

STANDARD AGREEMENT FORM				
1. Agency Contract Number <b>#060706</b> 060706		2. ASPS Number 2007-0600-6640	3. Financial Coding	4. Agency Assigned Encumbrance
5. Vendor Number			6. Alaska Business License Number 283744	
This contract is between the State of Alaska,				
7. Department of Health & Social Services		Division Health Care Services		
8. Contractor Affiliated Computer Services, Inc. dba ACS State Healthcare, LLC				
Mailing Address	Street or P.O. Box	City	State	ZIP+4
9040 Roswell Road, Suite 700		Atlanta	Georgia	30350
9. <b>ARTICLE 1. Appendices:</b> Appendices A through J referred to in this contract and attached to it are considered part of it.				
<b>ARTICLE 2. Period of Performance:</b> The period of performance for this contract begins October 1, 2007 and ends September 30, 2017.				
<b>ARTICLE 3. Considerations:</b>				
4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a firm fixed price of \$129,961,203.00 in accordance with the provisions of Appendix F.				
4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:				
10. Department of Health & Social Services		Attention: Division of Grants & Contracts Support Team		
Mailing Address P.O. Box 110650, Juneau, Alaska 99811-0650		Attention: Contracts Unit		
<b>11. CONTRACTOR</b>				
Name of Firm ACS State Healthcare, LLC				
Signature of Authorized Representative <i>Michael M. Davis</i>			Date 09/07/2007	
Typed or Printed Name of Authorized Representative Michael M. Davis				
Title Senior Vice President / COO		Employer ID No. (EIN) or SSN 58-247-9287		
<b>12. CONTRACTING AGENCY</b>				
Department/Division Health & Social Services / Health Care Services		Date 9-27-07	Signature of Head of Contracting Agency or Designee <i>Janet Clarke</i>	Date 9/26/07
Signature of Project Director <i>Paul Cartland</i>			Typed or Printed Name Janet Clarke	
Typed or Printed Name of Project Director Paul Cartland			Title Assistant Commissioner	
Title Project Director				

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

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ATTACHMENT A

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES CONTRACT (FORM 02-093)

STANDARD AGREEMENT FORM					
1 Agency Contract Number	2 ASPS Number 2007 3609 6640	3 Financial Coding	4 Agency Assigned Encumbrance		
5 Vendor Number			6 Alaska Business License Number 280744		
This contract is between the State of Alaska,					
7 Department of Health & Social Services		Division Health Care Services			
8 Contractor Affiliated Computer Services, Inc. dba ACS State Healthcare, LLC					
Mailing Address 9040 Reswell Road, Suite 700	Street or P.O. Box	City Atlanta	State Georgia	ZIP+4 30350	
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Mailing Address: P.O. Box 110650, Juneau, Alaska 99811 0650		Attention: Contracts Unit			
<b>11. CONTRACTOR</b>					
Name of Firm ACS State Healthcare, LLC		<b>13 CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.			
Signature of Authorized Representative <i>Michael M. Davis</i>					Date 9/27/07
Typed or Printed Name of Authorized Representative Michael M. Davis					
Title Senior Vice President / COO	Employer ID No. (EIN) or SSN 58-247-9287				
<b>12. CONTRACTING AGENCY</b>					
Department/Division Health & Social Services / Health Care Services		Date 9/26/07	Signature of Head of Contracting Agency or Designee <i>Joynt Clarke</i>		
Signature of Project Director <i>Paul Cornland</i>		Typed or Printed Name Joynt Clarke			
Typed or Printed Name of Project Director Paul Cornland		Title Assistant Commissioner			
Title Project Director					

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Signature of Authorized Representative <i>Michael M. Davis</i>		Date 09/07/2007		
Typed or Printed Name of Authorized Representative Michael M. Davis				
Title Senior Vice President / COO		Employer ID No. (EIN) or SSN 58-247-9287		
<b>12. CONTRACTING AGENCY</b>				
Department/Division Health & Social Services / Health Care Services		Date 9-29-07		
Signature of Project Director <i>Paul Cartland</i>		Signature of Head of Contracting Agency or Designee		
Typed or Printed Name of Project Director Paul Cartland		Date		
Title Project Director		Typed or Printed Name Janet Clarke		
		Title Assistant Commissioner		

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

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## APPENDIX A GENERAL PROVISIONS

