



Washington State Department of
Enterprise Services

TECHNOLOGY AGREEMENT

BY AND BETWEEN

***WASHINGTON STATE DEPARTMENT OF
ENTERPRISE SERVICES***

AND

[PRIME VENDOR]

_____, ***2013***

DES TA No. _____

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SCHEDULES

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EXHIBITS

Exhibit 1	TLA Solution Project Agreement
Exhibit 2	Hosting Services
Exhibit 3	Subcontractor Confidentiality and Non-Disclosure Agreement
Exhibit 4	Third Party Confidentiality and Non-Disclosure Agreement
Exhibit 5	Source Code Escrow Agreement

TECHNOLOGY AGREEMENT

This Technology Agreement ("**Agreement**") is made and entered into as of _____, 2013 (the "**Effective Date**"), by and between 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**", as further defined herein), and _____, a _____ corporation, with a principal place of business at _____ ("**Prime Vendor**").

WHEREAS, on February 26, 2013, DES issued a request (the "**RFP**", as further defined herein) to provide, implement, support and maintain a time, leave and attendance information solution ("**TLA Solution**," as further defined herein) (the implementation of the TLA Solution is referred to as the "**TLA Solution Project**"), and to implement the TLA Solution Project (as further defined herein).

WHEREAS, on _____, 2013, Prime Vendor submitted to DES its written response to the RFP, as subsequently supplemented (the "**TLA RFP Response**", as further defined herein), and in the TLA RFP Response and otherwise Prime Vendor represented to DES that it had the software, services, skills and personnel required to meet the requirements set forth in the RFP and implement the TLA Solution in accordance with the terms set forth in the Agreement.

WHEREAS, Prime Vendor acknowledges that during the negotiation period, including the implementation planning study workshops, it had sufficient time and opportunity to conduct comprehensive due diligence on the TLA Solution Project, including the ability to obtain a full understanding and clarification of the DES Business and Technical Requirements.

WHEREAS, in reliance on the representations made by Prime Vendor in the TLA RFP Response and in subsequent discussions, the Demonstrations, presentations to DES and the commitments and assurances made by Prime Vendor herein, DES selected Prime Vendor over other prospective technology providers to implement the TLA Solution.

WHEREAS, DES and Prime Vendor want to specify the terms and conditions under which Prime Vendor and DES will form their long-term technology partnership, implement the TLA Solution, and engage in future projects as may be agreed to by the parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

ARTICLE 1

SCOPE OF AGREEMENT, PARTNERING PRINCIPLES AND RELATIONSHIP MANAGEMENT

1.1 Scope of Agreement. The Agreement shall apply to all Software, Services and Equipment provided by Prime Vendor to DES, whether such Software, Services and Equipment are contemplated as of the Effective Date or thereafter, including the licensing of new or additional products or services, engaging in new or additional projects, purchasing new equipment

and the like, which shall all be subject to all applicable Washington state laws and policies related to competitive procurement.

1.2 Partnering Principles. The principles identified below ("**Partnering Principles**") include principles that the parties have determined to be important to ensure the success of their relationship. The Partnering Principles function as "constitutional" statements regarding the parties' overall intentions for the Agreement and all Project Agreements and Contract Supplements executed pursuant to the Agreement. If any term or condition of the Agreement or any Project Agreement or Contract Supplement is ambiguous or unclear or if the parties did not anticipate a particular issue, the parties shall refer to and apply the Partnering Principles to resolve and/or address the ambiguous, unclear and/or unanticipated issue.

PARTNERING PRINCIPLE #1	DIRECT SENIOR EXECUTIVE OVERSIGHT AND DECISION MAKING
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In a long-term strategic relationship, direct senior executive oversight and involvement by both parties is needed to ensure all commitments and timeframes are met. While ultimate decision making authority with respect to the TLA Solution Project and future projects rests with DES, Prime Vendor and DES must each manage their personnel and discharge their duties within the agreed parameters and requirements to ensure the projects are successfully implemented.

PARTNERING PRINCIPLE #2	COMPETITIVE PRODUCTS
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DES will be making a significant investment in Prime Vendor's products, and DES wants to ensure that Prime Vendor remains a competitive provider of solutions. Prime Vendor commits that its products shall be technologically competitive as measured against other commercially available products of the same types.

PARTNERING PRINCIPLE #3	COMPETITIVE PRICING, GROWTH OF DES AND PREDICTABILITY OF ON-GOING COSTS AND EXPENSES
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Prime Vendor's products and Services must be competitively priced and contemplate the growth in use at DES and the Agencies DES supports. Costs and expenses must be clearly articulated and understood by the parties prior to initiating a project or any change orders. Cost, personnel and other resource requirements must be clearly outlined for all parties.

PARTNERING PRINCIPLE #4	TIME-TO-MARKET SOLUTIONS AND REGULATORY UPDATES
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In a long-term technology relationship, time-to-market for products, including regulatory updates, is critical to DES. Economic incentives for Prime Vendor must be in place to ensure that Prime Vendor performs on a timely basis and delivers and implements fully tested and operational products.

PARTNERING PRINCIPLE #5	PRODUCT DEVELOPMENT
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DES will have the ability to influence Prime Vendor's product development efforts and be given the option to test and implement any new product developments on an early adopter basis. DES will be integrally involved in Prime Vendor's technology strategic planning process. Ongoing representation and/or observation and participation rights on Prime Vendor's "top-tier" customer councils and committees should be made available to DES.

PARTNERING PRINCIPLE #6	QUALITY PERSONNEL TO SUPPORT THE RELATIONSHIP
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Qualified personnel will be devoted by both parties to the relationship. The parties will commit appropriate, qualified management, administrative, technical and other support personnel to achieve the objectives of the relationship.

PARTNERING PRINCIPLE #7	COMMITMENT TO OPEN ARCHITECTURE PRODUCTS AND COMPLIANCE WITH DES' ENTERPRISE ARCHITECTURE
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Prime Vendor's products will operate in an open architecture environment and in accordance with DES' enterprise architecture. Prime Vendor will make available to DES all interfaces and supporting documentation specifications to promote interoperability among DES' other systems and devices.

PARTNERING PRINCIPLE #8	COOPERATION WITH DES' OTHER TECHNOLOGY PARTNERS
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Given the various technology platforms supporting DES, joint planning, open communication, and cooperation and collaboration between DES and all of its technology partners will be required. As such, Prime Vendor will participate in these cooperative activities.

PARTNERING PRINCIPLE #9	ALIGNMENT OF ACCOUNTABILITY AND RESPONSIBILITY
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Accountability and responsibility of roles should be aligned to ensure that each party is responsible for the aspects of a project or relationship that they control.

PARTNERING PRINCIPLE #10	PROTECTION OF DES' LONG-TERM INVESTMENT IN THE SOLUTION
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Prime Vendor will ensure that DES' investments in Prime Vendor products are protected economically against shifts in platforms and product migration.

PARTNERING PRINCIPLE #11	THOROUGH AND SPEEDY ISSUE RESOLUTION
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Prime Vendor and DES will ensure a thorough and speedy resolution of issues that arise in the relationship, including issues that may arise in a project.

1.3 Relationship Management. The parties commit to proactive sponsorship of the relationship created under the Agreement, and to further the interests of the relationship, agree to the following:

1.3.1 General. Each party shall allocate appropriate, quality personnel to fulfill the objectives of the relationship including, as appropriate and applicable, personnel to fulfill the development, implementation and support obligations set forth herein and in a Project Agreement and/or Contract Supplement. If either party believes that the other has not allocated sufficient personnel, the matter will be brought to the attention of the Executive Sponsors for resolution.

1.3.2 Executive Sponsors. Each party shall designate a senior executive-level individual (for DES, the "**DES Executive Sponsor**," and for Prime Vendor, the "**Prime Vendor Executive Sponsor**," and each an "**Executive Sponsor**") who will have overall responsibility for the relationship between the parties with respect to the relationship. The Prime Vendor Executive Sponsor shall be the Chief Executive Officer of Prime Vendor and have full authority to act on behalf of Prime Vendor with respect to all matters related to the Agreement. Each party may designate a new Executive Sponsor at any time by providing written notice thereof to the other party. If DES determines that individual appointed by Prime Vendor is not fulfilling the goals of the relationship, DES shall communicate that determination to Prime Vendor, and Prime Vendor shall replace such individual with an individual that both parties agree is suitable to fulfill the Prime Vendor Executive Sponsor role. The Prime Vendor Executive Sponsor's participation as sponsor of the relationship shall not be chargeable to DES.

1.3.3 Executive Briefings. The relationship with Prime Vendor will involve a significant investment and substantial commitment from DES in the form of monies, per-

sonnel, time and effort. During the pendency of the TLA Solution Project, the Executive Sponsors and other appropriate representatives from each party shall meet at least quarterly, or more frequently if needed, at DES, to discuss the overall relationship of the parties, the status of the TLA Solution Project, the status of and any risks, issues and any problems or difficulties relating to the TLA Solution Project and the Hosting Services, whether timeframes are being met, and what actions Prime Vendor can take to mitigate such risks, issues, problems or difficulties. From and after Project Completion of the TLA Solution Project, the Executive Sponsors shall meet bi-annually, or more frequently at the request of a party, in alternating locations between Prime Vendor's home office and DES' offices, to discuss the overall relationship of the parties, any risks, issues, problems or difficulties relating to Hosting Services, the Product Roadmap, any and such other items as appropriate. In addition to the above meetings, Prime Vendor's Chief Executive Officer and President shall meet generally on an annual basis with the DES Executive Sponsor and other DES leadership to discuss the relationship between DES and Prime Vendor. Prime Vendor Executive Sponsor's support of the relationship, including participation in phone calls, meeting (on-site and off-site), problem resolution and the like, and any expenses incurred in connection therewith, shall not be chargeable to DES.

1.3.4 Prime Vendor Account Executive. Prime Vendor shall designate an individual (the "**Prime Vendor Account Executive**") to serve as Prime Vendor's regular point of contact to administer the Agreement and projects, oversee the delivery of Solutions, Equipment and Services to DES and the overall performance of Prime Vendor's responsibilities under the Agreement and any Project Agreements and Contract Supplements. The Prime Vendor Account Executive shall attend all executive briefings. If DES perceives that the Prime Vendor Account Executive is not effectively discharging her or his duties, at DES' request, Prime Vendor shall replace such individual. Prime Vendor shall not charge DES for any Services, meeting time, etc., provided by the Prime Vendor Account Executive.

1.3.5 Prime Vendor Project Management. For each project, Prime Vendor shall appoint one or more Prime Vendor Project Manager(s) ("**Prime Vendor Project Manager(s)**"), and where more than one Prime Vendor Project Manager is assigned, then a project director to oversee the multiple Prime Vendor Project Managers ("**Prime Vendor Project Director**").

1.3.6 Prime Vendor Contract Manager. Prime Vendor shall designate an individual (the "**Prime Vendor Contract Manager**") to be responsible primarily for ensuring Prime Vendor's contractual compliance with the Agreement, and for proactively communicating and coordinating with Prime Vendor's Project Director, Project Manager(s) and other Prime Vendor personnel as needed, to ensure such compliance. In furtherance thereof, the Prime Vendor Contract Manager shall, among other things:

(a) Be fully knowledgeable about all the commitments made by Prime Vendor in the Agreement, Project Agreements and Contract Supplements, especially where such commitments may differ from Prime Vendor's general business practices and policies;

(b) Advise Prime Vendor personnel and Prime Vendor's subcontractors on the commitments made by Prime Vendor to ensure the Prime Vendor

personnel have a full and complete understanding of the level and scope of the commitments made under the Agreement, Project Agreements and Contract Supplements;

(c) Along with the Prime Vendor Account Executive, serve as a point of contact to administer the Agreement;

(d) Ensure that all policies and procedures relating to Prime Vendor's administration of the Agreement are applied consistently by Prime Vendor; and

(e) Such other duties or responsibilities relating to the administration of the Agreement as may be reasonably requested from time-to-time by either party.

1.3.7 Prime Vendor Information Security Officer; Compliance with Security Policies and Procedures and Security Certification.

(a) **Compliance with Security Policies and Procedures.** Prime Vendor shall comply with: (i) security requirements and obligations required by applicable Law; (ii) the state of Washington security policies and procedures and DES Security Policies and Procedures; and (iii) Prime Vendor's security standards, policies, guidelines and procedures, provided that state of Washington security policies and procedures and DES Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with Prime Vendor's security standards, policies, guidelines and procedures (**subsections (i) through (iii)** are collectively referred to as the "**Security Policies and Procedures**"). If there is a change in the Security Policies and Procedures from and after the Effective Date that Prime Vendor determines increases its costs to provide Services, Support and Maintenance Services or Hosting Services, Prime Vendor may submit a Change Request detailing Prime Vendor's reasonable increased costs to comply with such change. DES will evaluate the Change Request and either sign a Change Order paying the amounts set forth therein, whereupon Prime Vendor shall comply with the change in the Security Policies and Procedures, or waive Prime Vendor's obligation to comply with such change. The Prime Vendor Information Security Officer's participation shall not be chargeable to DES.

(b) **Prime Vendor Information Security Officer Responsibilities.** Prime Vendor shall designate a corporate officer ("**Information Security Officer**") who shall, at no cost or expense to DES:

(i) Be responsible to ensure Prime Vendor's initial and ongoing compliance with the Security Policies and Procedures;

(ii) At least once every six (6) months, and at any other time requested by DES, provide a written certification to DES confirming Prime Vendor's compliance with the Security Policies and Procedures; and

(iii) Upon DES' request, including following any certification related to Prime Vendor's compliance with the Security Policies and Procedures;

dures, meet with DES' Chief Information Security Officer to discuss Prime Vendor's certification, the Security Policies and Procedures or other related matters.

(c) Security Certifications. Prime Vendor represents and warrants that it is certified under ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27001:2005, Code of Practice for Information Security Management ("**ISO Security Standards**"), and shall maintain such certification on an on-going basis. Prime Vendor shall provide DES with full and complete copies of any ISO Security Standards and other security audits, reports and reviews, whether conducted internally by Prime Vendor or through a Third Party, within five (5) days of a request by DES and within thirty (30) days of Prime Vendor's receipt of such audits, reports and reviews. If there are deficiencies cited and/or recommendations made, Prime Vendor Information Security Officer, Prime Vendor Executive Sponsor and other appropriate personnel from Prime Vendor shall meet to review the deficiencies and recommendations and develop a plan of action to address such items. The implementation of any measures to address deficiencies and/or recommendations shall not be chargeable to DES.

1.4 Conflicts in Interpretation. In resolving any inconsistencies relating to the Agreement, the following order of precedence shall be followed:

- (a)** First, and most senior, applicable Laws;
- (b)** Second, the terms contained in the main body of the Agreement;
- (c)** Third, the terms contained in any Schedule, Exhibit (except for Project Agreement and Contract Supplement) and/or Attachment to the Agreement, provided that no order of precedence shall be given among them;
- (d)** Fourth, the terms contained in the main body of a Project Agreement and/or Contract Supplement;
- (e)** Fifth, the terms contained in any Schedule, Exhibit and/or Attachment to a Project Agreement and/or Contract Supplement other than the Project Schedule and any Statement of Work, provided that no order of precedence shall be given among them;
- (f)** Sixth, the Statement of Work document, if any, for the applicable Project Agreement and/or Contract Supplement;
- (g)** Seventh, the Joint Resource Plan, if any, for the applicable Project Agreement and/or Contract Supplement;
- (h)** Eighth, the Project Schedule, if any, for the applicable Project Agreement and/or Contract Supplement;
- (i)** Ninth, the RFP Response; and

(j) Tenth, any Documentation (to the extent not included in one of the preceding subsections) in the order of precedence contained in the definition thereof.

All RFP Responses, including the TLA RFP Response, are incorporated herein by reference and made a part of the Agreement. In addition, all Schedules, Attachments and Exhibits to the Agreement, including the following, are incorporated herein by reference and made a part of the Agreement:

Schedule 1.5	Definitions
Schedule 1.6	Consolidated Pre-Existing DES/Prime Vendor Agreements
Schedule 3.2.3	Certification Form
Schedule 5.3.2	Change Order Form
Schedule 7.1	Support and Maintenance Services
Attachment A	Multi-Vendor Sourcing Procedures
Attachment B	Support Standards and Support Credits
Schedule 8.4.2	Service Rates
Schedule 8.5.1	Form of Prime Vendor Invoice
Schedule 15.3.1	Insurance Coverages
Schedule 15.15	DES Policies
Exhibit 1	TLA Solution Project Agreement (including all Schedules, Attachments and Exhibits therein)
Exhibit 2	Hosting Services (including all Schedules, Attachments and Exhibits therein)
Exhibit 3	Subcontractor Confidentiality and Non-Disclosure Agreement
Exhibit 4	Third Party Confidentiality and Non-Disclosure Agreement
Exhibit 5	Source Code Escrow Agreement

Prime Vendor Implementation Methodologies will be used in the TLA Solution Project and in future projects. Using such Prime Vendor Implementation Methodologies may involve the use of terms, conditions, processes, protocols, workflows, assumptions or other features that the parties are required to follow. Using, following or implementing such Prime Vendor Implementation Methodologies shall not alter or modify Prime Vendor's obligations under the Agreement or any Project Agreement. Without limiting the generality of the foregoing, to the extent a Project Charter, "project management plan," "project initiation plan," "test materials" or similar documents are developed for the TLA Solution Project or other project, but are not attached to the applicable Project Agreement or Contract Supplement on its effective date, such items must be developed consistently with the terms of the Agreement, and any deviation from the terms of the Agreement because of the Prime Vendor Implementation Methodologies or otherwise, will not be deemed to amend or modify the terms of the Agreement, and the parties expressly disclaim that such changes amend the Agreement through course of dealing, by operation of law or otherwise.

1.5 Definitions and Construction. Capitalized terms used herein shall have the meanings ascribed to them in **Schedule 1.5**, or in any other Schedule, Exhibit or Attachment. Any project-specific definitions, if any, shall be included in the applicable Project Agreement or Contract Supplement. The words "include", "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". Any reference herein to a particular Article or Section number (e.g., "**Article 7**" or

"Section 7.1"), shall be deemed a reference to all Sections of the Agreement that bear sub-numbers to the number of the referenced in the Article or Section (e.g., a reference to **Article 9** includes **Section 9.1** through **9.16**, and a reference to **Section 9.1** includes reference to **Sections 9.1.1, 9.1.2, etc.**). The terms "hereof," "hereunder," "herein" and words of similar import will refer to the Agreement as a whole and not to any particular provision of the Agreement. Definitions in the Agreement apply equally to the singular and plural forms of the defined terms. Unless otherwise expressly specified, all references to "days" without any designation of "calendar" or "business" will be deemed to be references to calendar days and not business days. All references to "business days" shall mean Monday through Friday, excluding Holidays. When calculating the time period before which, within which or following which any act is to be done or step taken pursuant to the 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.

1.6 Consolidating Pre-Existing DES/Prime Vendor Agreements. [OPTIONAL] In order to have a consistent set of terms upon which to administer the DES-Prime Vendor relationship, prior agreements between DES and _____ are hereby migrated to the Agreement in accordance with the terms set forth in **Schedule 1.6** (collectively, the "**Pre-Existing Contracts**"). From and after the Effective Date, the Pre-Existing Contracts are hereby terminated, the products and services under such Pre-Existing Contracts are now subject to the terms and conditions of the Agreement, including the fees and any special terms that apply to such products and services as set forth in **Schedule 1.6**. To the best of DES' and Prime Vendor's knowledge, **Schedule 1.6** sets forth all Pre-Existing Contracts. Following the Effective Date, if either party identifies a Pre-Existing Contract that is not set forth on **Schedule 1.6**, **Schedule 1.6** shall be amended to include such Pre-Existing Contract.

1.7 Other DES/Prime Vendor Agreements. Following the Effective Date, if Prime Vendor acquires a new Affiliate and such new Affiliate is a party to one (1) or more agreements with DES or _____ (each of **subsection (a)** and **(b)**, a "**New Affiliate Agreement**"), DES has the right, but not the obligation, to subject the products, software and services set forth in the New Affiliate Agreement ("**New Affiliate Agreement Products and Services**") to the terms of the Agreement, as set forth herein. Within thirty (30) days following DES' written notice to Prime Vendor that the New Affiliate Agreement Products and Services will be subject to the terms of the Agreement, DES and Prime Vendor shall amend **Schedule 1.6** to add such New Affiliate Agreement Products and Services and remaining and on-going costs and charges related thereto and such New Affiliate Agreement Products and Services shall be subject in all respects to the terms of the Agreement as though such Pre-Existing Contract were originally provided to DES by Prime Vendor under the Agreement.

ARTICLE 2

PROJECT AGREEMENTS AND CONTRACT SUPPLEMENTS

DES shall license Software, and purchase Hosting Services and other Services, and Equipment from Prime Vendor pursuant to the terms of a Project Agreement for project-related initiatives (a "**Project Agreement**"), and a contract supplement for non-project related initiatives (a "**Contract Supplement**"). The TLA Solution Project Agreement is attached as **Exhibit 1**. All future Project Agreements developed by the parties shall be substantially in the same form and format

as the TLA Solution Project Agreement, and, to the extent applicable, Contract Supplements, and future Project Agreements and Contract Supplements shall be consistent with the terms and conditions contained in the Agreement, and include, as applicable, the following items:

- (a) A list of all Software, Hosting Services and other Services, and Equipment;
- (b) Complete pricing information for the Software (including any Support and Maintenance Services Fees for the Software), Hosting Services and other Services, and Equipment;
- (c) A Statement of Work and Project Schedule for the Services, including a detailed description of the training, education and adoption Services, developed in accordance with the terms set forth in **Sections 5.2.1 and 5.2.2**;
- (d) A list of Key Personnel;
- (e) A Test Plan for the System;
- (f) The Approved Equipment Configuration for the System;
- (g) The Performance Standards, including those relating to:
 - (i) System response time warranties (such as data transmission, screen-to-screen, report production and on-line entry standards);
 - (ii) System availability and up-times; and/or
 - (iii) Other performance and/or functionality standards that are specific to the System;
- (h) A listing of System-specific Documentation;
- (i) Any Solution-specific license terms or System-specific Support and Maintenance Services terms; and
- (j) Any other Solution-specific terms and conditions.

ARTICLE 3

DELIVERY OF SOLUTIONS

3.1 Software License

3.1.1 Grant of License. Subject to the further terms and conditions of the Agreement, Prime Vendor grants to DES and the Agencies served by DES a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 15.12**), unlimited use, user and user type in connection with its business operations, non-assessable, irrevocable (except as provided in the last paragraph of **Section 10.3**),

worldwide, fully-paid (once all Software License Fees relating to the particular Software item have been paid), multi-site and Enterprise-Wide (except to the extent otherwise set forth in a Project Agreement or Contract Supplement) license for DES, the Agencies served by DES and their Authorized Users to: (a) use the Software and the Documentation; (b) at no additional Software License Fee, to transfer and operate the Software on a different operating system and/or on different equipment; (c) make as many production and non-production copies of the Software and Documentation as DES deems necessary for production and non-production purposes, including testing, disaster recovery, backup, training and education, development and archiving; and (d) adapt the Software and combine the Software with Third Party Software. For purposes of the Agreement and without limiting the generality of the foregoing, the term "**Enterprise-Wide**" shall mean the right to use the Software across the entire spectrum of business and operational activities involving DES and the Agencies served by DES, now and in the future, directly or indirectly, including any and all growth of DES and the Agencies served by DES.

3.1.2 Construction and Interpretation of License and Right to Use Terms.

Prime Vendor acknowledges that the intent of the scope of the Software license is to make DES' rights to use the Software as broad as possible and, accordingly, the language in **Section 3.1.1** shall not be interpreted strictly or narrowly in favor of Prime Vendor. Furthermore, in the event Prime Vendor develops future limitations, qualifications and/or restrictions in how it licenses the Software to its customers, such future limitations, qualifications and/or restrictions shall have no effect on the scope of the Software license granted herein to DES and the Agencies served by DES, and Prime Vendor expressly disclaims the right to claim otherwise.

3.1.3 Restrictions. Other than the rights granted to DES herein, no Intellectual Property Rights to the Software are transferred to DES under the Agreement. DES shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software; provided, however, that DES shall have the right to disassemble, reverse compile, reverse engineer or otherwise translate the Software for purposes of creating interoperable computer programs.

3.1.4 Freedom of Use. Prime Bidder understands that DES may provide information processing services to other users that are Agencies of the State and other tax-supported entities. Prime Bidder further understands that DES or other users that are Agencies of the State and other tax-supported entities may provide services to the public through Internet applications. A Solution may be used in the delivery of these services. Prime Bidder acknowledges and agrees that such use of a Solution is permitted and acceptable.

3.2 Deliverables.

3.2.1 General. As part of a Project Agreement, Contract Supplement, Change Order or other applicable document or request, Prime Vendor may prepare and/or provide Deliverable(s) for DES.

3.2.2 Review and Certification of Deliverables. Each Deliverable shall be in a form, format, and in such detail as is necessary to: (a) in the case of Deliverables in

respect of which specifications have been developed, cause it to conform to such specifications; or (b) in the case of Deliverables in respect of which specifications have not been developed, considering the purpose of the Deliverable, cause it to be reasonably acceptable to DES; and (c) and be of fit quality, including meeting any quality standards as may be set forth in a Project Agreement or Contract Supplement (the applicable acceptance criteria for a Deliverable under the foregoing subsections shall constitute the "**Certification Criteria**" for the purposes of this Section). Prior to delivery to DES, Prime Vendor shall perform a systematic review of each Deliverable and shall, at the time of delivery to DES, confirm in writing that the Deliverable conforms to the Certification Criteria. Following receipt of the applicable Deliverable and within the review period that is applicable to the Deliverable (or if none is specified, then within a reasonable period of time) (the "**Review Period**"), DES shall review the Deliverable. If the Deliverable does not conform to its Certification Criteria, DES promptly will notify Prime Vendor of the deficiencies, but no later than within the Review Period, and Prime Vendor promptly will modify the Deliverable and resubmit it to DES for its review. The process described above will repeat until the Deliverable conforms to its Certification Criteria, and once this condition is met the Deliverable will be certified by DES. To the extent the failure of the Deliverable to conform to the Certification Criteria was caused by Prime Vendor, Prime Vendor shall perform its obligations relating thereto without additional cost or expense to DES. The parties acknowledge that certain Deliverables, such as design and configuration documents, will be subject to further activities, such as unit, systems and integration and user acceptance testing. If, upon testing or other confirmation process, a Deliverable that was previously certified does not meet the intended functionality due to a Prime Vendor error or design flaw, then the corrections required will be provided by Prime Vendor at no cost to DES. If the previously certified Deliverable does not meet the intended functionality due to a change in DES' requirements or a DES error in communicating its requirements, then any correction shall be subject to a charge pursuant to a Change Order. Any extensions of time permitted by DES where the Certification Criteria are not met does not waive any rights or remedies DES has with respect to an Event of Default for failure of Prime Vendor to meet a Critical Milestone Due Date.

If there is substantial but not complete conformance to the Certification Criteria and Prime Vendor wants DES to partially certify the Deliverable, Prime Vendor shall make a request for partial certification and accompanying such request shall be a plan to complete the Deliverable and the timeframe therefor. DES will evaluate any such request but shall not be required to agree to partial certification. If DES agrees to a partial certification, the Certification Form to be signed shall specify that the Deliverable is being partially certified, and the form must have attached an agreed to "Compliance Plan" on how the remaining components of the Deliverable will be completed. If there is partial certification, DES may agree, but shall not be required as a condition thereof, to make a partial payment against such certification, and any such partial payment shall require an amendment to the payment terms under a Project Agreement or Contract Supplement to be effective against DES.

3.2.3 Certification Form. Upon accepting (or partial certification as provided above) any Deliverable submitted by Prime Vendor, DES shall provide Prime Vendor with written acceptance of such Deliverable by the signing of the Certification Form set forth in **Schedule 3.2.3** by the DES Program Manager, or her or his designee, and for Deliverables 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.

3.2.4 Ownership of Deliverables.

(a) Ownership of Non-Software Based Deliverables. Subject to Prime Vendor's rights under **Section 3.2.5**, DES shall be and remain the sole and exclusive owner of any non-software-based Deliverables, such as designs, configuration outputs, test scripts, test data bases, workflow diagrams and schematics and reports developed by Prime Vendor for or on behalf of DES.

(b) Ownership of Interface and Extension Deliverables. Subject to Prime Vendor's rights under **Section 3.2.5** and the further terms of this Section, all Interfaces and Extensions paid for by DES and developed by Prime Vendor shall be and remain the sole and exclusive property of DES. If Prime Vendor wants to make such Interfaces or Extensions available to any other customer, or wants to incorporate the Interface and/or Extension in its base software or service offering, then ownership of such item will transfer to Prime Vendor upon written agreement by the parties that: (i) Prime Vendor shall include the Support and Maintenance Services with respect to such items (whether or not such items were previously covered by Support and Maintenance Services); (ii) any Support and Maintenance Services Fees or other fees relating to such items separately paid by DES (*i.e.*, any separate charges shall be eliminated); (iii) DES shall not be obligated to pay any license fees for such Interfaces or Extensions; and (iv) if the amount paid by DES for such item exceeded Twenty Five Thousand Dollars (\$25,000), the parties shall negotiate a recapture formula whereby DES will be reimbursed by Prime Vendor for the amounts paid by DES in connection with such Interfaces or Extensions with the financial goal to have the amount paid reimbursed within a two (2) year period.

(c) Work-For-Hire. In developing a Deliverable that is owned by DES, the parties agree that such ownership shall inure to the benefit of DES from the date of the conception, creation or fixation of the Deliverable in a tangible medium of expression, as applicable, and that all newly created copyright aspects of such Deliverables shall be considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Deliverables, or any part thereof, are not considered "works-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Prime Vendor shall be deemed to have expressly assigned to DES all exclusive right, title and interest in and to such Deliverables without further consideration, and Prime Vendor agrees to promptly execute all such documents as may be requested by DES to evidence and/or perfect DES' Intellectual Property Rights therein.

3.2.5 Pre-Existing and Independently Developed Intellectual Property.

Each party (and/or its Third Party licensors) is and shall remain the owner of all right, title and interest in and to that party's Intellectual Property Rights that existed prior to the Effective Date and in and to that party's Intellectual Property Rights that may be independently developed by such party on or after the Effective Date.

3.2.6 Support for Interfaces, Extensions and other Software-Based Deliverables. For Interfaces, Extensions and other software-based Deliverables that are developed by Prime Vendor pursuant to a Project Agreement, Contract Supplement or other ordering document, unless otherwise stated therein, Prime Vendor shall provide Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables as part of the standard Support and Maintenance Services Fees. For new or additional Interfaces, Extensions and other software-based Deliverables that are not required to meet a DES Business and Technical Requirement, Prime Vendor shall include proposed Support and Maintenance Services Fees in connection with the Change Order process to enable DES to determine whether it wants Prime Vendor to provide Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables, provided that such Support and Maintenance Services Fees cannot exceed twenty two percent (22%) of the development fees. Support and Maintenance Services for such Interfaces, Extensions and other software-based Deliverables shall include the obligation of Prime Vendor to retrofit such Interface, Extension or other Deliverable to, and maintain the compatibility with, all Enhancements.

3.2.7 Third-Party Agreements. Any agreement entered into by Prime Vendor and a Third Party in connection with Deliverables under the Agreement shall include the same terms as those appearing in **Section 3.2.4** to ensure that DES obtains the same rights in the works generated under such Third Party agreement as those set forth in **Section 3.2.4**.

3.3 Interfaces.

3.3.1 Cooperation. Prime Vendor acknowledges that DES is working with a number of Third Parties to develop, maintain and support various Agencies' systems and DES' systems and that it may be necessary to implement one (1) or more Interfaces between a Solution and such systems. Prime Vendor shall cooperate and work with DES and such Third Parties to implement and use standard Interfaces or develop and implement custom developed Interfaces, in accordance with the terms of **Section 3.2**, as necessary to allow information to pass from DES' and/or an Agencies' systems to a Solution, and vice-versa. Such cooperation may include, among other things, Prime Vendor's attendance at meetings with DES personnel and/or Third Party vendors and making available to DES and Third Party vendors the Documentation for the Interfaces. Prime Vendor shall attend DES-requested telephonic meetings (at no charge to DES) upon two (2) business days' notice by DES and DES-requested in-person meetings at DES (which in-person meetings will be chargeable to DES if approved in advance), upon four (4) business days' notice by DES.

