


 <p>Washington State Department of Social & Health Services</p> <p><i>Transforming lives</i></p>	<h2>IT SERVICES CONTRACT</h2> <h3>Eligibility Services and ACES Remediation Mainframe Rehosting</h3>	DSHS Contract Number: <input checked="" type="checkbox"/> Resulting from Competition Number: RFP 1723-669 <input type="checkbox"/> Sole Source	
This Contract is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 43.19 and 43.105 RCW.		Contractor Contract Number: 	
CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS	
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBERS	
CONTRACT START DATE		CONTRACT END DATE	CONTRACT MAXIMUM AMOUNT
<p>EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference:</p> <p><input checked="" type="checkbox"/> Sections (specify): Section A – Definitions, Section B – IT Professional Services, Section C – Fees, Compensation, and Payment, Section D – Insurance Requirements, Section E – DSHS General Terms and Conditions, Section F – Additional General Terms and Donctions – IT Service Contracts, Section G – Assets and Third-Party Contracts, Section H – Retained Authorities, Section I – Representations, Warranties and Covenants, Section J – Term and Termination, Section K – Disentanglement, Section L – Security and Safety, Section M – Acceptance, Section N – DSHS Data Security Requirements, Section O – Federal Tax Information Security Requirements.</p> <p>Attachments (specify): Attachment 01 – SOW_SLR_Pricing_BHD, Attachment 02 – Measurement Charter, Attachment 03 – Contract Management Plan, Attachment 04 – Demand Management Plan, Attachment 05 – Personnel, Attachment 06 – Communication Plan, Attachment 07 – Process Ownership Plan, Attachment 08 – Relationship, Integration and Governance, Attachment 09 – Exit Plan, Attachment 10 – Risk Analysis Framework, Attachment 11 – Innovation Plan, Attachment 12 – Current ACES Environment</p>			
The terms and conditions of this Contract are an integration of and constitute the final, entire and exclusive understanding of the agreement between the parties, superseding and merging all previous agreements, writings, and communications between the parties made prior to or at the signing of this Contract. The parties signing below warrant they have read and understand this Contract, and have authority to enter into this Contract.			
CONTRACTOR SIGNATURE Draft - Please Do Not Sign <u>Please Do Not Sign</u>		PRINTED NAME AND TITLE 	DATE SIGNED
DSHS SIGNATURE Draft - Please Do Not Sign <u>Please Do Not Sign</u>		PRINTED NAME AND TITLE 	DATE SIGNED

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Section A

Definitions

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Section A: Definitions

“**Agency**” means the Department of Social and Health Services (DSHS), a Washington state agency, and its employees and authorized agents, who are coordinating this solicitation opportunity.

"**Assets**" are hardware, software and physical facilities.

"**Attachment**" is a formal document attached to the contract.

"**Business Hours**" are 08:00 AM Pacific Time to 17:00 PM Pacific Time Monday to Friday.

“**Central Contract Services**” means the DSHS central headquarters contracting office, or successor section or office.

"**Confidential Information**" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws.

“**Contract**” or “**Agreement**” means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

“**CCLS Chief**” means the manager, or successor, of Central Contracts and Legal Services or successor section or office.

"**Contractor**" is the service-providing legal entity that signed this Contract. Contractor means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, “Contractor” includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.

“**Contractor's Affiliates or Subcontractors**” refers to any person or organization with a business relationship with, and under the control of, the Contractor.

"**Contractor Equipment**" is the equipment owned, leased or otherwise held by the Contractor that is used by the Contractor to provide the Services.

"**Control Framework**" is the body of business and IT controls that guide the demand principles as set out in **Attachment 04 – Demand Management Plan** to this Agreement.

"**Customer Equipment**" is any asset owned by the DSHS.

"**Data**" is defined as "any type of information that is stored in physical or virtual form, comprising, but not limited to, records, notes, reports, manuals, processes, procedures, principles, guidelines, documents of any type, computer programs in object code and fully commented source code form, graphical works, formulae, and designs."

“**Debarment**” means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.

"**Derivative Work Product**" is defined as "any Work Product in which creation or content is derived from a Work Product."

“**DES**” means the Washington state Department of Enterprise Services, any division, section, office, unit or other entity of DES or any of the officers or other officials lawfully representing DES.

"Effective Date" is the date where the contract becomes, in effect, inclusive of all the terms and conditions as defined in the Sections and the Attachments.

"Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.

"ESA" is the Economic Services Administration, an administration of DSHS.

"Expert" level staff are those with a minimum of eight (8) years' experience within the past ten (10) years in the targeted skills and abilities.

"External Service Providers" is a Division, Administration, Agency, or other entity that is separate from DSHS, ESA, IT Solutions Division and provides services such as networks, security, consulting, software development — including system integration and application service providers (ASPs) — and outsourcing. ESPs supplement the skills and resources of an in-house IS department.

"Fees" are the commercial price for the contracted services, which can be fixed periodical charges, a resource-based rate per hour for agreed work/products or fixed one-off charges that the Contractor charges DSHS for agreed work/products.

"Handover Date" is the contracted date that the workload becomes the responsibility of the Service Contractor, which may include a date prior to the conversion.

"Intellectual Property Rights" (IPR) means: (i) copyrights, rights in software, patents, database rights, rights in trademarks, trade names, inventions, domain names and designs (in each case, whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

"Interim Services" are the services that the Contractor provisions and DSHS provides at the Effective Date for the duration of the transformation period, until the Contractor's delivery organization formally accepts the Services, which marks the end of the transformation period.

"Journey" level staff are those with a minimum of three (3) years' experience within the past five (5) years in the targeted skills and abilities.

"Key Personnel" is defined as the designation of selected positions (management or operations) as key personnel within the contract. Key personnel positions are generally designated based on the knowledge required to fill the position, significant interfacing with customers or management of critical elements of delivery.

"Local Transfer Dates" are the dates when, at 12:00 a.m., the Contractor takes full responsibility to provide the services to the organization in a specific country in accordance with the MSA.

"On-Shore" refers to resources located within the United States but not on-site at a DSHS location.

"On-Site" refers to resources located at a DSHS location.

"Open-Source Software" is defined as software that (a) requires a licensor to cause source code to be distributed with the software or made available to any third party when the software is distributed or otherwise provided in any fashion to a third party, or (b) is subject to any version of the General Public License or the Lesser General Public License, or any license that has been certified as an "open source" or "free software" license by the Open-Source Initiative.

"Operational Services Manual (OSM)" is defined as "the formal documentation including all processes, policies, procedures, work instructions, configuration items (CIs), CI artifacts and settings, and technical

architecture regarding all service components as defined in **Attachment 01 – SOW_SLR_Pricing_BHD** that express the activities to be performed to warrant the operation of the Services."

"**Party**" or "**Parties**" are the reference to the legal entities or the assigned representatives of these legal entities that have signed this Contract as the recipient of the Services (DSHS) or the Contractor of the Services (Contractor).

"**Personal Information**" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

"**Physically Secure**" means that access is restricted through physical means to authorized individuals only.

"**Program Agreement**" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.

"**Process and Procedures Manual**" is a document that describes in detail the specific processes and procedures that parties will use during the term of the agreement.

"**Provider Service Management Tool Suite**" is defined as "the technology processes and people effort provided and deployed by the Contractor which represents the means for the Contractor to support and measure the provision the Interim Services and the Services."

"**RCW**" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.

"**Reasonable Endeavors**" is defined as the effort performed by the Contractor during the Transition Period, where the provision of the Interim Services is not measured against service levels.

"**Regulation**" means any federal, state, or local regulation, rule, or ordinance.

"**Resource Unit**" is a particular unit of the utilization of resources that have a baseline as described within the SOW, service-level agreement and the price.

"**Secured Area**" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

"**Senior**" level staff are those with a minimum of five (5) years' experience within the past eight (8) years in the targeted skills and abilities.

"**Services**" are the services, as defined within the statement of work (SOW), as attached to this Contract.

"**Service Credits**" are the fees that the Contractor is obliged to pay DSHS in the event of a service-level default.

"**Service Discontinuance**" is the cessation of one or more services as requested in writing by DSHS.

"**Service Requests**" are requests that users make, usually via the service or help desk, for information, changes or access to IT services or a range of support-specific service offerings.

“Services Sourcing Office” is the organization responsible for communicating activities, processes, methodologies, and procedures and other information relevant to the activities covered by the outsourcing contract.

“Solicitation” means the process of notifying prospective Bidders of a request for competitive bids or proposals. Also includes reference to the actual documents used for that process, along with all amendments or revisions thereto.

"Steady State" is the contracted date for normal delivery of the workload after the transition.

“Subcontract” means any separate agreement or contract between the Contractor and an individual or entity (“Subcontractor”) to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

"Subcontractor" is any entity other than the Contractor selected by the Contractor to provide Services to DSHS pursuant to an agreement with the Contractor.

“Technical Service Category” means an information technology skill categorized by common IT business need of state government described and set forth in this agreement.

"Term" is the initial duration of the contract, which starts from the Effective Date.

"Third Party" is an organization that has no direct responsibilities for the Services as set out in **Attachment 01 – SOW_SLR_Pricing_BHD** or any other obligation as defined within this Agreement.

“Tracking” means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.

"Transformation Period" is the duration in terms of months between the start of the Interim Services and the Contractor's delivery organization formally accepting responsibility for providing the Services.

"Transition Period" is defined as "the duration in terms of months between the Effective Date and the formal acceptance by the Contractor delivery organization of the Interim Services." Formal acceptance of the Interim Services by the Contractor delivery organization is effective at the next day after the date of the sign off of the Operational Services Manual, starting 12.00am Pacific Standard Time (PST).

“Trusted Systems” include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

“WAC” means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.

"Work Product" is defined as "any deliverable, as defined in **Attachment 01 – SOW_SLR_Pricing_BHD**, to this Agreement, developed by the Contractor under this Agreement, including all related Data and any improvements, including copyright, patent, trade secret, industrial design or trademark, and including all derivatives of or improvements on any deliverable, whether interim copies or works, works in progress or final versions of any such items, and any and all software, code, tools, materials or other information developed by the Contractor in performing the Services under this Agreement."

Section B	IT Professional Services	Home
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Section B: IT Professional Services

1. Guiding Principles

The Parties agree that the following principles ("Guiding Principles") are important to ensure the success of their relationship. If any term or condition of this Agreement is ambiguous or unclear or if the Parties did not anticipate a particular issue, the Parties shall use the Guiding Principles to interpret or resolve the issue arising from the Effective Date of this contract.

1.1. Enhance IT Capabilities and Provide Consistent and Stable Infrastructure Support

Services will be provided in a manner that enhances the DSHS' ability to deliver consistent, stable, high-quality, and cost-effective services both internally within DSHS and externally to its customers with minimal interruptions and few, if any, disruptions to DSHS business. Technology and processes used by the Contractor will provide DSHS with industry-prevailing levels of functionality and performance.

1.2. Reduce and Control IT Costs

Cost control and reduction are key objectives for DSHS in securing Services from the Contractor. The Contractor will continuously propose new and cost-effective processes and technologies in order to, at minimum, control and with all due expectations further reduce the overall cost of Services to DSHS.

1.3. Maintain and Improve Technology

The Contractor will implement industry best practices and new technologies to deliver Services to DSHS that allow DSHS to take advantage of improvements in cost-efficiencies and service functionalities, and with that objective will continually update the processes, procedures and methodologies as well as the underpinning technologies.

1.4. Improve Business Processes, Achieve ITIL, IT Service Management and Six Sigma or Equivalent Process Alignment, and Standardize Processes

The Contractor will deliver Services that are aligned with IT Solutions processes and with Information Technology Infrastructure Library (ITIL) as the nomenclature basis, IT Service Management (ITSM) as the service management basis, and Six Sigma as the continuous improvement basis, or any industry accepted substitute, for any or all of the aforementioned processes that will assist DSHS in standardizing and improving its business processes, including improving the efficiencies of delivering products to its customers. The Contractor will document such processes as part of its Service delivery.

2. General

Through the course of this Agreement, the Parties expect Services to be enhanced, supplemented and evolve through technological advancements and process improvements.

If any services, functions, responsibilities or tasks not specifically described in this Agreement are required for the proper performance of the Services and are an inherent part of, or a necessary sub-part included within, the Services, such services, functions, responsibilities and tasks shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement.

3. Statement of Work

Attachment 01 – SOW_SLR_Pricing_BHD and the accompanying Attachments contain a detailed description of each of the Services to be provided by the Contractor to DSHS.

The Parties may develop additional Appendices relating to additional Services within the scope of this Agreement that will be provided by the Contractor to DSHS hereunder. The Parties may develop additional SOW reflecting additional Service Towers. Once approved in accordance with the terms herein, all such Appendices and SOWs shall be deemed a part of **Attachment 01 – SOW_SLR_Pricing_BHD**.

4. Service-Level Requirements (SLRs)

- 4.1. **Commitment to Comply With All SLRs.** Beginning on the Effective Date, the Contractor shall perform all Services in accordance with, and in such a manner as to meet or exceed, the SLRs. Any Services developed by the Contractor pursuant to the terms of this Agreement shall incorporate methods permitting measurement of performance-related SLRs. The Contractor shall comply with all SLRs set forth in **Attachment 01 – SOW_SLR_Pricing_BHD** or elsewhere in this Agreement, including, without limitation, all SLRs for which no Fee Reduction has been assigned.
- 4.2. **Measurement and Reporting.** The Contractor shall measure its performance against the SLRs in accordance with the methodologies specified in the Appendices attached to **Attachment 01 – SOW_SLR_Pricing_BHD** and **Attachment 02 – Measurement Charter** and shall provide a detailed, comprehensive report of its performance against the SLRs during each applicable reporting period ("SLR Reports") by the tenth (10th) Business Day following the end of the applicable reporting period. The format for such SLR Reports shall be determined in accordance with Section 2.9 of Attachment 02. For continuing failures that occur in consecutive Measurement Intervals within a month, the Contractor shall report such failures in the month such failures commence. The Contractor shall meet with DSHS at least monthly, or more frequently if requested by DSHS, to review the Contractor's actual performance against the SLRs and shall recommend remedial actions to resolve any performance deficiencies. Notwithstanding the foregoing, all reporting on SLRs shall cover the results of SLR performance during the applicable Measurement Interval, regardless of the Reporting Period, and shall not be construed to limit the Contractor's obligations to comply with all SLRs as per the applicable Measurement Interval. DSHS's failure to analyze and enforce SLRs shall not be deemed a waiver of such performance standards. In the case where one or more SLRs are not able to be validated as contemplated by this Section, the Parties will negotiate in good faith to establish meaningful SLR(s) to replace such SLR(s).
- 4.3. **Root-Cause Analysis and Resolution.** Promptly, but in no event later than five (5) calendar days (or as otherwise set forth in **Attachment 01 – SOW_SLR_Pricing_BHD**) after the Contractor's discovery of, or if earlier, the Contractor's receipt of a notice from DSHS regarding the Contractor's failure to provide any of the Services in accordance with the SLRs, or for the existence of an Issue, the Contractor shall, as applicable under the circumstances: (i) perform a Root-Cause Analysis to identify the cause of such failure/Issue; (ii) provide DSHS with a written report detailing the cause of, and procedure for correcting those failures/Issues that are under the Contractor's control; and (iii) provide DSHS with satisfactory evidence that the Contractor has taken or will take commercially reasonable remedial steps to ensure that such failure/Issue will not recur to the extent under the Contractor's control. To the extent the cause of failures/Issues are not under the Contractor's control, then the Contractor will suggest appropriate corrective measures to the extent commercially reasonable. The correction of any such failures/Issues shall be performed in accordance with the time frames set forth in **Attachment 01 – SOW_SLR_Pricing_BHD** entirely at the Contractor's expense unless it has been determined, by mutual agreement of the Parties or through the Issue-resolution process

specified in this Agreement, that DSHS (or one of its subcontractors, agents or Third Parties provided by DSHS) was a direct contributing cause of the failure/Issue (but excluding contributing causes of Third Parties provided by DSHS that are managed by the Contractor to the extent such causes arise out of the Contractor's failure to properly manage such Third Parties) and the Contractor could not have worked around the failure/Issue without expending more than commercially reasonable efforts. In such event the Contractor shall be entitled to temporary relief from its obligation to comply with the affected SLR in a timely fashion, but only to the extent and for the duration so affected. For purposes hereof, except as otherwise agreed by the Parties in writing, the pre-existing condition of DSHS's properties and systems shall not be deemed a contributing cause of any failure if the Contractor knew or reasonably should have known of such condition and has had a reasonable period of time to implement corrective measures; provided, however, that, except as otherwise agreed by the Parties in writing, and subject to DSHS's approval, to the extent that the Contractor first became aware of such a pre-existing condition subsequent to the Effective Date, DSHS shall be financially responsible for all corrective measures that are necessary to correct such condition through the Change Control Process.

