subcontractor's access to the Confidential Information, Subcontractor will hold the Confidential Information in confidence and, except as is required in connection with Subcontractor's performance of its obligations to Prime Vendor, Subcontractor: (a) shall not use, copy, disclose or otherwise make the Confidential Information available to any other person or entity without the prior written consent of DES; and (b) shall not remove or permit to be removed from the Confidential Information any notice placed thereon by Prime Vendor or DES indicating the confidential nature of, or the proprietary right of DES in, the Confidential Information.

2.2 Data Security. Subcontractor shall comply with DES' security policies and procedures, currently located at <http://ofm.wa.gov/ocio/policies/documents/141.10.pdf>, as may be updated from time-to-time by DES.

2.3 Notification Obligation. If Subcontractor becomes aware of any unauthorized use or disclosure of the Confidential Information by any person or entity, Subcontractor promptly and fully shall advise Prime Vendor and DES of all facts known to Subcontractor concerning such unauthorized use or disclosure.

2.4 Return of Confidential Information. Upon the termination of Subcontractor's obligations to Prime Vendor, or at any time upon Prime Vendor's or DES' request, Subcontractor shall promptly return to DES (or destroy provided a written certification of such destruction is provided to DES) all of the Confidential Information in Subcontractor's possession, custody or control. In connection with any such return, upon Prime Vendor's or DES' request, Subcontractor shall provide DES with an affidavit stating that: (a) Subcontractor has returned to DES all Confidential Information to which Subcontractor had access; (b) Subcontractor does not have any Confidential Information, or copies thereof, in Subcontractor's possession, custody or control; and (c) Subcontractor has not made the Confidential Information, or any part thereof, available to any other person or entity without the prior written consent of Prime Vendor and DES. If Subcontractor has made the Confidential Information available to another person or entity without the prior written consent of Prime Vendor and DES, Subcontractor agrees to promptly document the extent and nature of such dissemination, including, without limitation, identifying: (d) what Confidential Information was disclosed; (e) to whom the Confidential Information was disclosed; (f) the manner and means by which the Confidential Information was disclosed; and (g) the date(s) on which such disclosure occurred.

3. GENERAL PROVISIONS

3.1 Injunctive Relief. Because of the unique and highly confidential nature of the Confidential Information, Subcontractor acknowledges and agrees that DES may suffer irreparable harm if Subcontractor breaches any of Subcontractor's obligations under this Subcontractor NDA Agreement and that monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other rights and remedies that may be available to Prime Vendor and DES at law and in equity, Prime Vendor and/or DES shall be entitled to seek enforcement of the provisions of this Subcontractor NDA Agreement by seeking injunctive relief.

3.2 Severability. If any provision of this Subcontractor NDA Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Subcontractor NDA Agreement.

3.3 Waiver. No delay or omission by Prime Vendor or DES to exercise any right occurring upon Subcontractor's non-compliance or default with respect to any of the terms of this Subcontractor NDA Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Prime Vendor or DES of any of the covenants, conditions or agreements to be performed by Subcontractor shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

3.4 Public Disclosures. Without the prior written consent of DES, which consent may be withheld in DES' sole discretion, Subcontractor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including, without limitation, any announcement made via e-mail or any posting on the Internet or any Prime Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into this Subcontractor NDA Agreement or that DES and

Prime Vendor have a contractual relationship, the name, image or logo of DES or any department of the State (or any variation or combination of such name, image or logo), as well as the name or image of any DES employee or contractor of DES. Without limiting the generality of the foregoing, Subcontractor shall not, without DES' prior written approval: (a) make any references to third parties that DES is a customer of Subcontractor or Prime Vendor; (b) include or make any reference to DES or DES' name in any proposals to third parties; or (c) provide DES contact information to existing or prospective customers of Subcontractor or Prime Vendor.

3.5 Governing Law; Jurisdiction. The Subcontractor NDA Agreement, and all the rights and duties of Subcontractor arising from or relating in any way to the subject matter of the Subcontractor NDA Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). **SUBCONTRACTOR AGREES AND CONSENTS TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS OF WASHINGTON LOCATED IN THURSTON COUNTY.**

3.6 Third Party Beneficiary. DES and the Agencies of the State which DES serves are direct and intended third-party beneficiaries of the terms of this Subcontractor NDA Agreement. If Subcontractor receives conflicting requests and/or instructions from Prime Vendor and DES with respect to the terms of this Subcontractor NDA Agreement, Subcontractor shall comply with DES' requests and/or instructions.

3.7 Assignment; Subcontracting. Subcontractor shall not assign the Subcontract Agreement or this Subcontractor NDA Agreement, nor subcontract or delegate any of its obligations under the Subcontract Agreement or this Subcontractor NDA Agreement, without the prior written consent of Prime Vendor and DES.

3.8 Conflicts of Interpretation. In the event of any conflicts between the terms of this Subcontractor NDA Agreement and the terms of the Subcontract Agreement, the terms of this Subcontractor NDA Agreement shall control.

3.9 Scope of Agreement. The terms and conditions of this Subcontractor NDA Agreement shall apply to DES and the Agencies of the State which DES serves, but only as to Confidential Information that is disclosed under the Technology Agreement to Subcontractor hereunder.

3.10 Exclusive Agreement; Modifications. This Subcontractor NDA Agreement constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter of this Subcontractor NDA Agreement and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter. All provisions that by their nature require survival shall survive after any termination of this Subcontractor NDA Agreement or Subcontractor's access to the Confidential Information. This Subcontractor NDA Agreement may be modified only pursuant to a writing executed by DES, Prime Vendor and Subcontractor.

IN WITNESS WHEREOF, this Subcontractor Confidentiality and Non-Disclosure Agreement has been executed on the date and year first above written.

[SUBCONTRACTOR]

By: _____

Printed Name: _____

Title: _____

EXHIBIT 4

THIRD PARTY CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Third Party Confidentiality and Non-Disclosure Agreement ("**Third Party NDA Agreement**") is executed this _____ day of _____, 20__, by _____ ("**Third Party**").