3.3.2 Delivery/Development of Interfaces; Interface Documentation. In accordance with the terms set forth in the applicable Project Agreement or Contract Supplement, Prime Vendor shall deliver and install at DES the standard Interfaces identified in the applicable Project Agreement or Contract Supplement. If Prime Vendor must develop a custom Interface, such Interface development shall be considered a Deliverable and developed in accordance with the terms set forth in **Section 3.2**. Prior to Project Completion for the applicable System, Prime Vendor shall provide to DES the Documentation for all Interfaces, including record layouts, design documentation, functional specifications, technical specifications, data transformations and data aggregations for each and every Interface

(both standard Interfaces and custom developed Interfaces). DES' receipt of such Documentation shall in all instances be a condition of Project Completion for the applicable System, and DES shall not be obligated to make and/or shall be excused from making any payment due to Prime Vendor at Project Completion until all such Documentation is received and accepted by DES. Prior to Project Completion, Prime Vendor shall provide to DES Documentation for all Enhancements to any Interfaces at no additional charge to DES. After Project Completion, Prime Vendor shall provide to DES Documentation for Interface Enhancements as part of and pursuant to Prime Vendor's Support and Maintenance Services obligations.

3.4 Documentation.

3.4.1 General. For each component of a Solution, Prime Vendor shall provide to DES Documentation that is reasonably detailed and complete and that accurately describes the functional and operational characteristics of the Solution. Prime Vendor shall provide to DES updated versions of all such Documentation as soon as reasonably practical following its release by Prime Vendor, but in no event later than ten (10) business days following delivery of any Enhancements to DES. Updated Documentation will be at least as detailed as the Documentation issued to DES with any initial Solution delivery. The date, version and/or release number of each and every item of Documentation that is applicable to a particular System will be specified in the applicable Project Agreement or Contract Supplement. For any Interfaces and Extensions and other software-based Deliverables, the Interface and Extension software shall internally document in the source code, instructions and pointers on how the Interface or Extension operates, and replicates such instructions and pointers in separate written Documentation. The level of detail required for Interface Documentation shall be sufficient to enable a reasonably skilled programmer to update and retrofit the Deliverable to future versions and releases of the Solution or other computer programs to which the Interface interfaces or Extension operates.

3.4.2 Additional Documentation. Prime Vendor's Documentation shall include detailed user-level descriptions of the changes in a release and the impact of such changes, detailed, comprehensive and complete technical release notes that identify all changes in a release and/or Enhancement. Prime Vendor agrees to continually work to improve and enhance the level of detail contained in its Documentation.

3.5 Project Management, Performance and Other Tools, Utilities, Etc. Prime Vendor shall grant to DES a royalty-free license during the term of the Agreement to all Prime Vendor (or its Affiliate's)-owned utilities and tools used by Prime Vendor to provide Services and/or in connection with a project, and, to the extent such licenses are sub-licensable by Prime Vendor to DES, a license to Third Party-owned utilities and tools used by Prime Vendor to provide Services and/or in connection with a project, including all tools and utilities used by Prime Vendor to provide project management, implementation, evaluation and operational, maintenance and support Services, and all tools and utilities used by Prime Vendor to provide performance monitoring, testing, managing and support of the Solution (collectively, "**Prime Vendor Tools and Utilities**"). During the pendency of a project, Prime Vendor shall provide training and education on the use of the Prime Vendor Tools and Utilities. The Prime Vendor Tools and Utilities shall be set forth in the applicable Project Agreement or Contract Supplement. For so long as the Agreement is not terminated and Prime Vendor is providing Support and Maintenance Services to DES, Prime Vendor shall provide updated versions and/or all new Prime

Vendor Tools and Utilities as such updated versions are available, all at no additional cost to DES.

3.6 Source Code.

3.6.1 Source Code Escrow Agreement. The Source Code and other Deposit Materials for all Solutions licensed to DES hereunder shall be deposited in escrow, with an escrow agent mutually selected by the parties, to be located in the United States. The escrow deposits shall be subject to release, all in accordance with the terms and conditions of the Source Code Escrow Agreement. The Source Code Escrow Agreement is supplementary to the Agreement. Prime Vendor shall make and cause to be made deposits of the Deposit Materials for the Source Code Escrow Agreement within thirty (30) days of the Effective Date. If Prime Vendor fails to deposit all such Deposits within the initial thirty (30) day time period, and thereafter, within the time frames specified in the Source Code Escrow Agreement, provided such failure is not cured by Prime Vendor within thirty (30) days following receipt of written notice of such failure, without limiting any other rights and remedies that may be available to DES, DES shall have the right to: (a) seek specific performance of the Deposit obligations in the Source Code Escrow Agreement, and Prime Vendor hereby waives all defenses associated with such remedy; (b) withhold payment of any and all amounts then due or that may become due to Prime Vendor; (c) obtain release of the Source Code and other Deposit Materials in accordance with the Source Code Escrow Agreement; and/or (d) terminate the Agreement in accordance with **Article 10.2**.

3.6.2 Source Code License. Upon any release of the Deposits to DES under the Source Code Escrow Agreement, DES shall have a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 15.12**), unlimited user, non-assessable, irrevocable, worldwide, fully paid and multi-site license (and sublicense with respect to Third Party Software) either directly or through a Third Party retained by DES, to use, modify, adapt, execute, compile and create derivative works of the Deposits for DES' internal use in order to support and enable DES' continued use of the Solution.

3.7 Technical Assistance and Knowledge Transfer. Prime Vendor shall transfer any knowledge it possesses which is necessary for the day-to-day operation of the System(s) to DES employees and contractors designated by DES so that DES will be able to operate and support the System(s) on a going forward basis ("**Knowledge**"). The transfer of Knowledge shall consist of Prime Vendor instructing, educating and training DES personnel with respect to the following, to the extent within Prime Vendor's Knowledge:

(a) The Solution(s) and all Interfaces between and among the Solution(s) and Third Party Software, including as further described in a Statement of Work;

(b) Enhancements to the Solution and Interfaces;

(c) All data files, file and data definitions and relationships, data definition specifications, data models, program and logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to the Solution;

(d) All available maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by Prime Vendor in the support and maintenance of the Solution, Interfaces and other Deliverables;

(e) Documentation;

(f) Security requirements and methodologies implemented under the terms of the Agreement to prevent or detect unauthorized access, and any networking security tools;

(g) Methodologies that address traffic management, workload balancing, segmentation, routing and overall network performance analysis;

(h) The installation/maintenance of tools to support network performance analysis;

(i) Management and troubleshooting, including how to install and utilize management and remote troubleshooting tools;

(j) Maximizing the use of the Solution, Interfaces and other Deliverables to perform key operational functions, including data backups, program downloads and security checks and how to automate such functions to minimize manual intervention; and

(k) Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the Knowledge previously transferred to DES hereunder.

If and when the Deposit Materials are released to DES, Prime Vendor shall cooperate with and assist DES in the transfer of Knowledge and in such other aspects of the Systems or their operation as may be reasonably necessary to facilitate DES' understanding and use of the Deposit Materials.

3.8 DES Participation in Product Development.

3.8.1 Advisory Council. Prime Vendor shall permit DES to participate on Prime Vendor's advisory or other councils and committees, including any of its "Technical Design Workshops" or similar advisory groups. If Prime Vendor has any councils, committees, retreats, "Technical Design Workshop" or other similar forums in which Prime Vendor's top tier customers are entitled to participate, DES shall be granted participation rights on no less favorable terms as Prime Vendor's other top tier customers.

3.8.2 Product Roadmaps. Prime Vendor shall provide DES with its internal product roadmap for the Solution and other products that are of interest to DES (collectively, the "**Product Roadmap**"). The initial Product Roadmap shall be attached to the Project Agreement or Contract Supplement, and each Product Roadmap thereafter shall contain substantially the same detail and content as the initial Product Roadmap and be provided to DES whenever Prime Vendor makes any significant change to the roadmap.

3.8.3 Early Adopter Status. From time-to-time, Prime Vendor allows certain customers to become "early adopters" of new, improved and/or emerging software products ("**Emerging Products**"). Prime Vendor shall advise DES of any Emerging Products that relate to the Solution and, as appropriate, other Prime Vendor products. DES shall have the right to become an early adopter of any such Emerging Products, in which event the parties shall develop a Project Agreement or Contract Supplement that shall address, as appropriate: (a) fees, if any, to be paid to Prime Vendor; (b) implementation, training, support and other related services associated with installing and operating the Emerging Product; and/or (c) any additional equipment required, on a loaner or other basis, to operate the Emerging Product.

3.8.4 Development Participation. Prime Vendor will afford DES the ability to directly participate in the development of future features and functionality of the Solution and other software products of Prime Vendor that are of interest to DES through the hosting of one-on-one development meetings ("**Development Meetings**"). Prime Vendor agrees that such Development Meetings will include discussion of the development phase of a subsequent release or version of the Solution and the development phase of a new product, as well as the timing for freezing the developments for the release, version or new product, and the cutoff date for reviewing new developments for the release, version or new product. Prime Vendor will provide DES with written notice of any features and functionality that are planned in new releases and versions generally within thirty (30) days, but no later than sixty (60) days, after Prime Vendor first identifies such for a particular release or version ("**Planned Features and Functionality**"). During the Development Meetings, DES may request that Prime Vendor provide new and additional features and functionality in a future release or version or new product. Prime Vendor will review, consider and respond in writing to such DES requests for inclusion into new releases, versions and new products within thirty (30) days or other mutually agreed timeframe of its receipt of such request. Prime Vendor shall provide DES with prior written notice if Prime Vendor determines to remove any particular feature or functionality as a Planned Feature or Functionality. Prime Vendor shall retain the sole right and discretion over the development and timing of Planned Features and Functionality and other Enhancements to be included in the Solution. Development Meetings shall be conducted at DES' request but at a time mutually convenient for both parties and can be held, at DES' election, in person with key Prime Vendor developer personnel at Prime Vendor's primary software development facilities for the Solution.

ARTICLE 4

EQUIPMENT

4.1 Delivery of Equipment.

4.1.1 Delivery Costs; Changes in Delivery Location. Prime Vendor shall cause the Equipment, if any, to be delivered to the applicable DES-specified installation location on the date specified in the applicable Project Agreement or Contract Supplement using the method of transportation required to meet the delivery date(s) specified therein. Equipment shall in no event be left or dropped off at DES' loading dock, and delivery will not have occurred until the Equipment is delivered to the applicable DES-designated data center room, designated staging area or other location. All costs associated with delivery of the Equipment to DES (freight, rigging and insurance) shall be in-

cluded in the purchase price for the Equipment and not charged in a separately issued invoice. At any time prior to delivery of the Equipment, DES shall have the right to designate a different delivery location for the Equipment. To the extent that such change in delivery location results in changes to the delivery dates for the Equipment, such changes shall be implemented in accordance with the Change Order terms of **Section 5.3**. All Equipment shall be subject to the testing and acceptance procedures set forth in **Section 6.9**. Installation Services related to Equipment shall be set forth in a Project Agreement, Contract Supplement, Change Order or other ordering document.

4.1.2 Delivery Delays Requested by DES. Unless otherwise agreed by the parties, upon ten (10) days' prior written notice to Prime Vendor and prior to the scheduled Equipment shipment date, DES shall have the right to suspend or reschedule delivery of any Equipment at no cost or expense to DES; provided, however, that DES shall reimburse Prime Vendor for any reasonable, actual and documented warehousing or other similar expenses incurred by Prime Vendor as a result of a delivery suspension that continues for more than ninety (90) days. If DES suspends or reschedules any Equipment delivery date as provided herein less than ten (10) days before the originally scheduled shipment date for the applicable Equipment, Prime Vendor shall accommodate such request, and DES shall reimburse Prime Vendor for any reasonable, actual and documented warehousing or other similar expenses incurred by Prime Vendor as a result of such suspension or rescheduling.

4.1.3 On-Site Receipt of Equipment. Prime Vendor personnel will be on-site at the DES-specified data center room, staging area or other location at the time the Equipment is delivered. Such personnel will receive, unpack and inventory the Equipment and inspect such Equipment for damage. Prime Vendor will report to DES and resolve all shipping errors, inventory discrepancies and damaged or defective materials. Receiving and unpacking shall be performed in a staging area previously designated for the storage and unpacking of Equipment. Such area will be selected based on a location that minimizes movement of material and personnel through the installation site. Prime Vendor shall utilize materials such as plywood or masonite as necessary to prevent heavy objects from damaging floors, walls and doors. Prime Vendor shall perform general cleaning of the installation area (e.g., clearing floors of debris, packing material, etc.) on a regular basis throughout the installation period. Rubbish shall be disposed of at Prime Vendor's expense and in compliance with local requirements and DES Policies. If Prime Vendor fails to maintain and clean the installation site in accordance with this Section, DES shall have the right to invoice Prime Vendor for all costs and expenses related to such cleaning, and such invoices shall be due and payable within fourteen (14) days following the date of the invoice. At its option, DES shall have the right to set off any such costs and expenses against any amounts due or to become due to Prime Vendor.

4.2 Title; Risk of Loss. Title and risk of loss to any Equipment shall pass to DES upon delivery of such Equipment to the DES-designated installation site (e.g., DES' data center); provided, however, that such title transfer shall in no way constitute a waiver of any acceptance rights and remedies that may be available to DES under the Agreement, and provided further that Prime Vendor shall at all times remain responsible for any damages associated with such Equipment that are based upon the fault or negligence of any Prime Vendor employee, agent and/or subcontractor.

4.3 New Equipment; Substitutions. All Equipment shall be new and shall not contain any replacement or refurbished parts or components. Prime Vendor shall not substitute any Equipment, or component thereof, with any other equipment, or component thereof, without DES' prior written consent. Prime Vendor may be permitted to temporarily substitute any Equipment, or component thereof, if all of the following conditions are met: (a) the substitute equipment, or component thereof, is equivalent or better in form, fit, function, capacity and performance than the ordered Equipment, or component thereof; (b) Prime Vendor is unable to meet the delivery requirements of DES in the absence of such substitution; (c) Prime Vendor provides reasonable prior written notice of the substitution to DES; and (d) DES consents in writing to the proposed substitution. If Prime Vendor substitutes any Equipment, or component thereof, as described herein, the cost of installation and removal of such substitute Equipment shall be borne solely by Prime Vendor. Title to and risk of loss for the substitute Equipment, unless accepted by DES as a permanent substitution, shall at all times remain with Prime Vendor.

4.4 Equipment Testing. Upon delivery of any item of Equipment to DES, Prime Vendor shall test the Equipment components (including the related operating system software) in accordance with the applicable Equipment manufacturer's standard diagnostic procedures, applicable DES Policies (including related to any data center Third Party procedures) and other testing criteria deemed reasonably necessary by DES to verify and confirm that the Equipment components (including the related operating system software) operate in accordance with such manufacturer's specifications and certify that the Equipment is ready for software loading. If any non-conformities are discovered during Equipment testing, Prime Vendor promptly shall correct such non-conformities. For equipment purchased by DES from a Third Party, DES shall be responsible for the testing of the equipment and will provide Prime Vendor with notice when it has completed its testing. Thereafter, Prime Vendor shall perform such reviews of DES' equipment to enable Prime Vendor to certify the configurations, and if Prime Vendor cannot so certify, provide written notice of any additional items or components needed for certification. This process shall continue until Prime Vendor is able to certify DES' equipment for purposes of software loading, and upon such certification shall sign and deliver the Certification Form to DES.

4.5 Equipment Maintenance. DES shall have the right to obtain maintenance services for any Equipment purchased from Prime Vendor directly from the manufacturer or any other Third Party.

ARTICLE 5

PROJECT AND IMPLEMENTATION SERVICES

Prime Vendor shall provide the Services as described in a Project Agreement or Contract Supplement, and when providing such Services shall comply with the further terms and conditions set forth in this Article.

5.1 Project Management Services. For projects in which Prime Vendor is performing project management Services, Prime Vendor shall act as the project manager and shall perform all customary duties of a project manager, including performing the day-to-day project management duties, managing the provision and coordination of the Services provided by Prime Vendor, reporting on the progress of or delays involving DES, and managing to complete the project on-time and within the Fixed Fee or budget. Without limiting the generality of the

foregoing, Prime Vendor shall provide the following project management Services, which Services may be supplemented as specified in a Project Agreement.

5.1.1 Project Status and Other Meetings. On the dates and locations specified in the Statement of Work and/or Project Schedule and other dates as reasonably requested by DES, the Prime Vendor Project Director, the Prime Vendor Project Manager(s), the DES Program Manager and applicable DES Project Manager(s) and other appropriate representatives of the parties shall discuss the status of the project ("**Project Performance (Status) Meetings**"). Project Performance (Status) Meetings for a project shall be held with the frequency (e.g., weekly) and at the location (e.g., at DES) as set forth in the applicable Project Agreement.

At least two (2) business days before each Project Performance (Status) Meeting, Prime Vendor shall create and distribute to all meeting participants, a meeting agenda, and send the Project Performance (Status) Report electronically to DES. At each Project Performance (Status) Meeting, the parties shall review the Project Performance (Status) Report and discuss any existing or newly discovered Issues and Risks, progress towards project goals, any proposed changes to Critical Milestone or Deliverables Due Dates and other Issues relevant to the project. Prime Vendor shall keep minutes of the meetings and shall include such minutes in the next Project Performance (Status) Report.

In addition, Prime Vendor shall create, maintain, update and circulate to applicable personnel a separate schedule that identifies the time, place, location and participants for all Project Performance (Status) Meetings, other status meetings, team meetings, executive briefings and other meetings relating to the project. For all Prime Vendor-arranged or conducted meetings: (a) Prime Vendor shall discuss such dates for meetings in advance with all key personnel from DES who need to attend such meetings to avoid scheduling the meetings when there are scheduling conflicts, and conflicts of availability for key personnel of DES; and (b) Prime Vendor shall prepare all meeting materials and present them to the meeting attendees sufficiently in advance of the meeting to permit time for review by the recipients.

5.1.2 Project Performance (Status) Reporting Management, Reports and Feedback.

(a) General. The Project Performance (Status) Report shall conform to the form, format, frequency, quality standards, content structure, minimum data sets, nomenclature and other operational program management systems adopted by DES, and be signed by the Prime Vendor Project Director (or Prime Vendor Project Manager if there is no Prime Vendor Project Director) and include:

(i) Excerpts from project issue logs based on escalation criteria as specified by DES' approved processes;

(ii) Excerpts from project risks logs based on escalation criteria as specified by DES' approved processes;

(iii) The cost management plan, both actual funds expended and those to be encumbered;

(iv) A separate section identifying the accomplishments and Issues encountered since the last Project Performance (Status) Report, and suggestions and proposed actions for dealing with and resolving such Issues, including identifying and explaining actual delays and expected delays, and the impact of such Due Date delays and expected delays, relating to the Statement of Work, Project Schedule and Deliverable Due Dates and Critical Milestone Due Dates;

(v) A separate section identifying previously-reported Issues, the date such Issue was previously reported, and the action taken to address such Issues – if no action was taken by either party, Prime Vendor shall identify which party was required to act and identify that such party did not take action;

(vi) Based on the estimating models determined by DES, the percent complete for each Deliverable, Critical Milestone and other milestones and the effort remaining and/or estimated number of hours required to complete each Deliverable, Critical Milestone and other milestones;

(vii) Thirty (30) and sixty (60) day forecasts identifying all the activities and tasks required of the project teams and the expected Deliverables and other outputs, which forecasts must be consistent with the timeframes set forth in the Project Schedule;

(viii) A cumulative summary and status of each Change Request, Change Response and Change Order, and a determination as to whether response time frame commitments are being met;

(ix) Compliance with Deliverable Due Dates and Critical Milestone Due Dates, and whether any Delay Credits, Quality Credits and/or Incentives are incurred, earned back or due;

(x) Status of any requests for additional Prime Vendor Personnel;

(xi) Status of any proposed changes to any other Schedules, Exhibits or Attachments to a Project Agreement or Contract Supplement, or any proposed amendments to the Agreement;

(xii) Tasks/activities accomplished and Deliverables completed since last Project Performance (Status) Report, tasks/activities/Deliverables planned for completion/delivery between the issuance of the current Project Performance (Status) Report and the next Project Performance (Status) Report and the dependencies of such tasks/activities/Deliverables; and

(xiii) Such other matters as one party may request of the other.

Issues or Risks that may arise shall be timely reported by one party to the other. Prime Vendor shall include in the Project Performance (Status) Report s any delays by DES and/or Third Parties or other circumstances as well as any Issues that are reported by DES to Prime Vendor. For any delays caused by DES (including any failures by DES personnel to fulfill its responsibilities), Prime Vendor shall identify the delay and/or the specific activity, task or subtask in the Project Schedule that DES has not completed on time. DES shall have the right to assume that Prime Vendor is not aware of any Issues or Risks unless Prime Vendor specifically identifies such Issues or Risks in the Project Performance (Status) Report s.

No Issues or Risks shall be deleted or removed from the Project Performance (Status) Report, issue log or risk log, respectively, until such Issue or Risk has been resolved to DES' reasonable satisfaction and DES agrees to remove the Issue from the Project Performance (Status) Report, issue log or risk log, as applicable.

(b) Feedback and Updates. DES shall have the right, but not the obligation, to provide feedback and comment on any Project Performance (Status) Report provided by Prime Vendor. If DES provides written feedback and comment to a Project Performance (Status) Report, Prime Vendor shall incorporate into and address such feedback and comment in the next Project Performance (Status) Report.

5.1.3 Issue Management. The issue log tool and issue management methodology shall be identified in each Project Agreement, and Prime Vendor shall use such tool and methodology to provide issue management Services. Prime Vendor shall identify and report on all Issues, whether such Issues are identified by Prime Vendor or DES, which arise in a project. Without limiting the generality of the foregoing, Prime Vendor shall:

(a) Populate an issues and defects log as soon as Prime Vendor or DES identifies an Issue or Defect; to the extent the Prime Vendor's tool is used for the issue and defects log, Prime Vendor shall provide DES with the ability to directly input Issues and Defects;

(b) For each Issue and Defect identified, propose to DES a mitigation plan to eliminate or mitigate the Issue and/or Defect, and upon approval, Prime Vendor shall include the mitigation plan in the issues and defects log;

(c) Monitor all outstanding Issues and report on whether the previously-approved mitigation efforts have been or are being undertaken and then assess whether the mitigation efforts are successful or need further revision; and

(d) Provide the current, updated issues log to the DES Program Manager on no less than a weekly basis, and such updated log shall be included in connection with the delivery of the Project Performance (Status) Report.

To the extent Prime Vendor uses an issues log tool other than DES' tool, Prime Vendor shall provide DES with unrestricted access to such issues log tool, including the ability to export, save and download any or all information contained in such tool relating to any DES project.

5.1.4 Risk Management. The risk log tool and risk management methodology shall be identified in each Project Agreement, and Prime Vendor shall use such tool and methodology to provide risk management Services. Prime Vendor shall provide risk management Services for both episodic and on-going Risks in a project. Without limiting the generality of the foregoing, Prime Vendor shall:

(a) Populate a risk log as soon as Prime Vendor or DES identifies a Risk; to the extent the Prime Vendor's tool is used for the risk log, Prime Vendor shall provide DES with the ability to directly input Risks;

(b) For each Risk identified, propose to DES a mitigation plan to eliminate or mitigate the Risk, and upon approval, Prime Vendor shall include the mitigation plan in the risk log;

(c) Monitor all outstanding Risks and report on whether the previously-approved mitigation efforts have been or are being undertaken and then assess whether the mitigation efforts are successful or need further revision; and

(d) Provide the current, updated risk log to the DES Program Manager on no less than a weekly basis, and such updated log shall be included in connection with the delivery of the Project Performance (Status) Report.

5.1.5 Project Cost Management. DES may create a cost management plan for use in managing a project. If DES develops a cost management plan, Prime Vendor will provide data inputs during the pendency of the project required to populate such cost management data based on Deliverables, Critical Milestones and milestones.

5.1.6 Communications Plan. Each Project Agreement shall include a comprehensive communication plan which shall have at least two (2) separate components: one component targeted to communications to project team members and other internal constituents (internal); and a second component targeted to communications to broader DES constituencies (external). The internal constituents plan will be developed by Prime Vendor with DES input, and the DES constituencies plan will be developed by DES with Prime Vendor input. The communication plan shall include, as applicable:

(a) Developing communications standards, methods, formats and templates, with Prime Vendor initially providing a variety of samples and templates with respect to internal and external constituencies for DES' consideration;

(b) Communicating project status for both internal and external constituencies, including preparing a project newsletter as mutually agreed, but no less than quarterly during the pendency of a project;

(c) Communicating team member assignments for internal constituencies;

(d) Communicating upcoming tasks, meetings and Critical Milestones for internal constituencies;

(e) Communicating Issues and Risks for internal constituencies; and

(f) Schedule management for internal constituencies.

Prime Vendor's development of its component of the communications plan shall be a Deliverable, subject to the terms of **Section 3.2**.

5.1.7 Document Management and Control.

(a) **Form and Format.** In developing written documentation, Prime Vendor shall present for DES' approval, the form and format for documentation templates and conventions such that all project-related documentation retains a consistent look and feel.

(b) **Repository.** For each project, using the tool or utility agreed to by the parties and identified in a Project Agreement, a project repository will be developed and used to track documents and other project artifacts. Prime Vendor shall comply with DES' procedures and policies relating to the use, version control and updating of the repository, and shall ensure that any items uploaded into the repository are uploaded on a timely basis, are an accurate version of the documents to be uploaded, and use the taxonomy and naming conventions approved by DES.

(c) **Security of Documents in Prime Vendor's Control.** Prime Vendor shall ensure the security of all project materials under Prime Vendor's control, including as requested by DES.

5.1.8 Contract Compliance Meeting. Prime Vendor and DES shall meet approximately monthly to discuss the parties' compliance with the Agreement and any pending Project Agreements and resolve any compliance Issues.

5.1.9 Cooperation; Coordination with Other DES Contractors. DES may involve Third Parties in the implementation of a project to assist DES in the discharge of its responsibilities or otherwise perform activities and tasks not otherwise assigned to Prime Vendor. Notwithstanding any such Third Party involvement, Prime Vendor shall:

(a) Take the lead to facilitate communications with and work constructively and cooperatively with DES' Third Parties involved in a project to ensure the Integration of numerous Third Party products with the System(s);

(b) Notify DES in writing in a Project Performance (Status) Report if any Third Party's performance (or failure to perform) has or may impact the project; and

(c) Work with the DES Project Manager(s) to facilitate resolution of any Issues which develop relating to such Third Parties.

5.2 Implementation Services.

5.2.1 Statements of Work, Project Schedules and Joint Resource Plans.

Each Project Agreement or Contract Supplement that involves Prime Vendor's provision of implementation, development and/or other Services shall include the following documents, as further described below: A statement of work ("**Statement of Work**"), an integrated project schedule ("**Project Schedule**") and joint resource plan ("**Joint Resource Plan**"), each of which shall be initially created jointly by the parties through an implementation planning study or other mutually agreed process and attached to the applicable Project Agreement or Contract Supplement. Thereafter, the Project Schedule and Joint Resource Plan shall be updated and maintained by Prime Vendor in accordance with the requirements in this Section and pursuant to applicable quality standards, and each updated Project Schedule and Joint Resource Plan shall be subject to written approval by DES. Additionally, changes to the Project Schedule must be made in accordance with DES' integrated change control process. Changes to the Statement of Work shall occur through an amendment to the applicable Project Agreement or Contract Supplement.

(a) **Statement of Work.** The Statement of Work shall include, as applicable:

(i) A general description of the project;

(ii) A complete description of the scope and responsibilities of each of the parties;

(iii) A complete description of any assumptions applicable to the scope of services; any assumptions not identified cannot be later claimed by Prime Vendor as an assumption in the project;

(iv) The Critical Milestones and entrance and exit (completion) criteria for determining whether a Critical Milestone has been successfully completed;

(v) Descriptions of Deliverables, including dependent Deliverables, in such detail as requested by DES;

(vi) Payment milestones; and

(vii) Other mutually agreed terms.

(b) Project Schedule. The Project Schedule shall be integrated, meaning that the plan must cover all aspects of the project and include all Prime Vendor and DES (or its Third Party)-only activities and tasks. The project tool used to develop the Project Schedule will be agreed to by the parties prior to project initiation, and shall include, as applicable:

(i) Commencement and completion dates for the project;

(ii) All Critical Milestone and Deliverable events and Deliverable Due Dates and Critical Milestone Due Dates (with such Critical Milestones being identified by a different color and with the phrase "Critical Milestone" in the Project Schedule document so that users can search on such term);

(iii) All other milestones, activities, tasks and subtasks, along with their dependencies;

(iv) For each grouping or subgrouping of Solution components, identify the activities that are related to other groupings or subgrouping of Solution components, including any activities that affect another grouping or subgrouping, *e.g.*, design activities of one grouping of Solution components may need to be designed considering the implementation of another grouping or subgrouping, *etc.*;

(v) Sufficient description of all activities, tasks and subtasks (including DES-only responsibilities) to be performed by Prime Vendor, DES or Third Party responsible for, and the location of, such activities, tasks and subtasks; and

(vi) The dates, duration and locations of Project Performance (Status) Meetings and contract compliance meetings.

The initial Project Schedule for a particular Project Agreement or Contract Supplement may be preliminary at the time such Project Agreement or Contract Supplement is developed, and accordingly, a more detailed Project Schedule may need to be developed by the parties as the implementation of the project proceeds. Any such final Project Schedule shall be subject to the terms of **Section 3.2**.

The status of any discussion regarding the change to a Deliverable Due Date or Critical Milestone Due Date shall be reflected in the next succeeding Project Performance (Status) Report.

(c) Joint Resource Plan. The Joint Resource Plan shall identify the role, amount and timing of DES and Prime Vendor (including approved subcontractors) personnel assigned to a project. Prime Vendor shall track and report to DES personnel utilization and the variance between actual personnel utilization and the Joint Resource Plan. Prime Vendor shall manage and update the Joint Resource Plan as changes are made to such plan, and any updates to the plan

must be submitted with the Project Performance (Status) Report. Prime Vendor shall not reduce any non-Key Personnel resources set forth in the plan without DES' prior written consent, it being acknowledged by Prime Vendor that a reduction in personnel may jeopardize Prime Vendor's ability to meet Due Dates and/or the quality standards for the project, unless Prime Vendor can demonstrate, to DES' satisfaction, that such impacts will not occur. Nothing contained herein shall prohibit Prime Vendor from supplementing its personnel at any time. The updates to the Joint Resource Plan shall set forth any agreed to reductions in personnel, any vacancies in personnel positions along with Prime Vendor's plan to fill such vacancies, any supplemental personnel being added by Prime Vendor, whether such personnel have been previously assigned or planned to be assigned.

5.2.2 Training and Education.

(a) General. Prime Vendor shall provide to DES training and education for the applicable software pursuant to the terms set forth in the applicable Project Agreement or Contract Supplement. Each Project Agreement and Contract Supplement shall specifically name and detail the education and training courses to be provided by or through Prime Vendor and shall provide other related information for such training and education courses, including the applicable class size, pricing and any restrictions and/or limitations in connection with such training and/or education. The timing and sequence of any training and education shall be incorporated into the Project Schedule at such point in time or times where the training and education is appropriate and relevant to project activities. At no additional cost to DES, all training and education shall be provided at one or more locations designated by DES, and Prime Vendor shall provide and install a training and education environment for the applicable software at each such location.