- 4.4. **Relief from SLRs.** If and to the extent that: (i) the failure to provide any of the Services in accordance with the SLRs is directly caused by a Force Majeure Event; (ii) the Contractor did not have an affirmative duty under the Agreement to prevent such a failure; and (iii) with respect to Services at issue, the Contractor used all commercially reasonable efforts to promptly implement disaster recovery and/or business continuity plans, as appropriate, the Contractor shall be entitled to temporary relief from its obligation to comply with the affected SLR in a timely fashion, but only to the extent and for the duration so affected and subject to the provisions of **Attachment 01, SOW, SLA, Price, and Behavior Drivers.**
- 4.5. **Review of SLRs.** The Parties agree that the SLRs will improve over time and that new SLRs may be added to reflect improvements in technology, DSHS's changing and/or new business requirements. Accordingly, at least once annually, the Parties expect to review and reach agreement on, among other things: (i) adjustments to the SLRs to reflect such anticipated continuous improvements in the SLRs; and/or (ii) the addition of new SLRs. In the event the Parties are not able to reach agreement on a proposed SLR modification within 60 days of a Party raising a formal change request, the Parties will obtain the recommendation of a third party (such as a party listed in **Attachment 02 – Measurement Charter**) to provide market information regarding the reasonableness of the proposed modification. The Contractor agrees to maintain and improve SLRs from time to time in accordance with the remainder of this Section. Unless requested by DSHS, in no event will the SLRs be made less favorable to DSHS as a result of such reviews.
- 4.6. **Benchmarking.** DSHS shall have the ongoing right to initiate the benchmarking process described in **Attachment 02 – Measurement Charter**, in order to evaluate: (i) the SLRs set forth in this Agreement; and (ii) the Fees set forth in this Agreement. The terms, conditions and procedures to be used in and during the benchmarking process are described in **Attachment 02 – Measurement Charter.**

5. Purchasing Support Services

If requested by DSHS, the Contractor shall assist in evaluating Contractor qualifications and independence, pricing rates and discounts; and assist DSHS in ordering, receiving, configuring, installing, testing, maintaining and distributing technology products for which the Contractor has support obligations hereunder as and to the extent set forth in the applicable SOWs (collectively,

"Procured Technology"). As between DSHS and the Contractor, all right, title and interest in and to each item of Procured Technology shall be vested in DSHS. Any request by DSHS to perform activities that are in addition to those described in the applicable SOWs shall be subject to the Change Control Procedures.

6. Technology Management and Security Services

6.1. **General** — The Contractor shall provide the technology management and security Services described in this Section. The Contractor shall obtain DSHS's prior written consent before acquiring (on DSHS's behalf), upgrading or replacing any asset that is used by the Contractor to satisfy its obligations hereunder if such acquisition, maintenance, upgrade or replacement could result in any material adverse change in the cost, method, manner, types or levels of Services that are then being provided to DSHS.

6.2. **Technology Upgrades and Enhancements** — The Contractor will keep all Services under this Agreement current with industry advances and leading technology standards. To that end, the Contractor may make recommendations to DSHS regarding hardware and software upgrades, replacements, or removals necessary to meet the SLRs and manufacturer-recommended requirements. DSHS shall make technology refresh and upgrade decisions in its sole discretion; however, in the event that the failure to repair or replace DSHS-Owned Equipment in accordance with the manufacturer-recommended requirements is the direct cause of the Contractor's inability to consistently meet an SLR, then DSHS shall allow the Contractor a temporary waiver of Fee Reductions associated with the affected SLR, which will resume immediately upon repair, replacement or refresh of the affected DSHS-Owned Equipment. The Parties will coordinate implementation of such upgrades and enhancements. The Contractor shall schedule all such upgrades and replacements in advance and in such a way as to prevent any interruption or disruption of, or diminution in, the nature or level of any portion of the Services. The Contractor shall supplement, modify, and enhance the Services over time to keep pace with industrywide advancements and improvements in the methods of delivering services similar to the Services. Without limiting the foregoing, the Contractor shall: (i) maintain a level of technology used to provide the Services for which the Contractor has financial responsibility; (ii) that allows the Service Recipient to take advantage of technological improvements and advances applicable to its business; (iii) is at least current with the level of technology that the Contractor uses in providing services to its other customers; and (iv) is at least current with the level of technology generally adopted from time to time in DSHS's industries.

7. Process and Procedures Manual

7.1. **Development of Manual** —The Contractor shall develop and continuously update a detailed, DSHS-specific Process and Procedures Manual that minimally includes the contents specified in this Section. The Contractor shall deliver the first draft of the Process and Procedures Manual to DSHS for its review, comments and approval within the time frame set forth and shall, with respect to each draft of the Process and Procedures Manual, incorporate all of DSHS's comments and suggestions. Not later than thirty (90) calendar days following the Effective Date, the Contractor shall deliver an updated draft of the Process and Procedures Manual to DSHS for its review, comments and approval and thereafter shall quarterly update the Process and Procedures Manual to reflect changes in the operations or procedures described therein. All such updates to the Process and Procedures Manual shall be provided to DSHS for its prior review, comments and approval. Prior to completion of the Process and Procedures Manual, the Contractor shall, as applicable, provide the Services in accordance with the previously existing

Process and Procedures Manual (a copy of which will be provided to the Contractor promptly following the Effective Date) and standards and procedures generally used by DSHS. The Contractor acknowledges that failure to maintain and update the Process and Procedures Manual may constitute a material breach of this Agreement.

- 7.2. **Contents** — The Contractor shall provide the Process and Procedures Manual to DSHS electronically (and in a manner such that it can be accessed via either DSHS's intranet or the Internet) and communicate the methodology for accessing the Process and Procedures Manual. The Process and Procedures Manual shall describe, among other things, the manner in which the Contractor will provide the Services hereunder, including the equipment and software being and to be used, the documentation (including, for example, operations manuals, user guides, quick reference, specifications, and End-User support) that provide further details of such activities and detailed problem and change management procedures in enough detail so that a similarly skilled resource can repeatedly and reliably produce the same end result. The Process and Procedures Manual also shall describe the activities the Contractor will undertake in order to provide the Services including, where appropriate, direction, supervision, monitoring, staffing levels relative to ongoing activities charged on a time and materials basis, quality assurance, reporting, planning and oversight activities, as well as the specific measures taken to comply with all applicable laws and regulations including, without limitation, those relating to the privacy and security of DSHS Data, including Sarbanes-Oxley Act (SOX), Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act (GLB), applicable State and Federal laws, policies, and standards, and any other laws and regulations applicable to DSHS systems and data and/or identified by DSHS, all to the extent and consistent with the format and level of detail generally set forth in the Process and Procedures Manual in use as of the Effective Date. The Process and Procedures Manual shall describe how the Services will be performed and act as a guide to End-Users seeking assistance with respect to the Services offered hereunder. The Process and Procedures Manual shall in no event be interpreted as an amendment to this Agreement or so as to relieve the Contractor of any of its performance obligations under this Agreement.
- 7.3. **Service Compatibility** — The Contractor will endeavor to work cooperatively with DSHS's other information technology vendors to problem solve, innovate and coordinate resources. The Contractor shall use commercially reasonable efforts to work collaboratively with DSHS (and its other vendors) to ensure that all services, equipment, networks, software, enhancements, upgrades, modifications and other resources, including those provided by DSHS (collectively, the "Resources"), used by the Contractor or approved by the Contractor for utilization by DSHS in connection with the Services, shall be successfully integrated and interfaced, and shall be compatible with the services, equipment, networks, software, enhancements, upgrades, modifications and other resources that are being provided to, recommended to and/or approved for use by Third-Party service Contractors (collectively, the "Third-Party Resources"). Further, the Contractor shall use commercially reasonable efforts to ensure that none of the Services or other items provided to DSHS by the Contractor shall be adversely affected by, or shall adversely affect, those of any such Third-Party Contractors, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures. While the Contractor is not ultimately responsible for the quality or functionality of Third-Party Resources, the Contractor will proactively engage with DSHS regarding architecture to recommend best practices to bring cost-effective performance to DSHS IT environment.

To the extent that any interfaces need to be developed or modified in order for the Resources to integrate successfully, and be compatible with, the Third-Party Resources, the Contractor shall

develop or modify such interfaces as part of the Services, pursuant to the process set forth in **Attachment 07 – Process Ownership Plan**, and **Attachment 01 – SOW_SLR_Pricing_BHD**. In the event of any Issue as to whether a particular defect, malfunction or other difficulty with respect to the Services was caused by Resources or by Third-Party Resources, the Contractor shall be responsible for correcting at its cost, such defect, malfunction or difficulty, except to the extent that the Contractor can demonstrate, to DSHS's reasonable satisfaction, by means of a Root-Cause Analysis, that the cause was not due to Resources. In addition, the Contractor shall cooperate with all Third-Party service Contractors of DSHS to coordinate its provision of the Services with the services and systems of such Third-Party service Contractors. Subject to reasonable confidentiality and security requirements, such cooperation shall include providing: (i) applicable written information concerning any or all of the systems, data, computing environment, and technology direction used in providing the Services; (ii) reasonable assistance and support services to such Third-Party Contractors; (iii) access to systems and architecture configurations of the Contractor, and of DSHS to the extent reasonably required for the activities of such Third-Party Contractors; and (iv) access to and use of the Resources.

8. Reports and Other Resource Materials

- 8.1. **General** — The Contractor shall furnish reports to DSHS in the manner, format, and frequency as set forth in **Attachment 01 – SOW_SLR_Pricing_BHD**. In addition to reports relating to the Contractor's performance of the Services in accordance with the SLRs and reports related to amounts invoiced to DSHS, the Contractor's reports shall include, among other things, annual security assessment reporting, including reporting on unauthorized system access incidents, and reports regarding End-User Satisfaction, supplier diversity, and any other pertinent data reasonably requested by DSHS. The Contractor promptly shall (but not later than two [2] business days after gaining knowledge thereof) inform DSHS of any deficiencies, omissions or irregularities in DSHS's requirements or in the Contractor's performance of the Services that come to the Contractor's attention. The Contractor Executive also shall advise DSHS of all other matters of a material nature that he or she believes would be helpful to DSHS in setting or revising its IT policies or requirements.
- 8.2. **Media** — The Contractor shall furnish to DSHS all reports in hard copy and/or electronic form as agreed by the Parties.
- 8.3. **Adjustments to Reports** — DSHS may from time to time adjust the type, nature and distribution of reports through the Change Control Process.
- 8.4. **Critical Milestones** — The Parties have designated and may in future designate certain milestones, activities, actions under this Agreement as Critical Milestones. If the Contractor fails to meet any Critical Milestone by the date corresponding thereto, without limiting any other rights and remedies that may be available to DSHS, DSHS shall have the right to: (i) withhold amounts due or to become due to the Contractor under the work associated with such Critical Milestone until such time as the Contractor achieves the Critical Milestone, or such other amounts as may be set forth in a specific Section; (ii) if applicable to the Critical Milestone, reduce the Fees by an amount equal to the Fee Reductions set forth in Fees and Payment Terms.
- 8.5. **End-User Satisfaction; Customer Satisfaction and Communication** — In addition to any End-User Satisfaction and/or Customer Satisfaction survey requirements set forth in **Attachment 01 – SOW_SLR_Pricing_BHD**, the Contractor shall at DSHS's request, but not more often than quarterly, conduct End-User Satisfaction and/or Customer Satisfaction surveys in accordance with this Section. The proposed surveys (including the underlying instrument[s],

methodology and survey plan) shall be subject to DSHS's review, comments and approval and shall cover a representative sample of the End-Users and/or Customers. DSHS shall provide reasonable assistance to the Contractor to: (i) identify the appropriate sample of End-Users and/or Customers; (ii) distribute the surveys; and (iii) encourage participation by such End-Users and/or Customers in order to obtain meaningful results. The Contractor shall report the results of the surveys separately from each of the End-Users or groups of End-Users as may be specified by DSHS, and the Contractor Executive shall review the results of each survey with DSHS within thirty (30) calendar days following the mutually agreed deadline for completion and return of the survey. Not later than thirty (30) calendar days following each review session, the Contractor shall provide to DSHS an action plan for addressing any problem areas identified in the survey results. In the event of any significant reduction in personnel, change in delivery model or change to user interface which may have a significant effect on DSHS End-User experience, the Contractor will submit in writing to DSHS for its review, revision and/or approval a plan outlining the communication and expectation management that the Contractor will undertake prior to such event to ensure a smooth transition and absence (or minimization) of disruption of business for DSHS.

- 8.6. **Cooperation With DSHS and Third Parties** — The Contractor acknowledges that DSHS operates a multi-Contractor environment and that a material element of the Services is the willingness to cooperate and work with other Contractors selected by DSHS in order to provide quality, cost-efficient Services to DSHS's End Users. Accordingly, the Contractor shall cooperate fully with all Third Parties designated by DSHS, and shall disclose such information to DSHS and Third Parties relating to the Contractor as may be reasonably required or necessary to perform the Services or as requested in writing by DSHS. All such disclosures shall be subject to the confidentiality provisions of Section E – DSHS General Terms and Conditions.
- 8.7. **Non-Exclusivity** — This Agreement is a non-exclusive relationship and DSHS shall not be precluded from obtaining services from any other Contractor that may be similar or identical to the Services. In addition, if the Contractor requests additional compensation or renegotiation of standard unit rate (SUR) charges and/or install, move, add, change and disposal (IMACD) fees for any Out of Scope Service Request (as further described in **Attachment 01 – SOW_SLR_Pricing_BHD**), DSHS shall be entitled, at its sole discretion, to solicit bids and award the applicable Service Request to another Contractor.

9. Contractor Personnel

This section describes the documentation of personnel terms and conditions, including, but not limited to, affected and selected employees, minimum proficiency levels, training, supervision, conduct, and the management and solicitation of personnel.

9.1. Designation of Personnel

Each of the Personnel is designated in, and shall have the functions assigned to him or her as set forth in, **Attachment 05 –Personnel Plan**. **Attachment 05 –Personnel Plan** may be modified from time to time in accordance with this Agreement and shall be deemed modified upon:

- 9.1.1. DSHS's designation in writing of acceptance of additional or replacement of Personnel
- 9.1.2. Any approved replacement or substitution of a new person for any Personnel and agreed to in writing by both Parties

The assignment, hiring or designation of any person to fill the position or perform the duties provided by any Personnel will be done so under the guidelines of **Attachment 05 – Personnel Plan**.

9.2. Specialized Personnel

As appropriate to its provision of Services, the Contractor shall ensure that applicable Contractor personnel (and the personnel of any Subcontractors) are trained, qualified and available to perform assigned services required in work areas, such as specific health, regulatory (including, without limitation, Sarbanes-Oxley Act, HIPAA, and other regulations identified by DSHS), and security or safety-related expertise, all as may be consistent with DSHS's regulatory and compliance-related policies and practices as communicated to the Contractor.