### A.1 Structure

- A.1.1 This agreement between the State Contracting Agency and the Contractor is comprised of a Cover Sheet bearing the signatures of the parties, this Appendix A (General Provisions) and the additional Appendices referenced in the Cover Sheet and/or attached hereto. Each Appendix may contain one or more Exhibits or Schedules. The Cover Sheet, Appendices, Exhibits, Schedules, the Work Plan, the RFP and the Proposal are referred to collectively herein as the "Agreement".
- A.1.2 In the event of any conflict, discrepancy or inconsistency within the provisions of this Appendix A and the other provisions of this Agreement, the following priority of control shall prevail: (a) this Appendix A, unless another Appendix or amendment to this Agreement expressly and specifically notes the deviations from the terms of this Appendix A and such deviation shall be approved in writing by the State's Department of Law; (b) the other Appendices; (c) the Exhibits, (d) the Schedules, (e) the Work Plan (i.e., the Schedule and Staffing Plan), (f) the RFP, and (g) the Contractor's Proposal; provided, however, that in the event the Contractor's Proposal, exceeds the requirements of the RFP, the State, in its sole discretion, may enforce the Contractor's language as provided in the Contractor's Proposal.
- A.1.3 In the event of any conflict, discrepancy or inconsistency within the Contractor's Proposal, the terms most favorable to the State, as determined by the State Contracting Agency, shall apply. In the event of any conflict, discrepancy or inconsistency between the provisions in the RFP and the Contractor's Proposal, the terms most favorable to the State, as determined by the State Contracting Agency, shall apply.

### A.2 Definitions and Construction

- A.2.1 Capitalized terms shall have the meanings ascribed to them in Appendix H and elsewhere in this Agreement. If any capitalized term is used herein without definition, such term shall have the meaning ascribed to it in the RFP.
- A.2.2 The words "hereby," "herein," "hereunder" and words of similar import refer to this Agreement as a whole (including all Appendices, Exhibits and Schedules hereto) and not merely to the specific article, section, paragraph or clause in which such word appears. The definitions given for terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

- A.2.3 With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.
- A.2.4 For purposes of this Agreement, (a) "days" means calendar days, unless specifically defined as "business days", however, if the due date falls on a weekend or holiday, the due date will be the next full business day in Juneau, Alaska, and (b) all times stated are Alaska Standard Time, unless otherwise noted.
- A.2.5 Unless otherwise specifically provided in a later Appendix, the Services, Deliverables and all work on the Project shall be provided in the State of Alaska at the locations designated by the Project Director. The Contractor shall pay the costs associated with the transportation and delivery of each Deliverable to the locations in the State of Alaska designated by the Project Director and any associated insurance costs.

### **A.3 Books and Records; Inspection; Accounting Procedures**

- A.3.1 The Contractor hereby agrees to the conditions of all applicable state and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, the Contractor shall maintain complete and accurate books and records to substantiate all fees, charges, expenses and other amounts invoiced under this Agreement. Such books and records shall be retained by the Contractor and the Contractor Agents for six years after the expiration or termination of this Agreement.
- A.3.2 All such books and records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by the State Contracting Agency, its auditors (including internal audit staff and external auditors) and inspectors or by federal officials authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these books and records will be provided in Juneau, Alaska. The Contractor shall be responsible for any audit exceptions, penalties, sanctions, or disallowed costs incurred by the Contractor or any Contractor Agents.
- A.3.3 The Contractor shall also provide to the State Contracting Agency access, upon prior notice and during regular business hours, to all facilities used to perform Services or provide Deliverables pursuant to this Agreement and to any personnel of the Contractor or a Contractor Agent engaged in providing such Services and Deliverables.
- A.3.4 As part of the Services, the Contractor shall provide, upon the Project Director's request, a copy of those portions of the Contractor's (and any Contractor Agent's) internal audit reports relating to the Services or Deliverables, (1) provided that such internal audit reports shall not be made

available to any third parties except the State's funding sources and its quality assurance and independent verification and validation consultants which are not Contractor's competitors and (2) subject to a non-disclosure agreement.

- A.3.5 The Contractor shall establish and maintain, and shall ensure that each Contractor Agent shall establish and maintain, an accounting system with procedures and practices in accordance with generally accepted accounting principles. Such accounting systems shall maintain records pertaining to the Services, Deliverables and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.
- A.3.6 The Contractor shall ensure that each Contractor Agent maintains the appropriate books and records and affords the State Contracting Agency and federal officials the rights of access, examination, inspection and audit set forth in this Section A.3.