(b) Re-Performance of Training Classes. If a specific training course is not performed to DES' reasonable satisfaction, whether because the instructor for the training course did not perform to DES' reasonable satisfaction, the training materials supplied by Prime Vendor were not relevant to DES' environment and/or the training was otherwise not satisfactory to DES, and DES provides written notice to Prime Vendor of such dissatisfaction during the pendency of the class or shortly after the class is concluded, then, at no additional tuition cost to DES, Prime Vendor shall promptly re-perform the training class with a different instructor who is qualified to teach the subject matter and/or correct the deficiencies or lack of relevancy in the training materials. If Prime Vendor disagrees with DES' assessment, the matter shall be referred to the Executive Sponsors for resolution.

5.2.3 Addressing Inadequate Personnel Planning or Availability of Personnel. Inadequate personnel planning and/or availability of personnel can have a significant negative impact on the ability to meet Deliverable Due Dates and Critical Milestone Due Dates. Inadequate personnel planning can result from, among other things, Prime Vendor not accurately representing the types or number of personnel needed by DES to complete its tasks and activities, DES not hiring or having its personnel available

when needed, and delays on the part of Prime Vendor that has the effect of requiring DES to attempt to accomplish too many tasks in a compressed timeframe (e.g., in order to meet a Critical Milestone). If the lack of personnel needed to complete the tasks and activities for a given Critical Milestone is based on or linked to Prime Vendor delays such as not completing prior activities when required, providing Deliverables late or other delays, then Prime Vendor shall identify such Issue in a Project Performance (Status) Report and work with DES to determine whether: (a) DES personnel can be effectively reallocated in a manner that will not jeopardize the ability to meet other timeframes or obligations in the project (current or future); (b) timeframes for any particular task or activity, such as completing Pre-Live Testing, can be accelerated; (c) if time frames can be accelerated, whether it is prudent or consistent with industry practices to do so (if it is not prudent or consistent with industry practices, then DES shall be under no obligation to agree to any such acceleration); or (d) there is any other impact on the project. If it is determined that Prime Vendor was the cause of the delay (based on any of the above reasons or otherwise), then Prime Vendor shall be responsible for the additional costs and expenses involved in either hiring additional DES-personnel, providing additional Prime Vendor personnel to accelerate performance, or both. If the reason for the need for additional DES personnel is attributable to DES, then DES shall be responsible for such additional costs and expenses, and if the solution is additional Prime Vendor personnel, DES shall only be obligated to the extent a Change Order is signed by DES.

5.2.4 Implementation Delays. A Critical Milestone will be achieved successfully when DES verifies in writing that the activities, events and/or Deliverables that comprise such Critical Milestone have met all applicable acceptance criteria and DES has signed the applicable Deliverables Certification Form. Subject to the further terms of this Section, if DES reasonably determines that Prime Vendor is likely to fail to meet a Critical Milestone Due Date or a Deliverable Due Date, or if Prime Vendor already has failed to meet a Critical Milestone Due Date or Deliverable Due Date, then:

(a) Additional Personnel. At DES' option, Prime Vendor shall provide to DES, at no additional cost, additional Prime Vendor personnel required or necessary to timely achieve the Deliverable Due Date and/or Critical Milestone Due Date, or, if Prime Vendor has already failed to meet one (1) or more Deliverable Due Dates and/or Critical Milestone Due Dates, complete the Critical Milestone(s) or Deliverable(s) as soon as practicable, provided that any adjustment of a Critical Milestone Due Date shall not operate to adjust any future Critical Milestone Due Date unless specifically agreed to in writing by DES; and

(b) Delay Credits and Earn Back Rights. DES shall be entitled to receive credits in the amounts and pursuant to the terms and conditions set forth in the applicable Project Agreement or Contract Supplement for each day that Prime Vendor fails to timely achieve a Critical Milestone Due Date on the original missed Critical Milestone Due Date ("**Delay Credits**"). The parties agree that the Delay Credits represent a lower net Services fee to Prime Vendor for not completing the implementation on time, and is not to be construed as a penalty or an exclusive remedy. If a Critical Milestone Due Date is reset pursuant to a mutually agreed Change Order, such reset Due Date shall not operate or be construed to automatically waive any Delay Credits unless DES specifically agrees in writing in connection with such reset Due Date that DES waives the applicable Delay

Credits. Prime Vendor shall have the ability to earn back the Delay Credits associated with a Critical Milestone if the next succeeding Critical Milestone Due Date (on an unadjusted basis) is met. Delay Credits associated with Production Use and Project Completion cannot be earned back by Prime Vendor.

DES' acceptance of additional personnel or Delay Credits as provided in **Sections 5.2.3 or 5.2.4** shall not be construed or implied to limit or constitute a waiver of any of DES' rights as provided in **Article 10**. Prime Vendor shall not be obligated to provide additional personnel at no additional cost or to provide Delay Credits to DES to the extent Prime Vendor's failure to achieve any Critical Milestone is caused by DES or its Third Party's delays or a Force Majeure Event that was not capable of being mitigated.

To the extent set forth in a Project Agreement, the parties may agree to economic incentives for completing Critical Milestones prior to the applicable Critical Milestone Due Date.

5.2.5 Quality Standards. In order to reduce the risk of project failure and to maximize the benefits of the Solution it is implementing, Prime Vendor must provide quality personnel and produce quality, on-time Deliverables. In order to ensure quality, Prime Vendor agrees to propose only quality personnel for projects, and provide quality Deliverables in accordance with any additional quality standards that may be set forth in a Project Agreement or Contract Supplement. As part of meeting quality standards, Prime Vendor further agrees to the following:

5.2.5.1 Project Quality Reviews.

(a) By Prime Vendor. Prime Vendor, through a separate, independent, internal audit group within Prime Vendor's organization, shall conduct a quarterly internal project review for each DES project, which shall, at a minimum, measure and assess Prime Vendor's performance generally and against the quality standards set forth in the Project Agreement or Contract Supplement. Without limiting the foregoing, quality shall be assessed on the timeliness of the delivery of Prime Vendor's project management, implementation, Extension development and training and education Services, the personnel Prime Vendor has assigned to the activities and tasks and their on-time delivery of such Services. Prime Vendor shall provide DES with a full and complete copy of such review (*i.e.*, not a summary) within five (5) business days after the end of each such calendar quarter. If there are areas of improvement or deficiencies cited in an audit, within fifteen (15) business days following each such calendar quarter, Prime Vendor shall develop and implement an action plan acceptable to DES to address such items.

(b) By DES. A quality assurance assessment will be conducted monthly by an independent Third Party, as required by State policy, to ensure that project management standards, processes, and procedures are appropriate and correctly implemented to increase the probability of the project's success. The quality assurance assessment is a systematic approach that monitors, evaluates, and provides interactive feedback about the project's activities and ensures the project is properly managed.

The Prime Vendor shall cooperate with DES and the independent Third Party to complete the assessment, including providing full and complete in-person access, at no additional cost, to all Prime Vendor personnel (both on-site and off-site personnel) and all relevant documentation. If there are areas of improvement or deficiencies cited in the monthly assessment, the parties shall meet to review and develop a plan to address the quality assurance recommendations. The quality assurance assessment described in this subsection will apply to the TLA Solution Project.

5.2.5.2 Scorecards and Quality Credits and Incentives.

(a) Scorecards. The scope of monthly assessments under **Section 5.2.5.1(b)** will include a review of the quality standards set forth below and in a Project Agreement or Contract Supplement.

(b) Quality Credits and Incentives. Each Project Agreement and Contract Supplement shall set forth quality credits and incentives ("**Quality Credits**" and "**Quality Incentives**", as applicable), for the project, provided that Quality Credits will be no less than ten percent (10%) of the overall implementation fees, and the Quality Incentives will be no greater than five percent (5%) of the overall implementation fees. The scorecard will be used to determine whether Quality Credits or Quality Incentives apply, provided that the following minimum terms apply:

Quality Measurement Factors The quality measurement factors shall include:

(a) The degree to which a configuration, Interface, Extension, user report, other Deliverable tendered by Prime Vendor to DES, whether in draft or other form, is complete and meets the applicable Certification Criteria;

(b) The number of times, including turnaround and resolution times, a configuration, Interface, Extension, user report or other Deliverable needs to be re-worked because of incomplete analysis, incorrect assumptions made by or lack of understanding on the part of Prime Vendor;

(c) Whether written Deliverables are clearly written, understandable, and devoid of typographical and formatting errors;

(d) Whether proper quality assurance for the configuration, Interface, Extension, user report and/or other 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;

(e) 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;

(f) Whether Prime Vendor undertakes proper testing prior to delivery to DES, and is prepared in a manner to avoid regression testing failures;

(g) 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;

(h) Whether the training and education materials are complete and comprehensively support the changes needed to adapt to the future state of business processes;

(i) 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;

(j) Whether Prime Vendor provides knowledgeable staff who can maximize the transfer of Knowledge to DES personnel;

(k) 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

(l) The degree to which data conversion or migration tendered by Prime Vendor to DES is complete and meets applicable Certification Criteria.

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

If Prime Vendor disagrees with the scorecard as presented by the reviewer or auditor, the matter shall be referred to the Executive Sponsors for resolution.

5.3 Change Order Procedures.

5.3.1 General. Strict project management control processes and the documentation of changes to a Project Agreement or Contract Supplement and similar implementation items are all important components of project management discipline. Accordingly, with respect to any changes that will result in an out-of-scope activity, a change to a Deliverable Due Date or Critical Milestone Due Date, or a reduction in the scope of activities, a Change Order will be required pursuant to this Section and any additional change control processes as may be mutually agreed to by the parties. For purposes of the Agreement, an out-of-scope activity is an activity that is not identified or contemplated in the applicable Statement of Work or Project Schedule, or otherwise addressed as part of the work to be performed in connection with a Project Agreement or Contract Supplement. Prime Vendor acknowledges that a reduction in the scope of work will result in a credit to be provided to DES, and that such credit may be held and retained by DES for future out-of-scope Change Orders or as a set off as provided for herein.

5.3.2 Change Orders. Change Orders shall be initiated by a change request ("**Change Request**") and can be initiated by either party. DES and Prime Vendor shall each bear their own costs in preparing and analyzing the Change Request and Change Response. The form of the Change Request is attached as **Schedule 5.3.2**.

(a) DES-Generated Change Requests. Within three (3) business days following receipt of any DES Change Request, Prime Vendor shall acknowledge that it has received the Change Request and that the appropriate Prime Vendor representative(s) are working on a response. Within ten (10) business days for a Change Request involving a request by DES to change one (1) or more Deliverable Due Dates or Critical Milestone Due Dates and within seven (7) business days for all other Change Requests, following Prime Vendor's receipt of such DES Change Request, Prime Vendor shall update the Change Request form to include its response ("**Change Response**") describing in detail:

(i) Any additional Services to be performed and/or new components of the Solution and/or Equipment required as a result of the Change Request and/or Services, Equipment or components of the Solution that are no longer required as a result of the Change Request;

(ii) The effect, if any, that any such additional or deleted Services, component of the Solution and/or Equipment shall have on the Statement of Work and/or Project Schedule;

(iii) The cost or savings associated with such additional or deleted Services, component of the Solution and/or Equipment; and

(iv) Any other information relating to the Change Request that may reasonably be requested by DES.

If DES accepts a Change Response, the parties shall finalize the Change Response form and once signed shall constitute a "**Change Order**." If DES rejects such Change Response, Prime Vendor shall proceed to fulfill its obligations as

originally agreed under the Agreement and the applicable Project Agreement or Contract Supplement.

Compliance with the timeframes set forth herein are important to ensure that Issues that need to be solved with a Change Order are processed on a timely basis. Accordingly, if Prime Vendor repeatedly fails to abide by the timeframes, or fails to process any Change Requests relating to Critical Milestone or Deliverable Due Dates in a manner that will or may cause significant delays, then DES shall be entitled to withhold fifty percent (50%) of all payments due or that may become due to Prime Vendor until Prime Vendor complies with the timeframes required herein.

(b) Prime Vendor-Generated Change Requests. For Prime Vendor-generated Change Requests, DES shall review and evaluate such request and provide feedback to Prime Vendor during the Project Performance (Status) Meetings. To the extent such Change Request identifies an out-of-scope Service, additional value-added Services or other similar items, DES shall not be obligated to provide a written response to such request.

5.3.3 Special Provisions Relating to Change Orders for Changes to Deliverable Due Dates and Critical Milestone Due Dates. Deliverable Due Dates and Critical Milestone Due Dates shall not be changed at any time prior to Project Completion under the applicable Project Agreement or Contract Supplement without the prior written consent of DES and pursuant to a Change Order.

(a) Prime Vendor-Proposed Changes. If Prime Vendor proposes a change in a Deliverable Due Date or Critical Milestone Due Date, it shall submit a Change Request along with a detailed explanation of the basis for the Change Request, an updated Project Schedule reflecting all adjusted dates, including the adjusted Deliverable Due Date and/or Critical Milestone Due Date and, if there is an impact on the scope of Services, a revised Statement of Work (or portion thereof), highlighting the proposed text change and, if there is a proposed change in the fee, an updated fee and payment schedule. If the Change Request is due to a delay on the part of DES, any Third Party or a Force Majeure Event, Prime Vendor shall: (a) for a Force Majeure Event, identify the Force Majeure Event and explain what steps or measures Prime Vendor took to mitigate the effect of the Force Majeure Event; (b) for a delay on the part of DES or any of its Third Parties, specify in detail the failure or inaction by DES or its Third Party, provided, however, if the reason there is a DES or Third Party delay is that predecessor responsibilities of Prime Vendor were not performed which resulted, in whole or in part, in the DES or Third Party delay, Prime Vendor shall not be entitled to claim a delay on the part of DES or the Third Party. A Change Request is not complete, and nor shall DES be required to review a Change Request without the foregoing revised documents. In addition, any delay by Prime Vendor which results in a disruption to the allocation of personnel to be provided by DES shall not be a basis for Prime Vendor to claim delays on the part of DES, and any such disruption to DES personnel shall be identified in the Project Performance (Status) Report. If the DES Program Manager disagrees that such Change Request is warranted, the matter shall be escalated to the Prime Vendor

Account Executive and the DES Program Manager, and then to the Executive Sponsors if needed, for resolution.

(b) DES-Proposed Changes. If DES proposes a change in a Deliverable Due Date or Critical Milestone Due Date, the parties shall meet to discuss the proposed date changes and Prime Vendor shall prepare a Change Request along with the items referenced in **subsection (a)**.

5.3.4 Administration of Change Orders. The Prime Vendor Project Manager and the DES Program Manager shall be authorized to administer the Change Order process set forth in this Section; provided that all proposed Change Orders must be approved in writing by the DES Director, or her or his designee, in order to be effective against DES and must be signed by an authorized employee of Prime Vendor, in order to be effective against Prime Vendor.

5.4 Personnel.

5.4.1 DES Personnel. DES will appoint a Program Manager ("**DES Program Manager**") who shall be responsible for a project, and will appoint one or more Project Managers ("**DES Project Manager(s)**") who will be responsible for coordinating DES' resources and personnel and have overall responsibility for ensuring DES' performance of its responsibilities under the TLA Solution Project Agreement. In connection with the TLA Solution Project and for future projects, DES will appoint such DES Project Manager(s) and, if determined by DES, a DES Program Manager, to fulfill such project management roles as appropriate for the project. The DES Program Manager and/or DES Project Manager may designate other DES personnel or agents as their designees, provided that any such designation to be effective as against DES must be communicated in writing to Prime Vendor.

5.4.2 Prime Vendor Personnel. Prime Vendor shall provide sufficient, qualified personnel to perform Prime Vendor's obligations, including: (a) if necessary for the project given its size and/or complexity, a Project Director; (b) one or more Prime Vendor Project Managers; and (c) such other key personnel as may be designated in the applicable Project Agreement or Contract Supplement (collectively referred to as the "**Key Personnel**"). All Key Personnel shall be available at locations specified in the applicable Project Schedule and as otherwise reasonably requested by DES. At DES' request, Prime Vendor shall provide DES with a list of Prime Vendor personnel, which list shall include professional qualifications for each person listed, specifying the persons qualified to be the Key Personnel. DES shall have the opportunity to conduct telephone or in-person interviews of such Key Personnel candidates at no cost to DES. DES shall have the right to approve, in its sole discretion, all Key Personnel and other Prime Vendor personnel assigned to a project. If DES does not provide such approval, then Prime Vendor shall not assign such personnel to provide Services to DES, whether on-site or off-site.

5.4.3 Experience of Prime Vendor Personnel. Key Personnel and other personnel assigned by Prime Vendor to provide Services to DES (other than administrative personnel) shall have the qualifications listed below. If Prime Vendor wants to assign personnel to DES' account that do not meet all of the following qualifications, such as-

signment shall require the prior written approval of DES, which approval may be withheld in DES' sole discretion. If DES does not provide its prior written approval of such personnel, then Prime Vendor shall not assign such personnel to provide Services to DES, whether on-site or off-site.

Qualifications of Prime Vendor personnel shall include:

(a) At least ten (10) years' experience in project management for project directors and managers (certification as a project management professional (PMP) is preferred), three (3) years' experience in project management for mid-level project personnel, and eighteen (18) months of experience for basic project personnel as an employee of Prime Vendor;

(b) Specific experience with other customers in the Implementation Methodologies to be used in the project;

(c) Substantial experience in the state government environment to the tasks assigned such personnel;

(d) Participation in on-time, on-budget, successful projects of similar size and scale in the same role and with the same responsibilities as such personnel has under the applicable Project Agreement or Contract Supplement;

(e) If applicable, certification in the technologies used in the project, including the specific release or version levels of software, to successfully complete the Services under the applicable Project Agreement or Contract Supplement;

(f) At least one (1) reference from a recent project of a similar size and scale stating that such personnel consistently met expectations and fulfilled their role and responsibilities effectively; and

(g) Eighteen (18) months experience in installing or with the component of the Solution in which such personnel is providing Services.

5.4.4 Removal of Prime Vendor Personnel by DES. If DES has concerns over Key Personnel or other Prime Vendor personnel assigned to a project and DES believes that the problem is capable of being corrected, DES shall bring such concerns to the attention of Prime Vendor. Prime Vendor shall have a period of seven (7) days following such disclosure to resolve any problems with respect to such person in a manner that is satisfactory to DES. If Prime Vendor is unable to resolve the problem within such seven (7) day period to DES' satisfaction, then Prime Vendor shall remove such person and provide a replacement as soon as reasonably possible thereafter (not to exceed fourteen (14) days following the seven (7)-day correction period), taking into consideration such person's duties and responsibilities. Nothing contained in this Section shall restrict DES from immediately removing Prime Vendor's personnel if Prime Vendor's personnel is engaging in a manner that is unlawful, non-compliant with DES Policies, or other exigent circumstances exist that require immediate removal.

5.4.5 Removal/Reassignment by Prime Vendor. Except upon DES' prior written consent, which consent may be withheld in DES' sole discretion, Prime Vendor shall not remove (other than upon termination of employment or a reason outside of Prime Vendor's control) from a DES project or temporarily reassign any Prime Vendor personnel to another account until such time as such personnel have completed all of their assigned responsibilities under the Project Agreement or Contract Supplement.

5.4.6 Transition. If Prime Vendor removes any Prime Vendor personnel from DES' account for any reason (including if such Prime Vendor personnel leaves the employment of Prime Vendor), if such Prime Vendor personnel is removed as provided in **Section 5.4.4**, or if Prime Vendor wants to replace or reassign any personnel, and either DES consents to such replacement or reassignment, or DES' consent to such replacement or reassignment is not required as provided in **Section 5.4.5**, then:

(a) Promptly (but in no event more than two (2) business days) following the date that Prime Vendor knows any Prime Vendor personnel will cease to be assigned to DES' account to provide Services, Prime Vendor shall provide written notice to DES of the name and role of such Prime Vendor personnel and the date that such Prime Vendor personnel will cease to be assigned to DES' account and a transition plan in accordance with this Section describing the transition of replacement personnel to replace the replaced personnel;

(b) The terms of **Section 5.4.2** with respect to DES' right to select replacement personnel shall apply;

(c) The terms of **Section 5.4.3** shall apply; and

(d) The proposed replacement personnel shall possess comparable experience and training as the Prime Vendor personnel to be replaced.

To the extent the replaced personnel remains employed by Prime Vendor, the replacement personnel shall work with the replaced personnel during a mutually agreed transition period, the duration of which shall be determined based on the duties and responsibilities of the person actually to be replaced, and all costs and expenses associated with educating and training the replacement personnel shall be borne by Prime Vendor. Additionally, following the transition period, the replaced personnel shall continue to be available by telephone to answer any project-related questions.

5.4.7 Key Personnel Vacancies. If there is a Vacancy in a Key Personnel position, DES shall have the right to withhold any amounts due to Prime Vendor under the Agreement until Prime Vendor provides a qualified replacement as defined in **Section 5.4.6**. In addition, a Vacancy in a Key Personnel position shall not be a basis for Prime Vendor to claim any excused failure to meet a Deliverable Due Date and/or Critical Milestone Due Date.

5.4.8 Prime Vendor Personnel Listing. Upon the commencement of any Project Agreement or Contract Supplement, Prime Vendor shall provide DES with a comprehensive written listing of all Prime Vendor personnel providing Services (including employees, subcontractors, agents and management and upper management personnel

in oversight roles) under such Project Agreement or Contract Supplement which shall include:

- (a) An organizational chart and hierarchy diagram;
- (b) Names of all such personnel;
- (c) Titles of all such personnel;
- (d) The roles and responsibilities of all such personnel;
- (e) Contact information for all such personnel (e.g., address, e-mail, cell phone number, office phone number, etc.);
- (f) Work location for all such personnel;
- (g) Duration of assignment of such personnel (e.g., from and to dates, from and to milestones); and
- (h) Percentage of allocation of all personnel (in the event that any Prime Vendor personnel are not full-time on DES' account).

Prime Vendor shall maintain and update this listing as the information and/or personnel change during the course of an applicable Project Agreement or Contract Supplement.

5.4.9 Background Checks. For any personnel providing Services, Prime Vendor shall have conducted, and such personnel shall have passed, a background check, which will include verification of the right to work in the United States. If there are any events or circumstances with an individual providing Services to DES that would disqualify such person from passing Prime Vendor's background check procedures, then Prime Vendor shall alert DES of such fact and remove such individual from DES' account. DES reserves the right to require Prime Vendor to augment its background check and screening procedures to comply with any DES Policies adopted after the Effective Date and from time-to-time by DES as applied to its contractors generally.

5.5 Facilities.

5.5.1 Identification Credentials. Each party shall have the right to require the other party's employees, agents, representatives and subcontractors to exhibit identification credentials issued by such party in order to access the other party's facilities.

5.5.2 Facility Rules. All Prime Vendor employees, agents, representatives and subcontractors shall, while on DES' premises, comply with all DES Policies, copies of which shall be made available to Prime Vendor upon request. Prime Vendor shall ensure that any of its personnel performing work on DES' premises, or accessing DES' computer systems do so with DES' advance permission and according to all applicable security and workplace-related DES Policies, including the Security Policies and Procedures. Prime Vendor shall not stop, delay or interfere with DES' day-to-day operations without the prior written consent of an authorized DES representative(s).

5.5.3 Damage to Buildings, Grounds or Other Furnishings. Prime Vendor shall be responsible for any damage or injury to the buildings, grounds, physical property or other furnishings of DES by Prime Vendor's employees, representatives and/or agents. Prime Vendor shall report the occurrence of any such damages or injuries to the DES building/facilities manager.

5.5.4 Collocation. Prime Vendor personnel, including permitted subcontractors, will co-locate with DES personnel, and any DES subcontractors, in DES facilities as available, as required by DES and as set forth in a Project Agreement or Contract Supplement and, as reasonably determined by DES after consultation with Prime Vendor, such personnel will be provided a desk, storage cabinet, and connection to the Internet. To the extent Prime Vendor personnel use their own equipment (e.g., laptops, PDAs, etc.) such equipment shall be subject to and require compliance with DES Policies, including the Security Policies and Procedures.

ARTICLE 6

TESTING AND ACCEPTANCE

Implementation of a Solution may be accomplished on a component-by-component basis, a grouping of Solution components basis and/or in "**Phases**," as specified in a Project Agreement or Contract Supplement. The terms and conditions relating to Equipment testing are set forth in **Section 4.4**.

6.1 Project Agreements and Contract Supplements. Project Agreements and Contract Supplements may set forth testing processes and procedures that are in addition to the processes and procedures described herein.

6.2 Test Plans. Prime Vendor shall lead the work effort to develop a specific test plan ("**Test Plan**") for the Solution, as applicable. Prime Vendor will identify previously developed test materials in Prime Vendor's possession that may be useful in the testing of the Solution. Prime Vendor shall tailor those materials into DES-specific test materials, including test plan models, test scripts, test scenarios and test databases (collectively, "**Test Materials**"). The Test Materials shall be subject to the certification process set forth in **Section 3.2**, and Prime Vendor shall ensure that the Test Materials are sufficiently comprehensive to confirm the operation of the Solution in accordance with the DES Business and Technical Requirements. If DES determines that the Test Materials are not sufficient, Prime Vendor shall revise the Test Materials and resubmit them to DES for its review and comment. This process shall continue until the Test Materials are accepted by DES.

As part of developing the Test Plan, Prime Vendor will develop the criteria for commencing and concluding ("entrance" and "exit" criteria) the various activities within Pre-Live Testing as described below, all as are required to test whether the System is operating according to the DES Business and Technical Requirements and applicable Performance Standards. During the testing process, Prime Vendor and DES will determine whether such entrance and exit criteria have been satisfied, and if the criteria are satisfied, the Pre-Live Testing may continue to succeeding activities. If the criteria are not satisfied, DES can require Prime Vendor to address any Issues with respect to such non-satisfaction of the criteria. DES may modify or amend the scope, methodologies and procedures for executing System testing as may be necessary to

adequately test the System. Prime Vendor shall provide to DES copies of all test data results and analyses generated by Prime Vendor during its performance of any testing processes and procedures for the project. The Test Plan may include testing processes and procedures that are in addition to, but not inconsistent with, the testing processes and procedures set forth in this Article and, once finalized, shall be deemed to be a part of the applicable Project Agreement.

6.3 Pre-Live Testing. Pre-live testing for each Phase ("**Pre-Live Testing**") shall be performed by the parties in accordance with the responsibilities allocated to each party in the applicable Statement of Work, Project Schedule and/or Test Materials and shall commence on the date, and shall continue for the period of time, specified in the applicable Statement of Work, Project Schedule and/or Test Materials and, if no such period is specified, generally will be a period of sixty-five (65) days. DES may elect, in its sole discretion, to reduce the number of days for Pre-Live Testing. Prime Vendor shall ensure that Extensions, Interfaces and all other software-based Deliverables required to be included in the applicable test are prepared in advance of the testing process. DES shall have the right not to initiate a particular portion of the Pre-Live Testing for a component of the Solution, grouping of components of the Solution or Phase, as applicable, if the required software-based Deliverable is not prepared in time for such testing.

Pre-Live Testing shall test and validate, as against the DES Business and Technical Requirements and the Performance Standards:

- (a) The functional capabilities of the component of the Solution, as applicable, for each Phase (functional and unit testing);
- (b) The accessibility capabilities of the Solution (accessibility testing);
- (c) That Interfaces and information flows seamlessly as designed among the various components of the component of the Solution and the Solution, as designed, meets DES' enterprise data integration requirements (system integration and enterprise integration testing);
- (d) The processing of high-volume data in a production-simulated environment in accordance with performance and scalability test plans developed by DES to demonstrate acceptable performance of the System to DES (stress testing);
- (e) Regression testing incorporating, at DES' election, any or all previously-installed software, to ensure that the software being tested does not impact or impair the functioning of the previously-installed and/or tested software, and that such tested software Integrates seamlessly with the previously-installed software (regression testing);
- (f) User acceptance testing, including achieving acceptable performance response times and availability of the Solution, as applicable (user acceptance testing);
- (g) Security features and functionality and ethical hacking/penetration testing (security testing);

(h) Corrections to any Defects or workarounds provided by Prime Vendor (including any required regression testing of such Defect corrections or workarounds); and

(i) Any other criteria that may be specified in the applicable Project Agreement or Contract Supplement or as may be agreed to by the parties;

all to verify and confirm that the Solution operates in accordance with the applicable DES Business and Technical Requirements and the Performance Standards.

In addition to the foregoing, prior to completion of Pre-Live Testing for each applicable Phase of a project, Prime Vendor shall provide to DES the Documentation, record layouts and other Documentation for all Interfaces, Extensions and reports. If DES notifies Prime Vendor of any Defects discovered as a result of Pre-Live Testing, Prime Vendor promptly shall correct such Defects. When all failures to operate in accordance with the DES Business and Technical Requirements and the Performance Standards identified during Pre-Live Testing for each Phase have been corrected by Prime Vendor, the Solution has operated without any Level 1 Defects or Level 2 Defects during Pre-Live Testing for at least fifteen (15) consecutive days and all Deliverables, including all Interfaces, Extensions, reports and Documentation, have been provided to DES, Prime Vendor shall provide DES with written certification that it has met all the criteria for Pre-Live Testing. If Prime Vendor issues a certificate indicating completion but DES disagrees with the certification, DES shall provide written notice to Prime Vendor and the parties shall meet to review the areas of non-compliance and any continued or unresolved disagreement shall be referred to the Executive Sponsors for resolution. Once the parties agree that the criteria for Pre-Live Testing have been satisfied with respect to a component of the Solution, grouping of components of the Solution or a Phase, as applicable, such Solution shall be ready for Production Use in accordance with **Section 6.4**.

If there are Level 1 Defects or Level 2 Defects at any stage of the Pre-Live Testing process and Prime Vendor will not be able to provide a correction on a timely basis such that important Due Dates may be missed, DES shall have the right, in its sole discretion, to proceed to the next testing phase, including placing the applicable component of the Solution in Production, and if it chooses to do so, then: (i) DES has not waived any rights to the requirement for Prime Vendor to correct such Defects; (j) the parties shall develop a plan to correct the Defect in an expeditious timeframe; (k) DES shall have the right to withhold up to fifty percent (50%) of all payments due or that may become due to Prime Vendor, and such withheld amounts shall be released to Prime Vendor once such Defects have been corrected.

6.4 Production Use. Following successful completion of Pre-Live Testing for a component of the Solution, grouping of components of the Solution and/or Phase, as applicable, DES will deploy the applicable component of the Solution in production as may be described in the Project Agreement or Contract Supplement ("**Production**" or "**Production Use**"). Once in Production, and subject to **Section 6.6** below regarding quarter and year end processing, there shall be a stabilization period of not less than ninety (90) days ("**Stabilization Period**") in order to correct any residual and/or new Defects, and an optimization period subsequent to the Stabilization Period of at least ninety (90) days ("**Optimization Period**") (the Stabilization Period and the Optimization Period is collectively referred to as the "**Production Use Period**").

(a) **Stabilization Period.** During this time period, Prime Vendor shall correct any Defects that were present in the System at the time of Production or that have arisen

en after the System was placed into Production, all subject to the further terms and conditions below.

(b) Optimization Period. During the Optimization Period, Prime Vendor shall: (i) address any adoption Issues and negative user experiences that have occurred prior to the commencement of the Optimization Period; (ii) examine workflows and processes that were designed and configured into the Solution for purposes of determining whether such workflows and processes need to be changed or improved; (iii) and lead any changes or improvements to workflow and processes that are approved by DES; and (iv) ensure the transfer of Knowledge to DES in accordance with the terms of the Agreement. The above time periods for the Stabilization Period and the Optimization Period may be changed by the parties in the Statement of Work.

(c) Correcting Defects During the Stabilization Period. If any Defects exist or are later discovered during the Stabilization Period, DES shall report such Defects to Prime Vendor, and Prime Vendor shall promptly using its continuous efforts correct such Defects. Subject to the terms of **Sections 6.7** and **6.8**, the process described in this Section shall repeat as often as necessary until all Level 1 Defects or Level 2 Defects have been corrected by Prime Vendor, and the Solution or System, as applicable, has operated in Production without any Level 1 Defects or Level 2 Defects for sixty (60) consecutive days. If the sixty (60) day period extends beyond the specified time allotted for the Stabilization Period, such Stabilization Period shall be extended to the extent necessary to demonstrate that the Solution or System, as applicable, has operated in Production without any Level 1 Defects or Level 2 Defects for the sixty (60) day period.