9.3. Personnel Requirements

- 9.3.1. The Contractor acknowledges and agrees that it is responsible for providing sufficient staff resources to perform its obligations under this Agreement.
- 9.3.2. Contractor personnel shall be subject to security clearances and provided with safety training by the Contractor and DSHS for consistency with any applicable policies and/or practices of DSHS that are applicable to DSHS's third-party contractors.
- 9.3.3. Access to the State Data Center where ACES equipment operates, requires submission of an application for badged access and approval by ESA/ITS management.
- 9.3.4. Background checks, at the expense of DSHS, may be required of Contractor staff (which may include finger printing).
- 9.3.5. All costs and expenses associated with providing, equipping and retaining Contractor staff and other personnel are included in the Services Fees, including, without limitation, all wages (including overtime payments), benefits of employment, applicable payroll taxes and all associated staffing costs, such as training and education, refreshments, travel and lodging costs (including all travel and lodging costs that may be associated with providing the Services, regardless of location), and recruiting and relocation expenses.
- 9.3.6. At the end of every month after the Effective Date of the Agreement, the Contractor shall provide DSHS with a written list of all Contractor and Subcontractor personnel who interface with DSHS on a regular basis or are otherwise assigned to perform the Services for DSHS and whose time is primarily dedicated to providing Services hereunder. The contents of the written list shall include the names of personnel, dates of placement, assignment addresses, assigned duties and responsibilities, and the names of the person to whom they are required to report.

9.4. Material Changes to Staffing

If the Contractor plans to change a service center location or a service model, or make changes related to the makeup, manner or staffing levels of Contractor personnel who have regular direct contact with DSHS, the Contractor will do so only after presenting and receiving approval in writing from DSHS regarding its changes and the management plan associated with such changes. Such approval may be withheld at DSHS's sole discretion if DSHS reasonably determines that such changes will adversely impact DSHS.

9.5. Removal/Replacement of Personnel by Contractor

- 9.5.1. All Personnel shall be assigned to perform the Services (for example, full-time assignment or otherwise) as needed to ensure that the Services contemplated hereunder are provided in an efficient and timely manner according to the plans and timelines expressed in this Section.
- 9.5.2. Without DSHS's prior written consent, the Contractor shall not: (i) undertake any action with respect to any Personnel that would result in the alteration or reduction of time expended by such Personnel in performance of the Contractor's duties hereunder; or (ii) for a period of 18 months generally, and 24 months in the case of initially assigned Personnel, from a Personnel's initial assignment date, transfer, reassign or otherwise redeploy any Personnel from performance of the Contractor's duties under this Agreement, except in the case of a voluntary termination or a For Cause termination.
- 9.5.3. If any of the Personnel becomes incapacitated, voluntarily terminates his or her employment with the Contractor (and/or any of the Contractor's Affiliates or Subcontractors), is terminated For Cause by the Contractor, or is transferred, reassigned or redeployed with the consent of DSHS, within 3 weeks, the Contractor shall replace such person with another person approved by DSHS who is at least as well qualified as the person being replaced as promptly as is practical under the circumstances, provided, however, that the Contractor shall (i) at a minimum, assign a temporary replacement within two business days, and (ii) remain responsible for providing all activities for which the departed Personnel were responsible in a timely fashion, notwithstanding such departure.
- 9.5.4. Whether or not DSHS consents to any reassignments or replacements of the Contractor Executive, the Contractor will use its best effort to ensure continuity and avoid disruption in the roles and activities for which the Contractor Executive is responsible.

9.6. Removal of Contractor Personnel by DSHS

If DSHS believes that the performance or conduct of any Person employed or retained by the Contractor to perform the Contractor's obligations under this Agreement (including, without limitation, Personnel) is:

- Unsatisfactory for any reason
- Has violated DSHS' personal safety, security or compliance requirements
- Is not in compliance with the provisions of this Agreement

DSHS shall notify the Contractor in writing, and the Contractor will promptly address the performance or conduct of such Person, or will promptly replace such Person with another Person acceptable to DSHS and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

10. Minimum Proficiency Levels

- 10.1. Key Personnel, and all other personnel assigned by the Contractor or its Subcontractors to perform the Contractor's obligations under this Agreement, shall have experience, training and expertise (as designated in **Attachment 05 – Personnel**) sufficient to perform their assigned portion of the Contractor's obligations under this Agreement, including, without limitation, the Contractor's obligations with respect to the SLRs.
- 10.2. With respect to Service Rates for work charged on a time-and-material basis, the Contractor will assign personnel possessing the minimum (or greater) required proficiency or skills to

accomplish the work and, in any event, will only charge DSHS at the Service Rates applicable to resources that have been approved for such work.

- 10.3. DSHS may request proof of completion of training classes and certifications for such training, proficiency and skill as required under Section E: DSHS General Terms and Conditions.

11. Training

- 11.1. The Contractor shall provide, and cause its Subcontractors to provide, all training to the employees of the Contractor and its Subcontractors, as deemed useful or necessary by DSHS, for them to perform all the Contractor's duties under this Agreement (including technical training, as well as training regarding applicable administrative matters, such as training regarding DSHS-specific policies and standard operating procedures).
- 11.2. Training shall be provided at the sole expense of the Contractor, unless DSHS introduces a new system, process and/or application, in which case, DSHS will be responsible for all training costs to the Contractor so the Contractor is able to support the new system, process and/or application.
- 11.3. Contractor is solely responsible for training their staff on any systems, procedures, processes, and applications recommended by the Contractor (and approved by DSHS). Contractor is also responsible to maintain training/skill levels on currently implemented systems, procedures, processes, and applications; and new industry best practice technologies being proposed to DSHS for implementation.
- 11.4. If the Contractor's employees are invited to attend DSHS-provided safety or facility training, the Parties will cooperate to ensure the sufficiency and adequacy of such training for the purposes of that employee's work at the given DSHS facility.
- 11.5. New staff will be trained on state systems based on DSHS approved training plans produced by their assigned team. Each Contractor-lead team will be required to develop training plans for incoming staff.

12. Supervision and Conduct

- 12.1. Except as expressly set forth herein, neither the Contractor nor the Contractor's employees, Subcontractors or other agents of the Contractor are, or shall be deemed to be, employees of DSHS.
- 12.2. The Contractor will be responsible for their own staff assigned to provide Services under this Agreement, and will have the sole right to direct and control the management of such staff.
- 12.3. The Contractor will: (a) determine and pay all applicable wages and salaries, including applicable overtime and other premium pay; (b) provide welfare and retirement benefits, as it deems necessary or desirable; (c) comply with applicable tax laws, including income tax and employment tax withholding laws; (d) comply with all applicable laws governing the relationship between the Contractor or the Contractor's Subcontractors and their respective employees, including laws relating to accommodation of disabilities, equal pay, provision of leave (for example, Family and Medical Leave Act, jury duty and so on), unlawful discrimination, as well as wage and hour law requirements; (e) comply with all workers' compensation insurance coverage laws; (f) file all applicable reports with federal, state and local agencies and authorities as required by law; (g) maintain all required employment records, including I-9, personnel and medical files consistent with applicable law and customary business practices; and (h) comply with all applicable equal employment

opportunity laws.

- 12.4. While working as a resource under this contract, personnel of the Contractor and the Contractor's Subcontractors will (a) conduct themselves in a businesslike manner and (b) comply with the requests and standard rules of DSHS regarding safety and health and personal, professional and ethical conduct (including, without limitation, those contained in DSHS's employee manuals and other written policies and procedures).

13. Employment Relationship Between the Parties:

- 13.1. Nothing contained in this Agreement shall be construed to give either party the legal power to direct and control the day-to-day activities of the other party, except if it relates to:
 - 13.1.1. The fulfillment of either party's legal obligations to ensure employees' well-being at their place of work (particularly health and safety regulations).
 - 13.1.2. Instructions given, including, but not limited to, those relating to working time, which are given in execution of the services to be performed under the terms and conditions of this Agreement.
 - 13.1.3. Instances where managing Contractor personnel in their day-to-day activities will be a shared responsibility between DSHS and the Contractor, ensuring that the Contractor's levels of performance established in this contract are met.
- 13.2. Both parties expressly undertake not to exercise employer's authority and guidance or control, or part thereof, over the other party's employees. Employer's authority may include disciplinary actions, holiday requests, salary reviews and dismissals, and performance evaluations for promotion or salary increases.

14. Management

The Contractor agrees to be responsible for managing the personnel assigned to DSHS's engagement, including the hiring and developing of employees so that they become more productive to DSHS. The managing responsibilities include communicating with all Contractor employees at all levels.

15. DSHS Personnel Obligations

The successful completion of the services and deliverables are dependent in part upon the participation of DSHS's management and personnel. Designated DSHS Personnel and/or Third Parties will be available according to the timelines and/or service's roles and responsibilities.

16. Other Personnel Requirements

16.1. Support of DSHS Meetings

- 16.1.1. The Contractor understands that its personnel assigned to perform the Services will be invited to DSHS-initiated meetings to provide subject matter expertise.
- 16.1.2. The Contractor will ensure attendance and support of such Contractor personnel who are subject matter experts in particular areas, on a reasonable basis during normal business hours. Contractor personnel will support such meetings and provide expertise as may be desirable to support DSHS's business goals.
- 16.1.3. The Contractor will ensure that any meeting or agreement between Contractor staff and staff outside of IT Solutions has an IT Solutions resource in attendance. These meetings and agreements must be at the direction of DSHS and in alignment with DSHS goals.

17. Nonharassment/Nondiscrimination

- 17.1. DSHS and the Contractor must ensure that their organizations and their subcontractors maintain a work environment for their employees that is free from any unlawful harassment and discrimination based on a person's gender, age, race, sexual orientation, religion, nationality or physical disability or condition. Unlawful harassment includes verbal, physical and visual harassment; unwelcome sexual advances; solicitation of sexual favors; and/or creating or maintaining an intimidating or hostile work environment. Contractor and staff must follow all DSHS and State policies.
- 17.2. Both Parties agree to maintain and enforce a strict policy prohibiting all unlawful harassment and discrimination in their workplace environments.
- 17.3. The Parties agree not to expose personnel that they employ or contract to unsafe or hazardous conditions when performing the Services at the Contractor and DSHS's premises, or during transit/transportation to perform the Services.
- 17.4. Failure by either Party to fulfill its obligations will constitute a material breach of this Agreement by the respective Party. In case of such a material breach, the other Party may immediately terminate this Agreement for cause.

Section C	Fees, Compensation, and Payment	
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Section C: Fees, Compensation, and Payment

Fees

1. General

As the sole and entire financial consideration for all the Services to be performed by the Contractor and any other obligations hereunder, DSHS will pay to the Contractor the amounts set forth in this Section.

Except as otherwise expressly stated in this Section, DSHS will not pay the Contractor any additional fees, reimbursements or expenses for labor and general business expenses (including travel, meals and overhead expenses) for the Services and other obligations of the Contractor hereunder.

2. Service Rates

The Contractor will not increase the billing rate for a particular individual who is assigned to DSHS as a result of a promotion or change in job classification, or otherwise without DSHS's prior written consent, it being the understanding of the Parties that DSHS does not expect any rate changes during the course of this engagement.

The Contractor will only be entitled to charge for a Change Request through an agreed Change Order, signed by DSHS, and as set forth in the Change Order Process documented in **Attachment 03 – Contract Management Plan**.

In no event will the Contractor bill DSHS for travel time.

3. Baselines, Metrics

Initial baselines will be set forth in **Attachment 01 – SOW_SLR_Pricing_BHD**, and may be changed from time to time by the Parties according to the mutually agreed-upon process set forth in **Attachment 08 - Relationship Integration and Governance** and/or **Attachment 01 – SOW_SLR_Pricing_BHD**.

Quarterly Adjustments. Without limiting any other terms herein contained, DSHS will have the right, not more often than once quarterly, to unilaterally adjust the weighting factors assigned to any SLR or critical milestone on sixty (60) calendar days' notice to the Contractor.

Annual Review. During the annual SLR review conducted by the Parties, DSHS will have the right to: (i) discuss and adapt the penalties assigned to any SLR and/or critical milestone; (ii) adjust SLRs in accordance with the benchmarking process described in **Attachment 02 – Measurement Charter**; and (iii) adjust for any new SLRs that will be applicable during the upcoming Contract Year.

4. Invoices

4.1. General

The Contractor shall submit monthly invoices to DSHS for Services. Any changes in the monthly invoice formats will be approved by DSHS in advance of such changes. All invoices will be subject to DSHS's review and approval prior to payment. The Contractor will not submit invoices until the last day of each month during which Services were delivered, or as may be otherwise specified in this agreement. Invoices must provide information as agreed by the Parties, and the Contractor will include any unresolved discrepancies.

Payment shall be made after acceptance by DSHS of the services described in the

Statement of Work and approved through the acceptance process documented in Section M: Acceptance. No payment in advance or in anticipation of services or supplies under this Work Order shall be made by DSHS. Claims for payment submitted by the Contractor or costs due and payable under this Work Order that were incurred prior to the expiration date shall be paid to the Contractor, if received by DSHS within ninety (90) days after the expiration date. Payment will be considered timely if funds are postmarked or dated within thirty (30) days of receipt of either of the following, whichever is later: Receipt of properly executed invoice vouchers; acceptance of deliverables by DSHS; or statewide payee desk.

Unless subject to a dispute as provided in Section 4.4 below, invoices are payable within thirty (30) calendar days after receipt of a correct invoice that complies with the requirements of this agreement. Except to the extent that the Contractor has reason to believe that it will not be able to invoice DSHS within ninety (90) days of the performance of associated Services, and the Contractor so notifies DSHS in writing prior to the end of the ninety (90) day period, which notification will contain an estimate of the charges, invoiced amounts must be charged in a timely manner, and the Contractor will have a maximum of one hundred and eighty (180) days (invoice deadline) from the earlier of the original invoice date, delivery of a product or completion of service date for a particular invoice period (invoice period) to invoice DSHS or to add additional charges for such invoice period that the Contractor had neglected to insert in the original invoice.

Any charges added for a particular invoice period following the invoice deadline will be improper and void, and DSHS will not be obligated to pay any such amounts, and will not be deemed to be in breach in the event that DSHS refuses to pay such amounts. Notwithstanding the foregoing, the Contractor may refund any overcharges with respect to any invoice at any time..

4.2. Invoicing Requirements.

Contractor shall submit properly itemized invoices to DSHS for any and all work pertaining to this Contract. Incorrect or incomplete invoices will be returned by DSHS to Contractor for correction and reissue. Invoices shall provide and itemize the following:

- SLR reports and other information and data that support the invoiced fees as well as any fee reductions that are applicable to the prior month.
- DSHS supplied State Form A-19 Invoice Voucher
- Appropriate supporting documentation sufficient to permit DSHS to validate and substantiate each invoiced item. Contractor shall submit properly itemized invoices to DSHS for any and all work pertaining to this Contract. Incorrect or incomplete invoices will be returned by DSHS to Contractor for correction and reissue. Invoices shall provide and itemize the following:

DSHS will pay the Contractor within 30 calendar days of receipt of properly executed invoices. The Contractor shall submit invoices, not more than monthly, using the DSHS supplied State Form A-19 Invoice Voucher. The A-19 must be accompanied by appropriate supporting documentation sufficient to permit DSHS to validate and substantiate each invoiced item. The A-19 along with copies of the supporting documentation must be emailed to ESAINvoices@dshs.wa.gov by the 10th of each month.

The rates shall be in accordance with those set forth in this Work Order.

4.3. Other Services

The invoicing milestones for other Services fees will be determined by the Parties on a case-by-case basis. The Contractor's invoices for other Services will include documentation that

references DSHS's authorizing documentation, charges and description. No invoice with respect to other Services will be paid unless such other Services were preauthorized in writing by DSHS.

4.4. Disputed Amounts

Subject to and in accordance with the provisions of this Section, DSHS may withhold payment of any portion of a Contractor invoice that DSHS in good faith disputes as due or owing. In such case, DSHS will pay any undisputed amounts and provide to the Contractor a written explanation of the basis for the disputes as to the disputed amounts within the time set forth above for the payment of undisputed invoices. The failure of DSHS to pay the disputed part of an invoice will not constitute a breach or default by DSHS, so long as DSHS complies with the provisions of this Section. Any dispute relating to amounts owed by a Party hereunder will be considered an issue. All the Contractor's obligations under this agreement will continue unabated during the dispute resolution process. Notwithstanding the foregoing, DSHS will not have the right to withhold payment of the fixed portion of monthly fees except to the extent that: (a) the invoice misstates the amount of such fixed portion of the monthly fees; or (b) the Contractor has invoiced DSHS for a higher than agreed amount, in which case, DSHS will have the right to withhold payment of the discrepancy.