WITNESSETH:

WHEREAS, Prime Vendor, a _____ corporation with a place of business at _____ ("**Prime Vendor**"), and the Washington State Department of Enterprise Services, an agency of the state of Washington, with a principal place of business at 1500 Jefferson Building, 1500 Jefferson Street SE, Olympia, Washington 98501 ("**DES**"), entered into that certain Technology Agreement, dated _____, 2013 ("**Technology Agreement**");

WHEREAS, Third Party has obligations to DES that will require Third Party to be granted access to the TLA Solution, as such term is defined in the Technology Agreement and such user will be exposed to and has a need to know certain confidential and proprietary information of Prime Vendor; and

WHEREAS, DES and Prime Vendor want to protect the confidentiality of any such confidential and proprietary information that may be disclosed by Prime Vendor or DES to Third Party.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Third Party agrees to the foregoing and as follows:

1. CONFIDENTIAL INFORMATION

Prime Vendor Confidential Information shall have the meaning as described in the Technology Agreement.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

2.1 Nondisclosure and Restricted Use. Third Party acknowledges and agrees that Prime Vendor owns all right, title and interest in and to the Prime Vendor Confidential Information, and in and to all copies thereof, and in and to all of the related trade secrets, copyrights, patents and other proprietary rights. Accordingly, at all times during and after Third Party's access to the Prime Vendor Confidential Information, Third Party will hold the Prime Vendor Confidential Information in confidence and, except as is required in connection with Third Party's performance of its obligations to DES, Third Party: (a) shall not use, copy, disclose or otherwise make the Prime Vendor Confidential Information available to any other person or entity without the prior written consent of DES and Prime Vendor; and (b) shall not remove or permit to be removed from the Prime Vendor Confidential Information any notice placed thereon by DES or Prime Vendor indicating the confidential nature of, or the proprietary right of Prime Vendor in, the Prime Vendor Confidential Information. The furnishing of the Prime Vendor Confidential In-

formation for the limited purposes set forth herein does not constitute the grant, option, license, sublicense, assignment, or other form of transfer to Third Party of any rights, title or interest in or to such Prime Vendor Confidential Information. Third Party shall not copy, translate, disassemble or decompile, nor create or attempt to create the source code from the object code of the TLA Solution licensed hereunder or use it to create a derivative work, unless authorized in writing by Prime Vendor.

2.2 Notification Obligation. If Third Party becomes aware of any unauthorized use or disclosure of the Prime Vendor Confidential Information by any person or entity, Third Party promptly and fully shall advise DES and Prime Vendor of all facts known to Third Party concerning such unauthorized use or disclosure.

2.3 Return of Proprietary Information. Upon the termination of Third Party's access to the TLA Solution, or at any time upon Prime Vendor's or DES' request, Third Party shall return to Prime Vendor all of the Prime Vendor Confidential Information in Third Party's possession, custody or control. In connection with any such return, upon Prime Vendor's or DES' request, Third Party shall provide Prime Vendor with an affidavit stating that: (a) Third Party has returned to Prime Vendor all Prime Vendor Confidential Information to which Third Party had access; (b) Third Party does not have any Prime Vendor Confidential Information, or copies thereof, in Third Party's possession, custody or control; and (c) Third Party has not made the Prime Vendor Confidential Information, or any part thereof, available to any other person or entity without the prior written consent of Prime Vendor and DES. If Third Party has made the Prime Vendor Confidential Information available to another person or entity without the prior written consent of Prime Vendor and DES, Third Party agrees to promptly document the extent and nature of such dissemination, including, without limitation, identifying: (d) what Prime Vendor Confidential Information was disclosed; (e) to whom the Prime Vendor Confidential Information was disclosed; (f) the manner and means by which the Prime Vendor Confidential Information was disclosed; and (g) the date(s) on which such disclosure occurred.

3. GENERAL PROVISIONS

3.1 Injunctive Relief. Because of the unique and highly confidential nature of the Prime Vendor Confidential Information, Third Party acknowledges and agrees that Prime Vendor may suffer irreparable harm if Third Party breaches any of Third Party's obligations under this Third Party NDA Agreement and that monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other rights and remedies that may be available to Prime Vendor and DES at law and in equity, Prime Vendor and/or DES shall be entitled to seek enforcement of the provisions of this Third Party NDA Agreement by seeking injunctive relief.

3.2 Severability. If any provision of this Third Party NDA Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Third Party NDA Agreement.

3.3 Waiver. No delay or omission by Prime Vendor or DES to exercise any right occurring upon Third Party's non-compliance or default with respect to any of the terms of this Third Party NDA Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Prime Vendor or DES of any of the covenants, conditions or agreements to be performed by Third Party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

3.4 Governing Law; Jurisdiction. The Third Party NDA Agreement, and all the rights and duties of Third Party arising from or relating in any way to the subject matter of the Third Party NDA Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). **THIRD PARTY AGREES AND CONSENTS TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS OF WASHINGTON LOCATED IN THURSTON COUNTY.**

3.5 Third Party Beneficiary. Prime Vendor is a direct and intended third-party beneficiary of the terms of this Third Party NDA Agreement. If Third Party receives conflicting requests and/or instructions from Prime Vendor and DES with respect to the terms of this Third Party NDA Agreement, Third Party shall comply with Prime Vendor's requests and/or instructions.

3.6 Assignment; Subcontracting. Third Party shall not assign, subcontract or delegate any of its obligations under the Third Party NDA Agreement, without the prior written consent of Prime Vendor and DES.

3.7 Exclusive Agreement; Modifications. This Third Party NDA Agreement constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter of this Third Party NDA Agreement and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter. All provisions that by their nature require survival shall survive after any termination of this Third Party NDA Agreement or Third Party's access to the Prime Vendor Confidential Information. This Third Party NDA Agreement may be modified only pursuant to a writing executed by DES, Prime Vendor and Third Party.

IN WITNESS WHEREOF, this Third Party Confidentiality and Non-Disclosure Agreement has been executed on the date and year first above written.

[THIRD PARTY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT 5

SOURCE CODE ESCROW AGREEMENT

(SEE ATTACHED)

ESCROW AGREEMENT

This Escrow Agreement ("**Escrow Agreement**"), is made and entered into on this the ____ day of _____, 2013 ("**Effective Date**") by and among the Washington State Department of Enterprise Services, an agency of the state of Washington, with a principal place of business at 1500 Jefferson Building, 1500 Jefferson Street SE, Olympia, Washington 98501 (hereinafter, "**Beneficiary**"), [_____] a _____ corporation, with a place of business at _____ (hereinafter, "**Depositor**"), and _____, as escrow agent (hereinafter, "**Escrow Agent**").