(d) Certifying Completion of the Production Use Period. If the requirements of this Section are satisfied, the DES Program Manager shall complete and provide the signed Certification Form to Prime Vendor within ten (10) business days after the date such conditions have been satisfied. If DES has not provided the signed Certification Form within the time period and Prime Vendor believes it has satisfied the conditions set forth above, Prime Vendor shall provide written notice to DES indicating that it believes the conditions have been satisfied. Prime Vendor shall not be permitted to provide the above written notice to DES if there are any outstanding and unresolved Level 1 Defects or Level 2 Defects. DES may reject Prime Vendor's written certification within ten (10) business days after receipt of Prime Vendor's written certification. If Prime Vendor disputes or disagrees with DES' rejection, the matter shall be referred to the Executive Sponsors for resolution. Once the parties agree that the criteria for Production Use have been satisfied with respect to a Solution Modules or Phase, such Solution shall be ready for Phase Certification in accordance with **Section 6.7**.

6.5 Suspension of Testing. Notwithstanding anything contained herein to the contrary, DES shall have the right to suspend Pre-Live Testing and/or Production Use at any time, and the time periods for conducting such testing for a Phase shall be extended on a day-for-day basis to account for the period of suspension.

6.6 Quarter, Year End and Other Periodic Processes. Notwithstanding anything to the contrary in this Article, to the extent any component of the Solution contains quarterly, year-end or other periodic processes, the Production Use Period shall remain open until the So-

lution has operated such processes in Production Use without any Level 1 Defects or Level 2 Defects.

6.7 Solution Component and Phase Certification. The following conditions are required for a component of the Solution, grouping of components of the Solution or a Phase to achieve "**Solution Component Certification**" or "**Phase Certification**," as applicable: (a) the criteria specified in **Section 6.4** have been satisfied with respect to the applicable component of the Solution or Phase; (b) Prime Vendor has provided to DES all Documentation and other Deliverables relating to the components of the Solution (including all Interfaces and related Documentation pursuant to **Section 6.3**); and (c) the DES Chief Information Officer, or her or his designee, has provided written confirmation that the conditions specified in **subsections (a) and (b)** have been satisfied. If the requirements of **subsections (a) and (b)** above are satisfied, the DES Chief Information Officer, or her or his designee, shall promptly (but in no event longer than forty-five (45) days following Prime Vendor's written certification that the requirements of **subsections (a) and (b)** are satisfied) provide written confirmation required in **subsection (c)**. Nothing else, including DES' use of the Solution, or any component thereof, in a live, production environment shall constitute Solution Component Certification or Phase Certification, affect any rights and remedies that may be available to DES and/or constitute or result in "acceptance" under Law.

6.8 Project Completion. The following conditions are required for a project to achieve "**Project Completion**": (a) Solution Component Certification and/or Phase Certification has been achieved for the entire Solution or Phases, as applicable, included within the project; (b) Prime Vendor has provided to DES all Documentation and other Deliverables relating to the Solution (including pursuant to **Section 6.3**); and (c) Prime Vendor has fulfilled its obligations relating to the transfer of Knowledge; and (d) the DES Chief Information Officer, or her or his designee, has provided written confirmation that the conditions specified in **subsections (a) through (c)** have been satisfied. Nothing else, including DES' use of the Solution or System, or any component thereof, in a live, production environment shall constitute acceptance or completion, or affect any rights and remedies that may be available to DES under Law.

ARTICLE 7

SUPPORT AND MAINTENANCE

7.1 General. Prime Vendor's obligations to support and maintain each System ("**Support and Maintenance Services**") are set forth in **Schedule 7.1**. Additionally, System-specific Support and Maintenance Services may be set forth in the applicable Project Agreement or Contract Supplement. Prime Vendor's Support and Maintenance Services obligations with respect to the Solution shall commence on the date the applicable Contract Supplement or Project Agreement is signed and shall be made available to DES for each component of the Solution for an initial period of the longer of: (a) twenty (20) years following Production Use for such Solution; and (b) as long as Prime Vendor makes support and maintenance services for such Solution available to its customers generally ("**Minimum Available Support Term**"). DES shall have the option to purchase Support and Maintenance Services on a year-to-year basis. Subject to Prime Vendor's obligation to make available Support and Maintenance Services to DES for the Minimum Available Support Term, Prime Vendor shall have the right to discontinue Support and Maintenance Services by providing DES with two (2) years prior written notice of such discontinuation, but only if Prime Vendor generally is discontinuing support and maintenance services for such Solution for substantially all of its customer base.

7.2 End-User Satisfaction Surveys. As part of Prime Vendor annual ongoing Support and Maintenance Services, Prime Vendor shall develop one (1) or more end-user surveys designed to elicit feedback from DES' end users regarding their satisfaction with the Systems delivered hereunder. Such end-user surveys shall be subject to DES' prior review and approval.

7.3 Technical User Satisfaction Surveys. Prior to Project Completion under the TLA Solution Project Agreement and as part of Prime Vendor's annual ongoing Support and Maintenance Services, Prime Vendor shall develop one (1) or more technical user surveys designed to elicit feedback from DES' technical support staff regarding their satisfaction with the Support and Maintenance Services provided by Prime Vendor. Such technical user surveys shall be subject to DES' prior review and approval.

7.4 Satisfaction Survey Review. Prime Vendor shall report the results of the end-user and technical user surveys separately by categories of respondents from DES and in the aggregate. Each year the Prime Vendor Account Executive shall review the results of each survey with DES within thirty (30) days following the mutually agreed deadline for completion and return of the survey. During each such review session, Prime Vendor shall submit a communication plan to DES for its review and approval that shall include, at a minimum, updates to the end-users and technical users regarding the results of the satisfaction surveys. Not later than thirty (30) days following each review session, Prime Vendor shall provide to DES an action plan for addressing any problem areas identified in the survey results.

ARTICLE 8

PRICING AND PAYMENT TERMS

8.1 Solution Fees.

8.1.1 Software License Fees. The Software license fees ("**Software License Fees**") and related payment terms for all Software licensed by DES from Prime Vendor pursuant to the Agreement shall be set forth in the applicable Project Agreement or Contract Supplement.

8.1.2 Support and Maintenance Services Fees. Fees for Support and Maintenance Services shall be set forth in the applicable Project Agreement or Contract Supplement and shall be charged at a rate not greater than eighteen percent (18%) of the applicable discounted Software License Fees. Unless other terms are set forth in the applicable Project Agreement or Contract Supplement, fees for Support and Maintenance Services shall commence upon Project Completion with respect to the applicable System and shall be paid quarterly in arrears. Support and Maintenance Services Fees may be increased by Prime Vendor once annually commencing two (2) years following Project Completion with respect to the applicable System; provided, however, that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Support and Maintenance Services Fees. Annual increases shall not carry forward from one year to the next, meaning that if Prime Vendor elects not to increase the Support and Maintenance Services Fees in one year by the full amount allowed hereunder, Prime Vendor shall not have the right to carry forward such "unused"

increase into subsequent years. DES shall have the right to require Prime Vendor to provide documentation substantiating the fee increase. If Prime Vendor notifies DES of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DES of invoices presented by Prime Vendor, DES shall be entitled to a refund or credit based on the actual increase that was permissible.

8.1.3 Discounts on Future Software License Fees. For any Software not included at no additional cost under **Section 3.1.1**, the Software License Fees and fees for all future Software licensed or purchased by DES from Prime Vendor pursuant to the Agreement for the ten (10) year period from the Effective Date shall be Prime Vendor's then-current list price discounted _____ percent (___%) [**DRAFTING NOTE: INSERT DISCOUNT % NOT LESS THAN ORIGINAL EXTENDED DISCOUNT AMOUNT**], or for such greater discount amounts as shall be mutually agreed to by the parties. At DES' request, an officer of Prime Vendor shall certify in writing to DES the list price for the applicable item(s) of Software.

8.2 Hosting Services Fees. The Hosting Services fees ("**Hosting Services Fees**") and related payment terms for all Hosting Services provided by Prime Vendor to DES pursuant to the Agreement shall be set forth in the applicable Project Agreement or Contract Supplement.

8.3 Equipment Fees.

8.3.1 Equipment Purchase Price. The purchase price, maintenance terms and payment terms for each item of Equipment purchased by DES from Prime Vendor pursuant to the Agreement shall be set forth in a Project Agreement or Contract Supplement.

8.3.2 Equipment Maintenance Fees. Fees for Equipment maintenance shall be set forth in the applicable Project Agreement or Contract Supplement and shall commence following expiration of the manufacturer's warranty period for the applicable item of Equipment. Equipment maintenance fees may be increased by Prime Vendor once annually commencing one (1) year following the date on which such fees commenced to pass through any actual price increases from the applicable Equipment manufacturer and otherwise will not be increased by Prime Vendor. At DES' request, an officer of Prime Vendor shall certify in writing to DES the amount of any price increase from the applicable Equipment manufacturer.

8.4 Implementation Services Fees.

8.4.1 Services Fees. Fees for project management and implementation Services to be acquired by DES from Prime Vendor under the Agreement and the related payment terms for such Services shall be set forth in the applicable Project Agreement or Contract Supplement. Upon DES' request, Prime Vendor shall provide a Fixed Fee, not-to-exceed fee and/or time and materials estimate of the fees for the implementation Services to be provided under a Project Agreement or Contract Supplement.

8.4.2 Service Rates. For implementation Services provided on a Fixed Fee basis under a Project Agreement or Contract Supplement, the Service Rate used to develop any Fixed Fee arrangement and for Change Orders that increase or decrease fees

shall be based on the services rates ("**Service Rates**") set forth in **Schedule 8.4.2**, and Prime Vendor shall be permitted to allocate a contingency component of such Fixed Fee provided Prime Vendor sets forth and separately identifies the contingency amount. Fees for all implementation Services provided on a time and materials or other billable basis shall be calculated using rates that do not exceed the Service Rates set forth in **Schedule 8.4.2**. The Service Rates may be increased by Prime Vendor once annually commencing on the first (1st) anniversary of the date of Project Completion for the TLA Solution Project; provided, however, that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Service Rates. Annual increases shall not carry forward from one year to the next, meaning that if Prime Vendor elects not to increase the Services Rates in one year by the full amount allowed hereunder, Prime Vendor shall not have the right to carry forward such "unused" increase into subsequent years. DES shall have the right to require Prime Vendor to provide documentation substantiating the fee increase. If Prime Vendor notifies DES of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DES of invoices presented by Prime Vendor, DES shall be entitled to a refund or credit based on the actual increase that was permissible. In determining Service Rates for personnel, Prime Vendor shall not differentiate Service Rates within a single job or personnel classification, and if Prime Vendor's business practices now or in the future nonetheless make this distinction, Prime Vendor shall use the lesser of the applicable rates. Prime Vendor shall not increase a particular person's billing rate as a result of a promotion, change in job classification or otherwise without DES' prior written consent, it being the understanding of the parties that DES does not expect any rate changes during the course of a particular project. Additionally, Prime Vendor shall bill DES in increments of one-quarter (¼) hour for all implementation Services provided, and for travel time, shall bill at fifty percent (50%) of the personnel's applicable Service Rate.

8.4.3 Adjustment of Services Fees Under Time and Material Arrangements. For each Project Agreement and Contract Supplement involving implementation Services to be provided under a time and materials basis, Prime Vendor shall provide DES with an estimate of the total number of hours to complete the Services under that Project Agreement or Contract Supplement ("**Original Estimated Hours**"). If there is a change in scope under a Project Agreement or Contract Supplement, the parties shall utilize the Change Order procedures under **Section 5.3**, and the Original Estimated Hours shall be adjusted appropriately. Each month (or more frequently as requested by DES), appropriate representatives of each party shall meet to discuss whether the Original Estimated Hours, as adjusted, is on target or is being exceeded (as reported in the most recent Project Performance (Status) Report). If the actual number of implementation Services hours provided by Prime Vendor under a Project Agreement or Contract Supplement exceeds the Original Estimated Hours, then the following adjustments to the Service Rates shall be made for any hours exceeding one hundred five percent (105%) of the Original Estimated Hours, as adjusted, as follows:

Percentage of Overage Hours (Based on the Original Estimated Hours, as Adjusted)	Percentage Discount Off Service Rates for Hours in Percentage Range
0-10%	0%
>10 + <25%	10%

Percentage of Overage Hours (Based on the Original Estimated Hours, as Adjusted)	Percentage Discount Off Service Rates for Hours in Percentage Range
≥25 + <40%	30%
≥ 40%	40%

The discounts set forth above shall only correspond to the hours included in the applicable percentage range. By way of example, if the Original Estimated Hours is one hundred (100) hours and the actual number of hours is one hundred thirty (130), then: No discount shall apply for hours up to 110; a ten percent (10%) discount shall apply to hours 111 through 125; and thirty percent (30%) discount shall apply to hours 126 through 130.

8.5 Payment of Invoices.

8.5.1 General. Prime Vendor shall issue all invoices promptly following the occurrence of the invoicing events specified in the Agreement and/or in the applicable Project Agreement or Contract Supplement, and all such invoices shall be directed to DES or its designee for payment. The initial form of invoice to be used by Prime Vendor is set forth in **Schedule 8.5.1**. In order for DES to process invoices from Prime Vendor for payment, each invoice from Prime Vendor must include the items listed below, as applicable to the goods or services being invoiced. Failure to provide each of the items below, as applicable, on the invoice shall be grounds for rejecting the invoice and requiring Prime Vendor to resubmit with such information. Receipt of the invoice by DES shall be deemed to occur only when all of the applicable information below is set forth on the invoice. Prime Vendor invoices shall include the following items, as applicable: The DES Technology Agreement number; the Statement of Work number; Prime Vendor's name, address, phone number and Federal Tax Identification Number; a reasonably detailed description of the Services performed, including the date, hours worked, and a reasonably detailed description of the Services to which the invoice relates; Prime Vendor's price for the Services; the net invoice price for each Service; a description of the Solution (including software) including the quantity ordered; date(s) of delivery and/or date(s) of installation and set-up; price for each item, or Prime Vendor's list price for each item and applicable discounts; Support and Maintenance Services Fees; net invoice price for each item; applicable taxes; shipping costs; other applicable charges; total price; and payment terms including any available prompt payment discounts. If expenses are invoiced, Prime Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of Fifty Dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. With respect to invoices for milestone-based payments, Prime Vendor invoices shall include a copy of the applicable Certification Form signed by the DES Program Manager, or her or his designee, and the DES Chief Information Officer, or her or his designee. By submitting an invoice, Prime Vendor certifies that the amount billed is accurate with respect to the fees, charges and expenses set forth therein and that such fees, charges and expenses are allowed pursuant to the Agreement. All invoices shall be issued in U.S. Dollars, and payment shall be made by DES in U.S. Dollars.

8.5.2 DES Billing Practices and Payment Structures. Prime Vendor shall comply with DES' standard billing practices, including providing supporting documentation as may be reasonably required to substantiate invoice amounts and the other re-

quirements of this **Section 8.5**. Except as may be otherwise set forth in a Project Agreement or Contract Supplement, and, as may be limited by applicable Law, DES shall not make any payments to Prime Vendor in advance for any Services or Equipment. Project management and implementation Services shall be paid for by DES in accordance with milestone payments, subject to holdback amounts to be paid upon Project Completion of the applicable project, all in amounts to be agreed between the parties and set forth in a Project Agreement, Contract Supplement, Change Order or other ordering document. Modifications to payment terms, including any adjustment to the payment of holdback amounts, shall require an amendment to the Project Agreement or Contract Supplement or a Change Order, as determined by DES.

8.5.3 Timeliness and Accuracy of Invoices.

(a) Prime Vendor acknowledges that timeliness and accuracy of invoicing is a critical DES business requirement, as Prime Vendor's failure to do so may adversely impact DES' ability to encumber funds within the proper fiscal year. Accordingly, and without limiting the generality of the terms set forth in **Sections 8.5.1 or 8.5.2**, Prime Vendor shall issue each invoice hereunder within sixty (60) days after the date on which Prime Vendor was authorized by the terms of the Agreement and/or the applicable Project Agreement or Contract Supplement to issue such invoice to DES (for each such invoice, the "**Invoicing Deadline**") and such invoice shall be accurate and correct. DES shall notify Prime Vendor of any inaccurate invoice, and Prime Vendor shall re-submit an accurate invoice. DES is not obligated to pay or partially pay any inaccurate invoices. If Prime Vendor fails to submit accurate invoices by an Invoicing Deadline, then the invoice amount (once determined to be accurate) shall be reduced by one and one half percent (1.5%) per month for each month (or partial month) that Prime Vendor fails to invoice DES following the applicable Invoicing Deadline. Further, if any Prime Vendor invoice contains an overbilling error that requires a financial adjustment of an amount equal to or greater than five percent (5%) of the total amount invoiced on that invoice, in addition to promptly crediting the overbilled amount, Prime Vendor shall credit to DES on the next invoice an amount equal to Five Thousand Dollars (\$5,000) to cover the DES expenses associated with reconciling such invoices.

8.5.4 Payment and Disputes. The parties agree that within sixty (60) days following its receipt of the applicable invoice, DES shall pay the invoice, provided that: (a) it was accurately and timely issued as provided in **Sections 8.5.1 and 8.5.2**; and (b) such invoice is not disputed by DES in accordance with the further terms of this Section. Prime Vendor shall accept electronic funds transfers as the form of payment. If an invoiced amount is disputed in good faith by DES, then DES promptly shall notify Prime Vendor of the dispute and, until resolution of the dispute occurs pursuant to **Article 14**, DES shall have the right to withhold and suspend disputed payments. All of the parties' obligations under the Agreement shall continue unabated during the duration of the dispute resolution. If DES claims that it has been inappropriately billed but it has already paid the disputed amount, the parties shall work to resolve the matter within ninety (90) days from the date of DES' written notice of such overpayment, and each party shall provide the other with all relevant documentation in an effort to resolve the matter as quickly as possible. If Prime Vendor determines that DES was billed improperly, it

promptly shall issue to DES a credit memo that DES can deduct on the next invoice billed.

8.5.5 Small Business, Minority and Women's Business Enterprise (MWBE) and Veteran-Owned Business Participation. [DRAFTING NOTE: This Section will only apply if Prime Vendor indicated small business, minority, women's, or veteran's business participation in its RFP Response. If not, this Section will be deleted.] With each invoice for payment and within thirty (30) days of DES' request, Prime Vendor shall provide DES an affidavit of amounts paid. The affidavit of amounts paid shall either state that Prime Vendor still meets the definition of small business vendor and/or maintains its MWBE and/or Veteran-Owned certification, or state that its Subcontractor(s) still meets the definition of small business and/or maintain(s) its/their MWBE and/or Veteran-Owned certification(s) and specify the amounts paid to each small business, certified MWBE or Veteran-Owned Subcontractor under the Agreement. Prime Vendor shall maintain records supporting the affidavit of amounts paid in accordance with **Section 15.2.5**.

8.6 Travel and Out-of-Pocket Expenses. Except to the extent that a Project Agreement, Contract Supplement, Change Order or other ordering document expressly states that DES will reimburse Prime Vendor for staffing accommodation, living, travel, out-of-pocket or other expenses, the fees (including Fixed Fees) set forth in a Project Agreement, Contract Supplement, Change Order or other ordering document shall be deemed to include all reimbursements, payments, liabilities and/or charges related to expenses and DES will not reimburse Prime Vendor for any staffing accommodation, living, travel, out-of-pocket or other expenses.

To the extent that a Project Agreement, Contract Supplement, Change Order or other ordering document expressly states that DES will reimburse Prime Vendor for staffing accommodation, living and travel, out-of-pocket or other expenses, Prime Vendor shall be reimbursed for such items in accordance with the then-current DES Policies, including applicable rules and regulations set forth in the Washington State Administrative and Accounting Manual, currently available at <http://www.ofm.wa.gov/policy/10.htm>. Travel and out-of-pocket expenses may be subject to a not-to-exceed or other agreed arrangement(s) as may be set forth in a Project Agreement or Contract Supplement. Prime Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of Fifty Dollars (\$50) or more when requesting reimbursement. Travel and out-of-pocket expenses that are not submitted with receipts (as required) and other required substantiating documentation in accordance with the DES Policies within sixty (60) days from the date chargeable to DES shall be reduced by one and one half percent (1.5%) per month for each month (or partial amount) that Prime Vendor fails to invoice DES following the applicable date such travel and out-of-pocket expenses were chargeable by Prime Vendor to DES. Travel and out-of-pocket expenses that do not receive pre-approval by DES, will not be eligible for reimbursement. If Prime Vendor's expense reports contain errors that result in financial adjustments of five percent (5%) or more and such adjustments occur more than two (2) times over a twelve (12) month period, Prime Vendor will be required to reimburse DES' costs and expenses in reconciling Prime Vendor's expense reports for each such report over the second of such occurrence during such 12 month period, up to Five Thousand Dollars (\$5,000).

8.7 Set-Off Rights. Prime Vendor shall comply with DES' billing practices relating to the issuance of credit notes and/or memoranda relating to amounts due to DES under the

Agreement, including any Delay Credits, Quality Credits, Support Credits, Performance Credits, or unresolved disputed amounts as described in **Section 8.5**. If Prime Vendor fails to issue to DES a credit note or memorandum on its next invoice to DES for any amounts that become due to DES in accordance with the above, then DES shall have the right to set off such amounts against any amounts then due or that become due to Prime Vendor under the Agreement. If DES cannot effectuate a complete set-off due to insufficient amounts owed by DES to Prime Vendor, Prime Vendor promptly shall refund unrealized set off amounts to DES no later than twenty (20) days following its receipt of written notice from DES requiring it to do so.

8.8 Taxes. DES shall pay all sales and use taxes required under applicable Law. Prime Vendor must pay all other taxes, including the Washington Business and Occupation Tax, other taxes based on Prime Vendor's income or gross receipts, and personal property taxes levied or assessed on Prime Vendor's personal property. Prime Vendor shall include on each invoice a separate line item specifying the tax for each component of Service or Solution. Prime Vendor shall work with DES to ensure that Prime Vendor is properly determining the amount of taxes under applicable Law associated with each type of Service or Solution. DES shall not be charged for any taxes levied or assessed on the income of Prime Vendor's employees such as IRS compensatory taxes. Prime Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Agreement. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, compensatory or other expenses for Prime Vendor or Prime Vendor's personnel shall be Prime Vendor's sole responsibility. DES reserves the right to require evidence of payment of such taxes prior to making any final payments due under a Project Agreement or Contract Supplement.

ARTICLE 9

REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Functionality and Performance Warranties.

9.1.1 Solution Functionality. Prime Vendor represents and warrants to DES that: (a) the Solution shall possess all of the functional capabilities described in: (i) the DES Business and Technical Requirements; and (ii) the Documentation; and (iii) shall perform all such functions described in **subsections (i) and (ii)** without any Level 1 Defects or Level 2 Defects; (b) except as may be otherwise expressly set forth in a Product Agreement or Contract Supplement, the various components of the Solution: (i) are designed to and shall not require multiple user sign-ons and forced sign-offs within, across and among all product lines, including Solutions provided to DES from and after the Effective Date; (ii) shall have the same "look and feel" within a product line; and (iii) either share a common database used across components of the Solution, or if there are multiple databases, the data among such databases is coordinated, synchronized or otherwise managed by the Solution without the need of a separate interface; and (c) to the extent the Solution has mobile features and/or using a mobile platform, the mobile component of the Solution complies with Mobile Standards. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as DES is paying for Support and Maintenance Services.

9.1.2 System Performance.

(a) Hosted Services Environment. If Prime Vendor is providing Hosting Services, Prime Vendor represents and warrants to DES that the hosted System shall meet or exceed the Performance Standards set forth in the Hosting Services Exhibit. If DES decides at any time that it wants to transfer the hosted operations to an in-house DES or Third Party facility, Prime Vendor will specify the operating environment that DES should use to host the System, which will be equivalent to or substantially the same as the operating environment used by Prime Vendor to provide the Hosting Services. Such operating environment shall for purposes of the Agreement be deemed the "Approved Equipment Configuration" and the terms of **subsection (b)** shall apply.

(b) In-House and Third Party Hosted Environment. If DES operates the System as an "in-house" solution (either by DES alone or in connection with a Third Party-hosted environment), Prime Vendor represents and warrants to DES that the System shall meet or exceed the Performance Standards set forth in the applicable Project Agreement or Contract Supplement (which for purposes of a transition from a Prime Vendor hosted environment, shall be equivalent to the Performance Standards as when Prime Vendor hosted the Software) when operating in the operating environment described in the applicable Project Agreement or Contract Supplement (the "**Approved Equipment Configuration**"). The representations and warranties set forth in this Section shall remain in effect for as long as the Approved Equipment Configuration is not exceeded, and for as long as DES continues to purchase Support and Maintenance Services. If: (a) DES' Approved Equipment Configuration has changed so that DES is no longer operating the System within the Approved Equipment Configuration parameters; and (b) DES wants to maintain the effectiveness of the Performance Standards with respect to the System, then Prime Vendor shall make recommendations that are reasonably necessary to ensure that the System continues to operate in accordance with the Performance Standards while operating within the re-established Approved Equipment Configuration, including that DES purchase additional equipment and/or license additional software. If DES implements such recommendations, the Performance Standards shall remain in effect for as long as the re-established Approved Equipment Configuration is not exceeded, after which the process described in this Section shall be repeated at DES' request. Without limiting any other rights and remedies that may then be available to DES, Prime Vendor shall correct any failure of the System to operate in accordance with the performance warranties set forth in this Section by providing additional equipment, software or services to DES at no additional cost to DES. The terms of this Section shall apply so long as DES is paying for Support and Maintenance Services and DES has not made modifications (but excluding any configurations permitted by or made in accordance with the Documentation) to the Software without the written consent of Prime Vendor.

9.1.3 Demonstrations. Prime Vendor represents and warrants to DES that, for any Demonstrations provided to DES in which a Solution was proposed, Prime Vendor used only generally available versions and releases of the Solution when it developed the Demonstrations, including the use of actual file structures, APIs, layouts and screens; (b) the test data populated actual files and file structures used in the Solution to show the movement of data native in the system and was not simulated in (*i.e.*, splashed

into) temporary excel or other files created to show features, functionality or information flows that are not present in the Solution; and did not use any tools, utilities, or other techniques to replicate or simulate any portion of the Solution. This representation and warranty shall survive the expiration or termination of the Agreement.

9.1.4 Certification of Third Party Equipment and Software.

(a) General. If DES acquires any Third Party software and/or equipment to operate with the System that has been previously recommended by Prime Vendor or previously certified by Prime Vendor (whether for DES or any other customer of Prime Vendor) then such software and/or equipment shall be deemed certified by Prime Vendor for DES' use and such use shall not affect the warranties set forth herein. If DES acquires any Third Party software and/or equipment that has not been recommended by Prime Vendor in a written configuration or previously certified by Prime Vendor (whether for DES or any other customer of Prime Vendor), then DES may submit such Third Party software and/or equipment for certification by Prime Vendor in order to assure conformance with Prime Vendor's reasonable specifications. Certification of Third Party software and/or equipment shall begin as soon as reasonably possible, but in no event later than ten (10) business days following DES' request. Fees for certification Services provided by Vendor shall be charged at the Service Rates and limited to the reasonable time, materials and out-of-pocket expenses associated with such certification. Upon certification by Prime Vendor, such Third Party software and/or equipment shall be deemed qualified to operate with the System without affecting the warranties set forth herein.

(b) Technical Alternatives. If Prime Vendor determines that the Third Party software and/or equipment cannot be certified, Vendor shall provide DES with a written explanation detailing the technical reasons why the software or equipment cannot be certified. If the technical issues are addressable in a commercially reasonable manner (such as acquiring technical proficiency in the technology to enable certification to be achieved) and the parties can address such issues (or, in the case of DES, DES makes an offer to address the technical issue), then the certification will proceed and the software or equipment will be certified upon addressing the technical issues. If the parties determine that the technical issues cannot be reasonably addressed then the parties shall work to develop a modified or alternative configuration or technology so that certification can proceed, and upon the adoption of such modification or alternative configuration or technology by DES, Prime Vendor will provide its certification.

(c) Retrofitting Previously Certified Technology. If DES migrates to a later release of a previously certified configuration or technology under this **Section 9.1.4**, at DES' request, Prime Vendor will provide technical assistance to DES and/or re-certify the configuration or technology, all at the Service Rates.

9.1.5 Solution Design Limitations. Each Project Agreement and Contract Supplement involving the implementation of a Solution shall provide a representation and warranty regarding the design limitations with respect to such Solution, including transaction volume throughput, field and record sizes, scalability and capacity limitations.

9.1.6 Disabling Codes. Prime Vendor represents and warrants that the Software and any Deliverable provided by Prime Vendor do not contain – and DES shall not receive from any Prime Vendor data transmission (including any connection to any Prime Vendor web-site or bulletin board) – any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause any System to become inoperable or incapable of being used in the full manner for which it was designed and created (a "**Disabling Code**"), including any limitations that are triggered by, as applicable: (a) any Solution being used or copied a certain number of times, or after the lapse of a certain period of time; (b) the Software being installed on or moved to a central processing unit or system that has a serial number, model number or other identification different from the central processing unit or equipment on which the Software originally was installed; or (c) the occurrence or lapse of any similar triggering factor or event. If Prime Vendor introduces a Disabling Code into the Solution, at its sole cost and expense, Prime Vendor shall, as applicable: (d) take all steps necessary to test for the presence of Disabling Codes; (e) furnish to DES a new copy of the Solution without the presence of Disabling Codes; (f) install and implement such new copy of the Solution at DES; (g) restore any and all data and programming lost by DES as a result of such Disabling Code (such restoration shall include, if needed, on-site technical assistance to extract data from corrupted data files, restoration of backup media, data log analysis, and the like). This representation and warranty shall survive the expiration or termination of the Agreement.

9.1.7 Comprehensiveness of Project Agreements and Contract Supplements and Sufficiency of Due Diligence. In order to avoid out-of-scope changes to a project and work to be performed under a Project Agreement or Contract Supplement, Prime Vendor represents and warrants to DES that, as of the effective date of the applicable Project Agreement or Contract Supplement: (a) Prime Vendor identified in the applicable Project Agreement or Contract Supplement all the software, services and other items required to: (i) implement the Solution and Equipment described therein; and (ii) achieve the DES Business and Technical Requirements and other requirements as set forth in such Project Agreement or Contract Supplement, and the Performance Standards; (b) all such software, services and other items are included in the applicable Project Agreement or Contract Supplement; and (c) there are no other products that are required to meet the DES Business or Technical Requirements or Performance Standards. Prime Vendor further represents and warrants to DES that, upon entering into a Project Agreement or Contract Supplement, that it will have properly sized the amount of personnel and other resources required to complete its obligations under a Project Agreement or Contract Supplement for the Fixed Fee (if any stated therein); the Services to be provided by Prime Vendor on a Fixed Fee basis under any Project Agreement or Contract Supplement are the only services required to meet the DES Business and Technical Requirements; and there are no other services (*i.e.*, optional or needed additional services) that are omitted from the Project Agreement or Contract Supplement but necessary to meet such requirements.

9.1.8 Exclusions. Prime Vendor shall not be responsible for a breach of the representations and warranties set forth in **Section 9.1** to the extent such breach is caused by: (a) if applicable, DES' failure to properly install and maintain the Solution, but only if Prime Vendor has provided DES with written notice of such failure; (b) any alterations of or additions to the Solution performed by a party other than Prime Vendor or

a Third Party not acting on Prime Vendor's behalf, at its direction or with its approval; or
(c) use of the Solution in a configuration not set forth in the Documentation or an approved configuration.

9.1.9 Correction of Failure to Meet Functionality and Performance Warranties. Upon any failure to comply with the representations, warranties and/or covenants set forth in this Section, within the applicable time frames specified in **Schedule 7.1**, or within five (5) days if such time frames are not applicable to the breach, in each case following receipt of written notice from DES of such failure, Prime Vendor shall repair, replace or correct, at Prime Vendor's sole cost and expense, the applicable component(s) of the System, including by providing any additional software, equipment and/or services that may be necessary. The remedies set forth in this Section shall be in addition to any Support Credits and/or any other rights and remedies that may be available to DES.