#### **A.4 Reports and Meetings**

- A.4.1 The Contractor shall make written progress and other reports in the manner and at the times the State Contract Agency reasonably requires. All such reports shall be produced in formats and at a level of detail approved by the Project Director. In addition, the Contractor will implement the automated performance monitoring system described in Section 5.7.1 of the RFP.
- A.4.2 The Contractor shall participate in the meetings described in the RFP and in this Section in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference at the State Contracting Agency's sole discretion.
- A.4.3 The Contractor Project Manager and other Key Personnel shall attend weekly status meetings with the Project Director or his or her designee and other members of the State Contracting Agency's Project team during the Project. These weekly status meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and the Project Director, but will also allow both Contractor and the State Contracting Agency to discuss other issues that may concern either party. The parties will also conduct Contract Performance Review meetings as provided in Section 5.7.1 of the RFP.

#### **A.5 Term of the Agreement**

The term of this Agreement shall commence on the Effective Date and, unless terminated pursuant to Section A.6 or Section A.7, shall expire when the Contractor's performance hereunder is completed and all Deliverables have been accepted.

## A.6 Termination for Cause

- A.6.1 The State Contracting Agency may, subject to Section A.6.2, by written notice of default to the Contractor, terminate this Agreement in whole or in part if the Contractor fails to:
- (a) Deliver the Deliverables or to perform the Services within the time specified in this Agreement or any extension;
  - (b) Make progress, so as to endanger performance of this Agreement; or
  - (c) Perform any of the other provisions of this Agreement.
- A.6.2 The State Contracting Agency's right to terminate this Agreement under Section A.6.1(b) and A.6.1(c) above, may be exercised if the Contractor does not cure such failure within 30 calendar days (or more if authorized in writing by the Project Director) after receipt of the notice from the Project Director specifying the failure. Contractor shall have the right to terminate this Agreement if the State Contracting Agency does not cure a material breach of this Agreement within 30 days (or more if authorized in writing by authorized representatives of the parties) after receipt of the notice from the Contractor Project Manager specifying the material breach.
- A.6.3 If the State Contracting Agency terminates this Agreement, in whole or in part, it may acquire, under the terms and in the manner the Project Director considers appropriate, deliverables or services similar to those terminated, and the Contractor will be liable to the State Contracting Agency for any excess costs for those deliverables or services. However, the Contractor shall continue the work not terminated.
- A.6.4 If this Agreement is terminated by the State Contracting Agency pursuant to this Section A.6, the State Contracting Agency may require the Contractor to transfer title and deliver to the State Contracting Agency, as directed by the Project Director, any (a) completed supplies, materials and other work product, and (b) partially completed supplies, materials and other work product, including parts, tools, fixtures, plans, drawings, specifications, information, and contract rights (collectively referred to as "**Work in Progress**") that the Contractor has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Project Director, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- A.6.5 The State Contracting Agency shall pay the Maximum Amount (as defined in Section A.19.2) for completed work delivered and accepted. The Contractor and Project Director shall agree on the amount of payment for Work in Progress delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the disputes section of this Appendix.

- A.6.6 If, after termination pursuant to this Section A.6, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State Contracting Agency pursuant to Section A.7.
- A.6.7 The rights and remedies of the State Contracting Agency in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

#### **A.7 Termination for Convenience and Termination Procedures**

- A.7.1 Termination for Convenience. The State Contracting Agency may terminate this Agreement, in whole or, from time to time, in part, if the Project Director determines that a termination is in the State's interest. The Project Director shall terminate by delivering to the Contractor a notice of termination specifying the extent of termination and the effective date, which shall be not less than 90 days from the date notice of termination is received by the contractor, unless a different termination date is agreed to in writing.
- A.7.2 Termination Procedures. After receipt of a notice of termination, and except as directed by the Project Director, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section A.7:
- (a) Stop work as specified in the notice.
  - (b) Place no further subcontracts or orders (referred to as subcontracts in this Section A.7) for materials, services, or facilities, except as necessary to complete the continued portion of this Agreement.
  - (c) Terminate all subcontracts to the extent they relate to the work terminated.
  - (d) Assign to the State Contracting Agency, as directed by the Project Director, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the State Contracting Agency shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (e) With approval or ratification to the extent required by the Project Director, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Section A.7.
  - (f) As directed by the Project Director, transfer title and deliver to the State Contracting Agency the Work in Progress, and the State Contracting Agency shall pay the amount specified in the Agreement for such Work in

Progress or, if no such amount is specified or the Work in Progress is incomplete, the amount shall be a pro rated amount based on the work performed to the date of termination.

- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary, or that the Project Director may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which the State has or may acquire an interest.

A.7.3 Termination for Convenience Liability. The State Contracting Agency's sole and exclusive liability to the Contractor for termination of this Agreement pursuant to Section A.7.1 shall be the payment to the Contractor of the fees specified herein for Deliverables provided and accepted and Services satisfactorily rendered through the final day on which the Contractor provides Deliverables and performs the Services. The final day of performance shall be specified in the notice of termination from the Project Director or, if not specified therein, shall be the date of such termination notice.

## **A.8 Governing Law; Disputes**

- A.8.1 This Agreement shall be governed by the law of the State of Alaska, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- A.8.2 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute or claim arising out of or relating to this Agreement, including payment disputes, through negotiations between senior management of the parties. If the dispute cannot be resolved within 30 calendar days of initiating such negotiations, either party may pursue its available legal and equitable remedies by filing a contract claim under AS 36.30.620.
- A.8.3 Any dispute or claim arising out of or related to this Agreement which is not disposed of by mutual agreement of the parties pursuant to Section A.8.2 shall be decided in accordance with AS 36.30.620- 36.30.632. Except as provided in Section C.12.8 and in Appendix J Section 6, Alaska Court Rules, Civil Rule 82 shall apply in a contract claim proceeding between the parties regarding awards of attorney's fees and other costs.
- A.8.4 The Contractor irrevocably consents and agrees (a) to submit itself to the personal jurisdiction of Superior Court of the State of Alaska in the event any dispute or claim arises out of this Agreement or any of the transactions

contemplated by this Agreement, (b) that it will not attempt to deny or defeat the personal jurisdiction of such court by motion or other request for leave from such court, (c) that, except as provided in Section A.8.3, it will exhaust its administrative remedies under AS 36.30.620 and not bring any original action, suit or proceeding relating to this Agreement or any of the transactions contemplated by this Agreement in any court or forum but it may bring an appeal to the Superior Court of the State of Alaska after a final decision is issued under AS 36.30.680.

- A.8.5 The Contractor acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the discharge by the State of important public functions. Accordingly, in the event of a dispute between the Contractor and the State Contracting Agency, the Contractor shall continue to perform its obligations under this Agreement in good faith during the resolution of such dispute for up to 30 days as described in Section A.8.2. If attempts to resolve the dispute are not successful at the end of such 30-day period, the parties shall attempt, with a professional mediator, to reach a mediated resolution of the dispute. The parties shall equally share the costs incurred by the mediator. If such mediation is unsuccessful within 30 days of the commencement of the mediation, then either party may pursue its available legal and equitable remedies, and Contractor shall have the right to stop performing the obligations that resulted in or were associated with the dispute. For the avoidance of doubt, the provisions of this Section A.8.5 shall not be deemed to obligate the Contractor to begin work on a Change Request prior to agreement of the parties on the scope of such Change Request.

## **A.9 Equal Employment Opportunity**

- A.9.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this Section.
- A.9.2 The Contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal

opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood.

- A.9.3 The Contractor shall send to each labor union, or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' compensation representative of the Contractor's commitments under this Section and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- A.9.4 The Contractor shall include the provisions of this Section in every contract, and shall require the inclusion of those provisions in every contract entered into by any of its Contractor Agents, so that those provisions will be binding upon each such Contractor Agent.
- A.9.5 The Contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this Agreement, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- A.9.6 Full cooperation in Section A.9.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- A.9.7 The Contractor's failure to perform the obligations set forth in this Section A.9 (Equal Employment Opportunity) shall constitute a material breach of this Agreement by Contractor.

#### **A.10 No Assignment or Delegation**

The Contractor shall not assign its rights or, except as provided in Section A.11 (Subcontractors), delegate its obligations under this Agreement, whether by operation of law or otherwise, in whole or in part, without the prior written consent of the Agency Head. Any attempted assignment or delegation in violation of this Section shall be void.