WHEREAS, Beneficiary and Depositor have entered into that certain Technology Agreement dated as of [_____] 2013 (the "**Underlying Agreement**") which, among other things, provides for the license by Depositor to Beneficiary of certain software programs (as further defined in the Underlying Agreement, the "**Software**") in accordance with the terms and provisions thereof; and

WHEREAS, the availability and maintenance of the Software will be critical to Beneficiary in the continued conduct of its business if a Release Event occurs, and Depositor therefore has agreed to deposit with Escrow Agent the items described in **Attachment A** to this Escrow Agreement (such items are hereinafter referred to individually as a "**Deposit**," and collectively as the "**Deposits**"); and

WHEREAS, the Deposits are to be held by Escrow Agent in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree to the foregoing and as follows:

ARTICLE 1 **CREATION AND MAINTENANCE OF ESCROW;** **ESCROW AGENT OBLIGATIONS**

1.1 Creation and Maintenance of Escrow. Within thirty (30) days following the Effective Date, Depositor shall deposit with Escrow Agent the current release of the Deposits for the Software licensed by Beneficiary from Depositor as of the Effective Date ("**Initial Deposits**"). With respect to Software licensed by Beneficiary subsequent to the Effective Date (if any), Depositor shall deposit with Escrow Agent the then-current release of the Deposits for such Software (for purposes of this Escrow Agreement, such additional Deposits shall be considered "**Initial Deposits**") within thirty (30) days following the date on which Beneficiary and Depositor agree in writing to the license of such additional Software. With respect to all Software licensed by Beneficiary from Depositor, Depositor further agrees to deposit current copies of the items described in **Attachment A** ("**Supplemental Deposits**") with Escrow Agent: (a) on the six (6)-month anniversary of the Effective Date and every six (6) months thereafter; and (b) within thirty (30) days following the date on which Depositor issues a major release of the Software. If Supplemental Deposits consist of a full and complete deposit of the Deposits, Escrow Agent shall be entitled to destroy the prior-received Deposits: (c) upon Beneficiary's verification of such De-

posits pursuant to **Article 10** of this Escrow Agreement; or (d) with Beneficiary's prior written consent. With each Initial Deposit and each Supplemental Deposit, Depositor shall prepare and deliver to Escrow Agent a description of the Deposits in the form attached to this Escrow Agreement as **Attachment B**.

1.2 Escrow Agent Obligations.

(a) Within ten (10) business days following its receipt of Deposits from Depositor, Escrow Agent shall inspect such Deposits; however, Escrow Agent's inspection responsibilities shall be limited to checking the labels and quantity of the Deposits received from Depositor to determine whether the items described in Depositor's accompanying form of **Attachment B** have been received, and shall not include determining whether the Deposits actually contain the necessary information Depositor is required to submit as part of the Deposits.

(b) Upon completing the inspection described in **subsection (a)** for each Initial Deposit and each Supplemental Deposit, Escrow Agent promptly shall notify Beneficiary that Deposits have been received from Depositor by issuing to Beneficiary a complete and executed document in the form attached to this Escrow Agreement as **Attachment B**. If Escrow Agent determines that the Deposits received from Depositor do not match the item descriptions or quantities on the Depositor-prepared form of **Attachment B**, Escrow Agent will: (i) note the discrepancies in writing on Escrow Agent's form of **Attachment B**; and (ii) date, sign and mail Escrow Agent's form of **Attachment B** to Beneficiary and Depositor.

(c) Escrow Agent shall separately identify the Deposits through a deposit account number and shall segregate the Deposits from any of Depositor's other materials that may be in the possession of Escrow Agent.

(d) Escrow Agent shall safeguard, safekeep and maintain the Deposits in accordance with generally accepted industry standards that apply to source code escrow companies. Escrow Agent shall establish one (1) or more dedicated, locked receptacle(s) in which it shall place the Deposits, which receptacle(s) shall be under the administration of one (1) or more of its officers, selected by Escrow Agent, whose identity shall be available to Depositor and Beneficiary at all times. Escrow Agent shall exercise a professional level of care in carrying out the terms of this Escrow Agreement.

(e) Escrow Agent represents that it now carries, and agrees that it will continue to carry, with insurers having a financial strength rating of A or better as rated in the most recent edition of Best's Insurance Reports, the following insurance coverages in the following minimum amounts:

(i) commercial general liability (\$1,000,000 per occurrence and \$2,000,000 annual aggregate);

(ii) commercial crime (including Fidelity employee bond) (\$1,500,000);

(iii) intellectual property (\$10,000,000);

- (iv) professional liability (\$15,000,000); and
- (v) umbrella liability (\$10,000,000) (excluding commercial crime).

Upon request, Escrow Agent shall provide to Depositor and Beneficiary certificates evidencing all such insurance and identifying Depositor, Beneficiary and their respective subsidiaries and affiliates, and their respective officers, agents and employees, as additional named insureds, where applicable, and stating that Depositor and Beneficiary shall receive thirty (30) days' written notice of cancellation or modification of any such insurance coverages. Escrow Agent's policy shall be considered primary coverage for all claims arising out of the contractual relationship.

(f) Escrow Agent acknowledges Depositor's assertion that the Deposits contain proprietary data and that Escrow Agent has an obligation to preserve and protect the confidentiality of the Deposits. Except as permitted in this Escrow Agreement, Escrow Agent shall not divulge, disclose or otherwise make the Deposits available to any third person, or make any use of the Deposits, without the express prior written consent of Depositor.

(g) Escrow Agent will not be liable for any failure or delay in its performance under this Escrow Agreement if and to the extent, and only for the time period, such failure or delay is caused by an act of terrorism or war, acts of God, earthquake, flood, embargo, riot, civil disorder, rebellion or other causes of a similar nature that are beyond the reasonable control of Escrow Agent, except to the extent: (a) Escrow Agent is at fault in causing such failure or delay; or (b) the failure or delay would have been prevented or circumvented by Escrow Agent if it had prudently planned for foreseeably likely events and/or timely implemented commercially reasonable work around plans.

1.3 Limitation of Liability. UNDER NO CIRCUMSTANCE SHALL ESCROW AGENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF THIS ESCROW AGREEMENT UNLESS ESCROW AGENT PERFORMS ITS DUTIES HEREUNDER IN A NEGLIGENT, WILLFUL OR MALICIOUS MANNER.

ARTICLE 2

TERM AND TERMINATION OF ESCROW AGREEMENT

2.1 Term. Subject to payment of the initialization fee and first annual maintenance fee set forth in **Attachment D**, and unless earlier terminated in accordance with the terms set forth herein, this Escrow Agreement shall remain in effect for an initial period of one (1) year following the Effective Date. Thereafter, unless earlier terminated in accordance with the terms set forth herein, this Escrow Agreement shall renew on an annual basis for successive one (1)-year renewal terms, provided Escrow Agent receives the renewal fees as provided in **Section 8.4** of this Escrow Agreement.