9.2 Services Warranty. Prime Vendor represents and warrants to DES that it shall perform all Services in accordance with industry practices and standards generally applicable to such Services; provided, however, that where the Agreement or a Project Agreement or Contract Supplement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

9.3 Open Systems Warranty and Covenants. Prime Vendor represents and warrants to DES that, as of the Effective Date, the Solution (including Interfaces) is Compliant with current versions of IEEE 802.11(a/b/g/n)(wireless), ANSI X3T9.5 (FDDI Specifications), TCP/IP protocols, HTTP standards, the standards set forth in **Schedule 7.1**, and other standards that may be set forth in a Project Agreement or Contract Supplement. Prime Vendor covenants that the Solution and future releases and version of the Solution shall be Compliant with such standards, as such standards are updated from time-to-time. For purposes of the Agreement, the term "**Compliant**" shall mean that the Solution is compatible with the applicable standard and is able to utilize fully each and every feature and functionality of that release level without workarounds or additional programming. The representations and warranties set forth in this Section shall remain in effect for as long as DES is paying for Support and Maintenance Services.

9.4 Third Party and Mobile Warranties. Prime Vendor represents and warrants to DES that it has tested or shall have tested at the time of installation all Third Party Software supplied by Prime Vendor to DES and determined that such Third Party Software meets the representations and warranties set forth in the Agreement and/or the applicable Project Agreement or Contract Supplement. With respect to mobile and/or Third Party components of the Solution, Prime Vendor represents, warrants and covenants to DES that State Data shall not be stored, collected, used in geolocation tracking services, or other uses inconsistent with DES Policies, and that Third Party terms and conditions relating to the use of mobile devices are consistent with and do not violate any Laws, the Mobile Standards and/or DES Policies. The representations and warranties set forth in this Section shall survive the expiration or termination of the Agreement.

9.5 Equipment Warranty. With respect to any Equipment furnished by Prime Vendor to DES, Prime Vendor shall secure from the applicable manufacturer(s) such warranties and indemnities as may be available with respect to such Equipment at no additional cost to DES, and assign and pass through to DES such warranties and indemnities to the extent legally assignable. If such warranties and indemnities are not assignable to DES, at DES' request, Prime

Vendor shall enforce such warranties and indemnities on DES' behalf. This representation and warranty shall survive the expiration or termination of the Agreement.

9.6 Intellectual Property Warranty. Prime Vendor represents and warrants to DES that, as of the Effective Date, and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), the System and DES' use of the System in accordance with the terms of the Agreement does not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any Third Party. Prime Vendor further represents and warrants to DES that, as of the Effective Date, and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), there is, and there shall be, no actual or threatened suit against Prime Vendor by any Third Party based on an alleged violation of any right specified in the preceding sentence. This representation and warranty shall survive the expiration or termination of the Agreement.

9.7 Warranty of Authority. Each party represents and warrants to the other that it has the right to enter into the Agreement and, in the case of Prime Vendor, as of the Effective Date and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), there is not and there shall not be, any outstanding assignments, grants, licenses, encumbrances, obligations or agreements that relate to the System (whether written, oral or implied) that are inconsistent with the Agreement and the rights granted or transferred herein. This representation and warranty shall survive the expiration or termination of the Agreement.

9.8 Warranty of Title. Prime Vendor represents and warrants to DES that it has the full authority to provide, license or sublicense all Solutions provided or licensed to DES. Prime Vendor further represents and warrants that all Equipment shall be free and clear of all liens, claims, encumbrances and demands of Third Parties. This representation and warranty shall survive the expiration or termination of the Agreement.

9.9 Pending Litigation Warranty. Prime Vendor represents and warrants to DES that, as of the Effective Date and as of the effective date of each Project Agreement and Contract Supplement (except to the extent disclosed therein), there is (and there shall be at the time of a future Project Agreement and Contract Supplement), no action, suit, claim, investigation or proceeding pending, or the basis for any action, suit, investigation or proceeding, and to the best of Prime Vendor's knowledge, there is no action, suit, claim, investigation or proceeding, or the basis for any action, suit, investigation or proceeding, threatened against, by or affecting Prime Vendor, its Affiliates or the System in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind that, if adversely determined, might affect Prime Vendor's ability to enter into the Agreement and/or the applicable Project Agreement or Contract Supplement and perform all of its obligations herein.

9.10 Offshoring. Prime Vendor represents, warrants and covenants to DES that Prime Vendor shall not: (a) except as may otherwise be set forth in a Project Agreement or Contract Supplement, perform any of its obligations under the Agreement from locations, or using employees, contractors and/or agents, situated outside the United States; or (b) directly or indirectly (including through the use of subcontractors) transmit any State Data outside the United States; or (c) allow any State Data to be accessed by Prime Vendor employees, contractors

and/or agents from locations outside the United States. Notwithstanding the foregoing, with respect to Hosting Services, Prime Vendor represents and warrants to DES that the primary, backup, disaster recovery and other data center sites for the Hosting Services will be provided from locations in the United States. If a Project Agreement or Contract Supplement provides that Services may be provided offshore, to the extent any Law or regulation enacted after the Effective Date or any policy or circumstances exist or are created which have, or may have, an adverse impact on DES with respect to legal compliance or its relationships with the State, its unions or otherwise, Prime Vendor acknowledges and agrees that, to the extent technically feasible and commercially reasonable, it shall change the delivery of any affected offshore Services in a manner which enables DES to avoid such adverse impact; or if the foregoing objective cannot be met to the satisfaction of the parties, then the parties shall engage in good faith negotiations to arrive at a mutually agreeable reasonable alternative.

9.11 State Data. Prime Vendor represents and warrants to DES that it shall not collect, use, store, display and/or transmit State Data (including in a summary, extracted, redacted or de-identified form) other than as necessary to fulfill its obligations under the Agreement.

9.12 Conflicts of Interest. Prime Vendor represents and warrants to DES that neither Prime Vendor, any of its Affiliates or authorized subcontractors, nor any employee of either, has, shall have, or shall:

(a) Acquire, any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner or degree with Prime Vendor's performance of its duties and responsibilities to DES under the Agreement or otherwise create an appearance of impropriety with respect to the Agreement.

(b) Use the authority provided or to be provided under the Agreement to improperly obtain financial gain for Prime Vendor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.

(c) Use any State Data acquired in connection with the Agreement to obtain financial gain for Prime Vendor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.

(d) Accept anything of value based on an understanding that the actions of Prime Vendor, any such Affiliates or any such employees on behalf of DES would be influenced thereby; and neither Prime Vendor nor any of its Affiliates shall attempt to influence any DES employee by the direct or indirect offer of anything of value.

(e) Pay or agree to pay any person, other than *bona fide* employees working solely for Prime Vendor or such Affiliates or any of Prime Vendor's subcontractors, any fee, commission, percentage, brokerage fee, contingent fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of the Agreement. If Prime Vendor fails to comply with this Section, DES shall have the right to either cancel the Agreement without liability to DES or, in DES' discretion, deduct from payments due to Prime Vendor, or otherwise recover from Prime Vendor, the full amount of such commission, percentage, brokerage fee, contingent fee, gift or other consideration.

9.13 Compliance with Federal and State Programs. With respect to Prime Vendor and Prime Vendor's employees providing Services to DES:

(a) Prime Vendor represents and warrants that neither Prime Vendor nor any of its employees is currently ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(b) Prime Vendor shall immediately disclose to DES if it or any of its employees is debarred, suspended, excluded or otherwise declared ineligible to participate in federal or state procurement or non-procurement programs.

(c) Prime Vendor shall immediately disclose to DES if Prime Vendor or any of its employees is proposed for exclusion, debarment or suspension from participation in any federal or state procurement or non-procurement program.

(d) DES has the right to immediately terminate the Agreement for cause and without further liability to DES if Prime Vendor becomes ineligible to participate in federal or state procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate.

(e) If any of the occurrences described above, Prime Vendor shall provide written notice immediately to DES in accordance with **Section 15.1**.

9.14 Additional Warranties. Prime Vendor agrees that its performance under the Agreement shall include, in addition to the warranties set forth in this Article, all representations and warranties that may be set forth in a Project Agreement or Contract Supplement.

9.15 Material Misstatements or Omissions. No representation or warranty by a party that is contained in the Agreement or that may be contained in any Project Agreement, Contract Supplement, Schedule, Exhibit, Addendum or Attachment contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements and facts contained herein or therein not materially misleading.

9.16 Disclaimer of Warranties. THE WARRANTIES SET FORTH IN THE AGREEMENT AND IN ANY PROJECT AGREEMENT OR CONTRACT SUPPLEMENT, SCHEDULE, EXHIBIT, ADDENDUM OR ATTACHMENT CONSTITUTE THE ONLY WARRANTIES OF THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 10

TERM AND TERMINATION

10.1 Term.

10.1.1 Term of Agreement. The Agreement shall commence on the Effective Date and remain in effect until the date that no obligations remain under any Project Agreement, Contract Supplement, Change Order or other ordering document unless:

(a) the parties mutually agree in writing to terminate the Agreement; (b) DES terminates the Agreement pursuant to **Section 10.1.3**; or (c) a party elects to terminate the Agreement following the occurrence for an Event of Default or under the circumstances described in **Section 15.5**.

10.1.2 Term of Project Agreements and Contract Supplements. Each Project Agreement and Contract Supplement shall commence on its effective date and remain in effect until: (a) with respect to a Project Agreement, Project Completion of such Project Agreement occurs, and with respect to a Contract Supplement, the obligations under the Contract Supplement have been fulfilled, provided that a Project Agreement or Contract Supplement may provide that certain terms and conditions may survive; (b) the parties mutually agree in writing to terminate the Project Agreement or Contract Supplement; (b) DES terminates the Project Agreement or Contract Supplement pursuant to **Section 10.1.3**; or (c) a party elects to terminate the Project Agreement or Contract Supplement following the occurrence for an Event of Default or under the circumstances described in **Section 15.5**.

10.1.3 Termination for Convenience. DES shall have the right to terminate the Agreement in whole or in part, any Project Agreement or Contract Supplement, involving the purchase of Services, and/or any line or category of Services being provided under a Project Agreement or Contract Supplement, without cause and for its convenience and without further liability (except as provided in this Section) upon ten (10) days prior written notice to Prime Vendor. Following any such termination, DES will only be responsible for: (a) subject to the terms of **Section 8.6**, actual, documented reimbursable expenses incurred by Prime Vendor prior to receipt of the written notice of termination; (b) the value (at the applicable rates under the Agreement) of any Services provided by Prime Vendor prior to (and/or, if authorized as provided above in this Section, after) receipt of the written notice of termination; (c) any termination fees related to Hosting Services, as set forth in the Hosting Services Exhibit; and (d) Software License Fees according to the following:

(i) if DES elects to retain any Solution Module or Modules, then DES shall pay the remaining balance of such Software License Fees, and **Sections 3.1.1, 3.5, 3.6, 9.1.6, 9.6, 9.7, 9.8, 9.9, 9.14** (to the extent applicable), and **Articles 11 through 15** shall remain in effect; or

(ii) if DES elects not to retain any Solution Module or Modules, then DES shall not be responsible to pay for such remaining balance of Software License Fees.

Upon Prime Vendor's receipt of written notice of termination pursuant to this **Section 10.1.3**, to the extent not previously delivered, Prime Vendor shall deliver to DES all Deliverables developed by Prime Vendor, whether completed or in draft form, and the terms of **Section 3.2.4** shall apply.

In determining the fees owed under **subsection (b)** above with respect to partially completed Deliverables or milestones developed under a fixed fee arrangement, Prime Vendor shall disclose to DES: (d) the number of hours already expended by Prime Vendor toward achieving the milestone or Deliverable ("**E**"); and (e) the number of hours still

needed by Prime Vendor to complete the Deliverable or milestone ("**N**"). The percent complete for the Deliverable or milestone will be represented by the fraction of: $E/(N+E) \times 100$. For example, if Prime Vendor has expended sixty (60) hours towards completing a Deliverable or milestone and Prime Vendor estimates that it will take ninety (90) additional hours to complete such Deliverable or milestone, the Deliverable or milestone will be calculated to be forty percent (40%) complete (*i.e.*, $60/(60+90) \times 100 = 40\%$). DES shall then have the option of requiring Prime Vendor to complete the Deliverable or milestone for the applicable unpaid Deliverable or milestone fee, or pay Prime Vendor a *pro rata* amount of such Deliverable or milestone fee based on the percent complete as calculated above.

10.1.4 Termination Due to Insufficient Funding. If there is insufficient funding to complete a project, DES and Prime Vendor shall meet and discuss adjusting the time frames for the delivery of the Solution, Services and/or Equipment, in a manner such that the Solution, Services and/or Equipment can be provided to DES, but with different time frames based on the projected future funding. The parties will negotiate in good faith for a period of ninety (90) days (or longer by mutual agreement). If, at the end of such agreed ninety (90) day period the parties have reached mutually acceptable terms, such terms will be memorialized in a written amendment to the Agreement. If the parties have not reached mutually agreeable terms, DES may either elect to continue the Agreement or the applicable Project Agreement or Contract Supplement with respect to the applicable Solution, Services and/or Equipment, or terminate the Agreement, and/or applicable Project Agreement or Contract Supplement without further liability or penalty.

10.1.5 Survival. Any terms of the Agreement and/or any Project Agreements and Contract Supplements that would, by their nature or through the express terms of the Agreement or the applicable Project Agreement or Contract Supplement, survive the expiration or termination of the Agreement and/or the applicable Project Agreement or Contract Supplement shall so survive, including the terms of **Sections 3.1.1, 3.1.3, 3.1.4, 3.2.4, 3.2.5, 3.2.6, 3.6.2, 8.5 through 8.8, 9.1.5, 9.1.6, 9.2, 9.3, and 9.6 through 9.16, and Articles 10 through 15.**

10.2 Events of Default. The following events shall constitute "**Events of Default,**" and the occurrence of any one (1) or more of such Events of Default shall constitute a material breach of the Agreement and/or the applicable Project Agreement or Contract Supplement that shall afford the non-breaching party the rights and remedies set forth in this Article:

(a) Prime Vendor's failure to achieve any Critical Milestone by the applicable Critical Milestone Due Date, which failure shall constitute a Prime Vendor Event of Default unless such failure: (i) was caused by DES or its Third Party's delays or a Force Majeure Event that was not capable of being mitigated; or (ii) is cured by Prime Vendor within twenty (20) days after its receipt of written notice of such breach;

(b) A party's material breach of any representation, warranty or covenant set forth in the Agreement, which material breach shall constitute an Event of Default by the non-performing party, provided further that: (i) such failure is not cured within the applicable time frames, if any, set forth in the Agreement, or if no time frame for curing such breach is specified, then within twenty (20) days following the non-performing party's re-

ceipt of written notice of such failure; or (ii) if the breach reasonably cannot be cured within the time frames specified in the foregoing **subsection (i)**, the non-performing party has failed to provide to the other party within ten (10) days following its receipt of written notice of such failure a written plan to cure such failure that is acceptable to such other party in its sole discretion;

(c) Prime Vendor's failure to maintain insurance coverage as specified in **Sections 15.3**, provided that such failure is not cured by Prime Vendor within twenty (20) days following receipt of written notice of such failure, which failure shall constitute a Prime Vendor Event of Default;

(d) Prime Vendor's failure to make any Deposit(s) required under the Source Code Escrow Agreement in accordance with the terms set forth therein, provided that such failure is not cured within twenty (20) days following receipt of written notice of such failure, which shall constitute a Prime Vendor Event of Default;

(e) DES' failure to pay any undisputed invoice in accordance with the terms of **Section 8.5.3**, which failure shall constitute a DES Event of Default;

(f) The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Prime Vendor or any parent Affiliate of Prime Vendor under any law if such proceedings have not been dismissed or discharged within thirty (30) days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance by Prime Vendor or any parent Affiliate of Prime Vendor of any involuntary debts as they mature; the institution of any reorganization arrangement or other readjustment of debt plan of Prime Vendor or any parent Affiliate of Prime Vendor; or any corporate action taken by the Board of Directors of Prime Vendor or any parent Affiliate of Prime Vendor in furtherance of any of the above actions, which shall constitute a Prime Vendor Event of Default; or

(g) If Prime Vendor or any parent Affiliate of Prime Vendor makes an assignment of all or substantially all of its assets for the benefit of creditors, or Prime Vendor's or any parent Affiliate of Prime Vendor's Board of Directors takes any corporate action by in furtherance of the above action, which shall constitute a Prime Vendor Event of Default.

10.3 Rights and Remedies of Prime Vendor Upon Default of DES. Upon the occurrence of a DES Event of Default, Prime Vendor shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 10.2** occur that would give rise to a DES Event of Default but DES has effected a cure within the applicable time frames set forth in **Section 10.2**, if any, or thereafter, then Prime Vendor nonetheless shall be entitled to the remedies set forth in **subsections (b)** and **(c)** below.

(a) Subject to DES' rights as set forth below, fully or partially terminate the Agreement and/or the affected Project Agreement(s) or Contract Supplement(s); and/or

(b) Subject to the terms of **Article 11**, recover damages from DES; and/or

(c) Any other additional remedies that may be set forth in a Project Agreement or Contract Supplement.

Perpetual licenses granted to DES under the Agreement shall be irrevocable unless DES materially breaches the license restrictions or other obligations set forth in **Sections 3.1** and fails to cure (or, in the case of incurable breaches, fails to exercise all commercially reasonable efforts to substantially cure) such material breach within thirty (30) days following DES' receipt of written notice from Prime Vendor requiring DES to cure the breach. Notwithstanding anything contained herein to the contrary, Prime Vendor expressly waives and disclaims any right or remedy it may have under any existing or future Laws or otherwise to: (d) de-install, disable or terminate the use or access to the Solution or any portion thereof, interfere with DES' quiet enjoyment of the Solution or terminate any license granted hereunder, before Prime Vendor has received a final, non-appealable judicial order terminating DES' license or access and use rights; or (e) terminate, suspend or withhold Support and Maintenance Services prior to any termination of the entire Agreement and expiration of the Transition Period; or (f) exercise any other form of self-help remedy.

10.4 Rights and Remedies of DES Upon Default of Prime Vendor. Upon the occurrence of a Prime Vendor Event of Default, DES shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 10.2** occur that would give rise to a Prime Vendor Event of Default but Prime Vendor has effected a cure within the applicable time frames set forth in **Section 10.2**, if any, or thereafter, then DES nonetheless shall be entitled to recover damages from Prime Vendor, subject to the terms of **Article 11**.

(a) Fully or partially terminate the Agreement, the affected Project Agreement or Contract Supplement (or Schedule or Exhibit thereto), Statement of Work or other document, or the affected line or category of Services being provided under a Project Agreement or Contract Supplement; and/or

(b) Subject to the terms of **Article 11**, recover damages from Prime Vendor; and/or

(c) If a Disclosure Event has occurred, obtain the Deposits from escrow in accordance with the terms of the Source Code Escrow Agreement for use as provided in the Agreement and in such event, obtain the transfer of Knowledge as described in **Section 3.7**; and/or

(d) For terminated Support and Maintenance Services, obtain a refund of any pre-paid but unearned Support and Maintenance Services Fees; and/or

(e) Obtain from Prime Vendor transition Services in accordance with **Section 10.5**; and/or

(f) Any other additional remedies that may be set forth in a Project Agreement or Contract Supplement.

10.5 Transition Services. Upon an expiration or a complete or partial termination of the Agreement, one (1) or more Project Agreements, Contract Supplements or Exhibits, and/or one or more lines or categories of Services for any reason, DES shall have the right, at DES'

option, for up to thirty six (36) months (the "**Transition Period**"), to all or any combination of the following: (a) continue to receive from Prime Vendor all Support and Maintenance Services (at the applicable rates under the Agreement); (b) if DES will be transitioning to a new system or software solution (irrespective of whether DES' license to use any Software has been terminated as provided in **Section 10.3**), receive from Prime Vendor all Services reasonably necessary to effectuate an orderly transition to such new system or software solution, including providing assistance in transferring data files to an industry-standard format designated by DES; (c) if DES' license to use any Software has been terminated as provided in **Section 10.3**, continue to use the applicable Software for the purposes set forth herein and subject to the restrictions set forth herein; and (d) obtain from Prime Vendor the transfer of Knowledge described therein. All Services (excluding Support and Maintenance Services, unless provided at DES' option on a time-and-materials basis) provided by Prime Vendor during the Transition Period shall be provided at the Service Rates or other applicable rates set forth in the Agreement. Notwithstanding the foregoing, if the Agreement or any Project Agreement or Contract Supplement, or an affected line or category of Services being provided under a Project Agreement or Contract Supplement is completely or partially terminated due to the occurrence of a Prime Vendor Event of Default, Prime Vendor shall provide such transition Services at no cost to DES.

ARTICLE 11

LIMITATION ON LIABILITY

11.1 Cap on Damages. EXCEPT AS SET FORTH IN SECTION 11.2:

(A) WITH RESPECT TO PRIME VENDOR'S LIABILITY TO DES, PRIME VENDOR'S CUMULATIVE LIABILITY TO DES FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL NOT EXCEED TWO (2) TIMES THE FEES PAID OR TO BE PAID UNDER THE AGREEMENT (INCLUDING OF ALL PROJECT AGREEMENTS, CONTRACT SUPPLEMENTS AND OTHER ORDERING DOCUMENTS); AND

(B) WITH RESPECT TO DES' LIABILITY TO PRIME VENDOR, DES SHALL BE LIABLE TO PRIME VENDOR ONLY FOR UNPAID AND UNDISPUTED INVOICES FOR SOFTWARE, SERVICES AND EXPENSES (INCLUDING ANY INVOICES FOR SOFTWARE AND/OR SERVICES LATER DETERMINED TO BE VALID).

11.2 Exclusions from Limitations on Liability. Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in **Section 11.1** shall not apply: (a) to claims arising as a result of personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) to claims arising as a result of damage to real property or tangible personal property (including loss of data) caused by a party or its employees, agents and/or subcontractors; (c) to Prime Vendor's failure to comply with its obligations under **Section 1.3.7** and **Articles 12** and **13**; (d) to any amounts paid by Prime Vendor as Delay Credits, Support Credits and/or Performance Credits; and (e) any negligence or willful misconduct on the part of Prime Vendor.

11.3 Restoration of Liability Cap. If, at any time: (a) (i) the total aggregate liability of Prime Vendor for claims asserted by DES under or in connection with the Agreement exceeds seventy percent (70%) of the limitation of liability amount in **Section 11.1(A)**; and (ii) Prime Vendor does not agree in writing to increase such amount by the amount required to restore the

full original value of the limitation of liability amount in **Section 11.1(A)** within thirty (30) days following its receipt of a written request from DES that it do so; or (b) the total aggregate liability of Prime Bidder equals or exceeds the limitation of liability amount in **Section 11.1(A)**, then DES shall have the right to terminate the Agreement and/or any Project Agreement or Contract Supplement (in whole or in part) by delivering a written notice of termination to Prime Vendor. Any termination pursuant to this Section shall not constitute a termination under any other provision of the Agreement.

11.4 Costs of Cure. To the extent a party elects to cure any failure by it to comply with its obligations under the Agreement, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the cap on damages described in **Section 11.1**.

ARTICLE 12

DATA RIGHTS AND CONFIDENTIALITY

12.1 Ownership of Data. Each party is and shall remain the owner of all right, title and interest in and to any data that it owned prior to the Effective Date, and in and to any data to which it may hereafter acquire ownership. Without limiting the generality of the foregoing, DES shall own all right, title and interest in and to DES Data. Except as otherwise provided in the Agreement, no party shall be obligated to convey any right, title and/or interest in any data to the other. Subject to the terms of the Agreement, including the license rights granted to DES hereunder, each party, upon request of the other, promptly shall return to the other any data owned by the other that may have been disclosed hereunder (including State Data).

12.2 Confidential Information. Each party acknowledges that it may acquire or be exposed to Confidential Information of the other party. Having acknowledged the foregoing, the party that has received Confidential Information ("**Receiving Party**") agrees: (a) to exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information ("**Disclosing Party**") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care; (b) not to use the Disclosing Party's Confidential Information except as permitted or contemplated hereunder; and (c) not to directly or indirectly disclose, distribute, republish or allow any Third Party to have access to any Confidential Information of the Disclosing Party without such Third Party executing: (i) with respect to disclosure of Prime Vendor Confidential Information, the Third Party Confidentiality and Non-Disclosure Agreement set forth in **Exhibit 4**, provided that for Third Parties that have a signed confidentiality agreement with DES as of the Effective Date, such Third Parties shall not be required to execute the Third Party Confidentiality and Non-Disclosure Agreement; and (ii) with respect to disclosure of State Data, a confidentiality and non-disclosure agreement with no less protective confidentiality provisions than those set forth in the Agreement. Notwithstanding the above, but subject to the further requirements of the Agreement, as applicable: (d) DES may disclose Prime Vendor Confidential Information to DES' Authorized Users who have a need to know; (e) Prime Vendor may disclose State Data to its employees and authorized agents who have a need to know; and (f) a party may disclose Confidential Information if so required by Law (including court order or subpoena), provided that such disclosure is made in accordance with **Section 12.4**. With respect to Prime Vendor's Confidential Information, such information shall not include information that is: (g) publicly available or later becomes available other than through a breach of the Agreement; (h) known to the Receiving Party or its employees, agents or representatives prior to disclosure by the Disclosing Party or is

independently developed by the Receiving Party or its employees, agents or representatives subsequent to such disclosure; or (i) subsequently lawfully obtained by the Receiving Party or its employees, agents or representatives from a Third Party without obligations of confidentiality.

12.3 Public Records Disclosures. Notwithstanding anything contained in the Agreement to the contrary, including in **Section 12.2** or **12.4**, Prime Vendor acknowledges that DES is a public organization and that the terms and conditions of the Agreement (including all Project Agreements and Contract Supplements) and other Prime Vendor information including Prime Vendor Confidential Information, Documentation and Deliverables may be subject to disclosure under the applicable Law, including Washington State's Public Records Act (RCW 42.56). If such a disclosure request is made of DES or any of the Agencies which it serves, DES or the Agencies, as applicable, shall, generally within ten (10) business days prior to release, notify Prime Vendor of any such request, in order to provide Prime Vendor time to seek judicial relief if it believes such information should not be released. Subject to a court of competent jurisdiction issuing an order prohibiting such release or the requesting party notifying DES in writing prior to DES' planned release that it has rescinded its request for disclosure, DES and/or the Agencies, as applicable, shall release and disclose all requested information without liability therefore.

12.4 Confidentiality of Prime Vendor Personnel. Prime Vendor shall cause all of its employees and any authorized subcontractor employees who have access to DES' Confidential Information to be bound by a confidentiality agreement with confidentiality provisions no less protective than the confidentiality terms contained herein.

12.5 Notification Obligation. If the Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party, the Receiving Party promptly and fully shall notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party shall not disclose the Confidential Information without providing the Disclosing Party with reasonable prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party or any of its employees are nonetheless, in the written opinion of the Receiving Party's counsel (a copy of which opinion shall be delivered to the Disclosing Party), legally compelled to disclose Confidential Information to any tribunal or otherwise stand liable for contempt or suffer other censure or penalty, the Receiving Party or its employees may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises the Receiving Party that it is legally required to disclose. Notwithstanding the foregoing, the Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

12.6 Information Sharing. As part of its mission, DES intends to share information with the Agencies and other states and governmental institutions to promote best practices using the Solution. The types of information shared by DES with the Agencies and other states

and governmental institutions may include design documents, functional specifications, technical specifications, reports and report formats, workflow processes, policies and procedures, printed training and education materials, computer-based training and education materials, Extensions, Interfaces, implementation strategies, configuration strategies and recommendations, screen shots and queries and job descriptions. Prime Vendor shall permit DES to share the above types of Prime Vendor Confidential Information relating to the Solution with other institutions that are customers of Prime Vendor.

12.7 HIPAA. To the extent HIPAA compliance is required, if Prime Vendor (or any subcontractor) will, or will likely, have access to protected health information (as defined in the Health Insurance Portability and Accountability Act of 1996, as may be amended from time-to-time ("**HIPAA**") of DES or any Agency, Prime Vendor and any applicable subcontractor(s) shall execute the then-current form of Business Associate Agreement of DES or the applicable Agency.

12.8 Survival. The terms of this **Article 12** shall survive the expiration or termination of the Agreement.

ARTICLE 13

INDEMNIFICATION

13.1 General. Subject to the further terms of this Article, Prime Vendor (the "**Indemnifying Party**") shall assume all risk of and responsibility for, and shall indemnify, defend and hold harmless DES, the Agencies, the State, and their respective officers, employees, contractors, officials, consultants, volunteers, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from and against all claims, demands, suits, actions, recoveries, judgments and actual costs and expenses (including all attorneys', advisors and consultant fees and costs) in connection therewith on account of any Third Party claim arising out of or relating to: (a) bodily injury, including death, and real property and tangible personal property damage arising from or resulting directly or indirectly from the Services, Solution, work and/or materials supplied under the Agreement and/or otherwise relating directly or indirectly from Prime Vendor's or its employees', agents' or representatives' acts or omissions; (b) Prime Vendor's or its employees', agents' or representatives' failure to comply with the terms of **Article 12**; (c) any failure by Prime Vendor to comply with its obligations under **Section 15.16**; (d) DES' rights to indemnity under **Section 15.4**; (e) Prime Vendor failure to timely deliver any Regulatory Modifications to DES as required under **Section 1.3** of **Schedule 7.1**; (f) a breach of Prime Vendor's obligations which results in a fine or penalty to an Indemnified Party; or (g) Prime Vendor's negligence or willful misconduct in its performance under the Agreement. The indemnity provisions in this Section shall not be limited by reason of any insurance coverage required under the Agreement. Prime Vendor's indemnity obligations under this Section may be reduced to the extent DES is found to have been contributorily negligent.

13.2 Infringement. Subject to the further terms of this Article, Prime Vendor shall indemnify, defend and hold harmless the Indemnified Parties from and against any claim asserted or any claim, suit or proceeding brought by a Third Party against the Indemnified Parties alleging that the Deliverables, Solution, or any part thereof, or DES' use of the Deliverables or Solution constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other Intellectual Property Right. Prime Vendor shall pay all damages awarded or agreed to settlement payments, and any actual costs and ex-

penses, including attorneys' fees, litigation costs (including the costs and expenses of any appellate bonds) arising from any such claim and incurred by the Indemnified Parties; provided, however, that the Indemnified Parties, after receiving notice thereof, promptly shall advise Prime Vendor of any such claim, suit or proceeding and, at Prime Vendor's expense, cooperate with Prime Vendor in the defense thereof. If Prime Vendor reasonably believes that any such claim, suit or proceeding may be successful, Prime Vendor shall, at no additional cost to the Indemnified Parties, either: (a) procure for the Indemnified Parties the right to continue using the portion of the Deliverables and/or Solution subject to such claim, suit or proceeding; or (b) replace or modify the Deliverables and/or Solution so that it no longer is subject to any such claim, suit or proceeding while maintaining equivalent or better functionality and performance capabilities.

No undertaking of Prime Vendor under this Section shall extend to any alleged infringement or violation to the extent that such infringement or violation arises from adherence to design modifications, specifications, drawings, or written instructions that Prime Vendor is specifically directed by DES to follow, or relates to uses of the Deliverables and/or Solution in combination with other systems, furnished either by Prime Vendor or others, which combination was not recommended or otherwise approved by Prime Vendor, where the lack of the combination would not, in and of itself, be infringing.

13.3 Industrial Insurance Immunity Waiver. Prime Vendor waives its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend and hold the Indemnified Parties harmless under the Agreement.

13.4 Procedures for Indemnification.

13.4.1 General. Promptly after becoming aware of same, the Indemnified Parties shall notify Prime Vendor of any Third Party claim covered under the terms of **Sections 13.1 or 13.2**, as applicable, for which the Indemnified Parties seeks indemnification.