4.5. Payment.

This is a fixed fee deliverables based contract. Payment shall be made on a monthly basis dependent upon DSHS' review and acceptance of the monthly executive summary report. Payment shall be made after acceptance by DSHS of the services described in the Statement of Work. Upon acceptance, DSHS will pay eighty-five percent (85%) of the agreed upon monthly payment. No payment in advance or in anticipation of services or supplies under this Contract shall be made by DSHS. Claims for payment submitted by the Contractor or costs due and payable under this Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by DSHS within 90 days after the expiration date.

Payment will be considered timely if funds are postmarked or dated within 30 days of receipt of either of the following, whichever is later: Receipt of properly executed invoice vouchers; acceptance of deliverables by DSHS; or statewide payee desk.

4.5.1. Holdback/Completion Guarantee

DSHS will holdback fifteen percent (15%) of each monthly payment amount to be paid in full ninety (90) days following the Steady State date if existing deficiencies have been resolved and no new major issues or concerns have been documented by DSHS.

4.5.2. Statewide Payee Desk

In order to receive payment, Contractors must be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington state agencies cannot make payments to Contractor until Contractor is registered. Registration materials are available at <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>

4.6. Overpayments.

Contractor shall refund to DSHS the full amount of any erroneous payment or overpayment within thirty (30) days of such notice.

5. Compensation

Payment Schedule

Approved Amount	Actual Payment	Holdback
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Section C: Fees, Compensation, and Payment

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Payment for the services associated with this Contract will be based on completion of the deliverables described herein and approval of the deliverable by DSHS.

In the event additional funds become available, this Contract may be renegotiated to provide for additional services subject to continued satisfactory completion of work as specified herein. Prior to commencing any work that exceeds the Contract specification, written approval from DSHS must be received.

Section D	Insurance Requirements	
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Section D: Insurance Requirements

The Contractor shall provide insurance coverage as set forth in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from acts or omissions of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. The Contractor shall provide insurance coverage which the Contractor shall maintain in full force and effect during the term of this Contract as detailed herein.

The Contractor shall at all times comply with the following insurance requirements:

1. General Liability Insurance

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

In lieu of general liability insurance mentioned above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of the contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees shall be named as additional insured's.

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured.

2. Business Automobile Liability Insurance

The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an additional insured.

3. Professional Liability Insurance (PL)

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits:

Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

4. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.

5. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

6. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

7. Separation of Insured's

All insurance policies shall include coverage for cross liability and contain a "Separation of Insured's" provision.

8. Insurers

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

9. Evidence of Coverage

The Contractor shall, upon request by DSHS, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Department of Social and Health Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The Contractor shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

10. Material Changes

The insurer shall give the DSHS point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.

11. General

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

12. Waiver

The Contractor waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Contractor.

Section E

DSHS General Terms and Conditions

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Section E – DSHS General Conditions

1. Amendment.

This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

2. Assignment.

The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.

3. Billing Limitations.

- 3.1. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
- 3.2. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- 3.3. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

4. Compliance with Applicable Law.

At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

5. Confidentiality.

- 5.1. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:
 - 5.1.1. as provided by law; or,
 - 5.1.2. in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- 5.2. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
 - 5.2.1. Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - 5.2.2. Physically Securing any computers, documents, or other media containing the Confidential Information.
 - 5.2.3. Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - 5.2.3.1. Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.

- 5.2.3.2. Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
- 5.2.3.3. Verifying after transmittal that the fax was received by the intended recipient.
- 5.2.4. Send paper documents containing Confidential Information via a Trusted System.
- 5.2.5. Following the requirements of the DSHS Data Security Requirements Section N.
- 5.2.6. Following the requirements of the Federal Tax Information Security Requirements, Section O.
- 5.2.7. Following the requirements of the Minimal Acceptable Risk Standards for Exchanges (MARS-E) published by the Center for Medicare and Medicaid Services (CMS)
- 5.3. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.
- 5.4. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- 5.5. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

6. Debarment Certification.

The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.

7. Governing Law and Venue.

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

8. Independent Contractor.

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

9. Inspection.

The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.

10. Maintenance of Records.

The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

10.1. Recordkeeping

- 10.1.1. The Contractor will maintain complete and accurate documents and accounting records that relate to this Agreement, including electronic copies of all such records and books, consistently applying generally accepted accounting principles (GAAP) and complying with all applicable laws and regulations.
- 10.1.2. Complete and accurate documents and accounting records relevant to this Agreement will include transaction-related documentation, such as supporting invoices, purchase orders, bills of lading, tax returns, exemption certificates and other relevant documents.
- 10.1.3. Such records and books, and the accounting controls related to them, will constitute Contractor Confidential Information and will be sufficient to provide reasonable assurances that:
 - 10.1.3.1. The Contractor and DSHS will record transactions to produce their respective financial statements in accordance with GAAP and to ensure that it is possible to track assets used to deliver the Services contracted in this Agreement; and
 - 10.1.3.2. The Contractor will compare the inventory of traceable assets to all existing IT assets at reasonable intervals and take appropriate action to correct any differences.
- 10.1.4. The Contractor will maintain such documents and accounting records of its business and retain these at the Contractor's headquarters. DSHS (or its authorized representatives) will have the right to examine any part of these documents and accounting records during Business Hours provided DSHS issued a specific request at least five working days in advance.
- 10.1.5. DSHS (or its authorized representatives) may extract information and copies of such documents and accounting records for audit purposes in terms of this Agreement. Extracting such information is subject to the Contractor's standard practices relative to customer audits, provided any limitations in the Contractor's standard practices do not conflict with the permissible audits under this Agreement.
- 10.1.6. The Contractor will retain and maintain accurate records and documents that relate to performing the Services under this Agreement to meet the retention policies set by the Washington State Office of the Secretary of State, Records Management Schedule,

Section 5.6.

10.1.7. DSHS will only have the right to examine records and documents that relate to performing Services under this Agreement and the Fees related to it.

10.1.8. In no event will the Contractor be obliged to provide DSHS (or its authorized representatives) access to the Contractor's cost or profitability information unless this information is required to perform the audits in terms of this Agreement, including **Attachment 02 – Measurement Charter**.

10.2. **Operational Assessments/Audits**

10.2.1. DSHS, or its authorized representatives that are not the Contractor's competitors, which are subject to the confidentiality obligations of this Agreement, will have the right, at any time but with one (1) month's written notice, to assess the Contractor's operational and/or security performance related to the Services.

10.2.2. The Contractor will grant DSHS and its authorized representatives reasonable access to the Contractor and its Subcontractors' facilities, documents, and accounting and other records of the Contractor as they relate to this Agreement to ascertain any facts relative to the Contractor's performance in delivering the Services. **Attachment 02 – Measurement Charter** to this Agreement formalizes this information.

10.2.3. The Contractor will provide DSHS, or its authorized representatives, all information and assistance to perform such assessments as requested; provided, however, that the Parties will endeavor to arrange such assistance so that it does not interfere with the Contractor's performance of the Services and that DSHS made its request for this information and assistance in writing one (1) month beforehand.

10.2.4. If any assessment reveals a material breach in the Contractor's performance that the Contractor is aware of but has failed to disclose to DSHS prior to the start of such an assessment, the Contractor will bear the cost of such an assessment.

10.2.5. The Parties will address all other breaches in terms of **Attachment 02 – Measurement Charter** to this Agreement.

10.2.6. The Parties will handle all disputes regarding audit findings in agreement with AGREEMENT, Section 7 and Section E: DSHS General Terms and Conditions.

10.2.7. The Contractor will incorporate the substance of this Section into any agreement into which it enters with any Subcontractor for the provision of Services under this Agreement.

10.3. **Contractor Facility SAS 70 Type II Reports**

10.3.1. The Contractor will ensure that a reputable independent auditor conducts an audit related to the Statement of Auditing Standards (SAS) 70 and will pay for the total costs of this SAS 70 Type II Audit, if this audit applies to the Contractor's facilities, such as, data center management/operations, where the Contractor or its Subcontractors are performing the Services.

10.3.2. The SAS 70 Type II audit mentioned in this Section will result in a report that describes the Contractor's controls at a specific point in time and includes detailed testing and the agreed procedures describing these tests.

- 10.3.3. If applicable to the Services, all SAS 70 Type II audits that the Contractor conducts in relation to this Section will include the testing of completeness, accuracy, validity and restricted access (CAVR) of the controls and the processing locations responsible for providing the Services.
- 10.3.4. The Contractor will prepare and deliver DSHS copies of written Type II reports, but will remove any Confidential Information that is irrelevant to the Services.
- 10.3.5. The Type II report will cover, at a minimum, the six (6) month period specified by the Contractor (the "Type II report period").
- 10.3.6. The Contractor must deliver the Type II report to DSHS within sixty (60) days after the last day of the Type II report period.
- 10.3.7. If neither of the two Type II report periods each year ends on June 30, the Contractor will provide DSHS with a written description of all applicable control changes that it implemented during the period from the end of the most recent Type II Report through June 30 and as documented through the demand management process in **Attachment 04 – Demand Management Plan**. DSHS must provide this description of these control changes within forty five (45) days after June 30 and meet or procure any additional related requirements as agreed through the demand management process.

10.4. **Corrective Actions**

- 10.4.1. In the event that DSHS's internal auditors or an independent auditor identifies any deficiency, the Contractor will prepare and deliver a detailed plan to DSHS for correcting all such failures and exceptions ("corrective plan"). DSHS would need to review and approve this plan.
- 10.4.2. The Contractor will deliver such a corrective plan to DSHS and its independent auditor within ten (10) calendar days following:
 - 10.4.2.1. The Contractor's delivery to DSHS of the Type II Report that identifies and details the deficiencies and/or exceptions, or
 - 10.4.2.2. The Contractor's receipt of written notice from DSHS that describes such deficiencies and/or exceptions that DSHS (or its independent auditor) identified.
- 10.4.3. The Contractor will, at its sole cost except as indicated in d. below, remedy such a deficiency or deficiencies and provide DSHS with documentation of this remedy. This documentation must sufficiently prove that the applicable control (or remedy) is operating effectively at the end of the applicable calendar year. The Contractor must remedy the deficiency or deficiencies promptly, but in no event later than thirty (30) days following receipt of notification of such deficiency and DSHS's acceptance of the corrective plan, unless otherwise agreed by the Parties.
- 10.4.4. The Parties will follow the procedures and guidelines in AGREEMENT, Section 7 and Section E: DSHS General Terms and Conditions of this Agreement to resolve the Contractor's disagreement over the validity of any deficiencies and/or exceptions that DSHS (or its independent auditor) identified. This will not apply if the Contractor (or its independent auditor) identified the deficiencies and/or exceptions.
- 10.4.5. If the Contractor modifies the corrective plan to reflect changes that DSHS proposed and which apply to additional controls other than existing and approved controls and Services, such modifications will be subject to the demand management process. In

addition, the Contractor may be entitled to additional compensation for performing DSHS-requested modifications based on the service rates; unless the Contractor has the appropriately skilled and experienced staff to perform the modifications in less than 300 hours per year.

11. Order of Precedence.

In the event of any inconsistency or conflict between the General Terms and Conditions and any other term or condition contained in this Contract, including terms and conditions contained in any Exhibit or Attachment to this Contract, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.

12. Severability.

If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.

13. Survivability.

The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.

14. Contract Renegotiation, Suspension, or Termination Due to Change in Funding.

If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

- 14.1. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.
- 14.2. DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
 - 14.2.1. During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - 14.2.2. When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 - 14.2.3. If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- 14.3. DSHS may immediately terminate this Contract by providing written notice to the Contractor.

The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

15. Waiver.

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Section F

**Additional General Terms and Conditions –
IT Service Contracts**

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Section F: Additional General Terms and Conditions – IT Service Contracts:

1. Advance Payment.

DSHS shall not make any payments in advance or in anticipation of the delivery of services to be provided pursuant to this Contract.

2. Commencement of Work.

No work shall be performed by the Contractor until the Contract is executed by the Contractor and DSHS and received by DSHS.

3. Construction.

The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.

4. Contractor Certification Regarding Ethics.

The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.

5. Contractor Commitments, Warranties and Representations.

Any written commitment by the Contractor within the scope of this Contract shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and shall render the Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by the Contractor includes but is not limited to: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by the Contractor in its response to the solicitation resulting in this Contract ("Bid") or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Bid or used to effect the sale to DSHS.

6. Disputes.

6.1. In the event a bona fide dispute concerning a question of fact arises between DSHS and the Contractor that cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

6.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days (which shall mean Monday through Friday, 8:00 a.m. to 17:00 p.m., Pacific Time, except for holidays observed by the state of Washington). The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

6.2.1. If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.

- 6.2.2. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a written decision on the dispute in the shortest practical time.
- 6.2.3. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 6.3. Unless irreparable harm will result, the parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
- 6.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 6.5. Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.
- 6.6. DSHS and the Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 6.7. If the subject of the dispute is the amount due and payable by DSHS for services being provided by the Contractor, the Contractor shall continue providing services pending resolution of the dispute provided DSHS pays the Contractor the amount DSHS, in good faith, believes is due and payable, and may withhold the difference between such amount and the amount the Contractor, in good faith, believes is due and payable.

7. Health and Safety.

The Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health or safety of any DSHS client with whom the Contractor has contact.

8. Indemnification and Hold Harmless.

- 8.1. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind or nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
- 8.2. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
- 8.3. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- 8.4. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

9. Industrial Insurance Coverage.

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

10. Limitation of Liability.

- 10.1. The parties agree that neither the Contractor nor DSHS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. Damages resulting from termination for default, breaches of the Maintenance of Records clause, breaches of the data security requirements, or breaches of confidentiality including disclosure of PHI, are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 10.2. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

11. Notice of Overpayment.

If the Contractor receives a Contractor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- 11.1. Be received by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
- 11.2. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- 11.3. Include a statement as to why the Contractor thinks the notice is incorrect; and
- 11.4. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a Contractor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

12. Ownership/Rights in Data

- 12.1. Both Custom Services and Commercial Off-The-Shelf material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to DSHS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise DSHS at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. DSHS shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by the Contractor with respect to any Preexisting Material delivered under this Contract. DSHS shall not have the right to modify or remove any restrictive markings placed upon the Preexisting Material by the Contractor.
- 12.2. For Medicaid technology investments funded through an approved APD, DSHS will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with enhanced Federal financial participation (FFP).
- 12.3. Custom Services. If this Contract involves custom service, the below sections (b)(1) through (4) apply.
- 12.3.1. DSHS and the Contractor agree that all data and work products (collectively called “Work Product”) produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by DSHS. The Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 12.3.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, the Contractor assigns and transfers to DSHS the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 12.3.3. The Contractor shall execute all documents and perform such other proper acts as DSHS may deem necessary to secure for DSHS the rights pursuant to this section.
- 12.3.4. The Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of DSHS. The Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

12.4. Commercial Off-The-Shelf. If this Contract involves commercial off-the-shelf products, the below sections (c)(1) through (3) apply.

12.4.1. The Contractor shall maintain all title, copyright, and other proprietary rights in the Software. DSHS does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to DSHS that Contractor is the owner of the Software licensed hereunder or otherwise has the right to grant to DSHS the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide.

12.4.2. The Contractor represents and warrants that Contractor has the right to license the software to DSHS as provided in this Contract and that DSHS' use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide.

12.4.3. The Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

13. Patent and Copyright Indemnification.

13.1. The Contractor, at its expense, shall defend, indemnify, and hold DSHS harmless from and against any claims against DSHS that any Product or Work Product supplied hereunder, or DSHS's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Product shall mean any Contractor-supplied equipment, Software, or documentation. The Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DSHS provided that DSHS:

13.1.1. Promptly notifies the Contractor in writing of the claim, but DSHS's failure to provide timely notice shall only relieve the Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Contractor; and

13.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Contractor sole control of the defense and all related settlement negotiations.