2.2 Termination. This Escrow Agreement shall be terminated in its entirety:

(a) upon a joint, written notice of termination by Beneficiary and Depositor delivered to Escrow Agent in accordance with the terms set forth herein;

(b) upon a release to Beneficiary of all Deposits for all Software in accordance with the terms set forth herein; or

(c) by Escrow Agent if the initial fees or any renewal fees are not paid as provided in **Sections 8.3 and 8.4** and neither Beneficiary nor Depositor has cured such failure within thirty (30) days following receipt of Escrow Agent's written notice of such failure, provided that Escrow Agent has sent such written notice (in accordance with **Section 11.4**) to both Beneficiary and Depositor; and

(d) upon a written notice of termination by either Beneficiary or Depositor in connection with Escrow Agent's assignment of this Escrow Agreement pursuant to **Section 11.3**; provided, however, that such termination shall not be effective until: (i) Beneficiary and Depositor have entered into a replacement escrow agreement with a successor escrow agent and provided to Escrow Agent a joint, written instruction to deliver the Deposits to the successor escrow agent; and (ii) Escrow Agent has delivered the Deposits to the successor escrow agent; or (e) subject to **Section 2.4**, by Escrow Agent at the end of the initial term or at the end of any annual renewal term, for any reason, by providing Depositor and Beneficiary with at least six (6) months' prior written notice (in accordance with **Section 11.4**) of its intent not to renew this Escrow Agreement.

2.3 Obligations Upon Termination. Provided any fees that may then be owed to Escrow Agent under this Escrow Agreement are paid: (a) upon receipt of a joint, written instruction from Beneficiary and Depositor pursuant to **Section 2.2(a)**, Escrow Agent shall deliver the Deposits to the party (Beneficiary or Depositor) designated in the joint, written notice of termination promptly after its receipt of such instruction; (b) upon a **Section 2.2(c)** termination event, Escrow Agent shall destroy the Deposits; (c) upon receipt of a joint, written instruction from Beneficiary and Depositor pursuant to **Section 2.2(d)(i)**, Escrow Agent shall deliver the Deposits to the successor escrow agent designated by Beneficiary and Depositor in such joint written instruction promptly after its receipt of such instruction; and (d) upon a **Section 2.2(e)** termination event, the parties shall follow the procedures set forth in **Section 2.4**. Any provision of this Escrow Agreement that by its nature or through the express terms of this Escrow Agreement may reasonably be presumed to survive termination of this Escrow Agreement shall so survive and continue in full force and effect. Without limiting the generality of the foregoing, the term of this Escrow Agreement shall be deemed extended to the extent necessary so that Escrow Agent can process any outstanding instruction made during the term of this Escrow Agreement.

2.4 Resignation of Escrow Agent. If Escrow Agent terminates this Escrow Agreement pursuant to **Section 2.2(e)**, Depositor and Beneficiary shall, within the six (6)-month notice period provided by Escrow Agent, enter into a replacement escrow agreement and shall jointly appoint and designate in a joint written instruction to Escrow Agent a successor escrow agent. Following such appointment and designation, Escrow Agent shall forthwith deliver the Deposits to the successor escrow agent. If the parties do not appoint a successor escrow agent within the six (6)-month period, Escrow Agent may agree to extend the notice period and continue to hold the Deposits in escrow under this Escrow Agreement for a time period mutually agreed by the parties or apply to a court of competent jurisdiction for the appointment of a successor escrow agent (with any costs incurred in connection therewith borne by Depositor and Beneficiary

equally). Under the circumstances described in this **Section 2.4**, this Escrow Agreement shall terminate when Escrow Agent delivers the Deposits to the successor escrow agent.

ARTICLE 3 **RELEASE EVENTS**

An event requiring the release of the Deposits to Beneficiary (each, a "**Release Event**") shall be deemed to have occurred under this Escrow Agreement upon:

(a) Depositor's failure to cure any material breach of its support and maintenance services obligations under the Underlying Agreement ("**Support Services**") in accordance with the terms of the Underlying Agreement (including the applicable time frame for effectuating a cure); or

(b) Depositor's discontinuation of any part of Support Services for any of the Software across its customer base generally; or

(c) Depositor's election to discontinue making any part of the Support Services available to Beneficiary on commercially reasonable terms for any reason other than Beneficiary's uncured material breach of its obligation to pay Depositor for Support Services, provided Beneficiary would like to continue receiving Support Services from Depositor; or

(d) Depositor's failure to comply with its obligations under **Section 1.1** of this Escrow Agreement, provided that such failure remains uncured for a period of thirty (30) days following Depositor's receipt of written notice thereof; or

(e) Depositor's material breach of its obligations under **Article 10** of this Escrow Agreement (including, without limitation, Depositor's failure to provide additional, corrective and/or replacement Deposits in accordance with **Attachment E** which causes the Beneficiary Verification process to exceed a thirty (30)-day period), provided that such material breach remains uncured for a period of thirty (30) days following Depositor's receipt of written notice thereof; or

(f) The institution of bankruptcy, receivership, reorganization or other similar proceedings by or against Depositor under the United States bankruptcy code, if: (a) such proceedings have not been dismissed or discharged within thirty (30) days after they are instituted; (b) Depositor or a trustee has failed to accept the Underlying Agreement within fifteen (15) days after such proceedings are instituted; or (c) Depositor or a trustee elects or files pleadings to reject the Underlying Agreement at any time after such proceedings are instituted; or

(g) Depositor makes an assignment for the benefit of creditors; or

(h) Depositor makes an assignment in violation of **Section 11.3** of this Escrow Agreement or the assignment provisions set forth in the Underlying Agreement.

ARTICLE 4 **NOTICE OF RELEASE EVENT AND** **RELEASE OF DEPOSITS**

4.1 Notice. If Beneficiary believes that a Release Event has occurred, Beneficiary shall provide written notice of such Release Event to Depositor. Within seven (7) days after receiving such notice, Depositor shall either: (a) cure the Release Event; (b) provide a written explanation to Beneficiary that is satisfactory to Beneficiary in its sole discretion explaining why the Release Event has not occurred; or (c) provide to Beneficiary a plan to cure the Release Event that is satisfactory to Beneficiary in its sole discretion. If Depositor fails to: (d) cure the Release Event; (e) provide an explanation to Beneficiary as provided in **Section 4.1(b)**; or (f) provide a corrective plan to Beneficiary as provided in **Section 4.1(c)**; then by written notice to Escrow Agent (the "**Release Notice**"), Beneficiary shall have the right to demand that the Deposits be delivered to Beneficiary by Escrow Agent. Such Release Notice shall be accompanied by an affidavit signed by an authorized representative of Beneficiary attesting to a full description of the Release Event. The affidavit must be dated and sworn to within the ten (10) business day period prior to Escrow Agent's receipt of the Release Notice. Escrow Agent shall send Depositor a copy of the Release Notice and any related materials received from the Beneficiary (including the affidavit) within three (3) days following its receipt of such Release Notice and related materials.