13.4.2 Defense. The defense counsel selected by the Indemnifying Party shall be reasonably acceptable to the Indemnified Parties. Prime Vendor acknowledges that, as a State entity, DES is represented by the Attorney General's Office of the state of Washington which must approve of and appoint the Indemnified Parties' defense counsel as special assistant Attorneys General of the state of Washington.

13.4.3 Settlement of Claims. Prime Vendor shall not settle any claim, suit or action without the prior written consent of DES and/or the office of the Attorney General of the state of Washington, as required.

13.5 Survival; No Limitations on Liability. The terms of this Article shall survive any expiration or termination of the Agreement. Notwithstanding anything contained in the Agreement to the contrary, the terms of any limitations on liability clauses contained in the Agreement shall not apply to Prime Vendor's indemnification obligations under this Article.

ARTICLE 14

DISPUTE RESOLUTION

14.1 Administrative-Level Performance Review. If a dispute relating to the Agreement arises between the parties, the Prime Vendor Account Executive and the DES Program Manager may, but shall not be obligated to, meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the initial request for a meeting, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through an executive-level performance review as provided in **Section 14.2**.

14.2 Executive-Level Performance Review. For disputes that are not resolved at the Prime Vendor Account Executive and DES Program Manager level, the Executive Sponsors may, but shall not be obligated to, meet and attempt to resolve the dispute. If such representatives are unable to resolve the dispute within five (5) business days after the parties have commenced negotiations, or ten (10) days have passed since the initial request for negotiations at this level, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through mediation as hereinafter provided or, if the parties do not agree to submit the dispute to mediation, to seek any and all rights and remedies that may be available to them as provided in the Agreement.

14.3 Voluntary, Non-Binding Mediation. If the prior levels of dispute resolution are not invoked or are unsuccessful, the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to non-binding mediation. Mediation must occur within thirty (30) days after the parties agree to submit the dispute to mediation. The parties mutually shall select an independent mediator experienced in information systems of the type in dispute, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party.

14.4 Redress in Court. Informal dispute resolution under this Article shall not be a pre-condition to any action by a party to enforce its rights under the Agreement.

14.5 Continued Performance; No Tolling of Cure Periods. Except where clearly prevented by the area in dispute, the parties shall continue performing their obligations under the Agreement while the dispute is being resolved as provided in this Article, unless and until the dispute is resolved or until the Agreement and/or the applicable Project Agreement or Contract Supplement, as applicable, is terminated. The time frame for a party to cure any breach of the terms of the Agreement shall not be tolled by the pendency of any dispute resolution procedures.

ARTICLE 15

MISCELLANEOUS

15.1 Notices. Any written notice required or permitted to be delivered pursuant to the Agreement (other than project-related notices that may be sent by email) shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days

after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via e-mail or fax, with a confirmation copy sent via overnight mail; or (d) one (1) business day after deposit with a national overnight courier, in each case addressed to the following address:

If to DES:

Washington State Department of
Enterprise Services
1500 Jefferson Building
1500 Jefferson Street SE
Olympia, Washington 98501
Attention: Rebecca Riley, Contracts Manager
Fax: (360) 407-9174
E-mail: becci.riley@des.wa.gov

and

with a copy to:

Washington State Department of
Enterprise Services
1500 Jefferson Building
1500 Jefferson Street SE
Olympia, Washington 98501
Attention: Dawn Tatman, CIO
Fax: (360) 664-3423
E-mail: dawn.tatman@des.wa.gov

If to Prime Vendor:

Attention: _____
Fax: () _____
E-mail: _____

and

with a copy to:

Attention: _____
Fax: () _____
E-mail: _____

or to such other addresses as may be specified by a party upon notice given to the other.

15.2 Audits and Requests for Records.

15.2.1 Financial Audits. At any time up to and including six (6) years following the termination of the Agreement, DES (itself or through its Independent Auditor or a State auditor) shall have the right upon reasonable advance written notice and on an annual basis to fully audit the books and records of Prime Vendor to the extent reasonably necessary to confirm the accuracy and appropriateness of all invoices issued under the Agreement, including all supporting details, and to verify compliance with applicable Laws. All such audits shall be conducted during normal business hours. If any audit demonstrates that Prime Vendor has overcharged or undercharged DES, then either: (a) Prime Vendor promptly shall refund the overcharges to DES; or (b) following receipt of Prime Vendor's invoice, DES shall pay the undercharge to Prime Vendor. Further, if any overcharge is in excess of five percent (5%) of the aggregate charges incurred during the period to which the audit relates, then Prime Vendor shall reimburse DES for the reasonable costs and expenses (up to \$75,000 in expenses) incurred to conduct such audit.

15.2.2 Solution Usage Confirmation. With respect to Software licensed to DES, confirmation of DES' usage of such Software shall be accomplished through an attestation process as follows: If Prime Vendor believes that DES is in violation of **Section 3.1**, at Prime Vendor's written request, which request shall describe in detail the facts and circumstances giving rise to such belief and explain why Prime Vendor believes that such facts and circumstances constitute a violation of **Section 3.1**, an officer of DES shall promptly provide a written attestation to Prime Vendor stating that DES is in compliance with the terms of such section or stating the specific degree of non-compliance and DES' immediate efforts to establish compliance, provided, however, that such attestation shall not create a separate cause of action in connection with a claim of breach under the Agreement. If Prime Vendor disagrees with the attestation provided by DES, the matter shall be referred to the Executive Sponsors for resolution. Based on the foregoing, Prime Vendor waives its right to conduct a review or audit of DES' usage of the Software.

15.2.3 Operational and Security Audits by DES. Upon prior written notice to Prime Vendor, Prime Vendor shall make available to DES and its auditors and inspectors (including internal and external personnel) for the purpose of performing such audits or inspections access at all reasonable times to: (a) the data and records relating to the Services and Prime Vendor's other obligations under the Agreement; and (b) Prime Vendor's internal controls and systems as may be reasonably necessary to examine Prime Vendor's performance of the Services and compliance with its duties, responsibilities and obligations under the Agreement including the safeguarding of State Data and compliance with the Security Policies and Procedures and the terms set forth in **Section 1.3.7**. Prime Vendor shall provide to such auditors such assistance and support as they may reasonably request. If any audit reveals deficiencies, Prime Vendor shall review the findings with DES. If DES and Prime Vendor mutually agree that there are deficiencies to be corrected, Prime Vendor shall prepare and deliver to DES a detailed plan that is reasonably acceptable to DES for correcting all such deficiencies. If DES and Prime Vendor do not agree that there are deficiencies to be corrected, the parties shall select an independent, nationally-recognized, reputable auditing firm ("**Independent Auditor**") to review the results of the DES-prepared audit and determine whether the deficiencies in dispute exist. The cost of the Independent Auditor shall be shared equally by the parties. If requested by such Independent Auditor, Prime Vendor shall permit such firm to conduct interviews of applicable Prime Vendor personnel and engage in such other due diligence activities to verify whether such deficiencies exist. The Independent Auditor shall be tasked by the parties to issue a written opinion on its findings and such written opinion shall be binding on the parties with respect to the deficiencies cited therein. If the written opinion of the Independent Auditor cites deficiencies in Prime Vendor's operations, Prime Vendor shall prepare and deliver to DES a detailed plan that is reasonably acceptable to DES for correcting all such deficiencies. Prime Vendor shall implement all such corrections within the time frame(s) set forth in the plan. Prime Vendor shall bear all costs and expenses associated with correcting all deficiencies. Any audits shall be conducted so as to be non-disruptive to Prime Vendor's operational systems. User-level access may be granted to DES applications to support such audits, and if necessary, will be coordinated between the parties.

15.2.4 Washington State Audits. Any audits permitted by Law or permitted under **Section 15.2** may be conducted by the State or a Third Party on its behalf. Prime

Vendor shall provide to the State such assistance and support as reasonably requested. If any audit reveals deficiencies, Prime Vendor shall review the findings with the State and DES and Prime Vendor shall prepare and deliver to the State and DES a detailed plan that is reasonably acceptable to correct all such deficiencies.

15.2.5 Maintenance of Records. Prime Vendor and its subcontractors shall maintain books, records, documents and other evidence relating to the Agreement, including Minority and Women's Business Enterprise participation, protection and use of State Data and DES' Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of the Agreement. Prime Vendor shall retain all such records for six (6) years after the expiration or termination of the Agreement. Records involving matters in litigation related to the Agreement shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of the Agreement, whichever is later. Prime Vendor shall incorporate in its subcontracts with subcontractors the terms and conditions of this Section. Books, records, documents, and other evidence of accounting procedures and practices related to Prime Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from DES' or its auditors' review unless the cost or any other material issue under the Agreement is calculated or derived from these factors.

15.3 Insurance.

15.3.1 Required Coverages. At Prime Vendor's sole cost and expense, Prime Vendor shall procure and maintain in effect from and after the Effective Date and for the duration of the Agreement the insurance coverages described in the attached **Schedule 15.3.1**. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in the State or be eligible surplus lines insurers acceptable to DES and having agents in Washington upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any insurance or self-insurance available to DES shall be in excess of, and non-contributing with, any insurance that Prime Vendor is required to procure and maintain. Prime Vendor's insurance policies shall apply on a primary basis. To the extent that claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, Prime Vendor shall procure additional insurance as needed to continually meet and maintain the coverage amounts set forth on **Schedule 15.3.1**.

15.3.2 Additional Insureds and Evidence of Coverage. By endorsement to all liability policies except for the Professional Liability/Errors & Omissions and Internet Policies insurance and Industrial Insurance, DES, the Agencies and the State shall be named as additional insureds for all liability arising from the Agreement. On or before the Effective Date, thereafter upon each insurance policy renewal, and otherwise promptly following DES' request from time to time, Prime Vendor shall provide DES with certificates of insurance, together with copies of all applicable endorsements (by endorsement cross-liability of all insureds), evidencing Prime Vendor's compliance with the requirements set forth in this **Section 15.3**. If at any time during the period when insur-

ance is required by the Agreement, an insurer fails to comply with the requirements of the Agreement, as soon as Prime Vendor has knowledge of any such failure, Prime Vendor shall immediately notify DES and immediately replace such insurance with insurance meeting the Agreement requirements set forth herein. Within ten (10) business days following Prime Vendor's receipt of DES' written request, Prime Vendor shall provide (or cause to be provided) to DES a certified copy of any insurance policies that are required under this **Section 15.3**.

15.3.3 Claims-Made Coverage. If and to the extent any insurance coverage required under the Agreement is purchased on a "claims-made" basis, such insurance must: (a) cover the acts or omissions of Prime Vendor and any subcontractors, as applicable, up through and including the date that the Agreement and all Contract Supplements and Project Agreements have terminated and any Transition Periods have expired; and (b) be continuously maintained by Prime Vendor, with full prior acts coverage, for at least six (6) years beyond the date that the Agreement and all Contract Supplements and Project Agreements have terminated and any Transition Periods have expired.

15.3.4 Notice of Cancellation. Prime Vendor shall procure (or cause to be procured) endorsement(s) to its insurance policies that identify DES as a scheduled party to receive written notice thirty (30) days in advance of the cancellation of any insurance required hereunder.

15.3.5 Subcontractor Insurance. If Prime Vendor elects to have an approved subcontractor provide any Services to DES, prior to providing any such Services, Prime Vendor must furnish to DES a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by Prime Vendor and DES pursuant to **Section 15.4**. Additionally, if an approved subcontractor provides hosting services, either: (a) such subcontractor must have commercial general liability insurance, professional liability/errors & omissions and internet policies insurance, ID theft and cyber extortion insurance and umbrella or excess liability insurance, all in the amounts set forth herein; or (b) Prime Vendor's insurance policies must specifically cover all of such subcontractor's hosting services, and Prime Vendor must provide documentation from the applicable underwriter(s), acceptable to DES in its sole discretion, confirming such coverage.

15.4 Approval of Service Subcontractors. Prime Vendor shall obtain DES' prior written consent, which DES may withhold in its sole discretion, before entering into an agreement with any subcontractor who may be retained by Prime Vendor to provide implementation Services, training or education Services or any other Services on-site at DES. DES may condition the approval of any subcontractor on the receipt of the proposed subcontract between Prime Vendor and the subcontractor, to ensure that the subcontracted Services or other items are adequately covered. If DES determines, in its sole discretion, that any previously-approved Prime Vendor subcontractor is not satisfactorily performing its obligations, DES reserves the right to require Prime Vendor to replace such subcontractor with another subcontractor or for Prime Vendor to directly perform such obligations. Prime Vendor shall ensure that all such subcontractor agreements include provisions naming DES as a direct and intended third party beneficiary or otherwise granting DES the right to directly enforce Prime Vendor's rights against such subcontractor and provisions substantially the same as those set forth in **Section 3.2**

(where applicable) and **Article 12** of the Agreement. DES shall not be bound by the terms of such agreements entered into by Prime Vendor, and such agreements shall not contain any obligations with respect to DES, including a guarantee of payments to such subcontractor. Any approval of Prime Vendor's right to use a subcontractor shall be conditioned upon the following: (a) the agreement between Prime Vendor and subcontractor not imposing or seeking to impose any liabilities or obligations on DES, including the pass throughs of any termination fees, damages or costs in the event Prime Vendor is required to replace the subcontractor; (b) DES' ability to obtain a full assignment of such agreement upon written notice by DES to the subcontractor following any default by Prime Vendor under the Agreement and/or the applicable Project Agreement or Contract Supplement; (c) all employees of the subcontractor providing Services to DES being subject to the terms and restrictions of **Article 5**; (d) Prime Vendor being responsible for managing all subcontractor relationships; (e) Prime Vendor being liable for the acts and omissions of any subcontractor under the Agreement or any Project Agreement or Contract Supplement; (f) DES and Prime Vendor agreeing to the level and types of insurance to be obtained by subcontractor; (g) Prime Vendor and subcontractor incorporating the terms required by **Section 15.2.5** into their agreement; and (h) subcontractor executing and delivering to DES the Subcontractor Confidentiality and Non-Disclosure Agreement, the form of which is set forth in **Exhibit 3**. Prime Vendor agrees that assignment of any subcontractor agreement to DES shall in no way diminish, reduce, modify or affect Prime Vendor's obligations and liabilities to DES hereunder, and Prime Vendor shall remain responsible for all such obligations and liabilities. Prime Vendor further agrees that it shall indemnify, defend and hold harmless the Indemnified Parties for the actions of its subcontractors.

15.5 Force Majeure. Except as provided below, each party may be excused from performing any of its obligations hereunder, in whole or in part, to the extent that the inability to perform is caused by an act of God, war, riot, civil commotion, explosion, fire, government action, court order, epidemic, DES-related labor activities or other similar circumstance beyond its reasonable control (each, a "**Force Majeure Event**"). Prime Vendor's labor and union-related activities, the non-performance of Prime Vendor or any Prime Vendor subcontractor, and the inability or failure of Prime Vendor to obtain permits, visas or other governmental authorizations for its personnel, regardless of cause, shall not constitute a Force Majeure Event. A failure of the Internet or telecommunications lines shall not be a Force Majeure Event if there is an alternative form of communication and/or diverse routing communications linkages available to Prime Vendor. If a Force Majeure Event prevents, hinders or delays performance of either party's obligations hereunder for more than ten (10) days at any time during the term, the party not prevented from performing shall have the right to terminate the affected portion of the Agreement and/or applicable Project Agreements and Contract Supplements as of the date specified by such party in a written notice of termination to the other party; provided that during the pendency of such ten (10) day period the party whose performance is not prevented, hindered or delayed shall have the right to take all commercially reasonable actions that may be necessary to mitigate the impact of the other party's non-performance, and the party claiming a Force Majeure Event shall take all commercially reasonable actions that may be necessary to mitigate the impact of its non-performance.

15.6 Notice of Financial Impacts. Prime Vendor shall provide written notice to DES within five (5) business days following the occurrence of any event that will or may be likely to have a material adverse impact upon Prime Vendor's ability to perform its obligations hereunder, including Prime Vendor's breach of any significant contract, default of any credit agreement, denial of significant funding requests and/or the filing of a significant lawsuit against Prime

Vendor, and promptly (but in no event longer than ten (10) business days) thereafter shall meet with DES to discuss Prime Vendor's ability to continue to perform its obligations under the Agreement in light of such event.

15.7 Bankruptcy. The rights to the Solution licensed or provided by Prime Vendor to DES under the Agreement constitutes "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended, and the Agreement shall be governed by Section 365(n) of the Bankruptcy Code, as applicable, in the event Prime Vendor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Prime Vendor or the trustee in bankruptcy rejects the Agreement. In the event Prime Vendor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Prime Vendor or the trustee in bankruptcy rejects the Agreement under Section 365 of the Bankruptcy Code, DES shall have the right to: (a) treat the Agreement as terminated; or (b) retain DES' rights under the Agreement, specifically including the right to exercise its rights granted herein to the Software (and to all work-in-progress relating thereto). Failure by DES to assert its right to retain its benefits to the intellectual property embodied in the Software pursuant to Section 365(n)(1)(B) of the Bankruptcy Code with respect to an executory contract rejected by Prime Vendor or the trustee in bankruptcy shall not be construed by the courts as a termination of such contract by DES under Section 365(n)(1)(A) of the Bankruptcy Code. Any attempted assignment of the Agreement by Prime Vendor or the trustee in bankruptcy to a Third Party shall be subject to such Third Party providing "adequate assurance of future performance" (as referenced in Section 365(f) of the Bankruptcy Code) to DES. Among other requirements as may be reasonably imposed, "adequate assurance" shall include a Third Party's express written agreement to assume all of Prime Vendor's obligations under the Agreement.

15.8 Agency. No party shall make any representations or warranties or incur any liability on behalf of the other. No party is the agent, representative or partner of the other party. The parties agree that Prime Vendor is an independent contractor, that neither Prime Vendor nor its employees, subcontractors and/or agents are employees of DES and that neither DES nor the Agencies shall, on their behalf: withhold income or other taxes; provide Industrial Insurance; participate in group insurance plans which may be available to employees of DES; participate or contribute to any public employees retirement system; accumulate vacation leave or sick leave; or provide unemployment compensation coverage. Neither Prime Vendor nor its employees, subcontractors and/or agents are employees of DES or the Agencies, and accordingly, none of them are entitled to any of the compensation, benefits, rights, or privileges of employees of DES or the Agencies.

15.9 Severability. If any provision of the Agreement and/or any Project Agreement or Contract Supplement 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 the Agreement and/or such Project Agreement or Contract Supplement.

15.10 Waiver; Waiver of Non-Competition. No delay or omission by a party to exercise any right occurring upon any non-compliance or default by the other party with respect to any of the terms of the Agreement and/or any Project Agreement or Contract Supplement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. Additionally, Prime Vendor irrevocably waives any rights which it

may have, by contract or otherwise, to require another person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DES or the State, and Prime Vendor further agrees that it will not in the future, directly or indirectly, induce or solicit any person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DES or the State.

15.11 Governing Law; Exclusive Jurisdiction. The Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of the 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). Any claim against DES shall be initiated by Prime Vendor within one (1) year after the claim arises, or be barred. Any suit or proceeding relating to the Agreement shall be brought only in the State courts located in Thurston County, Washington. **THE PARTIES EACH CONSENT TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS LOCATED IN THURSTON COUNTY, WASHINGTON.**

15.12 Binding Nature and No Assignment. The Agreement or any of its provisions shall not be assigned, delegated or transferred, including a Change of Control which shall be deemed to be a transfer, in whole or in part, by either party without the prior written consent of the other party. The Agreement shall be binding on the parties and their successors and permitted assigns.

15.13 Counterparts. The Agreement and any Project Agreements and Contract Supplements may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

15.14 Public Announcements. Without the prior written consent of DES, which consent may be withheld in DES' sole discretion, Prime Vendor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including 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 the Agreement, the name, image or logo of DES or any Agency (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, Prime Vendor shall not, without DES' prior written approval: (a) make any references to Third Parties that DES is a customer of 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 Prime Vendor.

15.15 DES Policies. Prime Vendor, its employees, agents and permitted subcontractors shall comply with all DES policies, procedures, orders and directives (whether in final or "draft" form) that DES provides in writing to Prime Vendor, including those set forth on **Schedule 15.15** and all standards referenced therein and the State Travel Policy found in the Washington State Administrative and Accounting Manual (currently set forth in <http://www.ofm.wa.gov/policy/10.htm>) (collectively, the "**DES Policies**"). Prime Vendor acknowledges and agrees that the DES Policies and the list of DES Policies set forth on **Schedule 15.15** may change from time-to-time and that DES may add, delete and/or change the DES Policies and/or the list of DES Policies set forth on **Schedule 15.15**, in its discretion.

15.16 Compliance with Laws; Compliance with Civil Rights. With respect to its obligations under the Agreement, Prime Vendor shall at all times comply with all applicable Laws, including State data breach notice statutes, RCW 19.255.010 and RCW 42.56.590, federal and applicable state nondiscrimination Laws, including Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*, the Americans with Disabilities Act ("**ADA**") and Title 49.60 RCW, Washington Law Against Discrimination, the Gramm-Leach-Bliley Act ("**GLB**"), HIPAA, and all rules, regulations and policies promulgated thereunder, including the commitment to negotiate in good faith any sub-agreements that may be required to be entered into by the parties pursuant to such Laws, and any and all obligations to obtain similar protections in or institute safeguards with respect to any Third Party agreements and/or arrangements. Prime Vendor shall comply with all Laws governing the importation, exportation or transfer of technology across national boundaries, shall obtain all necessary permits and governmental authorizations and approvals necessary to the performance of the Agreement. Prime Vendor's noncompliance, or refusal to comply, with any applicable Law shall constitute an Event of Default pursuant to **Section 10.2(b)** and DES shall have the rights and remedies set forth in **Section 10.4**, additionally Prime Vendor may be declared ineligible for further contracts with DES or the State.

15.17 Waiver of UCITA. The parties agree that the Uniform Computer Information Transactions Act or any substantially similar law is enacted as part of the law of the State or any other state ("**UCITA**"), shall not apply to the Agreement and, to the extent that UCITA is applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein, if any.

15.18 Binding, Irrevocable Offer. In consideration of DES agreeing to continue evaluating Prime Vendor as its service provider, Prime Vendor agrees that the signed Agreement by Prime Vendor constitutes a binding, irrevocable offer to DES on the terms and conditions set forth herein which shall remain in full force and effect through and including December 31, 2013, or such later date as may be agreed to in writing by the parties. The Agreement shall only become an effective and binding agreement upon DES' execution and delivery of a copy of the Agreement to Prime Vendor.

15.19 No Construction Against Drafter. The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of the Agreement.

15.20 Attorneys' Fees. If either of Prime Vendor or DES brings an action, suit or proceeding against the other arising out of or relating to the Agreement, or pertaining to a declaration of rights under the 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.

15.21 Security Interest.

(a) Prime Vendor expressly acknowledges DES' intention to finance purchases under the Agreement through the State of Washington Lease Purchase Program (the "**State Program**") as provided by RCW 39.94 and the standard forms of financing documents utilized by the State Program for the use and purchase of personal property, as described at <http://www.tre.wa.gov/government/leasePurchaseProgram.shtml>.

(b) Notwithstanding anything to the contrary contained in the Agreement and any ordering documents entered into under the Agreement, Prime Vendor consents to DES' grant of a security interest in DES' license rights granted under the Agreement in the Prime Vendor Software and Deliverables to the Washington Finance Officers Association (the "**Corporation**") and the assignment of that security interest by the Corporation to The Bank of New York Mellon, as trustee (the "**Trustee**") in connection with the intended DES financing transaction referenced in **subsection (a)** above.

(c) Except as provided below, Trustee shall not use nor transfer to a third party any license rights in the Prime Vendor Software or Deliverables. If there is a DES Event of Default under the State Program or a non-appropriation of funds by the State Legislature such that DES will be unable to meet its obligations under the State Program financing documents, Prime Vendor consents and agrees that the Trustee thereafter shall have the right to realize upon its security interest in DES' license rights in the Prime Vendor Software and Deliverables and to transfer or assign DES' rights in the Prime Vendor Software and Deliverables as permitted under the State Program financing documents.

15.22 Entire Agreement; Modifications. The Agreement, together with all of its Schedules, Exhibits and Attachments, constitutes the final, complete and exclusive statement of the agreement of the parties relative to the subject matter hereof and supersedes all previous or contemporaneous oral or written proposals, negotiations, representations or understandings concerning such subject matter. The Agreement may be modified only pursuant to a writing executed by Prime Vendor and the DES Director, or her or his designee, in order to be effective against DES. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to the Agreement or any amendments based on course of dealing, waiver, reliance, estoppel or other similar legal theory.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Technology 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)

SCHEDULE 1.5

DEFINITIONS

Whenever used in the Agreement, including in any Schedules, Exhibits, Attachments, Addenda and other documents attached to the Agreement, the following terms shall have the meaning ascribed to them below. Other capitalized terms used in the Agreement are defined in the context in which they are used and shall have the meanings ascribed therein. The terms defined in this Schedule include the plural as well as the singular.

"**ADA**" is defined in **Section 15.6**.

"**Additional Programs**" is defined in **Section 2 of Attachment A to Exhibit 5**.

"**Affiliate(s)**" means any person, firm, corporation (including service corporation and professional corporation), partnership (including general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, association, business trust or other similar entity that, now or in the future, directly or indirectly, controls, is controlled with or by or under common control with Prime Vendor. For purposes of the foregoing, "control" shall mean the direct or indirect control of fifty percent (50%) or more of the voting power to elect directors thereof, or any other entity, the power to direct the management of such entity. Upon request, Prime Vendor shall provide DES with a list of entities qualifying as Affiliates of Prime Vendor.

"**Agency**" means any agency, office, institution, board, commission or department of the State.

"**Agreement**" or "**TA**" is referenced in the preamble and means this Technology Agreement, entered into by and between DES and Prime Vendor, effective as of the Effective Date, inclusive of all Schedules and Exhibits.

"**Annual Hosting Renewal Option**" has the meaning set forth in **Section 2.2 of Exhibit 2**.

"**API**" means an application programming interface.

"**Application Response Time**" is described in **Section 5.3 of Attachment C of Exhibit 2**.

"**Approved Equipment Configuration(s)**" is defined in **Section 9.1.2**.

"**At Risk Amount**" has the meaning set forth in **Section 2.3 of Attachment C of Exhibit 2**.

"**Authorized Users**" means: (a) DES, the Agencies and their respective employees, and any and all staff, volunteers, prospective employees, vendors, business partners and employees of other governmental organizations (e.g., the federal government) with whom DES conducts business; (b) Third Party agents, consultants, system integrators, auditors and other independent contractors performing services for DES and/or an Agency; (c) any persons and/or entities to whom or which DES and/or an Agency provides business and/or enterprise services; (d) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to data; (e) a facility manager or outsourcing or hosting services provider; and (f) such other persons as the parties may mutually agree.

"Base Foundation" is defined in **Section 4.2.2** of the TLA Statement of Work.

"Beneficiary" is defined in **Exhibit 5**.

"Beneficiary Verification" is defined in **Section 2.1** of **Attachment E** to **Exhibit 5**.

"C" or **"Contributor or Actively Involved and/or Contributing"** is defined in **Section 1.1** of the TLA Statement of Work.

"Certification Criteria" is defined in **Section 3.2.2**.

"Certification Form" is attached to the Agreement as **Schedule 3.2.3**.

"Change of Control" means: (a) any transaction or combination of transactions as a result of which either a person, an entity or a group of persons and/or entities that customarily has acted in concert and that presently is in control of a party ceases to be in control of such party; or (b) the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the Securities Exchange Act of 1934) of the voting power of a party, or of the assets of such party that constitute a substantial or material business segment of such party; or (c) the divestiture, in whole or in part, of the business unit or division of Prime Vendor that has provided the Solution, Services and/or Equipment hereunder.

"Change Order", **"Change Request"** and **"Change Response"** are defined in **Section 5.3.2**.

"Chronic Performance Standards Failures" is defined in **Section 2.5** of **Exhibit 2**.

"Communications Management" is defined in **Section 1.14** of **Exhibit 2**.

"Compliant" is defined in **Section 9.3**.

"Confidential Information" shall mean: (a) information concerning the other party's business affairs, property and methods of operation that is marked "confidential" and/or "proprietary"; and (b) in the case of DES, regardless of whether such information is marked confidential or proprietary: (i) State Data; (ii) any information and materials relating to Third Party vendors that have provided any part of DES' and/or any Agencies' information or communications infrastructure; (iii) any information of DES and/or any Agency that is maintained or stored by or through the Solution; and/or (iv) to the extent not covered above, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code and agency security data, or other information identifiable to an individual that relates to any of the foregoing types of information.

"Constituencies" is defined in **Section 2.1.2** of the Statement of Work.

"Contract Supplement" is defined in **Article 2**.

"Control Objectives" is defined in **Section 2.8.1.1** of **Exhibit 2**.

"Corporation" is defined in **Section 15.21(b)**.

"CPI" means the annual increase in percentage points (or fraction thereof) of the official Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI data shall be determined by reference to the "Percent Dec-Dec" column of the Consumer Price Index History Table for the applicable year, published by the United States Department of Labor, Bureau of Labor Statistics.

"Critical Milestone" means those key Deliverables and key events, to be identified in the Project Agreement or Contract Supplement, as significant project-related milestones deliverables and events, and can include, for a particular component of the Solution, by way of example, finalization of design, complete configuration, commencement and/or completion of Pre-Live Testing, Production Use and Project Completion.

"CSC" is defined in **Section 1.5 of Schedule 7.1**.

"Data Protected by Law" refers to data regulated and/or protected by Law, and includes all Personal Information and Laws that prohibit or limit disclosure such as the EAR, the ITAR, or HIPAA.

"Defect" is defined in **Section 3.1 of Schedule 7.1**.

"Deficiencies" is defined in **Section 2.8.3 of Exhibit 2**.

"Delay Credits" is defined in **Section 5.2.4**.

"Deliverables" means Extensions, Interfaces, custom-developed software, documentation, designs, diagrams, configurations, functional specifications, technical specifications, data transformations, data aggregations, schematics, architectural renderings, prototypes, screen layouts and other documents and materials developed or prepared by Prime Vendor, either alone or jointly with DES and/or any Agency.

"Demonstrations" means, those features, functionality, workflows, *etc.*, contained in the demonstrations presented to DES. With respect to the TLA Solution Project, the Demonstrations have been recorded and placed on a DVD, a copy of which is incorporated into the TLA Solution Project Agreement.

"Deposits" and **"Deposit Materials"** are defined in **Exhibit 5**.

"Depositor" is defined in **Exhibit 5**.

"Depositor Support Tools" is defined in **Section 5 of Attachment A to Exhibit 5**.

"DES" is referenced in the Recitals and means the Washington State Department of Enterprise Services, and any successors and assigns. DES is the Agency responsible for providing centralized products and services to support the Agencies. As the context requires, DES includes the Agencies served by DES. For example, in **Section 3.3.1**, Prime Vendor's obligation to work

with DES and Third Parties to implement and use standard Interfaces, includes the obligation to work with the Agencies served by DES and their Third Parties.

"DES Business and Technical Requirements" means the business and technical requirements and Performance Standards that may be attached to a Project Agreement or Contract Supplement. With respect to the TLA Solution, the DES Business and Technical Requirements are set forth in **Section 5.5** of the TLA Solution Project Agreement. For purposes of the software functionality warranty set forth in the Agreement, the DES Business and Technical Requirements originally set forth in a Project Agreement or Contract Supplement shall be replaced by the specifications set forth in the Solution Design Document, and shall become the replacement DES Business and Technical Requirements, but only to the extent the business and technical requirements are specifically addressed in the Solution Design Document.

"DES Chief Information Officer" means the DES Chief of Information Technology, or her or his designee.

"DES Data" means any and all data within DES' possession, custody, or control, and any and all data that DES has disclosed to Prime Vendor. For the purposes of the Agreement, DES Data does not cease to be DES Data solely because it is transferred or transmitted beyond DES' immediate possession, custody, or control, and with respect to **Exhibit 3**, is defined in **Schedule 2.2** therein.

"DES Director" means the individual appointed by the governor under RCW 43.19.008 as the executive head and appointing authority of DES. The DES Director has the powers and duties enumerated in RCW 43.19, including the authority to enter into contracts on behalf of DES.