13.2. If such claim has occurred, or in the Contractor's opinion is likely to occur, DSHS agrees to permit the Contractor, at its option and expense, either to procure for DSHS the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Contractor determines that none of these alternatives is reasonably available, the Contractor, at its risk and expense, will take back the Product or Work Product and provide DSHS a refund. In the case of Work Product, the Contractor shall refund to DSHS the entire amount DSHS paid to the Contractor for the Contractor's provision of the Work Product. In the case of Product, the Contractor shall refund to DSHS its depreciated value. No termination charges will be payable on such returned Product, and

DSHS will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by DSHS shall be refunded by the Contractor.

13.3. The Contractor has no liability for any claim of infringement arising solely from:

13.3.1. The Contractor's compliance with any designs, specifications or instructions of DSHS;

13.3.2. Modification of the Product or Work Product by DSHS or a third party without the prior knowledge and approval of the Contractor; or

13.3.3. Use of the Product or Work Product in a way not specified by the Contractor;

13.3.4. unless the claim arose against the Contractor's Product or Work Product independently of any of these specified actions.

13.4. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

14. Public Records Act.

The Contractor acknowledges that DSHS is subject to the Public Records Act (Chapter 42.56 RCW) and that this Contract is a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by the Contractor to be Proprietary Information must be clearly identified as such by the Contractor. "Proprietary Information" means information owned by the Contractor to which the Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws. To the extent consistent with Chapter 42.56 RCW, DSHS will maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view the Contractor's Proprietary Information, DSHS will notify the Contractor of the request and of the date that such records will be released to the requester unless the Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, DSHS will release the requested information on the date specified.

15. Publicity.

The Contractor shall not name DSHS as a customer, nor use any information related to this Contract, in any format or media, in any Contractor's advertising or publicity without prior written consent from DSHS.

16. Site Security.

While providing services at a DSHS location, the Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations specific to the DSHS location.

17. Subcontracting.

Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior written approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.

18. Taxes.

- 18.1. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt from property tax.
- 18.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of Title 82 RCW and Title 458 WAC. Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to WAC 458-20-101 (Tax registration and tax reporting) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.
- 18.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

19. Waiver of UCITA

The Parties agree that the Uniform Computer Information Transactions Act or any version thereof, adopted by any State in any form ("UCITA"), shall not apply to this 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.

20. Time of the Essence

The Contractor acknowledges that work should be completed in a timely fashion or as quickly as possible and agrees to perform the Work within the time specified in the Contract Documents. Any failure by DSHS to terminate the Contract Documents promptly where the Contractor does not perform within the time specified shall not constitute a waiver by DSHS of its rights to subsequently terminate the Contract Documents or suspend the Work, or to seek damages for untimely performance.

21. Use of Organization Name

Except as necessary to deliver the Services in accordance with this Agreement, the Contractor shall have no right to use, and shall not use, the name of DSHS and/or any of its officials or employees, or logos or trademarks in any manner without the prior written consent of DSHS, which consent may be withheld at the DSHS's sole discretion.

Section G

Assets and Third-Party Contracts

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Section G: Assets and Third-Party Contracts

1. DSHS-Owned/Leased Equipment

- 1.1. It is the intent of the Parties that DSHS will provide and retain ownership of the assets, inclusive of asset maintenance agreements which have been in ownership of, or in lease by, DSHS on the Effective Date.
- 1.2. DSHS will furnish to on-site Contractors, for use at no charge, DSHS-Owned/Leased Equipment listed in **Attachment 01 – SOW_SLR_Pricing_BHD** to this Agreement.
- 1.3. When the lease expires or DSHS-Owned Equipment has reached the end of its useful life, the Contractor shall deinstall (per the Services as defined in Section K of this Agreement) and return such item of equipment per DSHS's reasonable directions and at DSHS's expense. DSHS-Owned Equipment will remain the property of DSHS, however, to the extent set forth in **Attachment 01 – SOW_SLR_Pricing_BHD**, whereby assets are listed as retained or purchased as defined in this Agreement.
- 1.4. The Contractor will provide DSHS with reasonable access to all DSHS-Owned/Leased Equipment located at a Contractor or other non-DSHS facility, and, notwithstanding any contrary terms that may be contained herein, will be responsible for all costs and expenses associated with repair or replacement of any DSHS-Owned/Leased Equipment or any part thereof damaged (reasonable wear and tear excepted) by the Contractor, its employees, Subcontractors, agents or invitees (excluding DSHS).

2. Installation and Procurement of DSHS-Owned/Leased Equipment

- 2.1. Under the reasonable instruction of DSHS, the Contractor will arrange for installation of each item of DSHS-Owned/Leased Equipment used in connection with Services to such location(s) as may be mutually agreed to by the Parties. If DSHS relocates any DSHS facility in which DSHS-Owned/Leased Equipment may be installed, DSHS will be responsible for the relocation costs of such DSHS-Owned Equipment.
- 2.2. If the Contractor requests the relocation of any DSHS-Owned/Leased Equipment, the Contractor shall be responsible for the associated relocation costs.

3. Maintenance of DSHS-Owned/Leased Equipment

- 3.1. Maintenance of DSHS-Owned/Leased Equipment. Financial responsibility for certain maintenance agreements, lease agreement and various DSHS-Owned or DSHS-Leased Equipment is set forth in the financial responsibility matrix in **Attachment 01 – SOW_SLR_Pricing_BHD** to this Agreement.
- 3.2. As more specifically provided in the applicable Statements of Work, the Contractor shall serve as DSHS's agent in coordinating and executing against such maintenance and lease agreements that DSHS may enter into with equipment vendors. To the extent specifically so provided in the Statements of Work, the Contractor is responsible for the routine and preventative maintenance of all DSHS Equipment and DSHS will have financial responsibility for parts, equipment, repair and refresh costs for all DSHS-Owned or DSHS-Leased Equipment after installation at an DSHS location; provided, however, that the Contractor will be responsible for all costs and expenses of repair or replacement to correct any damage to such Equipment or any part thereof (reasonable wear and tear excepted) caused by the Contractor, or one of the Contractor's employees, agents

or invitees.

4. Return of DSHS Equipment

At the end of the Term, DSHS and the Contractor shall arrange for the return and/or acquisition of all DSHS Equipment, subject to the provisions of Section K of this Agreement. Unless a different return date is agreed by the Parties, immediately upon expiration or termination of this Agreement, the Contractor will return each item of DSHS-Owned Equipment and DSHS-Leased Equipment to DSHS the same condition it was in when initially provided to the Contractor, reasonable wear and tear excepted.

5. DSHS-Owned Software

- 5.1. It is the intent of the Parties that DSHS will provide and retain ownership of the assets, inclusive of asset maintenance agreements which have been in ownership of, or in lease by DSHS on the Effective Date.
- 5.2. All right, title and interest in and to DSHS-Owned Software shall remain with DSHS and/or its Affiliates, and the Contractor will have no ownership interests or other rights in DSHS-Owned Software, provided that DSHS grants to the Contractor the right to use and otherwise access DSHS-Owned Software solely as necessary to provide the Services.
- 5.3. DSHS-Owned Software will be made available to the Contractor in such form and on such media as the Contractor may reasonably request, together with existing documentation and other available materials.
- 5.4. If the Contractor is authorized to make any changes to any DSHS-Owned Software, such changes will be authorized by the change management procedure as defined in **Attachment 03 – Contract Management Plan** to this Agreement to be fully developed as part of the Process and Procedures Manual. The Contractor will document any such changes, and all such changes shall constitute DSHS-Owned Software.
- 5.5. Without DSHS's prior written permission, the Contractor will not access or use DSHS-Owned Software for any purpose other than the provision of Services hereunder. All matters associated with DSHS-Owned Software shall be subject to Section F - DSHS General Terms & Conditions, Section B: IT Professional Services and Section F: Additional General Terms and Conditions – IT Service Contracts.
- 5.6. For Medicaid technology investments funded through an approved APD, DSHS will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with enhanced Federal financial participation (FFP).

6. DSHS-Licensed Third-Party Software

- 6.1. It is the intent of the Parties that DSHS will provide and retain ownership of the assets, inclusive of asset maintenance agreements which have been in ownership of, or in lease by DSHS at the Effective Date.
- 6.2. DSHS shall attempt, but shall not be obligated, to effectuate assignments of all such licenses to the Contractor. If, after exercising commercially reasonable efforts to do so, DSHS is unable to effectuate a license assignment for any DSHS Third-Party-Assigned Software, such software shall become subject to the terms and conditions set forth in Section H.
- 6.3. If the Parties agree that any item of software inadvertently was omitted from the Appendices to

the Statements of Work, at DSHS's request, the Parties shall cooperate to effectuate the assignment of such item of software to the Contractor.

7. Contractor-Owned Software

- 7.1. The Contractor will not use any Contractor-Owned Software to provide the Services without first notifying DSHS of such proposed use and obtaining DSHS's written consent to such use. Provided DSHS consents to such use, the Contractor shall grant to DSHS a non-exclusive, non-transferable, fully paid, royalty-free, worldwide license for DSHS and its Affiliates to use, or receive the benefit of the use by the Contractor of, such Contractor-Owned Software during the Term and the period of performance of Section K as necessary to receive the Services.
- 7.2. The cost of any required license, installation, maintenance, support and/or upgrade fees with respect to any Contractor-Owned Software shall be deemed to be included in the Services Fees. All right, title and interest in and to the Contractor-Owned Software (including Derivative Works that contain Work Product) shall remain with the Contractor.
- 7.3. For the avoidance of doubt, the Contractor's creation of a Derivative Work of Contractor-Owned Software that incorporates DSHS Data, DSHS Confidential Information, DSHS-Owned Software, or DSHS-Owned Work Product (collectively, "DSHS Content") will not by virtue of such incorporation create in the Contractor's favor any right or license to such DSHS Content. Further, the Contractor's use of Derivative Work containing DSHS Content shall be subject to the same restrictions and limitations that are otherwise applicable to DSHS Content under this Agreement until such DSHS Content has been removed from such Derivative Work.

8. Contractor-Licensed Third-Party Software

- 8.1. The Contractor will not use any Contractor-Licensed Third-Party Software to provide the Services without notifying DSHS prior to such use and obtaining DSHS's written consent to such use.
- 8.2. Provided DSHS consents to such use, the Contractor shall ensure that DSHS and its Affiliates are properly licensed or otherwise authorized to use, or receive the benefit of the use by the Contractor of such Contractor-Licensed Third-Party Software.
- 8.3. The cost of any required license, installation, maintenance, support and/or upgrade fees with respect to any Contractor-Licensed Third-Party Software shall be deemed to be included in the Services Fees.
- 8.4. In connection therewith, the Contractor shall use commercially reasonable efforts to cause the applicable Third Party to grant to DSHS a non-exclusive, non-transferable, fully-paid, perpetual, irrevocable, royalty free, worldwide license for DSHS and its Affiliates to use, or receive the benefit of the use by the Contractor of, such Contractor-Licensed Third-Party Software. Subject to Section K, all right, title and interest in and to the Contractor-Licensed Third-Party Software (excluding Derivative Works that contain Work Product) shall remain with the applicable Third Party.

9. Assigned Contracts

- 9.1. With the exception of software license agreements, **Attachment 03 – Contract Management Plan** sets forth the written support, maintenance and other agreements that are expected to be assigned to the Contractor for use in providing the Services. If any agreement has been inadvertently omitted from **Attachment 03 – Contract Management Plan**, at DSHS's request,

the Parties shall work together in a cooperative manner to effectuate the assignment of such agreement to the Contractor. If DSHS is unable to effectuate an assignment of any such agreements, then such agreements shall become subject to the terms of Section H;

- 9.2. Provided, however, that the Contractor will credit to DSHS fees and expenses paid by DSHS to the applicable Third Party under such agreements to the extent that such fees and expenses displace fees and expenses that the Contractor would otherwise incur. DSHS and Contractor will work together to minimize or eliminate redundant costs and expenses.

10. Managed Contracts

- 10.1. With the exception of software license agreements, **Attachment 03 – Contract Management Plan** sets forth the support, maintenance, lease and other agreements that will be managed by the Contractor as part of the Services (collectively, the "Managed Contracts"). If any agreement was omitted inadvertently from such a Schedule, at DSHS's request, the Parties shall add such agreement to **Attachment 03 – Contract Management Plan**.
- 10.2. DSHS will attempt to secure the appropriate consents and approvals required to enable the Contractor to perform its obligations relating to the Managed Contracts. If any such consents or approvals are not reasonably available, DSHS will not be required to obtain them, and DSHS and Contractor agree to negotiate in good faith as to the impact of the lack of consent and to produce a reasonable alternative.
- 10.3. DSHS hereby appoints the Contractor to act during the Term as its single point of contact for all matters pertaining to the Managed Contracts, and with DSHS's approval, the Contractor promptly will notify all appropriate Third Parties of such an appointment.
- 10.4. DSHS may at any time exercise reasonable control over the Contractor's actions with respect to such Third Parties as it relates to the provision of Services. DSHS will retain responsibility for all payment obligations, including all related fees, expenses, and maintenance, with respect to the Managed Contracts. Excluding contracts that: (a) were inadvertently omitted; and (b) maintenance agreements for equipment for which the Contractor will have operational management control, the Parties will review and incorporate such additional contracts, if appropriate, through the Change Control Process in **Attachment 03 – Contract Management Plan**.

11. Further Assurances

DSHS and Contractor agree to execute and deliver such other instruments and documents as either Party reasonably requests to evidence or effect the transactions contemplated by this Section.

12. Use of DSHS Facilities

- 12.1. DSHS will provide Contractor on-site resources a standard desk with chair and hardware (desktop PC, telephone, etc.), business productivity software, and normal supplies required to perform the functions in this Work Request. Special equipment, software, supplies required for the Contractor's resource accommodations must be provided by the Contractor.
- 12.2. Due to space and resource constraints, office space will only be provided for direct service staff. Vendor staff providing support and administrative functions will not be housed at the DSHS facilities and will be the exclusive responsibility of the contractor.
- 12.3. Additionally, the office space, furnishings, storage space, and assets that are installed or

operated on DSHS's premises and any supplies allocated, are provided "AS IS, WHERE IS," and are to be used exclusively for the performance of Services for DSHS.

- 12.4. DSHS shall provide the Contractor with reasonably unencumbered access to such facilities as is reasonably required for the Contractor to provide the Services.
- 12.5. The Contractor shall be entitled to make improvements to any space where the Contractor's personnel are performing Services on-site at a Location, provided that: (i) such improvements shall have been previously approved in writing by DSHS (which may be withheld at DSHS's sole discretion); (ii) such improvements shall be made at no cost to DSHS; (iii) any Subcontractors used by the Contractor to perform such improvements shall have been identified or otherwise approved in writing by DSHS; (iv) DSHS shall be granted, without further consideration, all rights of ownership in such improvements; and (v) the Contractor shall otherwise comply with the provisions of this Agreement.
- 12.6. Except as expressly provided in this Agreement, the Contractor shall use DSHS Facilities for the sole and exclusive purpose of providing the Services. Use of such facilities by the Contractor does not constitute a leasehold interest in favor of the Contractor. The Contractor shall use DSHS Facilities in a reasonably efficient manner.
- 12.7. The Contractor, and its Subcontractors, employees, and agents, shall keep DSHS Facilities in good order, shall not commit or permit waste or damage to such facilities, and shall not use such facilities for any unlawful purpose or act. The Contractor shall comply, and shall cause its Subcontractors and employees to comply, with all applicable laws and regulations, including all DSHS's safety training, standard policies and procedures that are provided to the Contractor in writing regarding access to and use of DSHS Facilities, including procedures for the physical security of DSHS Facilities. The Contractor shall not make any improvements or changes involving structural, mechanical, or electrical alterations to DSHS Facilities without DSHS's prior written approval.
- 12.8. When DSHS Facilities are no longer required for performance of the Services, the Contractor shall return such facilities to DSHS in substantially the same condition as when the Contractor began use of such facilities, subject to reasonable wear and tear. The Contractor shall not cause the breach of any lease agreements governing use of DSHS Facilities, and shall cease any activity that constitutes a breach of any lease agreement promptly upon written notification by DSHS

13. Third-Party Approvals

The Contractor shall identify, and the Contractor, with DSHS's reasonable assistance, will take all actions reasonably necessary to obtain any consents, approvals or authorizations from Third Parties as required for the Contractor to perform the Services hereunder. If any consents or approvals under this Agreement are required to be obtained but are not reasonably available, DSHS will not be required to obtain them, and DSHS and Contractor agree to negotiate in good faith as to the impact of the lack of consent and to produce a reasonable alternative.