4.2 Release. Unless Escrow Agent receives an Order as described in **Section 4.3** of this Escrow Agreement restraining Escrow Agent from releasing the Deposits to Beneficiary, then Escrow Agent shall release the Deposits to Beneficiary on the twenty-first (21st) day after the date on which it received the Release Notice from Beneficiary; provided that Escrow Agent shall not be required to release the Deposits until Beneficiary has paid to Escrow Agent any fees described under **Article 8** of this Escrow Agreement that remain unpaid at the time the Deposits are due to be delivered to Beneficiary (and Depositor shall reimburse Beneficiary for any fees paid by Beneficiary that are Depositor's responsibility under the terms of this Escrow Agreement promptly following Beneficiary's request). In no event shall Beneficiary be required to pay for any legal fees incurred by Escrow Agent except as provided in **Article 5**.

4.3 Challenge. Depositor's exclusive and only right to challenge Beneficiary's demand for release of the Deposits shall be through: (a) instituting an appropriate action in a court of competent jurisdiction; and (b) within the twenty-one (21)-day period after Escrow Agent received the Release Notice, causing the delivery to and receipt by Escrow Agent of an order of such court restraining Escrow Agent from releasing the Deposits to Beneficiary (an "**Order**"). The sole basis for the entry of an Order shall be the absence of a Release Event. If Depositor obtains an Order, any right Beneficiary may have to receive the Deposits that are the subject of such Order shall be determined by the court.

4.4 Limit on Escrow Agent's Obligations. Escrow Agent shall have no duty to investigate the facts set forth in Beneficiary's Release Notice or accompanying affidavit including, without limitation, whether a Release Event exists and, absent an Order restraining release of the Deposits, shall act in accordance with such Release Notice and properly executed affidavit.

ARTICLE 5

INDEMNIFICATION OF ESCROW AGENT

Escrow Agent, by reason of its execution of this Escrow Agreement, shall not assume any responsibility or liability for any transactions between Depositor and Beneficiary other than for the performance of Escrow Agent's obligations with respect to the Deposits held by it in accordance with this Escrow Agreement. The party on whose behalf, or pursuant to whose direction, as set

forth in the Escrow Agreement, Escrow Agent acts, shall indemnify, defend and hold harmless Escrow Agent from any and all liability, damages, costs or expenses, including reasonable attorneys' fees, which may be sustained or incurred by Escrow Agent as a result of taking such action. Absent any such direction, Depositor and Beneficiary, to the extent Beneficiary is permitted under Washington law, shall jointly and severally indemnify and hold harmless Escrow Agent from any and all liability, damages, costs or expenses, including reasonable attorneys' fees, except for any liability, damages, costs or expenses that may be sustained or incurred as a result of: (a) the negligent or willful misconduct of Escrow Agent, its employees or agents; or (b) Escrow Agent's breach of its duties under this Escrow Agreement. Escrow Agent is not a party to, or bound by, any provisions contained in the Underlying Agreement, and with respect to the Deposits acts as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the Underlying Agreement, or with respect to the form or execution of the same, or the identity, authority or right of any person executing the same or depositing the Deposits. This indemnification shall survive the termination of this Escrow Agreement.

ARTICLE 6

COMPLIANCE WITH ORDERS OF COURT

Escrow Agent is expressly authorized to comply with and obey any and all orders, judgments or decrees of any court of competent jurisdiction (including Orders), and in case Escrow Agent complies with any such order, judgment or decree (including Orders), it shall not be liable to the parties by reason of such compliance. In complying with the foregoing, if Escrow Agent becomes or is made a party to any court proceeding that affects this Escrow Agreement, the parties or the Deposits, Escrow Agent shall promptly give written notice thereof to Depositor and Beneficiary. In accordance with the terms set forth in **Article 5**, Depositor or Beneficiary, as applicable, shall hold Escrow Agent harmless from any loss or expense incurred by Escrow Agent as a result of following the instructions given by Depositor or Beneficiary, as applicable. If not already parties to any such proceedings, Escrow Agent shall to the extent possible interplead Depositor and Beneficiary in any such court proceedings, and Depositor and Beneficiary shall take all actions necessary to assume complete responsibility for such proceedings.

ARTICLE 7

LOCATION AND CONDITION OF DEPOSITS

Except to the extent provided otherwise herein, the parties acknowledge that the Deposits will be stored in accordance with Escrow Agent's standard escrow operating procedures. Escrow Agent shall maintain the environmental conditions within the vault within normal operating temperatures and humidities. For purposes of this Escrow Agreement, "normal operating temperatures and humidities" means temperatures and humidities at or near the range usually maintained for ordinary computer media storage. Depositor and Beneficiary hereby agree not to hold Escrow Agent liable for any damages or claims resulting from loss of data that may occur: (a) solely as a result of self-destruction or disintegration of a tape or disk; (b) solely because of defects in the tapes or disks on which the data is stored; or (c) solely because such tapes or disks are sensitive to the normal operating temperatures and humidities in Escrow Agent's vault.

ARTICLE 8

FEES AND EXPENSES OF ESCROW AGENT

8.1 General. Beneficiary shall pay the fees set forth in **Attachment D**, which fees may be increased by Escrow Agent annually in an amount equal to the change in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics, United States Department of Labor, subject to a cap of three percent (3%), in each case of the then-current fees. Annual increases shall not carry forward from one year to the next, meaning that if Escrow Agent elects not to increase the fees in one year by the full amount allowed hereunder, Escrow Agent shall not have the right to carry forward such "unused" increase into subsequent years. Any proposed fee increase shall be provided to Depositor and Beneficiary ninety (90) days prior to any fee change.

8.2 Extraordinary Costs. Notwithstanding anything in this Escrow Agreement to the contrary, except for any acts taken by Escrow Agent at the direction of Beneficiary or Depositor pursuant to **Article 5** (for which the requesting party will bear financial responsibility), Depositor and Beneficiary shall each reimburse Escrow Agent for fifty percent (50%) of any extraordinary costs which Escrow Agent may incur including, without limitation, the costs of hiring or retaining any agents or attorneys; provided, however, that Escrow Agent shall provide ten (10) days' advance written notice to, and the prior written consent of, Depositor and Beneficiary before incurring any extraordinary costs.