"DES Executive Sponsor" is defined in **Section 1.3.2**.

"DES Policies" is defined in **Section 15.15**.

"DES Program Manager" is defined in **Section 5.4.1**.

"DES Project Manager(s)" is defined in **Section 5.4.1**.

"DES Security Policies and Procedures" means 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.

"Development Meetings" is defined in **Section 3.8.4**.

"Disabling Code" is defined in **Section 9.1.6**.

"Disaster" is defined in **Section 1.5.5** of **Exhibit 2**.

"Disaster Recovery Restoration" is described in **Section 5.4** of **Attachment C** of **Exhibit 2**.

"Disaster Recovery and Business Continuity Plan" is defined in **Section 5.4.2** of the TLA Statement of Work.

"Disclosing Party" is defined in **Section 12.2**.

"Documentation" means, collectively, and shall be interpreted in the following order of precedence: (a) first, features or functionality and any special provision relating thereto, if any, as described in a Project Agreement or Contract Supplement; (b) second, the DES Business and Technical Requirements; (c) third, Deliverables other than the DES Business and Technical Requirements; (d) fourth, the Demonstrations; (e) fifth, the applicable RFP Response; (f) sixth, all of the written, printed, electronic or other format materials published or otherwise made available by Prime Vendor to DES; and (g) seventh, any user, operations and similar manuals other than that Prime Vendor or other software manufacturer makes generally available to its customers, that relate to the functional, operational and/or performance capabilities of the Solution or software, as applicable.

"DOT" and **"Department of Transportation"** mean the State Department of Transportation.

"Due Date" means the date by which a Deliverable or Critical Milestone must be completed.

"E" is defined in **Section 10.1.3**.

"EAR" means the Export Administration Regulations, as may be amended from time-to-time.

"ECY" and **"Department of Ecology"** mean the State Department of Ecology.

"Effective Date" means the date, if any, on which the Agreement is counter-signed by DES.

"Emerging Products" is defined in **Section 3.8.3**.

"Encryption Keys" is defined in **Section 12** of **Attachment A** to **Exhibit 5**.

"Enhancement Defects" are defined in **Section 1.2.2** of **Schedule 7.1**.

"Enhancements" means any releases, versions (including releases or versions that operate on a different or new platform or version of the operating system of the Equipment or any database or other equipment), improvements, modifications, upgrades, updates, fixes and additions to the Solution, no matter how designated, classified or marketed by Prime Vendor that Prime Vendor makes available pursuant to its obligations under the Agreement or that Prime Vendor or the applicable Third Party vendor markets or generally makes available to its customers as part of support and maintenance services from time-to-time to correct deficiencies and/or to improve or extend the capabilities of the Solution.

"Enterprise-Wide" is defined in **Section 3.1.1**.

"Equipment" means any and all equipment purchased by DES from Prime Vendor pursuant to a Project Agreement or Contract Supplement.

"Escrow Agent" is defined in **Exhibit 5**.

"Escrow Agreement" is defined in **Exhibit 5**.

"Escrowed Third Party Software" is defined in **Section 4 of Attachment A to Exhibit 5.**

"Ethical Hacking" is defined in **Section 1.11.1(I) of Exhibit 2.**

"Events of Default" is defined in **Section 10.2.**

"Executive Sponsor" is defined in **Section 1.3.2.**

"Extension" means a configuration or other programming, other than a change to the Source Code, residing in a Solution to affect a function or feature that is not part of the generally available Solution.

"Final Resolution" is defined in **Section 3.1 of Schedule 7.1.**

"Fit/Gap Document" is defined in **Section 4.1.3** of the TLA Statement of Work.

"Fixed Fee" means the fixed fee as defined in a Project Agreement or Contract Supplement.

"Force Majeure Event" is defined in **Section 15.5.**

"FTEs" is defined in **Section 8.3.2** of the TLA Statement of Work.

"Gain Sharing/Improvement Opportunity" is defined in **Section 4.0 of Attachment D of Exhibit 2.**

"GLB" is defined in **Section 15.16.**

"HIPAA" is defined in **Section 12.7.**

"Holidays" means those days on which DES observes a holiday in a particular calendar year as published from time-to-time by DES.

"Hosting Services" is defined in **Exhibit 2.**

"Hosting Services Fees" is defined in **Section 8.2.**

"Hosting Term" is defined in **Section 2.2 of Exhibit 2.**

"Hosting Transition Plan" is defined in **Section 2.7 of Exhibit 2.**

"Incident" is defined in **Section 3.1 of Schedule 7.1.**

"Incident Report" and **"Incident Resolution Report"** are defined in **Section 3.3 of Schedule 7.1.**

"Incident Response" is defined in **Section 3.1 of Schedule 7.1.**

"Included Maintenance" is defined in **Section 1(H) of Exhibit 2.**

"Indemnified Parties" and **"Indemnifying Party"** are defined in **Section 13.1**.

"Independent Auditor" is defined in **Section 15.2.3**.

"Industrial Insurance" is the system of workers compensation established and administered under Title 51 RCW.

"Information Security Officer" is defined in **Section 1.3.7(b)**.

"Initial Deposits" is defined in **Section 1.1** of **Exhibit 5**.

"Initial Hosting Term" has the meaning set forth in **Section 2.2** of **Exhibit 2**.

"Integrate" or **"Integration"** means the process of functionally and technically linking together different computing systems and/or software applications so that the linked systems and/or applications Interoperate as a coordinated whole.

"Intellectual Property Rights" means any and all rights in and to all copyrights, inventions, patents, trademarks, trade secrets and any other proprietary rights in or to tangible or intangible property recognized in any jurisdiction in the world, whether or not registered or registerable.

"Interface" or **"Interfaces"** means the programming required to accomplish the coupling of one system, device or program with another system, device or program.

"Interim Resolution" is defined in **Section 3.1** of **Schedule 7.1**.

"Interoperate" or **"Interoperability"** means that computer programs communicate, execute programs or transfer data seamlessly by and among the other computer programs in which they are intended to communicate, and, unless otherwise agreed by the parties in writing in connection with the TLA Solution Project Agreement or otherwise.

"Invoicing Deadline" is defined in **Section 8.5.3**.

"ISO Security Standards" is defined in **Section 1.3.7(c)**.

"Issue" is defined in **Section 3.1** of **Schedule 7.1** and also means any of the following: (a) any presently identified event, circumstance or problem that adversely affects the ability to meet project requirements, or a Deliverable Due Date or Critical Milestone Due Date, whether by Prime Vendor, DES or a Third Party; or (b) any event, problem, difficulty, circumstance or Defect which affects or may affect the System or the operation of the System by DES, including the failure to meet the Performance Standards.

"ITAR" means the International Traffic in Arms Regulations, as may be amended from time-to-time.

"ITIL" is defined in **Section 1.9** of **Schedule 7.1**.

"Joint Resource Plan" is defined in **Section 5.2.1**.

"Key Personnel" is defined in **Section 5.4.2**.

"Knowledge" is defined in **Section 3.7**.

"Law" or **"Laws"** means all existing and future laws, statutes, regulations, rules, administrative codes, ordinances, executive orders, policies, judicial opinions and/or decrees and other decisions having the effect of law (and any amendments thereto) by any federal, state or local government, authority, department or agency in any location that DES or an Agency conducts business.

"Level 1 Defect" and **"Level 1 Incident"** are defined in **Section 3.1 of Schedule 7.1**.

"Level 2 Defect" and **"Level 2 Incident"** are defined in **Section 3.1 of Schedule 7.1**.

"Level 3 Defect" and **"Level 3 Incident"** are defined in **Section 3.1 of Schedule 7.1**.

"List of Deficiencies" is defined in **Section 2.3 of Attachment E to Exhibit 5**.

"Load Instructions" is defined in **Section 3 of Attachment A to Exhibit 5**.

"Minimum Available Support Term" is defined in **Section 7.1**.

"Mobile Standards" means any Laws, guidance, recommendations, guidelines or reports published by the Federal Trade Commission (FTC), Federal Drug Administration (FDA), U.S. and state Attorney General Offices, and other regulatory or governmental bodies setting forth practices, policies and procedures to govern the use of mobile devices, including the following FTC Staff Report, issued February 1, 2013, and the State of California Attorney General report on Privacy on the Go, Recommendations for the Mobile Ecosystem, issued January 2013.

"Monthly Performance Report" has the meaning set forth in **Section 1.2 of Attachment C of Exhibit 2**.

"Multi-Party Incident" is defined in the opening paragraph of **Attachment A to Schedule 7.1**.

"N" is defined in **Section 10.1.3**.

"New Affiliate Agreement" is defined in **Section 1.7**.

"New Affiliate Agreement Products and Services" is defined in **Section 1.7**.

"Non-Production Infrastructure Availability" is referenced in **Section 5.2 of Attachment C of Exhibit 2**.

"OCIO" means the Office of the Chief Information Officer of the State.

"OFM" or **"Office of Financial Management"** mean the Office of Financial Management of the State, which is responsible for development of rules and policy related to the TLA Solution. The following OFM units will be involved with the TLA Solution Project: the OCIO, the Office of State Human Resources Director, Labor Relations Division, Statewide Accounting and Budget.

"**OIMS**" is defined in **Section 1.5** of **Schedule 7.1**.

"**Optimization Period**" is defined in **Section 6.4**.

"**Order**" is defined in **Section 4.3** of **Exhibit 5**.

"**Original Estimated Hours**" is defined in **Section 8.4.3**.

"**Other Information**" is defined in **Section 14** of **Attachment A** to **Exhibit 5**.

"**OWASP**" is defined in **Section 5.1** of the TLA Statement of Work.

"**Page Load Data Point(s)**" is defined in **Section 5.3.1.2.2** of **Attachment C** of **Exhibit 2**.

"**Partnering Principles**" is defined in **Section 1.2**.

"**Payment Milestones**" is defined in **Section 4** of **Exhibit 1**.

"**Performance Analysis Tools**" is defined in **Section 10** of **Attachment A** to **Exhibit 5**.

"**Performance Credits**" means the financial consequences, if any, associated with failure of a System or Service, as applicable, to conform to the applicable Performance Standards.

"**Performance Standards**" means the standards for performance of a particular System or Service, as applicable, and shall include: (a) the functionality and performance warranties set forth in **Section 9.1**; and (b) as may be specified in the applicable Project Agreement or Contract Supplement.

"**Personal Information**" means: (a) State Data from which a natural person can be identified by reference to an identification number, including an individual's Social security number, driver's license number or Washington identification card number, or an account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (b) such other definition as may be set forth in Personal Information Laws.

"**Personal Information Law(s)**" mean any law that regulates the disclosure, handling and/or security of Personal Information, including Washington Revised Statutes Section 19.255.010 *et seq.* and 42.56.590 *et seq.*, or any similar federal or state statute or regulation that exists as of the Effective Date or may be enacted in the future.

"**Phase Certification**" is defined in **Section 6.7**.

"**Phases**" is referenced in the opening paragraph of **Section 6**.

"**Planned Features and Functionality**" is defined in **Section 3.8.4**.

"**PMP**" is defined in **Section 3.2.2** of the TLA Statement of Work.

"**Power Users**" is defined in **Section 4.3.2** of the TLA Statement of Work.

"**Pre-Existing Contracts**" is defined in **Section 1.6**.

"**Pre-Live Testing**" is defined in **Section 6.3**.

"**Prime Vendor**" means _____, and any successors and permitted assigns.

"**Prime Vendor Account Executive**" is defined in **Section 1.3.4**.

"**Prime Vendor Contract Manager**" is defined in **Section 1.3.6**.

"**Prime Vendor Enhancement Correction Team**" is defined in **Section 1.2.2** of **Schedule 7.1**.

"**Prime Vendor Environment**" means the Prime Vendor environment identified in **Attachment B** of **Exhibit 2**.

"**Prime Vendor Executive Sponsor**" is defined in **Section 1.3.2**.

"**Prime Vendor Implementation Methodologies**" means the methodologies used by Prime Vendor to implement a product, Solution or Service, as may be further defined and described in a Project Agreement or Contract Supplement, and with respect to the TLA Solution Project, is defined in **Section 6.7** of **Exhibit 1**.

"**Prime Vendor Personnel**" is defined in **Section 1.11.1(D)(1)** of **Exhibit 2**.

"**Prime Vendor Project Director**" and "**Prime Vendor Project Manager(s)**" are defined in **Section 1.3.5**.

"**Prime Vendor Tools and Utilities**" is defined in **Section 3.5**.

"**Procedures Manual**" has the meaning set forth in **Section 2.9.1** of **Exhibit 2**.

"**Product Migration**" and "**Product Migration Credits**" are defined in **Section 1.2.7** of **Schedule 7.1**.

"**Product Roadmap**" is defined in **Section 3.8.2**.

"**Production**" and "**Production Use**" is defined in **Section 6.4**.

"**Production Application Availability**" is described in **Section 5.1** of **Attachment C** of **Exhibit 2**.

"**Production Baselining Period**" has the meaning set forth in **Section 3.3** of **Attachment C** of **Exhibit 2**.

"**Production Use Period**" is defined in **Section 6.4**.

"Program Manager" means the individual who maintains responsibility for the leadership, conduct and performance of a program.

"Project Agreement" is defined in **Article 2**.

"Project Charter" means a document agreed by the parties that formally authorizes the existence a project, and provides the Project Manager with the authority to apply organizational resources to project activities.

"Project Completion" is defined in **Section 6.8**.

"Project Manager(s)" means the individual(s) who are assigned to lead the team that is responsible for achieving the project objectives.

"Project Performance (Status) Meetings" is defined in **Section 5.1.1**.

"Project Performance (Status) Report" means the report to be developed by Prime Vendor in accordance with the terms of **Section 5.1.2**.

"Project Schedule" is defined in **Section 5.2.1**.

"PV" is defined in **Section 1.1** of the TLA Statement of Work.

"Quality Credits" and **"Quality Incentives"** are defined in **Section 5.2.5.2(b)**.

"R" or **"Responsible"** is defined in **Section 1.1** of the TLA Statement of Work.

"RCA" is defined in **Section 2** of **Attachment A** to **Schedule 7.1**.

"RCW" means the Revised Code of Washington.

"Receiving Party" is defined in **Section 12.2**.

"Records" is defined in **Section 2.8.2** of **Exhibit 2**.

"Refresh" is defined in **Section 1.7.1(O)** of **Exhibit 2**.

"Regulatory Modifications" are modifications to the Solution that enable the Solution to comply with applicable Regulatory Requirements.

"Regulatory Requirements" means governmental and quasi-governmental Laws, regulatory requirements, ordinances, policies, administrative codes, edicts, rules, guidelines or standards, and shall include, for purposes of the Agreement: (a) all Laws related to the use and functions of the Solution by DES, the Agencies served by DES and their Authorized Users; (b) the Fair Labor Standards Act, the Immigration Reform & Control Act, the Employee Polygraph Projection Act, the Uniformed Services Employment & Re-Employment Rights Act, the Equal Pay Act, the Consumer Credits Protection Act, the National Labor Relations Act (Wagner Act), the Labor-Management Relations Act (Taft-Hartley), the Employee Retirement Income Security Act, the Uniform Guidelines of Employee Selection Procedures, the Federal Insurance Contributions

Act, Occupational Safety & Health Act, the Civil Rights Act (Title VII), the Americans with Disabilities Act (Title I), HIPAA, GLB, Pregnancy Discrimination Act, the Fair Credit Reporting Act, the Age Discrimination in Employment Act, the Consolidated Omnibus Budget Reconciliation Act, the Family Medical Leave Act, EEO-1 Report filed annually with the EEOC, the Worker Adjustment & Retraining Notification Act, EEO-1 Report filed annually with the EEOC if not a federal contractor, Executive Orders 11246, 11375 and 11478, the Vocational Rehabilitation Act, the Drug Free Workplace Act, the Davis Bacon Act, the Copeland Act, the McNamara-O'Hara Service Contract Act, the Walsh-Hartley Act, State labor laws and the State DRS; and (c) all standards or guidelines established by committees, agencies or other standards-setting organizations implementing Regulatory Requirements.

"Release" is defined in **Section 1.2.1 of Schedule 7.1**.

"Release Event" is defined in **Article 3 of Exhibit 5**.

"Release Notice" is defined in **Section 4.1 of Exhibit 5**.

"Remedial Plan" is defined in **Section 2.8.3 of Exhibit 2**.

"Requirements Repository" is defined in **Section 4.1.3 of the TLA Statement of Work**.

"Review Period" is defined in **Section 3.2.2**.

"RFP" is referenced in the Recitals, and includes all updates and supplements to the originally-issued RFP, along with all clarifications and additional information provided by DES.

"RFP Response" means Prime Vendor's response to a DES request for proposal, including any supplements and clarifications thereto. Without limiting the foregoing and with respect to the TLA Solution Project, the RFP Response includes the following Prime Vendor submissions: _____ and _____ **[DRAFTING NOTE: LIST EACH OF THE RFP SUPPLEMENTS AND RESPONSES]**.

"Risk" means any potential event that could adversely affect the project's success (scope, resources, effort, quality, or schedule) at a future point in time. The impact to the project could take the form of diminished quality of the end product, increased costs, delayed completion or failure.

"RPO" is defined in **Section 5.4.1 of the TLA Statement of Work**.

"RTM" is defined in **Section 1.5 of the TLA Statement of Work**.

"RTO" is defined in **Section 5.4.1 of the TLA Statement of Work**.

"SDD" is defined in **Section 1.7 of the TLA Statement of Work** and means the solution design document.

"Security Management" is described in **Section 5.6 of Attachment C of Exhibit 2**.

"Security Policies and Procedures" is defined in **Section 1.3.7(a)**.

"Security Requirements" is defined in **Section 8 of Attachment A to Exhibit 5.**

"Service Level Objective" or **"SLO"** is defined in **Section 5.3.1 of Attachment C of Exhibit 2.**

"Service Rates" are defined in **Section 8.4.2** and are set forth in **Schedule 8.4.2.**

"Service Request Response and Resolution Time" is described in **Section 5.5 of Attachment C of Exhibit 2.**

"Services" means any and all services acquired by DES from Prime Vendor, including any and all implementation services, Support and Maintenance Services, development services, data conversion or migration services, integration services, training and education services, consulting services and transition services.

"SIT," "SIT Test #1" and "SIT Test #2" are defined in **Section 6.3.4.2** of the TLA Statement of Work.

"SME" means a subject matter expert, and for the TLA Solution Project, is defined in **Section 4.3.3** of the TLA Statement of Work.

"Software" means all software licensed or provided by Prime Vendor to DES, including: (a) all Prime Vendor-proprietary software (including Interfaces owned by Prime Vendor); (b) all Extensions, Interfaces and other software-based Deliverables provided by Prime Vendor to DES; (c) all Third Party Software, including all Interfaces, Extensions and custom developments provided by DES and owned by the applicable Third Party; (d) all beta, pre-release or pre-generally available release versions of software; and (e) all Enhancements to the software described in the foregoing.

"Software License Fees" is defined in **Section 8.1.1.**

"Solution" means the Software or other technology solution provided by Prime Vendor to DES, as applicable and as the context so provides.

"Solution Component Certification" is defined in **Section 6.7.**

"Solution Module" means a component of the Solution.

"Source Code" is defined in **Section 1 of Attachment A to Exhibit 5.**

"Source Code Escrow Agreement" means that certain Escrow Agreement, by and between Prime Vendor, DES and _____, dated _____, 2013, and attached as **Exhibit 5.**

"Specifications" is defined in **Section 7 of Attachment A to Exhibit 5.**

"Stabilization Period" is defined in **Section 6.4.**

"Standard Transactions" is defined in **Section 5.6.3** of the Statement of Work.

"State" means the state of Washington.

"State Data" means any and all information provided by DES or any Agency to Prime Vendor, including any Confidential Information and Data Protected by Law

"State Pay Practices " means the rules (including civil service rules), procedures, practices, policies and other terms by which State employees, appointees and others are managed, trained and certified, governed, regulated and/or compensated, including those reflected in the State's contracts; labor agreements; personnel codes; executive orders; Regulatory Requirements (including all federal, state, local and foreign Laws, regulations and policies); administrative, employment and benefits policies; and any future amendments to the foregoing.

"State Program" is defined in **Section 15.21(a)**.

"Statement of Work" is defined in **Section 5.2.1**.

"Subcontract Agreement," "Subcontractor NDA Agreement" and **"Subcontractor"** are defined in **Exhibit 3**.

"Supplemental Deposits" is defined in **Section 1.1** of **Exhibit 5**.

"Support and Maintenance Services" is defined in **Section 7.1**.

"Support and Maintenance Services Fees" means the then-current fees DES pays Prime Vendor to receive Support and Maintenance Services.

"Support Services" is defined in **Article 3** of **Exhibit 5**.

"System" means the combination of Software and Equipment provided by Prime Vendor to DES.

"System Optimization Assessment" is defined in **Section 1.8** of **Schedule 7.1**.

"Technical Architecture" is defined in **Attachment E** of **Exhibit 2**.

"Technology Agreement" is defined in the Recitals of **Exhibit 3** and **Exhibit 4**.

"Termination Fees" is set forth in **Section 2.3** of **Exhibit 2**.

"Test Materials" is defined in **Section 6.2**.

"Test Plan" is defined in **Section 6.2**.

"Third Party" or **"Third Parties"** means persons, corporations and entities other than Prime Vendor or DES.

"Third Party NDA Agreement" is defined in **Exhibit 4**.

"Third Party Performance Analysis Tools" is defined in **Section 11** of **Attachment A** to **Exhibit 5**.

"Third Party Software" means all Third Party software licensed, sublicensed or otherwise provided by Prime Vendor to DES under the terms of the Agreement.

"Third Party Solution Provider" is defined in the opening paragraph of **Attachment A** to **Schedule 7.1**.

"Third Party Support Tools" is defined in **Section 6** of **Attachment A** to **Exhibit 5**.

"Time Intensive Transactions" is defined in **Section 5.6.3** of the TLA Statement of Work.

"TLA Program" means the collection of projects to prepare the State for, and to implement, the enterprise TLA Solution to DOT and ECY. Projects in the TLA Program include the business process and policy project, enterprise technology project, customer agency preparation projects and the TLA Solution Project.

"TLA RFP Response" is defined in the Recitals, and is incorporated into and made a part of the Agreement.

"TLA Solution" means the Software and/or Equipment as specified in the TLA Solution Project Agreement, including that which Prime Vendor is responsible for Integrating and/or implementing in connection with the TLA Solution Project and including any Software or Equipment, or Integration and/or implementation responsibilities that are added by a Change Order.

"TLA Solution Project" is defined in the Recitals, is further described in the TLA Solution Project Agreement and includes the design, configuration and deployment of the TLA Solution to the core enterprise, supporting the OFM and OCIO policies, and use by the Department of Transportation and Department of Ecology.

"TLA Solution Project Agreement" means the Project Agreement for the TLA Solution Project, attached as **Exhibit 1**.

"TLA Sponsors" means the business and executive sponsors for the TLA Program representing a cross section of Agencies.

"TLA Statement of Work" is the statement of work attached to the TLA Solution Project Agreement.

"Traffic Management Methodologies" is defined in **Section 9** of **Attachment A** to **Exhibit 5**.

"Transition Period" is defined in **Section 10.5**.

"Trustee" is defined in **Section 15.21(b)**.

"UAT" is defined in **Section 6.3.5.1** of the TLA Statement of Work.

"UCITA" is defined in **Section 15.17**.

"Underlying Agreement" is defined in the Recitals of **Exhibit 5**.

"Updated Project Documents" is defined in **Section 1.7** of the TLA Statement of Work.

"Vacancy" means a circumstance in which Prime Vendor does not have a specific individual fully performing the responsibility of the applicable Key Personnel position. A Vacancy includes Prime Vendor's failure to provide a replacement within the time frames specified in **Section 5.4.4**. Additionally, if Prime Vendor has a single person performing more than one (1) full-time position, a Vacancy will have occurred.

"Verification Location" is defined in **Section 2.2** of **Attachment E** to **Exhibit 5**.

"Verification Request" is defined in **Section 2.2** of **Attachment E** to **Exhibit 5**.

"Version" is defined in **Section 1.2.1** of **Schedule 7.1**.

SCHEDULE 1.6

CONSOLIDATED PRE-EXISTING DES/PRIME VENDOR AGREEMENTS

[OPTIONAL]

NOTES ON COMPLETING THIS SCHEDULE:

1. PRIME VENDOR TO INVENTORY ALL EXISTING AGREEMENTS
2. IDENTIFY CURRENT SUPPORT FEES PAID
3. IDENTIFY ANY METRICS THAT CANNOT BE SUPERSEDED BY ENTERPRISE-WIDE LICENSE TERMS

#	Solution Product Name	Annual Support and Maintenance Services Fees	Special Terms and Conditions
1.			
2.			
3.			
4.			
5.			
6.			

#	Services Name	Annual Services Fees	Special Terms and Conditions
1.			
2.			
3.			
4.			
5.			
6.			

SCHEDULE 3.2.3

CERTIFICATION FORM

CERTIFICATION OF DELIVERABLES AND CRITICAL MILESTONES

Deliverable Name: _____ : Deliverable Number: _____

Critical Milestone Name: _____ : Critical Milestone Number: _____

Check One:

- ☐ DES certifies that the Certification Criteria for the above referenced Deliverable or Critical Milestone have been fully met.
- ☐ DES certifies that the Certification Criteria for the above referenced Deliverable or Critical Milestone have been partially met as follows, and the balance of the Certification Criteria shall be met according to the Compliance Plan, a copy of which is attached to this Certification Form.

Certification Criteria Met: _____

Certification Criteria Not Met: _____
(Must Attach an Agreed to Compliance Plan)

To be effective against DES, this form must be signed by the DES Program Manager (or her or his designee as communicated in writing by DES to Prime Vendor). For Critical Milestones or Deliverables that result in a DES payment obligation, the Certification Form must also be signed by the DES Chief Information Officer to be effective against DES.

Print Name: _____, DES Program Manager

Print Name: _____, DES Chief Information Officer
(Required for Critical Milestones and Deliverables that require payment)

SCHEDULE 5.3.2
CHANGE ORDER FORM

Step 1: Change Request Description		
Title:		Change Order #:
Submitted By:	Phone # (Extension):	Date:
<u>Describe the Nature of the Requested Change:</u> _____ _____ <u>In-Scope vs. Out-of-Scope</u> Is this change within the Project Scope? Yes ____ No ____ If Yes, explain basis for determination: _____		
Step 2: Initiation Approval		
Written Response by Prime Vendor – Expected Date: ____ DES Signature: _____ Date: _____		
Step 3: Scope of Work, Impact Analysis and Cost		
Part I. Scope – Describe the Work to be Performed by Prime Vendor (Attach Functional Specifications, As Applicable)		
<u>Describe the work to be performed by Prime Vendor:</u> _____ _____ Will Prime Vendor develop and/or provide any Extensions, Interfaces or software-based Deliverables in performing its work? Yes ____ No ____ If Yes, Prime Vendor must propose a Support and Maintenance Services Fee, not to exceed		

22% of the development fees, for Support and Maintenance Services, including the retrofitting and maintaining compatibility of such Extensions, Interfaces and Deliverables.

Part II. Impact Analysis

A. Impact on Critical Milestone Due Dates or Deliverable Due Dates? Yes ___ No ___

Comments/Explanation:

B. Impact on Other Milestone/Key Dates or Deliverables? Yes ___ No ___

Comments/Explanation:

C. Impact on DES' Resources? Yes ___ No ___

Comments/Explanation:

D. Update to Project Agreement or Contract Supplements: If there are new or revised functional specifications applicable to this Change Order, or you answered "yes" to any of the above items, you will need to update and attach to this Change Order one (1) or more of the following documents (check which ones are applicable).

- ☐ **Statement of Work**
- ☐ **Project Schedule**
- ☐ **Joint Resource Plan**
- ☐ **Payment Schedule**
- ☐ **DES Business and Technical Requirements (New and Revised)**
- ☐ **Other (Please Specify)** _____

Part III. Fees and Payment Terms

A. Fixed Fee Quote: \$ _____

Specify payments terms: _____

B. Time and Materials – If a Fixed Fee quote is not reasonably possible, check here _____

C. No Charges Applicable to this Change Order – Prime Vendor to Initial Here _____

D. Interfaces/Extensions – Ongoing Support and Maintenance Services Fees:
\$ _____/year (not to exceed 22% of the development costs)

Part IV. Prime Vendor Signature

Submitted by: Prime Vendor

By: _____
Authorized Signature

Date: _____

Print Name: _____

Part V. Approval of Change Order by DES

Selection of Fee Arrangement: (Check Appropriate Box)

☐ Fixed Fee

☐ Time and Materials

☐ No Charge Change Order (Work is Considered Within Scope)

Agreed To: Washington State Department of Enterprise Services

By: _____
Authorized Signature

Date: _____

Print Name: _____

SCHEDULE 7.1

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SCHEDULE 7.1

SUPPORT AND MAINTENANCE SERVICES

Prime Vendor shall provide Support and Maintenance Services for each System in accordance with its general support offering to its customers and the terms set forth in this Schedule, provided that, in the event of a conflict between Prime Vendor's general support offering and the terms and conditions set forth in this Schedule, the terms and conditions of this Schedule shall control. The Services referenced herein shall be included within the Support and Maintenance Services Fees paid by DES to Prime Vendor, except as otherwise expressly set forth herein. The terms of this **Schedule 7.1** shall only apply during the term of the Agreement while DES is paying for Support and Maintenance Services. Without limiting the foregoing, Prime Vendor shall provide Support and Maintenance Services for the Third Party Software that Prime Vendor licenses to DES in accordance with the terms of this Schedule, including the terms set forth in **Section 1.4** of this **Schedule 7.1**.

1. Scope of Services. Prime Vendor shall provide to DES the Support and Maintenance Services described in this Schedule to ensure that the Solution and Equipment functions in accordance with the applicable Performance Standards and to address Incidents as they may arise from time-to-time.

1.1 Defect and Incident Identification and Resolution.

1.1.1 Prime Vendor Customer Service Center. Trained System specialists shall diagnose and resolve Incidents and Defects. Action plans shall be developed with DES until Incidents and Defects have been resolved or until further escalation is warranted. Prime Vendor shall provide "continuous support," which shall mean twenty-four (24) hours per day, seven (7) days per week, for Level 1 Incidents. Prime Vendor shall also provide "Operational Support" from Monday through Friday, 7:00 a.m. to 11:00 p.m., Pacific Time, to: (a) respond to and address Level 2 Incidents and Level 3 Incidents; and (b) provide telephone support to DES-designated individuals. Telephone support shall include: (c) clarification of functions and features of the Solution and Equipment; (d) clarification of the Documentation; (e) guidance in operation of the Solution and Equipment (*i.e.*, tips, suggestions and workarounds), and the level of such telephone support shall be consistent with the parties' past practices; and (f) additional Services that are outside of the scope of the Support and Maintenance Services described herein, provided DES approves electronically any such Service request (or determines to perform the work itself and closes the service request), and any such Services shall be provided at the Service Rates.

1.1.2 Upgrade Assistance. At DES' request, and at the Service Rates, Prime Vendor shall provide on-site assistance to DES to implement Enhancements.