14. Specific Hardware and Carrier Charges

DSHS shall provide telephone and modem lines, telephones and network access, as may be necessary for the Contractor and Contractor personnel in order to provide the Services. However, the Contractor shall be responsible for maintenance, management, and safekeeping (including repair and replacement) of such DSHS Equipment used by Contractor personnel.

15. Access to Personnel and Information

The Parties shall cooperate with each other in all matters relating to the Contractor's performance of the Services. With respect to DSHS, such cooperation shall be limited to providing, as reasonably required by the Contractor for the performance of the Services, access to DSHS's administrative and technical personnel, other similar personnel, and network management records and information (subject to DSHS Security Policy).

Section H	Retained Authorities
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Section H: Retained Authorities

1. General

While the Contractor is expected and encouraged to provide innovations (as outlined in **Attachment 11 – Innovation Plan**), new ideas and recommendations around the delivery of services, DSHS will retain the exclusive right and authority to develop DSHS's IT strategy and architecture, and to determine, alter and define any or all DSHS's requirements and operational and/or business processes and procedures. DSHS will have the right to approve or reject any or all proposed decisions regarding infrastructure design, technical platform, architecture and standards and, subject to the change management procedures that relate to the in-scope services (see "**Attachment 01 – SOW_SLR_Pricing_BHD**"), will be developed as part of the Process and Procedures Manual, and will have the right and authority to cause the Contractor at any time to change any or all such decisions.

2. Specific Retained Authorities

Without limiting the generality of Retained Authorities, DSHS will retain exclusive authority, discretion and rights of approval with respect to the activities described in this Section, and the Contractor will obtain DSHS's prior written approval before undertaking any such activities.

2.1. Strategic and Operational Planning

DSHS will retain exclusive authority, discretion and rights of approval concerning strategic and operational planning.

2.2. Architecture

DSHS will retain exclusive authority, discretion and rights of approval concerning the architecture, which will determine the long-term technical direction of DSHS's infrastructure based on business need and the evolution of technology and timing of its implementation.

2.3. Service Design and Delivery

DSHS will retain exclusive authority, discretion and rights of approval concerning DSHS-facing service design and delivery that integrate directly with DSHS's processes.

2.4. Moves, Adds and Changes

DSHS will retain exclusive authority, discretion and rights of approval concerning move, add and change ordering activities.

2.5. Business Process Re-engineering

DSHS will retain exclusive authority, discretion and rights of approval over any business process re-engineering opportunities that the Contractor identifies. Regardless of anything contained in this Section or anywhere else in this Agreement to the contrary, DSHS will retain sole control over its business operations.

2.6. Budget Management

DSHS will retain exclusive authority, discretion and rights of approval concerning the management of DSHS's annual budget for all DSHS's operations, using the Contractor's

estimates for the Services included in the scope of this Agreement and for additional services planned or anticipated throughout the Term.

2.7. Validation and Verification

DSHS or DSHS delegates will retain exclusive authority, discretion and rights of approval concerning verification activities related to key initiatives and operational processes.

2.8. Review and Acceptance

DSHS will have the right to review and accept or reject all components, deliverables and systems that the Contractor is obliged to provide DSHS in terms of this Agreement or applicable Service Request, in terms of the methodology detailed in the Process and Procedures Manual. Neither DSHS's conditional nor final acceptance will mean that DSHS has waived any right to assert claims based on defects, which applicable test procedures could not detect and which were subsequently discovered in a component, deliverable or system after DSHS's had already accepted them.

2.9. Contractor Management

DSHS will retain exclusive authority, discretion and rights of approval concerning verification activities related to the Contractor performing its obligations of the Contractors supporting DSHS.

Section I

Representations, Warranties and Covenants

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Section I: Representations, Warranties and Covenants

1. Legal and Corporate Authority

The Contractor represents and warrants to DSHS that:

- 1.1. it is qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification;
- 1.2. it has all necessary rights, powers, and authority to enter into and perform this Agreement and to bind its DSHS with respect to the same, and the execution, delivery, and performance of this Agreement by the Contractor have been duly authorized by all necessary corporate actions;
- 1.3. the execution and performance of this Agreement by the Contractor shall not violate any law, statute or regulation, and shall not breach any agreement, covenant, court order, judgment or decree to which the Contractor is a party or by which it is bound;
- 1.4. it has, and promises that it shall maintain, in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement;
- 1.5. it owns or leases and promises that it shall own or lease, free and clear of all liens and encumbrances, other than lessors' interests, or security interests of the Contractor's lenders, all rights, titles, and interests in and to the tangible property and technology and the like that the Contractor intends to use or uses to provide the Services, and in and to the related patent, copyright, trademark, and other proprietary rights, or has received appropriate licenses, leases or other rights from Third Parties to permit such use; and
- 1.6. this Agreement constitutes a valid, binding and enforceable obligation of the Contractor.

2. Performance of the Services

The Contractor represents and warrants to DSHS that:

- 2.1. it has the skills, resources and expertise to provide all Services in accordance with the terms of this Agreement and associated statement(s) of work,
- 2.2. without limiting the generality of the foregoing, all Services and Other Services provided under this Agreement shall be provided in a timely, professional and workmanlike manner consistent with the highest industry standards of quality and integrity provided, however, that where this Agreement specifies a particular standard or criteria for performance, including, without limitation, applicable service-level requirements (SLRs) as defined in **Attachment 01 – SOW_SLR_Pricing_BHD**, this warranty is not intended to and does not diminish or supersede that standard or criteria for performance.

3. Conflicts of Interest and Business Ethics

The Contractor represents and warrants to DSHS that it is in compliance with DSHS's Conflicts of Interest Policy and conducts its business in a manner that is consistent with DSHS's Business Ethics and Code of Conduct, and DSHS Administrative Policies.

4. Financial Condition and Information

The Contractor represents and warrants to DSHS that it now possesses, and covenants that it shall maintain throughout the Term, sufficient financial resources to comply with the requirements of this Agreement. The Contractor must notify the customer — in writing and in advance — if such financial

resources negatively change or reduce over the engagement or the term of this contract.

5. Litigation and Service of Process

The Contractor represents and warrants to DSHS that, as of the Effective Date, there is no pending or anticipated claim, suit or proceeding that involves the Contractor or any of its Affiliates or Subcontractors that might adversely affect the Contractor's ability to perform its obligations under this Agreement, including, without limitation, actions pertaining to the proprietary rights described in Section 1. The Contractor shall notify DSHS within seven calendar days of the Contractor's knowledge of any such actual or anticipated claim, suit or proceeding.

6. Proprietary Rights Infringement

The Contractor represents and warrants to DSHS that, to the best of the knowledge of those Contractor personnel responsible for creating and/or approving the Contractor's technical proposal and solution, the use of any services, techniques or products provided or used by the Contractor to provide the Services does not and shall not infringe upon any Third Party's patent, trademark, copyright or other intellectual-property rights, nor make use of any misappropriated trade secrets and is compliant with Section F - DSHS General Terms & Conditions.

7. Violations

The Contractor shall comply with any laws, ordinances, statutes, rules, regulations, or orders of governmental or regulatory authorities to which it is subject, and shall obtain any licenses, permits, franchises, or other governmental authorizations necessary for the ownership of its properties or the conduct of its business, of which violation or failure, either individually or in the aggregate, might materially and adversely affect its business, properties or financial condition, the consummation of the transactions contemplated by this Agreement, and the performance of its obligations hereunder.

8. Viruses and Disabling Devices

As specified in the applicable **Attachment 01 – SOW_SLR_Pricing_BHD**, the Contractor shall implement and leverage industry best practices and conform to Federal, OCIO and DSHS policies and standards regarding Security, Data, Technology and Architecture to identify, screen and prevent incidents, and shall not introduce, any Disabling Device in hardware, software or other resources used by the Contractor, DSHS or any Third Party in connection with the Services. A "Disabling Device" can be — not limited to — any virus, restrictive code, malware, spyware, timer, clock, counter, time lock, time bomb, trojan, worm, file infector, boot sector infector or other limiting design, instruction or routine and surveillance software, routines, data gathering, or collecting software or devices that could, if triggered, erase data or programming, have an adverse impact on the Services, or cause the hardware, software or other resources to become inoperable or otherwise incapable of being used in the full manner for which such hardware, software or other resources were intended to be used, or that collect data or information. To the extent caused by the Contractor's failure to perform its obligations relative to non-introduction, identification, screening and prevention of Disabling Devices, the Contractor shall, at no cost or expense to DSHS, and with minimal adverse impact to the Services or any Other Services, reduce and/or eliminate the effects of any Disabling Device, including, without limitation, by restoring any lost data and/or software programming.

Section J	Term and Termination
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Section J: Term and Termination

1. Term Clauses

1.1. Initial Term

The Initial Term of the Agreement shall be 3 years from the effective date of the Agreement. The Agreement shall start on the Effective Date and, unless extended as indicated in **Renewal Terms** or terminated earlier in accordance with the terms of this Agreement, shall end at 12:01 a.m., Pacific Standard Time, on the date of Day Month Year ("**Initial Term**"). The Contractor shall be obligated to provide the Services documented in **Section B** of the MSA during the Initial Term and, unless extended in **Renewal Terms** or terminated earlier in accordance with the terms of this Agreement, shall end the delivery of these Services concurrently with the end of the Initial Term.

1.2. Renewal Terms

DSHS shall have the right to extend the Initial Term for up to two successive renewal periods of 12 months each (each a "**Renewal Term**") by providing written notice to the Contractor in accordance with the terms of the deal before the end of the Initial Term or the then-current Renewal Term, as applicable. At DSHS's request, the Parties shall meet within 60 calendar days of the Contractor's receipt of DSHS's notice to proceed with Renewal Terms and negotiate modifications to the terms of this Agreement. If DSHS does not request such negotiations or if the negotiations do not result in agreement of different terms, the then-existing terms and conditions of this Agreement shall remain unchanged, and in full force and effect during each Renewal Term.

1.3. Annual Renegotiations

Either party may require that the Parties meet annually at least 30 days prior to each anniversary of the Effective Date of this Agreement to review the status of the performance of the Contractor and DSHS in terms of the Agreement, and to negotiate modifications to the terms of the Agreement. If neither party requests such modifications or if the negotiations with respect to such modifications do not result in agreement of different terms, the then-existing terms and conditions of this Agreement shall remain unchanged, and in full force and effect during the following Contract Year.

2. Termination Clauses

2.1. Termination for Default

The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

- 2.1.1. Failed to meet or maintain any requirement for contracting with DSHS;
- 2.1.2. Failed to protect the health or safety of any DSHS client;
- 2.1.3. Violated any applicable law or regulation.

If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

2.2. Termination for Default/Cause

Subject to the dispute resolution process provided in **the agreement (Dispute Resolution)** having been exhausted, either party may terminate this Agreement if the other party is, at any time, in breach of its obligations under this Agreement. The non-breaching party may terminate this Agreement, or a portion of the scope of this Agreement. The party seeking termination will provide the other party with sufficient reasonable prior written notice in reasonable detail of such a material breach and the opportunity to resolve the breach. If the party in breach of contract does not resolve the breach within 30 days of receipt of written notice of a monetary breach (failure of DSHS to pay for contracted services), or within 30 days of notice of all other breaches, then the party that is not in default may terminate this Agreement on the date specified in the written notice of termination.

In the event of such termination, the Contractor shall deliver to DSHS the result obtained for all outstanding work on or before the termination date.

The non-breaching party may withdraw its written notice of termination within 5 days of delivering such notice to the other party. If the Contractor is the breaching party, DSHS may also extend the period during which the Contractor will continue to provide the Services (in whole or part) to allow for any delay in the termination plan schedule or a later effective date of termination.

DSHS shall pay the Contractor for Services performed through the effective date of termination or expiration of the Term. If DSHS terminates within 5 years after the effective date of the Agreement, then DSHS shall reimburse the Contractor on a pro-rata basis for all commitments that the Contractor made for office space, communication, hardware and software. If DSHS terminates under this paragraph more than 5 years after the effective date, then DSHS has no obligation to reimburse any portion of the before-mentioned costs.

The terminating party shall have all rights and remedies generally afforded by law or equity, subject to the limitations expressed in this Agreement. Such termination will proceed in an orderly manner, as soon as practical or in accordance with the schedule agreed to by DSHS and the Contractor.

The DSHS Chief of Contracts may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

- (1) Failed to meet or maintain any requirement for contracting with DSHS;
- (2) Failed to protect the health or safety of any DSHS client;
- (3) Violated any applicable law or regulation.

If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

2.2.1. Events of Breach

"Events of Breach" and the occurrence of any one or more of such Events of Breach shall constitute a breach of this Agreement that shall afford the non-breaching Party, as applicable, the rights and remedies detailed in **Rights and Remedies Upon Default and Nonexclusive Remedies**.

2.2.2. Rights and Remedies Upon Default

When an Event of Default occurs, the non-breaching Party may terminate all the Services, terminate one or more Service Tower and/or end the Term, seek to recover damages from the other or pursue any additional remedies that this Agreement or any Schedule, Attachment or Addendum may detail.

2.2.3. Nonexclusive Remedies

The remedies provided in **Rights and Remedies Upon Default** and elsewhere in this Agreement are neither exclusive nor mutually exclusive. The Parties shall be entitled to any and all such remedies, and any and all other remedies that may be available to the Parties by law or in equity, by statute or otherwise, individually or in any combination.

2.3. Termination for Convenience

DSHS may, for any reason or for its convenience, terminate the Contractor's delivery of Services under this Agreement, in whole or in part, by issuing the Contractor at least thirty (30) days' written notice of termination. This notice shall state the extent to which such termination shall become effective.

DSHS shall pay the Contractor all amounts due and owing to the Contractor by or on the date termination as outlined in Section K (Disentanglement).

2.4. Termination for Change in Business

If any person or entity unaffiliated to the Contractor acquires control of the Contractor directly or indirectly in a single transaction or series of related transactions, or acquires all or substantially all the Contractor's assets at any time within 2 months following the closing of the acquisition, DSHS may terminate this Agreement by:

- 2.4.1. **Giving the Contractor at least 2 months' prior written notice designating the termination date.**
- 2.4.2. **Paying the Contractor the "Termination Fee," which is an amount computed in accordance with Section C (Fees and Payment Terms).**

2.5. Termination for Bankruptcy

DSHS shall have the right to terminate the Agreement on:

- 2.5.1. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against the Contractor under any section or chapter of the bankruptcy regulation or code in the country whose law governs the contract, as amended, or under any similar laws or statutes of that country, if such proceedings have not been dismissed or discharged within 30 calendar days after they were instituted.
- 2.5.2. The insolvency or creation of an assignment for the benefit of creditors or the Contractor's admission of any involuntary debts, which have matured.
- 2.5.3. The institution of any reorganization, arrangement or other readjustment of the Contractor's debt plan, which does not involve the U.S. Bankruptcy Code.
- 2.5.4. Any corporate action that the Contractor's Board of Directors has taken to further any of the above actions. Any termination resulting from **Termination for Bankruptcy** shall neither constitute a termination for convenience nor cause, and DSHS shall in no event be required to pay a Termination Fee to the Contractor with respect to any such termination.