8.3 Initial Fees. Initial fees shall be invoiced by Escrow Agent upon the Effective Date. If the initial fees are not paid within thirty (30) days following the Effective Date, Escrow Agent shall notify Beneficiary and Depositor with a notice in the form of **Attachment C**. Such notice shall be sent in accordance with the notice procedures specified herein. If the initial fees are not received within thirty (30) days following Beneficiary's and Depositor's receipt of such notice, Escrow Agent may terminate this Escrow Agreement in accordance with the terms set forth in **Sections 2.2 and 2.3**.

8.4 Renewal Fees. Each year during the term of this Escrow Agreement, Escrow Agent shall invoice Beneficiary for the renewal fees ninety (90) days prior to the anniversary of the Effective Date. If the renewal fees are not received sixty (60) days prior to the anniversary of the Effective Date, Escrow Agent shall notify Depositor and Beneficiary that the renewal fees have not been received by providing Depositor and Beneficiary with a notice in the form of **Attachment C**. Such notice shall be sent in accordance with the notice procedures specified herein. If the renewal fees are not received by the anniversary of the Effective Date, Escrow Agent may terminate this Escrow Agreement in accordance with the terms set forth in **Sections 2.2 and 2.3**.

ARTICLE 9

ANNUAL REPORTS

Escrow Agent shall keep reasonably detailed and complete records of the activities undertaken and materials prepared pursuant to this Escrow Agreement. Escrow Agent shall issue to Depositor and Beneficiary an annual report profiling the Deposit account or otherwise make the information described in this Article available to Depositor and Beneficiary (e.g., via online access). Such annual report shall identify Depositor and Beneficiary, their respective then-current designated contacts, selected special services and the Deposit history, including all Initial Deposits, Supplemental Deposits, the begin and end dates of any Beneficiary Verifications under **Article 10** and/or releases of the Deposits and any instructions related thereto. Subject to Beneficiary's verification rights under **Article 10**, upon reasonable notice, during Escrow Agent's

normal business hours and during the term of this Escrow Agreement, Depositor or Beneficiary shall be entitled to inspect the records of Escrow Agent pertaining to this Escrow Agreement. Neither Depositor nor Beneficiary shall be entitled to remove or replace any of the Deposit Materials during such inspections.

ARTICLE 10 **VERIFICATION PROCESS**

The Deposits shall be subject to verification for accuracy, completeness and sufficiency in accordance with the verification procedures set forth in **Attachment E**.

ARTICLE 11 **MISCELLANEOUS**

11.1 Further Assurances. Each of the parties shall from time-to-time execute and deliver all such further documents and instruments and do all acts and things as any other party to this Escrow Agreement may reasonably request to effectively carry out the intent and meaning of this Escrow Agreement.

11.2 Amendments and Waiver. No modification of, or amendment to, this Escrow Agreement shall be valid or binding unless set forth in writing and duly executed by the parties. No waiver of any breach of any term or provision of this Escrow Agreement shall be effective or binding unless made in writing and signed by the party against whom enforcement is sought, and any such waiver shall be limited to the specific breach waived.

11.3 Assignment. Subject to the remaining provisions of this **Section 11.3**, none of Beneficiary, Depositor or Escrow Agent shall assign or otherwise transfer this Escrow Agreement, in whole or in part (whether by operation of law or otherwise), to any third party without the prior written consent of the other parties. Notwithstanding the foregoing, upon Depositor's or Beneficiary's permitted assignment or transfer of the Underlying Agreement to a third party in accordance with the terms of the Underlying Agreement, this Escrow Agreement automatically shall be assigned or transferred to such third party, and the assigning or transferring party promptly shall deliver a written notice of same to Escrow Agent. The terms and conditions of this Escrow Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns, whether such transfer or assignment occurs by merger, consolidation, purchase, operation of law or otherwise. All assignments or other transfers of this Escrow Agreement in violation of the terms set forth in this Section shall be null and void and have no force or effect.

11.4 Notices. Any demand and/or notice to be given in connection with this Escrow Agreement shall be given in writing and may be given by personal delivery, registered or certified United States mail, or by overnight courier except for demands and/or notices required to be given in connection with **Articles 2** and **4**, which shall be given by overnight courier, each addressed to the recipient as follows:

If to Depositor:

If to Beneficiary:

Washington State Department of
Enterprise Services

Attention: [_____]]
Fax: _____

With a copy to:

Attention: [_____]]
Fax: _____

If to Escrow Agent:

Attention: Chief Executive Officer

1500 Jefferson Building
1500 Jefferson Street SE
Olympia, Washington 98501
Attention: Rebecca Riley, Con-
tracts Manager
With a copy to:

Washington State Department of
Enterprise Services
1500 Jefferson Building
1500 Jefferson Street SE
Olympia, Washington 98501
Attention: Dawn Tatman, CIO

or to such other address or individual as may be designated hereafter from time to time by notice given by one party to the other parties. Any demand, notice or other communication shall be deemed to have been received: (a) if given by personal delivery, on the day of actual delivery thereof; (b) if given by overnight courier, the next business day; or (c) if given by registered or certified mail, on the third (3rd) business day following the deposit thereof in the mail.

11.5 Severability. If any provision of this Escrow Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Escrow Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Escrow Agreement.

11.6 Headings. The division of this Escrow Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Escrow Agreement. The terms "this Escrow Agreement," "hereof," "hereunder" and similar expressions refer to this Escrow Agreement and not to any particular Section or other portion hereof and include any supplemental agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Escrow Agreement.

11.7 Attorneys' Fees. If either of Depositor or Beneficiary brings an action, suit or proceeding against the other arising out of or relating to this Escrow Agreement, or pertaining to a declaration of rights under this Escrow Agreement, the trier of fact may, in the exercise of its discretion, award the party it finds to be the prevailing party in such action, suit or proceeding that portion or all of its fees, costs and expenses (including court costs and reasonable fees for attorneys and expert witnesses) that it deems to be appropriate under the facts and circumstances. The term "prevailing party" for purposes of this Section shall include a defendant who has by motion, judgment, verdict or dismissal by the court, successfully defended against any claim that has been asserted against it.

11.8 Governing Law; Exclusive Jurisdiction. This Escrow Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Escrow Agreement or the transaction(s) contemplated by it, shall be governed by, construed, and enforced in accordance with the laws of the state of Washington (excluding any Washington conflict of laws rules that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Escrow Agreement shall be brought only in the courts, state and federal, located in Thurston County, Washington. Each of Beneficiary, Depositor and Escrow Agent consents to the exclusive personal jurisdiction and venue of the courts in Thurston County, Washington.