1.2 Solution Enhancements.

1.2.1 General. Prime Vendor shall provide all Enhancements to DES, and shall develop and provide to DES all Enhancements necessary to: (a) maintain compatibility with all Third Party Software, including Enhancements to such Third

Party Software; (b) maintain compatibility with current, generally available versions of Internet Explorer, Chrome, Firefox, Safari, and other browsers to which Prime Vendor then maintains compatibility (as described in the Documentation) or that are specified in the DES Business and Technical Requirements to which Prime Vendor has agreed in a Project Agreement or Contract Supplement; and (c) maintain compatibility with changes to database, operating system and other software used by DES in conjunction with the Solution (as described in the Documentation). To the extent technically feasible and functionally compatible, Prime Vendor shall maintain compatibility between the Solution and the latest releases of software of Third Party vendors, *e.g.*, Prime Vendor shall maintain the Solution's compatibility with then-current release level of applicable database products in DES' environment. Prime Vendor shall ensure that all Enhancements, including Regulatory Modifications, successfully complete the testing process set forth in **Section 1.2.2** of this **Schedule 7.1** prior to delivery to DES and shall deliver such Enhancements to DES on the earlier of: (d) when five percent (5%) of Prime Vendor's customers receive such Enhancements; or (e) when at least five (5) of Prime Vendor's other significant customers receive such Enhancements. Notwithstanding the foregoing, DES shall have the right to remain on any Release of the Solution that is the later of: (f) one (1) Release behind the then-current release; or (g) twenty-four (24) months from the installation of the existing release. For purposes herein, Releases are classified by Prime Vendor as of the Effective Date in accordance with the following taxonomy: "X.Y", where "X" represents a new version (a "**Version**") and "Y" represents a new release (a "**Release**"). Releases currently are issued generally on an annual basis. If Prime Vendor changes the taxonomy of its Enhancements and/or the general time intervals in issuing Releases, then the parties shall apply the new taxonomy on a basis to align to the original taxonomy. For example, if Prime Vendor begins to issue Releases quarterly, then **subsection (c)** above will be deemed to read "8 Releases behind" to align with the annual cycle, *i.e.*, 4 Releases/year x 2 years = 8 Releases. Subject to the right of DES to remain on back Releases as provided above, DES acknowledges that future Enhancements may require that DES purchase additional equipment and/or Third Party software (and to have such items supported and maintained) and/or professional Services in order to continue to be eligible for Support and Maintenance Services and/or maintain the System Performance warranty.

1.2.2 Quality Assurance Testing. Prime Vendor shall create and maintain one (1) or more test environments as appropriate or advisable to adequately test the Solution provided under the TLA Solution Project Agreement (and such other Solutions in the future as may be mutually agreed to by the parties and set forth in a Project Agreement or Contract Supplement) and any Enhancements. Prime Vendor shall test each Enhancement in the test environment prior to delivery to DES in accordance with Prime Vendor's quality assurance process which, at a minimum, shall test for: (a) vulnerabilities and compliance with security obligations, including running OWASP tests, which test results shall be provided to DES; (b) operation and performance of the Enhancement in accordance with the applicable Performance Standards; (c) browser compatibility in accordance with **Section 1.2.1(b)** of this **Schedule 7.1**; (d) database and operating system compatibility in accordance with **Section 1.2.1(c)** of this **Schedule 7.1**; and (e) any regression problems using existing DES usage and test cases and test data. Prime Vendor shall correct any Defects and other non-conformities discovered during such testing and shall deliver each Enhancement to DES only after such Enhancement has

been approved by Prime Vendor's quality assurance lead. Prime Vendor also shall deliver or make available to DES contemporaneously with the delivery of each Enhancement detailed Documentation describing such Enhancement. With respect to any Enhancement labeled in writing by Prime Vendor as an emergency fix intended to correct a Level 1 Defect or Level 2 Defect, Prime Vendor shall exercise all commercially reasonable efforts to test such emergency fix in accordance with the requirements of this Section, and in all events shall conduct sufficient and adequate regression testing.

(i) Special Provisions Relating To Quality Assurance of Enhancements. If, after Prime Vendor delivers the Enhancement to DES, DES experiences Level 1 Defects or Level 2 Defects in an Enhancement ("**Enhancement Defects**") that have not been resolved in a reasonable time by Prime Vendor's standard Support and Maintenance procedures, then Prime Vendor shall provide the following personnel and shall comply by the following terms, at no additional cost to DES (including weekends) until the Enhancement Defects are fully debugged and corrected:

(A) Prime Vendor shall provide one (1) on-site appropriate technical representative from Prime Vendor's development/engineering group on a continuous basis to assist DES in debugging and correcting any Enhancement Defects.

(B) Prime Vendor will assign a Senior Project Director to oversee and assist the testing and debugging of any Enhancement Defects. The Senior Project Director and the appropriate additional technical personnel Prime Vendor assigns will be referred to as the "**Prime Vendor Enhancement Correction Team.**"

(C) DES and the Prime Vendor Enhancement Correction Team will have daily status update conference calls until the Enhancement Defects are resolved.

(D) If Enhancement Defects exist and cannot be resolved for a period of one (1) week or more, the matter shall be escalated via daily conference calls to Prime Vendor's head of engineering, to facilitate closure of such items.

(E) If required to debug and correct the Enhancement Defects, Prime Vendor will provide additional on-site engineering and technical services.

(ii) Costs for Personnel. If the reported Enhancement Defect (through a root cause analysis or otherwise) is shown not to be a Defect in the Enhancement or Solution, then DES shall reimburse Prime Vendor on a time and materials basis at the Service Rates for the personnel and expenses incurred in providing the personnel set forth in **subparagraph (i)** above.

1.2.3 Process Improvement. At DES' request, Prime Vendor shall provide to DES a detailed description of Prime Vendor's quality assurance process

and/or a plan for improving or remedying any problems identified by DES with respect to Prime Vendor's quality assurance process.

1.2.4 Special Provisions Pertaining to Deliverables Including Interfaces. As part of Prime Vendor's Support and Maintenance Services and at no additional cost to DES, Prime Vendor shall retrofit any then-existing Deliverables, including custom-developed Interfaces for which DES is paying Support and Maintenance Services Fees, to ensure that such then-existing Deliverables will be compatible with any Enhancements provided by Prime Vendor, and continue to function and operate as originally designed. By way of example, if DES has an Interface to Version 1.0 of a Prime Vendor product (not licensed by Prime Vendor to DES), and Prime Vendor has made Version 2.0 available but DES has not yet installed Version 2.0, then Prime Vendor must develop the new Enhancement to accommodate and meet the requirements of Version 1.0 and not Version 2.0. The requirement to code to Version 1.0 shall apply even though Prime Vendor may generally be developing the Enhancement for its other customers at the Version 2.0 level. If Prime Vendor is retrofitting the Enhancement at the Version 1.0 level only for DES (*i.e.*, all of Prime Vendor's other customers are using Prime Vendor Version 2.0 and the Enhancement is not being used for any other customer at the Version 1.0 level), and DES later wants to migrate to Version 2.0, then the cost of such migration (but not the cost of the Interface if Prime Vendor made Version 2.0 of the Interface available to Prime Vendor's other customers without charge) shall be chargeable at the Service Rates and shall be authorized under a Project Agreement, Contract Supplement or other ordering document.

1.2.5 Obligation to Improve and Enhance the Solution. Subject to DES obtaining Support and Maintenance Services, in addition to correcting Defects and providing Enhancements necessary to address Regulatory Requirements for the Solution, Prime Vendor shall make general improvements and enhancements to the Solution from time-to-time to extend the capabilities, functionality and features of the System, provided that the nature, extent and timing of all such improvements and enhancements shall be in Prime Vendor's sole discretion. If Prime Vendor discontinues improving and enhancing the Solution as required in the preceding sentence, then Prime Vendor shall provide to DES and implement, at no additional Software License Fees to DES, the successor or replacement product (whether or not such product is owned by Prime Vendor) that is substantially equivalent to the affected Solution in terms of functionality and performance capabilities and reasonably acceptable to DES, and such replacement product shall be treated as an Enhancement under the terms of the Agreement.

1.2.6 Reductions in Functionality. If Prime Vendor removes, reduces or disables any feature or functionality of a Solution that is then being used by DES and that existed prior to such Enhancement or modification, then at DES' request and at no cost or expense to DES, Prime Vendor shall either: (a) provide substantially equivalent replacement functionality to DES that is reasonably acceptable to DES; or (b) modify, adjust or customize such Solution for DES' use, and continue to provide Support and Maintenance Services for such modified or customized Solution, so that the applicable feature or functionality remains available to DES along with all of the other features and functionality of the enhanced or modified Solution, provided such replacement or modified or customized Solution shall be treated as an Enhancement under the terms of the Agreement. DES

acknowledges that Prime Vendor may introduce an Enhancement that changes how a feature or function is expressed or used in the Solution, and, provided that the feature or function is not removed, reduced or disabled, such Enhancement may require that DES expend additional costs or expenses to implement such Enhancement.

1.2.7 Protection Against Product Obsolescence. If within fifteen (15) years following Project Completion for the affected Solution, Prime Vendor promotes and/or markets a replacement or successor product to the Solution or makes an infrastructure change, such as a change to the database, middleware, storage area networks and the like, the effect of which will require DES to expend additional funds (each, a "**Product Migration**"), then Prime Vendor shall provide DES: (a) at no additional cost a license to the replacement or successor Solution; and (b) credits ("**Product Migration Credits**") equal to the fees paid by DES to Prime Vendor for Services paid under a Project Agreement or Contract Supplement in the following amounts:

Elapsed Time from Project Completion	Product Migration Credit – Based on Percentage of Fees Paid under the Project Agreement or Contract Supplement
0 to 7 years	100%
> 7 – 10 years	60%
> 10 – 12 years	40%
> 12 – 15 years	20%

Product Migration Credits shall not accrue when the Product Migration is the result of a discontinuation of a product line by or the ceasing of business operations of a Third Party. DES shall have the right to apply the Product Migration Credits as a set off against any amounts due, or to become due to Prime Vendor under the Agreement, or, at DES' option, DES shall have the right to apply such Product Migration Credits toward the purchase of equipment, software and services from Prime Vendor.

1.2.8 Enhancement Documentation. Without limiting the other obligations set forth herein, all Documentation for the Enhancements shall comply with the terms set forth in **Section 3.4** of the Agreement.

1.3 Regulatory Requirements. Prime Vendor shall provide Regulatory Modifications to DES whenever such modifications are mandated or required to meet any Regulatory Requirements and are related generally to the then-existing features or functionality of the Solution. DES shall notify Prime Vendor of any new state or local Regulatory Requirements affecting DES after becoming aware of such Regulatory Requirements. Regulatory Modifications shall be at no additional cost to DES (beyond the Support and Maintenance Services Fees). Prime Vendor shall provide to DES fully-tested Regulatory Modifications in accordance with **Section 1.2.2** of this Schedule and within the time frames set forth below so as to enable DES to adequately test and deploy such Regulatory Modifications.

1.4 Third Party Software and Equipment.

1.4.1 General. Prime Vendor shall serve as the primary point of contact for, and shall provide the Defect Analysis for, any Support and Maintenance Services requests initiated by DES that relate to Third Party Software and, if Equipment supplied by Prime Vendor to DES is then covered under warranty or Equipment Maintenance, the Equipment. If Prime Vendor cannot resolve the Defect through its actions as an intermediary, Prime Vendor shall facilitate direct contact between the Third Party and DES.

1.4.2 Registration. If registration of Prime Vendor customers is available by the Third Party product vendor, Prime Vendor shall register DES with such Third Party product vendor. Upon request by DES, Prime Vendor shall produce evidence of such registration.

1.5 Support and Maintenance Services History Tracking System. Prime Vendor shall maintain a DES-specific Support and Maintenance Services history, including updated records of DES' System configuration. Prime Vendor shall provide DES and State auditors with online access to and the ability to extract all such data from Prime Vendor's online issue management system ("**OIMS**"), which shall provide, at a minimum, the following information: (a) the number of DES calls received by Prime Vendor's customer support center ("**CSC**") during the reporting period; (b) the date, time and the subject matter of each call; (c) the severity and urgency of the reported Incident or request; and (d) the resolution of each matter, including date and time resolved. All data history and other data related to DES, an Agency and their Authorized Users residing in Prime Vendor's OIMS or other support tools or trouble ticketing systems shall be and constitute data owned by DES.

1.6 Environments. Prime Vendor shall be obligated to provide Support and Maintenance Services at no additional cost to DES for all of the equipment configurations specified in a Project Agreement or Contract Supplement or Prime Vendor's Documentation.

1.7 Alternative Arrangement for Support and Maintenance Services. To the extent DES elects not to renew the Support and Maintenance Services on an annual or other term basis due to a complete or partial termination of the Agreement, provided that DES is then operating on a supported release of the Solution, Prime Vendor shall make its general support services available to DES on a month-to-month basis at the then-current Support and Maintenance Services Fees, pro-rated on a monthly basis.

1.8 System Optimization Assessment. At DES' request and at no additional cost to DES, Prime Vendor and DES jointly shall conduct an annual audit comprising approximately one (1) week of work effort (involving both on-site and off-site presence) of DES' use of the System, the purpose of which shall be to identify opportunities for improving and maximizing DES' utilization of the System ("**System Optimization Assessment**"). Upon the completion of such assessment, the Prime Vendor Executive Sponsor and Prime Vendor Account Executive and other appropriate Prime Vendor representatives shall present Prime Vendor's findings to DES at DES' location.

1.9 Information Technology Infrastructure Library. Prime Vendor has and will continue to implement best practices standards in service management. Prime Ven-

dor's current practices are based on the Information Technology Infrastructure Library ("ITIL"). The anticipated benefits from the ITIL approach include: (a) increased user and customer satisfaction with Services provided; (b) improved Service availability which leads directly to improved business performance; (c) financial savings from reduced re-work and lost time, and improved personnel management and usage; (d) improved responsiveness to the market; and (d) improved decision making and optimized risk. At the request of DES, Prime Vendor shall meet with DES to evaluate Prime Vendor's implementation of the ITILs so that further improvements can be made by Prime Vendor, including identifying any gaps in the Services as against the best practices. Prime Vendor shall implement programs and initiatives as may be agreed to by the parties.

1.10 Multi-Vendor Sourced Environment. Prime Vendor acknowledges that the Solution is being deployed as one of several components of DES' total technology environment. As such, Vendor shall cooperate with DES and all Third Parties that have services and/or products in DES' technology environment, including as set forth in **Attachment A** to this **Schedule 7.1**, to minimize the disruptions, Incidents and Defects within DES' technology environment and interfaced Third Party systems.

1.11 OWASP Certification. Every six (6) months and additionally within thirty (30) days of the delivery of any Enhancement to DES, Prime Vendor shall certify that the Solution(s) meets applicable OWASP secure coding and testing guidelines.

2. DES Responsibilities.

2.1 Designated Support Contacts. DES shall designate one (1) or more system administrators to serve as the primary DES contacts for Prime Vendor's Support and Maintenance Services. DES agrees to establish working procedures and be responsible for establishing a centralized support help desk, including training of appropriate personnel to provide end-user first-level support. Prime Vendor agrees to provide and be responsible for second- and third-level support of the Solution through the CSC and development organizations.

2.2 Backups and Procedures. For Solutions operated by DES, DES will be responsible for maintaining a testing environment and for performing all necessary backups, recovery and required System operating procedures. Support and Maintenance Services Fees do not include Incident or Defect resolution that are caused by DES not following Prime Vendor's recommended procedures as specified in the Documentation.

2.3 Remote Access. Subject to the further terms below, for Solutions operated by DES, DES shall provide Prime Vendor with both on-site and remote access to the System via the network configuration described in the DES only section of the Prime Vendor website. DES shall be responsible for all telecommunication services and remote programming support connections charges. When accessing DES' System, Prime Vendor shall, and shall cause any approved subcontractor to, comply with DES Policies. DES may disconnect such access and/or disable any userids issued to Prime Vendor for such access during any hours of operation and, thereafter, shall provide notice to Prime Vendor of such disconnection or disablement within a reasonable time frame. If DES disconnects such access or disables Prime Vendor's passwords, Prime Vendor shall remain responsible for maintaining and supporting the System, provided that DES acknowledges that such disconnection or disablement may adversely affect the Defect

resolution time frames set forth in **Section 4** of this **Schedule 7.1** and the ability of Prime Vendor to deliver technical services to address the Issues or problems.

2.4 DES Assistance in Resolving Defects. DES shall provide such assistance and cooperate with Prime Vendor in helping to identify and address Defects. With respect to Level 1 Defects, DES acknowledges that such assistance and cooperation may involve the reversion to a prior copy or instance of Solution.

3. Incident Response.

3.1 Defined Terms Relating to Incidents and Defects. The following defined terms have the meanings referenced herein:

"Defect" means any non-conformance of the Solution to operate in accordance with the Documentation, or the System to operate in accordance with the Performance Standards.

"Final Resolution" means Prime Vendor delivers to DES a correction or modification that permanently corrects the Defect, or non-Defect-based Incidents, a permanent solution that ensures the Incident will not be repeated.

"Incident" means any Level 1 Incident, Level 2 Incident or Level 3 Incident.

"Incident Response" means a fax, email, update to the OIMS or telephone call from Prime Vendor acknowledging that an Incident Report has been received and that appropriate technical personnel have been assigned to work on the Incident.

"Interim Resolution" means Prime Vendor: (a) reinitiates or restarts, as applicable, the System, if the reported Defect caused the System to be inoperative; (b) enables DES to access the System or Solution, as applicable, if the reported Defect caused DES to be unable to access the System or Solution; or (c) provides DES with a workaround acceptable to DES that solves or mitigates a reported Defect.

"Issue" means an undecided matter, something in dispute, or a concern (e.g., the interpretation of a business rule, a process that is ineffective or not being followed, a communication problem, or a human resource concern).

"Level 1 Defect" means any Level 1 Incident that results from or is caused by a Defect.

"Level 2 Defect" means any Level 2 Incident that results from or is caused by a Defect.

"Level 3 Defect" means any Level 3 Incident that results from or is caused by a Defect.

"Level 1 Incident" means any failure of a System or any part thereof to conform to the Documentation or Performance Standards that directly or significantly impacts the ability to use the System, or materially exposes DES or its Authorized

Users to liability because of operational, business, financial or information deficiencies.

"Level 2 Incident" means any failure of a System or any part thereof to conform to the Documentation or Performance Standards that adversely affects DES' or its Authorized Users' use of the System.

"Level 3 Incident" means any failure of a System or any part thereof to conform to the Documentation or Performance Standards that causes minor problems to occur with the System that can be circumvented without difficulty or disruption to DES' or its Authorized Users' operations.

3.2 Incident and Defect Levels. DES shall classify, or reclassify, as applicable, all Incidents and/or Defects as Level 1, Level 2 or Level 3 Incidents and/or Defects, as applicable. Prime Vendor shall honor DES' classification. If subsequently Prime Vendor disagrees on the classification of any Incident or Defect, such dispute shall be escalated for resolution in accordance with the procedures set forth in **Article 14** of the Agreement.

3.3 Reporting and Management of Incidents. Reports of Incidents (an **"Incident Report"**) shall be made by DES to the CSC. DES may access the CSC through either the OIMS, or, for Level 1 Incidents, by telephone 24 hours per day, 7 days per week to report such failures. The CSC shall log the reported Incident and provide DES with an Incident tracking number to refer to when making follow-up inquiries. The Incident Report shall contain: (a) the date and time of the call; (b) the name of the product and the version or release number; (c) the name/type of affected Equipment; (d) the DES contact name, e-mail address if available, telephone number and fax number; and (e) a description of the Incident and DES' classification of the Incident. DES shall provide Prime Vendor with as much information as possible to enable Prime Vendor to investigate and attempt to identify and verify the reported Issue. DES shall work with Prime Vendor support personnel during the problem isolation process, as reasonably needed. Prime Vendor shall manage and maintain records with respect to the resolution of all reported Incidents (**"Incident Resolution Report"**) and facilitate a status calls in accordance with current practices with DES. Prime Vendor shall maintain the working history of Incident Reports and provide DES with expected resolution dates, and, for Defects, a status of where the Defect correction is in the Prime Vendor correction and quality assurance process.

3.4 Escalation Procedures. Prime Vendor shall escalate Defects for which an Interim Resolution has not been provided through its Support and Maintenance Services organization in accordance with Prime Vendor's standard escalation procedures.

4. Support Standards and Support Credits. Attachment B to this **Schedule 7.1** sets forth the Support Standards and Support Credits that are applicable to the Support and Maintenance Services. The Support Credits are in addition to any other rights and remedies that may be available to DES upon Prime Vendor's failure to achieve the Support Standards set forth in **Attachment B**, including those set forth in **Article 10** of the Agreement.

ATTACHMENT A TO SCHEDULE 7.1

MULTI-VENDOR SOURCING PROCEDURES

This Attachment describes the operational processes that will govern the interactions between Prime Vendor, DES and Third Parties relating to the Interoperability of DES' systems ("**Third Party Solution Provider**"). Upon detecting an Incident, DES will make an initial determination of whether the Incident relates to a Solution or a Third Party system. If DES believes that the Incident relates to the Solution, DES will notify Prime Vendor and Prime Vendor will respond and resolve the Incident as set forth in **Schedule 7.1**, including **Attachment B** to this **Schedule 7.1**. If DES believes that the Incident relates to the Solution and a Third Party system ("**Multi-Party Incident**"), DES will notify Prime Vendor of the applicable Third Party Solution Provider, and Prime Vendor and the Third Party Solution Provider will respond and resolve the Multi-Party Incident as set forth in **Schedule 7.1**, including **Attachments A and B** to this **Schedule 7.1**.

1. Help Desk Interaction Process.

- (a) If DES opens a ticket with Prime Vendor related to a Multi-Party Incident, Prime Vendor's Help Desk will coordinate and cooperate with applicable Third Party Solution Provider as necessary to resolve the Incident or Defect, including as provided in **Attachment B** to this **Schedule 7.1**. In order to resolve the Multi-Party Incident within the timeframes set forth in **Attachment B** to this **Schedule 7.1**, Prime Vendor's Help Desk shall proactively communicate with the Help Desks of the applicable Third Party Solution Provider, while notifying DES in writing (including through e-mail) of the time and substance all such communications.
- (b) Prime Vendor and the applicable Third Party Solution Provider will transfer and track calls sent to and from their respective Help Desks. All information needed by DES to confirm the proper Help Desk pass offs from one desk to another will be made available to DES at times and formats as mutually agreed upon by the parties.

2. Escalation Process. If a ticket related to a Multi-Party Incident is handed off by Prime Vendor to a Third Party Solution Provider and then returned by a Third Party Solution Provider to Prime Vendor, or a Third Party Solution Provider to Prime Vendor and then returned by Prime Vendor to a Third Party Solution Provider, the ticket will be escalated to DES.

The following steps will be followed by both Prime Vendor and the Third Party Solution Provider to ensure cooperative and timely resolution of the ticket:

- (a) A triage event will be scheduled to include representatives from Prime Vendor, the Third Party Solution Provider and DES, if any Level 1 or Level 2 Incident is transferred (even once) back to the Help Desk that originally opened the ticket.
- (b) If Prime Vendor and the applicable Third Party Solution Provider are unable to mutually determine the appropriate party responsible to resolve the ticket, DES will have the right to assign it to either Prime Vendor the Third Party Solution Provider.

- (c) If a Multi-Party Incident assigned to Prime Vendor for resolution by DES is transferred to a Third Party Solution Provider and eventually determined through root cause analysis ("**RCA**") to be a Prime Vendor responsibility, for purposes of measuring Interim Resolution and Final Resolution times, the entire time the ticket was unresolved shall be used in the calculation (*i.e.*, both the time that the ticket was with Prime Vendor and the Third Party Solution Provider). This will provide an incentive for all providers to resolve the ticket expeditiously.
- (d) Without limiting the other terms of this Attachment, DES may choose to have Prime Vendor conduct an RCA for any Multi-Party Incident.

3. Dispute Resolution and Alignment Process. In the process of monitoring and resolving Multi-Party Incidents the following dispute resolution or mutual alignment process will be invoked: The Prime Vendor Account Executive, an DES representative and the project executive for the applicable Third Party Solution Provider will meet as requested by DES to resolve all Issues. If they are unable to reach an agreement, the matter shall be referred to the Executive Sponsors for resolution.

ATTACHMENT B TO SCHEDULE 7.1

SUPPORT STANDARDS AND SUPPORT CREDITS

1. Support Service Levels. Set forth below are the Support and Maintenance Services service levels as well as personnel to be committed if Prime Vendor does not meet such service levels. A failure to meet such service levels or provide such personnel will entitle DES to the Support Credits as described below.

2. Incident Response Times. The Support Standard categories and the related Support Standards set forth below shall apply to the CSC Incident Response obligations.

Support Standard Category	Support Standard Description	Support Standards	Measurement Technique	Measurement Period	Support Credits
Incident Response for Level 1 Incidents	The time that lapses from when the Prime Vendor detects a potential Level 1 Incident, a DES-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DES-designated interface, until a qualified technician from Prime Vendor has been assigned and is working the Level 1 Incident and a representative from Prime Vendor calls the DES-designated representative to identify such individual.	100% of the time a qualified technician from Prime Vendor has been assigned and is working the Level 1 Incident within fifteen (15) minutes.	Call back response time will be determined with reference to DES' and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a thirty percent (30%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.
Incident Response for Level 2 Incidents	The time that lapses from when the Prime Vendor detects an Incident that qualifies as a Level 2 Incident, a DES-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DES-designated interface, until a qualified technician from Prime Vendor has been assigned and is working the Level 2 Incident and a representative from Prime Vendor calls the DES-designated representative to identify such.	100% of the time a qualified technician from Prime Vendor has been assigned and is working the Level 2 Incident within thirty (30) minutes.	Call back response time will be determined with reference to DES' and Prime Vendor's support tracking applications and Support and Maintenance Services logs for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a fifteen percent (15%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.

Support Standard Category	Support Standard Description	Support Standards	Measurement Technique	Measurement Period	Support Credits
Incident Response for Level 3 Incidents	The time that lapses from when the Prime Vendor detects an Incident that qualifies as a Level 3 Incident, a DES-designated interface leaves a voice mail message with the CSC, or from when the CSC receives a fax or an email from a DES-designated interface, until a qualified technician from Prime Vendor has been assigned and is working the Level 3 Incident and a representative from Prime Vendor calls the DES-designated representative to identify such.	100% of the time a qualified technician from Prime Vendor has been assigned and is working the Level 3 Incident within twenty-four (24) hours.	Call back response time will be determined with reference to DES' and Prime Vendor's support tracking applications and Support and Maintenance Services logs for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a five percent (5%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.

3. Defect Resolution. The Support Standard categories and the related Support Standards set forth below shall apply to Prime Vendor's obligations to identify and resolve Defects reported to the CSC. In addition to the applicable Support Standards, Final Resolution Support Standards may require the commitment of on-site Prime Vendor personnel as further described below.

Support Standard Category	Defect Analysis	Support Standard Description	Support Standard (Interim Resolution)	Support Standard (Final Resolution)	Measurement Technique	Measurement Period	Support Credits
Defect Resolution—Level 1 Defects	One (1) hour	The time that lapses from when a Level 1 Defect is reported to the CSC or detected by the Prime Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Prime Vendor's option, a Final Resolution), is provided within four (4) hours after being reported or detected.	100% of the time, a Final Resolution is provided within twenty-four (24) hours after being reported or detected. After twenty four (24) hours have passed without Final Resolution, Prime Vendor will send (at its expense) one (1) senior application expert and one (1) senior application programmer on-site at DES on a seven (7) day a week basis until a Final Resolution is provided.	Defect resolution time frames will be determined with reference to DES' and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a thirty percent (30%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.

Support Standard Category	Defect Analysis	Support Standard Description	Support Standard (Interim Resolution)	Support Standard (Final Resolution)	Measurement Technique	Measurement Period	Support Credits
Defect Resolution—Level 2 Defects	Two (2) Hours	The time that lapses from when a Level 2 Defect is reported to the CSC or detected by the Prime Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Prime Vendor's option, a Final Resolution), is provided within eight (8) hours after being reported or detected.	100% of the time, a Final Resolution is provided within sixty (60) days after being reported or detected. After sixty (60) days have passed without Final Resolution, Prime Vendor will send (at its expense) one (1) senior application expert and one (1) senior application programmer on-site at DES on a five (5) day a week basis until a Final Resolution is provided.	Defect resolution time frames will be determined with reference to DES' and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a fifteen percent (15%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.
Defect Resolution—Level 3 Defects	Twenty-four (24) Hours	The time that lapses from when a Level 3 Defect is reported to the CSC or detected by the Prime Vendor until the Defect is resolved as an Interim Resolution or Final Resolution, as applicable.	100% of the time, an Interim Resolution (or, at Prime Vendor's option, a Final Resolution), is provided within forty-eight (48) hours after being reported or detected.	100% of the time, a Final Resolution is provided in the next Release.	Defect resolution time frames will be determined with reference to DES' and the OIMS for the applicable month.	Each calendar day commencing on the Effective Date; reporting on a monthly basis.	If this Support Standard is not achieved during any given calendar month, then DES shall receive Support Credits from Prime Vendor equal to a five percent (5%) reduction in the monthly Support and Maintenance Services Fees paid or payable by DES for the applicable month.

SCHEDULE 8.4.2

SERVICE RATES

There shall be no premium rates for overtime work.

On-site Service Rates as of the Effective Date:

Category/Description	Prime Vendor List Hourly Rates	Hourly Services Rates - DES Discounted Rate

The on-site Service Rates above are fully-burdened, and include all staffing accommodation, living, travel, out-of-pocket and other expenses.

Off-site Service Rates (which do not include any staffing accommodation, living, travel, out-of-pocket or other expenses as such expenses do not apply to off-site services) as of the Effective Date:

Category/Description	Prime Vendor List Hourly Rates	Hourly Services Rates - DES Discounted Rate

There shall be no premium rates for overtime work.

Staff Augmentation (Long-Term) Rates:

Category/Description	Weekly Rates*	Monthly Rates*

* The staff augmentation rates are fully-burdened, and include all staffing accommodation, living, travel, out-of-pocket or other expenses.

SCHEDULE 8.5.1

FORM OF PRIME VENDOR INVOICE

(SEE ATTACHED)

SCHEDULE 15.3.1

INSURANCE COVERAGES

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
Industrial Insurance	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy must include a waiver of subrogation in favor of DES and the Agencies. The policy shall cover all Prime Vendor's employees, including as may be required of an "employer" as defined in Title 51 RCW, and shall be in full compliance with Title 51 RCW.
Employer's Liability	- Each Accident: \$1,000,000 - Disease, Each Employee: \$1,000,000 - Disease, Policy Limit: \$1,000,000		
Commercial General Liability	\$5,000,000	\$10,000,000	The policy must include a waiver of subrogation in favor of DES and the Agencies.
Business Automobile Liability	\$1,000,000		The policy must include a waiver of subrogation in favor of DES and the Agencies.
Professional Liability/Errors & Omissions and Internet Policies	\$25,000,000	\$50,000,000	Must include coverage for Internet professional services, ASP, web portal, security/privacy. The policy must include a waiver of subrogation in favor of DES and the Agencies.
ID Theft and Cyber Extortion	\$25,000,000	\$50,000,000	Must include coverage for crisis management and public relations expense. The policy must include a waiver of subrogation in favor of DES and the Agencies.
Umbrella or Excess Liability	The greater of: (a) the fees due and to be due under the TLA Solution Project Agreement; and (b) \$50,000,000	The greater of: (a) the fees due and to be due under the TLA Solution Project Agreement; and (b) \$50,000,000	For Industrial Insurance, Employer's Liability, Commercial General Liability and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of DES and the Agencies.

SCHEDULE 15.15

DES POLICIES

[PLEASE CONTACT THE RFP COORDINATOR FOR COPIES OF POLICIES IN DRAFT FORM OR UNDER DEVELOPMENT]

DES Policy Number	DES Policy Title
FAC.05.01	1500 Jefferson Office Building Access
ETS.01.02	1500 Jefferson Wireless Terms of Use
ETS.01.01	Acceptable Use of Information Technology Assets
HR.01.01	Affirmative Action and Equal Employment Opportunity Statement
HR.01.24	Alcohol and Drug-Free Workplace
HR.01.19.A01	Approved Employee Activities and Events
UNDER DEVELOPMENT	Debarment
HR.01.05	Discrimination and Harassment Prevention
HR.01.19	Ethical Conduct
FO.01.06	Food and Beverages at Meetings (DRAFT)
UNDER DEVELOPMENT	Litigation Hold
FO.01.14	Loss of Money or Property (DRAFT)
HR.01.17	Safety Policy
HR.01.07.P1	Safety Procedure
HR.01.20	Safe and Secure Workplace
HR.01.25	Reasonable Accommodation
PPP.01.01	Records Management
COM.01.01	Using Social Media for Agency Business
HR.01.27	Whistleblower