2.6. Termination for Audit Deficiencies

DSHS shall have the right to terminate the Agreement if the Contractor fails, after DSHS has provided the Contractor with reasonable notice and the opportunity to implement corrective action for audit deficiencies before DSHS's then current fiscal year-end. Audit deficiencies may include any internal control deficiencies and/or exceptions identified in any Type 2 Reports and/or DSHS's (or its independent auditor's) inquiries conducted pursuant to Section E (Record Keeping Audit Rights), or fails to comply with the security assessment pursuant to **Section L (Security and Safety)**. Any termination pursuant to **Consequences of Termination** shall not

constitute a termination for convenience nor cause, and DSHS shall in no event be required to pay a Termination Fee to the Contractor with respect to any such termination.

2.7. Termination or Expiration Procedure

The following terms and conditions apply upon Contract termination or expiration:

- 2.7.1. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
- 2.7.2. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
- 2.7.3. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
- 2.7.4. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
- 2.7.5. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
- 2.7.6. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract.

2.8. Consequences of Termination

Upon termination, both parties shall perform the exit rights described in **Attachment 09 (Exit)** and **Section K (Disentanglement)**. The Contractor shall also return all DSHS-owned property and assist in the transition as described below:

2.8.1. Termination Assistance

At the expiration or termination of the scope of Services, both DSHS and the Contractor agree to:

- 2.8.1.1. Cooperate to provide all information and assistance necessary to ensure the smooth transition of Services and functions being performed by Contractor to DSHS or DSHS's service provider.
- 2.8.1.2. The Contractor will assist in the orderly transfer of the Services, functions, operations, responsibilities and tasks which the Contractor has been delivering to DSHS itself or another service provider under this Agreement.
- 2.8.1.3. The Contractor will charge any assistance fees, on a pro-rata basis.

2.8.2. Return of Materials Upon Termination

All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and

insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.

Upon termination of this Agreement, each party will promptly deliver to the other party, or certify destruction of all data, programs and materials of the other. In no event shall DSHS be liable for any Contractor Personnel termination costs arising from the expiration or termination of this Agreement.

The Contractor shall promptly (within 10 working days) deliver to DSHS:

- 2.8.2.1. All Deliverables, regardless whether complete or incomplete, for which DSHS has paid.
- 2.8.2.2. All equipment and all materials held in connection with performing this Agreement.
- 2.8.2.3. Promptly remove any Contractor equipment located at DSHS's premises.

Section K

Disentanglement and Exit Plans

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Section K: Disentanglement

The purpose of Section K – Disentanglement is to outline the obligations, activities, roles and responsibilities, timetables, financial responsibility and documentation and data requirements when completing an orderly transition from the Contractor to DSHS following termination or expiration of the Agreement, regardless of the cause.

1. General Obligations

- 1.1. On any delivery of notice of termination or expiration of this Agreement, or the delivery of notice of termination of one (1) or more Service Towers or applicable Services, the Contractor will provide Disentanglement obligations as defined in this Section K. If the Contractor terminates the Agreement or any Service Tower pursuant to Section J (Term and Termination), Part 9.2.1.1 (Events of Breach), then the Contractor will only be obligated to provide Disentanglement-related services if and to the extent that:
 - 1.1.1. On the date of termination, DSHS is up-to-date with all its undisputed payment obligations in terms of this Agreement.
 - 1.1.2. DSHS pays the Contractor, thereafter, for the Contractor's good-faith estimates of all Services (including, without limitation, Disentanglement-related services). The Contractor will bill DSHS monthly for post-termination ad hoc Disentanglement services at the contracted labor rate set forth in the current contract billable in no less than 30-minute increments.
- 1.2. The Contractor will complete the transition of any terminated Services from the Contractor and its subcontractors to DSHS, its Affiliates and/or any replacement providers that DSHS designates (collectively, the "Replacement Provider"), without causing any unnecessary interruption of or adverse impact on the Services, any other services and/or services provided by Third Parties (the "Disentanglement").
- 1.3. Without limiting the generality of the aforementioned obligations, the Contractor will:
 - 1.3.1. Cooperate with DSHS, its Affiliates and/or the Replacement Provider by promptly taking all steps required to assist DSHS in completing the Disentanglement related to the Services it had previously performed.
 - 1.3.2. Provide DSHS, its Affiliates and/or the Replacement Provider with all nonproprietary information regarding the Services that these parties will need to perform the Disentanglement. This information includes, without limitation, data conversions, interface specifications and data about related professional services.
 - 1.3.3. Promptly and orderly conclude all work that DSHS may direct the Contractor to do. This may include the documentation of work in progress and other measures to provide an orderly transition to DSHS, its Affiliates and/or the Replacement Provider.
 - 1.3.4. Accomplish the other specific obligations described in Section K.
- 1.4. **Attachment 09 (Exit Plan)** outlines how the Disentanglement Plan will take place and documents the items to be transferred and the tasks required to accomplish an orderly transition to DSHS, its Affiliates and/or the Replacement Provider. In addition, the Contractor and DSHS will discuss in good faith a detailed plan (the "Disentanglement Plan"), and the Contractor will provide this detailed plan to DSHS within fifteen (15) days of the start of the Disentanglement. This plan will determine the nature and extent of the Contractor's Disentanglement obligations and detail the transfer of Services required, but this plan must not reduce the Contractor's obligation under this Agreement to provide all Services necessary for Disentanglement. The

Parties will deem all services related to Disentanglement as part of the Services, and include these services, provided that:

- 1.4.1. The Contractor's personnel, who are otherwise assigned to perform Services, can perform the related Disentanglement services without interfering with the execution of their assigned duties or provider performance obligations.
- 1.4.2. The Parties agree on a schedule for those Disentanglement services that will not require any additional charges over and above those detailed in the Agreement, and for those Disentanglement services that are new or require additional charges. The Parties will include this schedule in a document separate from this Agreement.
- 1.5. Following receipt of the Termination Notice, the Contractor will not, without DSHS's prior written consent, transfer, reassign or otherwise redeploy any of the Contractor's personnel that are performing the Contractor's duties under this Agreement, except when:
 - 1.5.1. This transfer, reassignment or redeployment of the Contractor's personnel is consistent with the Contractor's past management practices demonstrated throughout the Term.
 - 1.5.2. The Contractor voluntarily terminates the Agreement for Cause.
 - 1.5.3. DSHS reduces the scope of the Agreement after receiving the Termination Notice.
- 1.6. The Contractor's obligation to provide the Services will not cease until the Contractor has delivered to DSHS a Disentanglement Plan that DSHS deems satisfactory. A satisfactory Disentanglement Plan indicates issues relating to how the Contractor will transfer all assets, if any, and perform all its other obligations under Section K, including, but not limited to, the transition to the new Contractor.

2. Disentanglement Period

- 2.1. The Disentanglement process will begin on the earliest of any of the following dates:
 - 2.1.1. The date that DSHS designated as the expiration of the Term (the "Expiration Date").
 - 2.1.2. The date specified in any Termination Notice that DSHS delivered to the Contractor when DSHS elected to terminate any or all Services pursuant to Section J (Term and Termination), unless the Contractor disputes such termination in good faith, subject to the procedures detailed in Section F.
 - 2.1.3. The date specified in any Termination Notice that DSHS delivered to the Contractor pursuant to Section J (Term and Termination), unless DSHS disputes such termination in good faith, subject to the procedures detailed in Section F.
- 2.2. The Disentanglement Period will continue:
 - 2.2.1. In the case of Section K, Part 2.a.(1), until the Expiration Date that DSHS designated at its sole discretion, which will not be later than twelve (12) months after the expiration of the Term.
 - 2.2.2. In all other cases, for a period of up to twelve (12) months after the Disentanglement Period starts. The Contractor will expedite its Disentanglement obligations at DSHS's request, if DSHS terminates this Agreement pursuant to Section J (Term and Termination).

3. Specific Obligations

3.1. Disentanglement will involve, without limitation, performing the specific obligations described in this Section. In connection with Parts 4, 6 and 7 below, the Contractor will perform the following obligations as soon as it is reasonably possible to do so:

- 3.1.1. Acknowledge receipt of a Termination Notice in writing, within ten (10) business days of receipt.
- 3.1.2. Provide DSHS with complete and accurate documentation of nonproprietary Processes and Procedures associated with the Services performed in each Service Tower that it will disentangle. The Contractor must deliver this list to DSHS six (6) months before the end of the Term, and in no event later than fifteen (15) days after receipt of a Termination Notice.
- 3.1.3. Agree that its agreements with all Third Parties relating to this Agreement, including Subcontractors, will not include any terms that would prohibit or otherwise restrict such Third Parties, including Subcontractors, from entering into agreements with DSHS, its Affiliates and/or the Replacement Provider (directly or through an assignment).
- 3.1.4. Continue to deliver the contracted services with the agreed service levels for the scope, which the provider is still responsible for; or the new service levels that were previously agreed in the **Exit Plan attachment**.

3.2. Full Cooperation, Information and Knowledge Transfer

During Disentanglement, the Parties will cooperate fully with one another to facilitate a smooth transition of the terminated Services from the Contractor and its Subcontractors to DSHS, its Affiliates and/or the Replacement Provider. The Parties will cooperate according to DSHS's or the Replacement Service Provider's request, provided that this request is reasonable or in accordance with a written agreement of cooperation between the Parties. The Contractor will cooperate with DSHS and all DSHS's other Service Providers to provide a smooth transition (i.e., the Contractor will minimize or eliminate service disruptions) at the time of Disentanglement, without unnecessarily interrupting the Services detailed in this Agreement or any services that Third Parties provide, and without adversely affecting the provision of these Services, Third-Party services or DSHS's activities. The Contractor will cooperate before and after the Expiration Date, and such cooperation will include, without limitation:

- 3.2.1. Provision of complete, detailed and sufficient information and assets, including, but not limited to:
- 3.2.1.1. Customer and other records (including subcontractor agreements that are required to provide the Services)
 - 3.2.1.2. Configuration information
 - 3.2.1.3. Databases
 - 3.2.1.4. Documentation
 - 3.2.1.5. Asset registers
 - 3.2.1.6. Programs
 - 3.2.1.7. Knowledge databases
 - 3.2.1.8. Fault databases
 - 3.2.1.9. Asset maintenance history and status
 - 3.2.1.10. Manuals
 - 3.2.1.11. Process and procedure documentation
 - 3.2.1.12. Any other similar items that the Contractor used or produced during the course of, or for the purpose of, provisioning the Services or relating to the configuration control of the Services
- 3.2.2. Knowledge transfer of all such information so that DSHS, its Affiliates, the Replacement Provider and/or Third-Party personnel can assume full responsibility for providing the Services without interruption.

3.3. Third-Party Authorizations

Subject to the terms of any contracts between the Contractor and Third Parties, which the Contractor uses exclusively to provide the Services, pending Contractor assignment to DSHS pursuant to Part 8, the Contractor will procure, at no charge to DSHS, any Third-Party authorization necessary to grant DSHS the use and benefit of any of these Third-Party contracts, if DSHS requests this Third-Party authorization, and provided that procuring this authorization does not limit the Contractor's obligations pursuant to Section G (Assets and Third-Party Contracts) and **Section I (Proprietary Rights)**. In addition, the Contractor will use commercially reasonable efforts to transfer other contractual arrangements (for example, Organization-specific work orders or maintenance arrangements) to DSHS at no additional charge to DSHS, if DSHS requests these contractual transfers as part of the Disentanglement.

3.4. Software Licenses

Without limiting DSHS's rights to the licenses previously granted to DSHS pursuant to Section G (Assets and Third-Party Contracts), the Contractor will:

- 3.4.1. Reassign to DSHS, its Affiliates and/or the Replacement Provider any licenses assigned to the Contractor pursuant to Section G (Assets and Third-Party Contracts). The Contractor will return to DSHS reassigned licensed materials with any updates that were provided to the Contractor. In addition, although DSHS acknowledges that the Contractor does not control Third-Party software, if requested by DSHS, the Contractor will assist DSHS, its Affiliates and/or the Replacement Provider in securing maintenance (including all enhancements and upgrades) and support with regard to any such software for as long as DSHS requires.
- 3.4.2. Provide reasonable assistance to DSHS, its Affiliates and/or the Replacement Provider in securing software maintenance (including all enhancements and upgrades) and support

from software vendors at competitive rates, if DSHS requests this and for as long as DSHS requires these services. DSHS acknowledges, however, that the Contractor does not control Third-Party software vendors (if any).

- 3.4.3. Agree to negotiate, in good faith, licenses with software vendors on commercially reasonable terms so that, following the Term of this Agreement, DSHS can use software that the Contractor installed. The Contractor will only agree to negotiate these software licenses for software that:
 - 3.4.3.1. Is not commercially available through another vendor
 - 3.4.3.2. Is necessary for the ongoing operation of DSHS's systems
 - 3.4.3.3. Does not have a commercially reasonable substitute or work-around

3.5. Coordinated Removal of Contractor Assets

If applicable, the Contractor will remove its assets (including Contractor Equipment) from DSHS's facility or its Affiliates' facilities.

3.6. Assignment of Contracts

If DSHS requests the assignment of contracts as part of the Disentanglement, then the Contractor will assign to DSHS's Affiliates and/or the Replacement Provider — from among the leases, maintenance, support and other contracts used exclusively by the Contractor in connection with the Services. The Contractor's obligation will include the Contractor performing all its obligations under such leases, maintenance, support and other contracts for periods prior to the date of assignment, and the Contractor will reimburse DSHS for any losses resulting from any failure to perform any such obligations. At no additional cost to DSHS, the Contractor will undertake all administrative activities necessary to obtain all required consent to obtain the assignments. DSHS will cooperate in obtaining the necessary consent if the Contractor communicates this request to DSHS in writing.

3.7. Delivery of Documentation and Data

The Contractor will, at no additional charge, deliver to DSHS and/or its Affiliates all current, nonproprietary documentation and data related to DSHS-owned assets and infrastructure, DSHS's Data, as well as the Process and Procedures Manual, if and as DSHS requests the Contractor to do so, and during the Disentanglement or in anticipation of Disentanglement. The Contractor may retain one (1) copy of such documentation and data that are proprietary to DSHS, excluding DSHS's Data, for archival purposes or warranty support.

4. Preparation for Disentanglement

4.1. Complete Documentation

In addition to and/or as part of the Process and Procedures Manual, the Contractor will, at all times during the Term, provide DSHS with complete information that is sufficient to enable DSHS, its Affiliates and/or the Replacement Provider to fully assume the provision of Services to DSHS. This information will include complete documentation, in accordance with the standards and methodologies that the Contractor has or plans to implement during the Term, for all software and hardware configurations. Documentation reviews will occur during the monthly status report meetings.

4.2. Maintenance and Record Keeping of Assets

The Contractor will keep all the hardware, software, systems, networks, technologies and other assets used in providing Services to DSHS (including leased and licensed assets) in good condition, and in such locations and configurations that DSHS and its designees can readily identify and trace these assets in terms of the provisions of this Agreement.

At DSHS's request, and if DSHS or its Affiliates wish to purchase the assets on termination, the Contractor will prepare a list of current Contractor-owned assets necessary to sustain the delivery of Services, and will list their current valuation. The asset valuation will be based on net book value using predetermined asset life and salvage value with the straight line depreciation method. If DSHS or its Affiliates acquire the assets, then the warranties will transfer along with those assets.

4.3. Advance Written Consent

In accordance with **Section I (Proprietary Rights)**, and at all times during the Term, the Contractor will obtain advance written consent from all licensors and lessors to convey, transfer or assign applicable licenses to DSHS, its Affiliates and/or the Replacement Provider on Disentanglement. The Contractor will also obtain for DSHS, on Disentanglement, the right to obtain maintenance (including all enhancements and upgrades) and support for the assets (that are the subject of such leases and licenses) at the price at which such maintenance and support is commercially available to other customers of such Third Parties, and for the same period of time that this price is available to those customers.

4.4. All Necessary Cooperation and Actions

The Contractor will cooperate, take any necessary additional action and perform such additional tasks that DSHS may reasonably request to ensure a timely Disentanglement that complies with the provisions of **Section K**.