11.9 Attachments. The following Attachments are incorporated by reference into, and deemed to be a part of, this Escrow Agreement:

- Attachment A – Deposits
- Attachment B – Description of Deposit Materials
- Attachment C – Notice
- Attachment D – Escrow Fees
- Attachment E – Verification Process

11.10 Counterparts; Electronic Signatures. This Escrow Agreement may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument. Counterparts may be executed in either original or electronically transmitted form (e.g., faxes or emailed portable document format (PDF) form), and the parties hereby adopt as original any signatures received via electronically transmitted form.

11.11 Defined Terms; Interpretation. As used in this Escrow Agreement, capitalized terms shall have the meanings ascribed to them in this Escrow Agreement or, if not defined herein, such terms shall have the meanings ascribed to them in the Underlying Agreement. Unless expressly specified otherwise, all references to "days" without any designation of "business" will be deemed to be references to calendar days and not business days. When calculating the time period before which, within which or following which any act is to be done or step taken pursuant to this Escrow Agreement, the date that is referenced in calculating such period will be excluded (for example, if an action is to be taken within two (2) days of a triggering event and such event occurs on a Tuesday, then the action must be taken by Thursday). If the last day of a business day period is a non-business day, the period in question will end on the next succeeding business day.

11.12 Nature of Agreement and Deposits. The parties acknowledge and agree that this Escrow Agreement is an agreement supplementary to the Underlying Agreement as defined under Section 365(n) of the United States Bankruptcy Code, 11 U.S.C. § 101, et. seq.

11.13 Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Escrow Agreement.

~ Signature Page Follows ~

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Escrow Agreement as of the Effective Date.

DEPOSITOR:

By: _____

Title: _____

Date: _____

BENEFICIARY:

**Washington State Department of Enterprise
Services**

By: _____

Title: _____

Date: _____

ESCROW AGENT:

By: _____

Title: _____

Date: _____

Approved as to Form

**State of Washington
Office of the Attorney General**

Suzanne Shaw, Assistant Attorney General

Date: _____

ATTACHMENT A DEPOSITS

The Deposits consist of the following items (all of which shall be provided in human-readable, electronic and machine-readable form, unless stated otherwise below):

1. All source code for the Depositor-owned or developed Software licensed to Beneficiary under the Underlying Agreement, as configured for Beneficiary (if applicable), and all customizations, extensions and modifications to such Software made by Depositor for Beneficiary, including all source code listings (collectively, "**Source Code**").
2. All sub-programs, routines, program files, data files, file and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to, interacting with, or a part of, the Depositor-owned or developed Software (collectively, "**Additional Programs**").
3. All initial program load and start-up instructions, directions, information and materials that will enable a reasonably skilled programmer to load and execute (including compiling if necessary), the Source Code without the assistance of Depositor or any other person or reference to any other materials (collectively, "**Load Instructions**").
4. A list of all commercially available versions and releases, and copies of all non-commercially available versions and releases, of all third party software programs, tools, utilities, diagnostic programs and support programs used by Depositor that will enable a reasonably skilled programmer to compile, load and execute the Source Code without the assistance of Depositor or any other person (collectively, "**Escrowed Third Party Software**").
5. Copies of all Depositor-developed or owned maintenance and support tools, utilities, diagnostic programs and supporting programs used by Depositor internally in the support or maintenance of the Software, or externally in connection with supporting other Beneficiary locations, whether or not such items are made available to customers generally or at an additional fee (collectively, "**Depositor Support Tools**").
6. A list of all commercially available versions and releases, and copies of all non-commercially available versions and releases, of all third party-developed or owned maintenance and support tools, utilities, diagnostic programs and supporting programs used by Depositor internally in the support or maintenance of the Software, or externally in connection with supporting other Beneficiary locations, whether or not such items are made available to customers generally or for an additional fee (collectively "**Third Party Support Tools**").
7. For the Depositor-owned or developed Software, all documentation, interface documentation and Source Code specifications including, without limitation, all available reference manuals, user and operating guides and manuals, design specifications, functional specifications, flow charts, internal use listings or manuals relating to error corrections, fixes and workarounds, file and program cross-reference information (collectively, "**Specifications**").

8. Any documentation or other materials relating to security requirements, methodologies and tools that prevent or detect unauthorized access to the Software (collectively, "**Security Requirements**").
9. Any documentation or other materials relating to methodologies that address traffic management, workload balancing, segmentation, capacity planning, routing and overall performance analysis of the Software (collectively, "**Traffic Management Methodologies**").
10. Copies of all Depositor-owned or developed tools used by Depositor to support performance analysis of the Software, whether or not such items are made available to licensees generally or for an additional fee (collectively, "**Performance Analysis Tools**").
11. A list of all commercially available versions and releases, and copies of all non-commercially available versions and releases, of all third-party-developed or owned tools used by Depositor to support performance analysis of the Software, whether or not such items are made available to licensees generally or for an additional fee (collectively, "**Third Party Performance Analysis Tools**").
12. A list of any encryption keys or passwords required to access or use any of the Deposits (collectively, "**Encryption Keys**").
13. A list of the names, business addresses and business telephone numbers of all key programmers or authors currently employed by Depositor of any portion of the Software and/or the other materials referenced in **Sections 1** through **11** of this **Attachment A**, which list shall be updated upon the written request of Beneficiary.
14. Any other information and technical materials in Depositor's possession that are reasonably necessary for a reasonably skilled computer programmer to maintain, modify or enhance the Software without the aid of Depositor or any other person and without reference to any other materials (collectively, "**Other Information**").

ATTACHMENT B
DESCRIPTION OF DEPOSIT MATERIALS

Washington State Department of
Enterprise Services
1500 Jefferson Building
1500 Jefferson Street SE
Attention: Chief Information Officer

Re: Account No. **[Account No.]**; Software of _____.

Ladies and Gentlemen:

This writing is to inform you of the receipt of the following Deposits under the terms of that certain Escrow Agreement by and among Washington State Department of Enterprise Services, _____ and _____, dated as of [____], 2013 (the "***Escrow Agreement***"). All capitalized terms used herein shall have the meanings ascribed to them in this Escrow Agreement. The items marked or checked below have been received as of the dates indicated below; any discrepancies are noted below:

<u>Received</u>	<u>Label Description</u> <u>Item of Deposit</u>	<u>Updates</u>	<u>Date Received</u>
_____	1. Source Code	_____	_____
_____	2. Additional Programs	_____	_____
_____	3. Load Instructions	_____	_____
_____	4. Escrowed Third Party Software	_____	_____
_____	5. Depositor Support Tools	_____	_____
_____	6. Third Party Support Tools	_____	_____
_____	7. Specifications	_____	_____
_____	8. Security Requirements	_____	_____
_____	9. Traffic Management Methodologies	_____	_____
_____	10. Performance Analysis Tools	_____	_____
_____	11. Third Party Performance Analysis Tools	_____	_____
_____	12. Encryption Keys	_____	_____

<u>Received</u>	<u>Label Description</u> <u>Item of Deposit</u>	<u>Updates</u>	<u>Date Received</u>
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_____ 13.	Programmer List	_____	_____
_____ 14.	Other Information	_____	_____

Please check as applicable:

Deposit Type: Initial _____ Supplemental _____

Environment: _____

Special Instructions: _____

I received and deposited the above described Deposit Materials pursuant to the terms and conditions of this Escrow Agreement.