4.5. Payment for Disentanglement Services

If DSHS terminates this Agreement, or any part thereof, for convenience, or if the Contractor terminates this Agreement, or any portion of it, due to a material default by DSHS, or if this Agreement expires without renewal, then DSHS will pay the applicable fees associated with Disentanglement. If DSHS terminates this Agreement, or any part thereof, due to a material breach or an Event of Default by the Contractor, then the Contractor will pay the applicable fees associated with Disentanglement.

Section L

Security and Safety

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Section L: Security and Safety

1. Security Policies and Technologies

As outlined in the applicable statements of work, the Contractor will provide all Services, using security technologies and techniques in accordance with industry best practices, State of Washington and DSHS's security policies, procedures and requirements, Federal and IRS security policies (including, but not limited to IRS Publication 1075, Federal Tax Information Security Requirements) including those relating to the prevention and detection of fraud and any other inappropriate use or access of systems and networks.

2. Network and Application Security

Without limiting the generality of this Section, the Contractor will implement and use network management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies.

3. Server Security

The Contractor will implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for servers. This must include mechanisms to identify vulnerabilities and apply security patches.

4. Security Program

- 4.1. In addition, the Contractor will establish and maintain a continuous security program as part of the Services. The program will:
 - 4.1.1. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of DSHS due to the Services, subject to the terms, conditions and procedures set forth in **Attachment 10 – Risk Analysis Framework**.
 - 4.1.2. Implement appropriate mitigating controls and training programs, and manage resources.
 - 4.1.3. Monitor and test the security program to ensure its effectiveness. The Contractor will review and adjust the security program in light of any assessed risks.

5. Security Maturity Level

- 5.1. In no event may the Contractor's action or inaction result in any situation that is less secure than:
 - 5.1.1. The security that DSHS provided as of the Effective Date of the Agreement.
 - 5.1.2. The security that the Contractor then provides for its own systems and data, whichever is greater.
- 5.2. Moreover, the Contractor organization is obliged to obtain a Statement on Standards for Attestation Engagements (SSAE) No. 16/SOC 1 type II certification for the Services provided under this Agreement. The Contractor is also obliged to certify its security program against ISO/IEC 27001 no later than 60 days after the signature of this contract.

6. Physical Access

- 6.1. The Contractor will ensure physical security. This includes:
 - 6.1.1. Physical access to any equipment that is on the premises of the DSHS' facilities and contains any data or information of DSHS.
 - 6.1.2. Any mobile storage devices or any other access on the contractor desktops that allow staff to potentially take away data from the premises.
 - 6.1.3. Scenarios for moving and storing electronic data off-site (or hot site).

7. Information Access

- 7.1. Prior to performing any Services, the Contractor and its employees, agents and Subcontractors who may access DSHS's data and software must have executed agreements concerning access protection and data/software security that are consistent with the terms and conditions of this Agreement. The Contractor and its employees, agents and Subcontractors must comply with all DSHS's policies and procedures regarding data access, privacy and security, including those prohibiting or restricting remote access to DSHS's systems and data.
- 7.2. Computer data and software, including DSHS's data, provided by DSHS or accessed (or accessible) by the Contractor's personnel or the Contractor's Subcontractor personnel, must be used by such personnel only in connection with the obligations provided in this Agreement and will not be commercially exploited by the Contractor or its Subcontractors in any manner whatsoever. Failure of the Contractor or the Contractor's Subcontractors to comply with the provisions of this Section may result in DSHS restricting offending personnel from access to DSHS's computer systems or Data, or immediately terminating this Agreement. The Contractor will be responsible for maintaining and ensuring the confidentiality and security of DSHS's data.

8. Identity and Access Management

DSHS will authorize, and will issue, any necessary information access mechanisms, including access identities (IDs) and passwords, and the Contractor agrees that the personnel to whom they are issued will use the same mechanisms. The Contractor will provide these personnel only with the minimum level of access necessary to perform the tasks and functions for which they are responsible. The Contractor will provide DSHS with an updated list of those Contractor personnel who have access to DSHS's and/or its Affiliates' systems, software and data, and the level of such access. The Contractor will provide this list at the request of DSHS or at least quarterly in the absence of any request from DSHS.

9. Security Monitoring and Incident Response

DSHS and the Contractor will collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. The Contractor will, at the request of DSHS or, in the absence of any request from DSHS, at least quarterly, provide DSHS with a report of the incidents that it has identified and taken measures to resolve.

10. Safety

- 10.1. The Contractor understands that safety is a high priority and a material element of how the Contractor delivers the Services. The Contractor, therefore, agrees to follow all DSHS safety policies when at DSHS's facilities.
- 10.2. The Contractor also acknowledges that it may use DSHS's facilities only for DSHS's operations and that it must maintain these to standards required for such usage. Before the

delivery of Services begins, the Contractor will, at its own expense, become familiar with and comply with the operations and any safety rules or guidelines that DSHS and ESA may supply from time to time for any of its sites.

- 10.3. In addition to any site-specific safety guidelines, the Contractor will meet all guidelines from occupational safety and health administrations and similar national and international requirements regarding safety.
- 10.4. The Contractor will promptly report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury to DSHS (and/or its employees, affiliates, contractors or Subcontractors) that occur at a DSHS facility. The Contractor agrees to cooperate and help DSHS investigate any such incidents in accordance with the safety procedures that DSHS has in place at the time of any such incident. The operation of the Contractor's vehicles or private vehicles of Contractor personnel on DSHS's property will conform to any safe driving regulations and visible road or traffic-related signs. The Contractor and/or any of its personnel involved in accidents on DSHS and/or its Affiliates' property will promptly report the incidents to DSHS's appropriate security personnel.

11. Other Policies

The Contractor will abide by all DSHS and its Affiliates' policies and procedures that DSHS and/or its Affiliates submit to the Contractor in writing. These policies and procedures may include, without limitation, rules and requirements for the protection of premises, materials, equipment and personnel. The Contractor will also cause its employees, contractors (including Subcontractors), and agents to comply with these policies and procedures. If any such Contractor personnel (contractors or Subcontractors) violate or disregard these policies or procedures, DSHS and/or its Affiliates will have the right to deny these personnel access to DSHS and/or its Affiliates' properties or immediately terminate this Agreement.

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Section M: Acceptance

1. Deliverable Acceptance Criteria

DSHS and Contractor will complete the deliverable acceptance form (an example is provided at the bottom) as provided in the respective SOW for each of the deliverables that is defined in the SOW or SOWs under this Agreement.

Acceptance criteria for deliverables will be defined in SMART terms:

- Specific
- Measurable
- Agreed between DSHS and Contractor at definition
- Realistic in the sense that the deliverable can be realized and the criteria can be measured
- Timely in the sense that deliverables can be realized in the provided or available time frame

2. Deliverable Readiness Notification

The party that is the delivery owner of the deliverable will forward the respective deliverable acceptance form with the specified deliverable to the Other Party for review.

3. Review Period

Unless specified differently in the respective SOW, at each deliverable gate, DSHS will have ten (10) business days to review and accept the associated deliverable, provide feedback on nonconformance required for acceptance, or to request additional review time.

4. Acceptance/Rejection Notification

- 4.1. If DSHS is satisfied that the deliverable conforms to the acceptance criteria as defined, DSHS will notify the Contractor in writing of its acceptance.
- 4.2. If DSHS determines that the deliverable does not conform to the relevant acceptance criteria, DSHS will notify the Contractor in writing, describing in detail why such deliverable does not conform.
- 4.3. If at the end of the Review Period, DSHS has not filed a written notice stating acceptance or rejection, the deliverable shall be deemed accepted. Similarly, if the deliverable has been put to productive use by DSHS for more than 30 days, the deliverable shall be deemed accepted (unless an alternative time period is stated in the respective SOW).

5. Rework Period

Within ten (10) business days (or such other time period as may be agreed upon in writing by the parties) after receipt of the nonconformance of a deliverable, the Contractor will, at no additional cost to DSHS, cause such deliverable to conform with the acceptance criteria, and acceptance review will then be re-performed in accordance with the procedure set out above.

6. Reworked Deliverables Not Accepted

If the Contractor fails to cause such deliverable to conform to the acceptance criteria within the Rework Period, DSHS may:

- 6.1. Extend the Rework Period to allow the Contractor additional time to correct the deliverable nonconformity and re-perform the acceptance review in accordance with the procedure set out above.
- 6.2. Accept the deliverable "as is" and agree with Contractor on a reduction in the fees to reflect the reduced functionality and/or performance if such deliverable was the responsibility of Contractor.
- 6.3. Instruct the Party to refund amounts paid by the Contractor for the nonconforming deliverable if such deliverable was the responsibility of the Contractor.
- 6.4. Terminate the agreement if such deliverable was the responsibility of Contractor.

Example – Deliverable Acceptance Form

Deliverable Acceptance Form		
Work Package SOW name:	Deliverable Name: <i>Use the description as included in the WBS section in the SLA section of the SOW</i>	Deliverable Number: <i>Work package ID "—" deliverable number (for example, PPM01-001) or SOW SLA ID, for example AS-001 (for Application Services)</i>
Deliverable Owner: <i>Name the role that signs off for this deliverable.</i>	Deliverable Implementer: <i>Name the role responsible for the realization of this deliverable.</i>	Scheduled Fulfillment Date: <i>dd-mm-yyyy</i>
Deliverable Description: <i>Describe the deliverable in specific and measurable terms.</i>		
Acceptance Criteria: <i>List the acceptance criteria that reflect successful realization of this deliverable. Ensure that acceptance criteria are specific, measurable, agreed, realistic and timely.</i>		
Back-Out Plan: <i>Specify the process and all required resources that are initiated in case the deliverable is deemed a failure.</i>		
Deliverable Dependencies (if applicable): <i>List all the dependencies that affect this deliverable. Differentiate between prerequisite deliverables (that is, deliverables required before this deliverable can be realized) and dependent deliverables (deliverables that can be realized only if this deliverable is realized).</i>		
Required Resources (if applicable): <i>Specify the documentation, technology, process and people that are required to realize this deliverable.</i>		
Installation Document (if applicable): <i>Document the provided detailed steps for installation. It is a common document provided by application development to production.</i>		
Handover Document (if applicable): <i>Document all configuration item (CI) artifacts. Differentiate between CIs per group that owns these CIs — for example, handover of application configuration definitions and settings by the application development group to the application maintenance groups responsible for the involved or affected applications.</i>		
Involved or Affected CIs (if applicable): <i>List all the CIs that are affected by the deliverable.</i>		
Changes to Involved or Affected CIs (if applicable): <i>Describe per CI, or group of CIs, any changes to the CIs that result from the realization of this deliverable.</i>		

Deliverable Acceptance Form
Approved or Rejected by Deliverable Owner:
Signature:.....
Name:.....
Date:.....

Section N – DSHS Data Security Requirements

Section N

DSHS Data Security Requirements

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Section N – DSHS Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
- a. “AES” means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (<http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf>).
 - b. “Authorized Users(s)” means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.
 - c. “Business Associate Agreement” means an agreement between DSHS and a contractor who is receiving Data covered under the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996. The agreement establishes permitted and required uses and disclosures of protected health information (PHI) in accordance with HIPAA requirements and provides obligations for business associates to safeguard the information.
 - d. “Category 4 Data” is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. Data classified as Category 4 includes but is not limited to data protected by: the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), 45 CFR Parts 160 and 164; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99; Internal Revenue Service Publication 1075 (<https://www.irs.gov/pub/irs-pdf/p1075.pdf>); Substance Abuse and Mental Health Services Administration regulations on Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and/or Criminal Justice Information Services, 28 CFR Part 20.
 - e. “Cloud” means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iTunes, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, and Rackspace.
 - f. “Encrypt” means to encode Confidential Information into a format that can only be read by those possessing a “key”; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
 - g. “FedRAMP” means the Federal Risk and Authorization Management Program (see www.fedramp.gov), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.
 - h. “Hardened Password” means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

- i. “Mobile Device” means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.
 - j. “Multi-factor Authentication” means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. “PIN” means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.
 - k. “Portable Device” means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.
 - l. “Portable Media” means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.
 - m. “Secure Area” means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.
 - n. “Trusted Network” means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.
 - o. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
2. **Authority.** The security requirements described in this document reflect the applicable requirements of Standard 141.10 (<https://ocio.wa.gov/policies>) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: <https://www.dshs.wa.gov/fsa/central-contract-services/keeping-dshs-client-information-private-and-secure>, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

- 3. Administrative Controls.** The Contractor must have the following controls in place:
- a. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.
 - b. Security awareness training for all employees, presented at least annually, which informs Contractor staff of their responsibilities under the Contractor's security policy. If the Contractor does not have an appropriate security awareness course, any of their staff who will work with the Data or systems housing the Data, must successfully complete the DSHS Information Security Awareness Training, which can be taken on this web page: <https://www.dshs.wa.gov/fsa/central-contract-services/it-security-awareness-training>.
 - c. If the Data shared under this agreement is classified as Category 4, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.
 - d. If Confidential Information shared under this agreement is classified as Category 4, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.
- 4. Authorization, Authentication, and Access.** In order to ensure that access to the Data is limited to authorized staff, the Contractor must:
- a. Have documented policies and procedures governing access to systems with the shared Data.
 - b. Restrict access through administrative, physical, and technical controls to authorized staff.
 - c. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action.
 - d. Ensure that only authorized users are capable of accessing the Data.
 - e. Ensure that an employee's access to the Data is removed immediately:
 - (1) Upon suspected compromise of the user credentials.
 - (2) When their employment, or the contract under which the Data is made available to them, is terminated.
 - (3) When they no longer need access to the Data to fulfill the requirements of the contract.
 - f. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.
 - g. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

- (1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.
 - (2) That a password does not contain a user's name, logon ID, or any form of their full name.
 - (3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.
 - (4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.
- h. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:
- (1) Ensuring mitigations applied to the system don't allow end-user modification.
 - (2) Not allowing the use of dial-up connections.
 - (3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.
 - (4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.
 - (5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.
 - (6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.
- i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:
- (1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor
 - (2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)
 - (3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)
- j. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:
- (1) Be a minimum of six alphanumeric characters.
 - (2) Contain at least three unique character classes (upper case, lower case, letter, number).

- (3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.
- k. Render the device unusable after a maximum of 10 failed logon attempts.

5. Protection of Data. The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

- a. **Hard disk drives.** For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
- b. **Network server disks.** For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers.** Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents.** Any paper records must be protected by storing the records in a Secure Area which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.
- f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an

Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

g. Data storage on portable devices or media.

- (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:
 - (a) Encrypt the Data.
 - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
 - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
 - (d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
 - i. Keeping them in a Secure Area when not in use,
 - ii. Using check-in/check-out procedures when they are shared, and
 - iii. Taking frequent inventories.
- (2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

h. Data stored for backup purposes.

- (1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.
 - (2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.
- i. Cloud storage.** DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:

- (1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:
 - (a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attests in writing that all such procedures will be uniformly followed.
 - (b) The Data will be Encrypted while within the Contractor network.
 - (c) The Data will remain Encrypted during transmission to the Cloud.
 - (d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
 - (e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor and/or DSHS.
 - (f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on either the DSHS or Contractor networks.
 - (g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.
- (2) Data will not be stored on an Enterprise Cloud storage solution unless either:
 - (a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
 - (b) The Cloud storage solution used is FedRAMP certified.
- (3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

6. System Protection. To prevent compromise of systems which contain DSHS Data or through which that Data passes:

- a. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.
- b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.
- c. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.
- d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

7. Data Segregation.

- a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been

compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.

- (1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data. And/or,
- (2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,
- (3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,
- (4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
- (5) When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.

b. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

8. Data Disposition. When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Using a “wipe” utility which will overwrite the Data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive

Magnetic tape	Degaussing, incinerating or crosscut shredding

9. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

10. **Data shared with Subcontractors.** If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

Section O

Federal Tax Information Security Requirements

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Section O – Federal Tax Information Security Requirements

I. PERFORMANCE

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

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

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or

electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.