_____,
Escrow Agent

By: _____

Title: _____

Date: _____

I certify that the above described Deposit Materials were provided to Escrow Agent.

_____,
Depositor

By: _____

Title: _____

Date: _____

ATTACHMENT C
NOTICE

Washington State Department of
Enterprise Services
1500 Jefferson Building
1500 Jefferson Street SE
Attention: Chief Information Officer

[Depositor]

Attention: [_____]

RE: Escrow Agreement #_____

Dear Sir or Madam:

In accordance with your escrow agreement, the **[SPECIFY EITHER "INITIAL" OR "RENEW-AL"]** fees are due by **[INSERT APPLICABLE DUE DATE]**. If such fees are not received by the date set forth above, _____ may terminate the Escrow Agreement without further notice or liability to you.

If you have any questions, please contact me at _____.

Sincerely,

Name

Title

Date

ATTACHMENT D
ESCROW FEES

Initialization Fee

(First-year fee only: Includes all contract review, modification and set-up of account.)

\$700

Annual Maintenance Fee

(Annual fee: Includes escrow deposit maintenance, all account activity notifications, unlimited escrow deposit material updates, online account information access, electronic depositing option, and two (2) cubic ft. storage allowance.)

\$1,200

Additional Items Menu

Additional Standard Beneficiaries	\$ 200 each
Additional Non-Standard Beneficiaries	\$ 700 each
Additional Storage Space	\$ 100/ cubic ft.
Deposit Material Reporting	\$ 600 annually
Technical Verification	TBD

ATTACHMENT E

VERIFICATION PROCESS

1. Depositor Verification. Prior to depositing any Deposits (including any Supplemental Deposits) with Escrow Agent, at its own cost and expense, Depositor shall verify that all items required to be deposited into escrow as described in **Attachment A** are included in the Deposits, that all Deposits that are stored on electronic media can be accessed from that media (meaning, for example, that the media is not defective) and that the Deposits are otherwise accurate, complete and sufficient in accordance with the requirements set forth in this Escrow Agreement.

2. Beneficiary Verification.

2.1 General. Beneficiary shall have the right from time-to-time to request Depositor to perform for Beneficiary's observation a verification of the Deposits to ensure that the Deposits are accurate, complete and sufficient in accordance with this Escrow Agreement ("**Beneficiary Verification**"). Beneficiary Verification may include, without limitation, Depositor's performance and Beneficiary's observance of the following activities: (a) compiling the Source Code; (b) building a full working version of the Software; (c) testing the functionality of the Software, as applicable; and (d) assembling and packaging the Deposits for delivery to Escrow Agent.

2.2 Verification Location. Depositor shall conduct Beneficiary Verification at Depositor's United States-based facility (the location of Beneficiary Verification hereinafter referred to as the "**Verification Location**"). Beneficiary Verification shall commence not later than thirty (30) days following Beneficiary's written request for the same to Depositor and Escrow Agent (the "**Verification Request**"). Promptly following its receipt of a Verification Request, Escrow Agent shall make available a copy of the Deposits at, or deliver a copy of the Deposits to, the Verification Location. The package containing the Deposits shall be opened only in the presence of Beneficiary and Depositor representatives at such time as Beneficiary Verification has begun. Depositor shall permit representatives of Beneficiary and/or a Beneficiary-designated third party(s) to be present during Depositor's verification of the Deposits. Immediately following such Beneficiary Verification, the package containing the Deposits shall be sealed and deposited with an overnight courier for delivery to Escrow Agent.

2.3 Inaccurate, Incomplete or Insufficient Deposits. If it is discovered during Beneficiary Verification that the Deposits are inaccurate, incomplete or insufficient in any way, Beneficiary and Depositor shall jointly create a detailed written list of deficiencies ("**List of Deficiencies**"). Within three (3) days thereafter, Depositor will provide to Escrow Agent additional, corrective and/or replacement Deposits, as applicable, to correct the deficiencies identified in the List of Deficiencies. Upon receipt or notice of receipt of any additional, corrective and/or replacement Deposits, Beneficiary shall again have the right to verify the Deposits in accordance with **Section 2** of this **Attachment D**. At Beneficiary's option, Beneficiary Verification shall continue until the Deposits are accurate, complete and sufficient in accordance with the requirements set forth in this Escrow Agreement. If the Beneficiary Verification process exceeds a period of thirty (30) days because of Depositor's failure to provide additional, corrective and/or replacement Deposits in accordance with this **Section 2.3**, Depositor shall be deemed to be in material breach of its obligations under **Article 10** of this Escrow Agreement.

2.4 Personnel. During Beneficiary Verification, Depositor shall permit members of Beneficiary's internal audit staff and/or a third party contractor(s) retained by Beneficiary (provided the contractor has signed a confidentiality and non-disclosure agreement with Benefi-

ciary), to be present at the Verification Location and to verify, audit and inspect the Deposits pursuant to this **Section 2**. Additionally, at Beneficiary's request, Depositor shall make available at the Verification Location one (1) or more persons who are knowledgeable about the Deposits including, without limitation, the operation of the Source Code, to answer any questions as part of Beneficiary Verification.

2.5 Commercially-Available Third Party Software. To the extent they are not included in the Deposits, at no cost or expense to Beneficiary, Depositor shall make available for use by Beneficiary and its representatives at the Verification Location copies of all applicable versions and releases of the third party software, Third Party Support Tools and/or any other products or information (if not included in the Deposits) that may be necessary for Beneficiary to verify the Deposits in accordance with this **Section 2**.

2.6 Costs and Expenses. As between Beneficiary and Depositor, Beneficiary shall pay all charges, costs and/or fees charged or incurred by Beneficiary-retained third parties in connection with each Beneficiary Verification. Notwithstanding the foregoing, if Beneficiary and Depositor develop a List of Deficiencies, Depositor timely shall pay and/or reimburse Beneficiary for all such charges, costs and/or fees plus all reasonable travel costs and expenses incurred by Beneficiary with respect to the applicable Beneficiary Verification.