## A.11 Subcontractors

- A.11.1 The Contractor may engage subcontractors at no additional cost to the State Contracting Agency; provided, however, that (a) if the subcontractors are not expressly referenced in an Appendix or Contractor's Proposal, the Contractor must receive the prior written approval of the Project Director for each subcontract; (b) the subcontractor will be bound by record retention, insurance, audits, testing results, ownership, indemnification, confidentiality and data protection provisions no less onerous than those to which the Contractor is subject under the Agreement; (c) the Contractor will remain the State Contracting Agency's sole point of contact and sole contracting party; (d) the subcontractor shall appoint a management level employee who shall be responsible for the subcontracted activities and for responding to any requests from the Project Director, including requests for status updates, and (e) all subcontractor employees will be subject to the same provisions of the Agreement as employees of the Contractor.
- A.11.2 Prior to amending, modifying, or otherwise supplementing any subcontract, the Contractor shall notify Project Director of the proposed amendment, modification, or supplement and shall obtain the Project Director's written approval thereof.
- A.11.3 The Contractor shall make all payments it is contractually required to make to all subcontractors in accordance with the respective agreements between the Contractor and its subcontractors such that no subcontractor shall be in a position to enforce any liens and/or other rights against the State Contracting Agency or any Deliverable or any part thereof. The Contractor shall protect and keep free all Deliverables from any and all claims, liens, charges or encumbrances of the nature of mechanics, labor or materialmen liens or otherwise arising out of or in connection with the performance by the Contractor of this Agreement or any performance by any subcontractor, and to promptly have any such lien released by bond or otherwise.
- A.11.4 No subcontract shall release the Contractor from its responsibility for its obligations under this Agreement. The Contractor shall be responsible for the work and activities of each of its subcontractors, including their compliance with the terms of this Agreement. Any breach of this Agreement by a subcontractor performing services pursuant to this Agreement shall be deemed a breach by the Contractor. The Contractor's use of subcontractors shall in no way increase the Contractor's rights or diminish the Contractor's liabilities to the State Contracting Agency with respect to this Agreement. The Contractor shall be liable for any delays caused by any subcontractor as if such delays were caused by the Contractor.
- A.11.5 The terms of this Agreement shall in all events be binding upon the Contractor regardless of and without regard to the existence of any inconsistent terms in any agreement between the Contractor and any

subcontractor whether or not and without regard to the fact that the State Contracting Agency may have directly or indirectly had notice of any such inconsistent term.

A.11.6 All subcontracts will be made in writing and copies provided to State Contracting Agency at least 30 calendar days prior to the applicable Subcontractor starting work under the Subcontract unless another date is agreed to by the parties in writing by authorized representatives, subject to Contractor's right to redact pricing and rates in the Subcontracts prior to providing any Subcontract to the State Contracting Agency. Upon expiration or termination of this Agreement for any reason, State Contracting Agency will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with State Contracting Agency.

#### **A.12 No Additional Work or Material**

A.12.1 No claim for additional services, not specifically provided in this Agreement, performed or furnished by the Contractor, will be allowed, nor may the Contractor do any work or furnish any material not covered by this Agreement unless the work or material is ordered in writing by the Project Director in accordance with the provisions set forth in this Agreement.

A.12.2 The Contractor shall be deemed to have satisfied itself before entering into this Agreement as to the quantities and nature of the work, equipment, facilities and materials necessary for the performance of the Services and completion of the Deliverables, the accommodation, equipment and facilities it may require; and in general shall for itself have obtained all necessary information as to risks, contingencies, expenses and other circumstances which might have influenced its decision to enter into this Agreement, and to have satisfied itself as to the correctness and sufficiency of the terms and conditions of this Agreement.

#### **A.13 Independent Contractor**

The Contractor, and any Contractor Agents, act in an independent capacity. Nothing contained herein shall be deemed to create an employment, agency, joint venture or partnership relationship between the parties hereto or any of their employees, agents, officers, directors or other representatives, or any other legal arrangement that would impose liability upon the State for the act or failure to act of the Contractor. The Contractor is not granted hereby, and shall not hold itself out as having, any right or authority to enter into any contract, incur any liabilities, create any obligation or responsibility or make any representation or warranty, express or implied, on behalf of or in the name of the State, or to otherwise bind the State in any manner.

#### **A.14 Payment of Taxes**

As a condition to the State Contracting Agency's performance of this Agreement, the Contractor shall pay all federal, state, and local taxes and duties incurred by the Contractor in the performance of its obligations hereunder and shall require their payment by any Contractor Agent or any other persons or entities in performing work under this Agreement.

#### **A.15 Waivers and Amendments**

A.15.1 No waiver of any provision of, or consent or approval required by, this Agreement, nor any consent to or approval of any departure herefrom, shall be effective unless it is in writing and signed by the Project Director. Such waiver, consent or approval shall be effective only in the specific instance and for the purpose for which given. Neither the failure of the State Contracting Agency to enforce, nor the delay of the State Contracting Agency in enforcing, any condition, provision or part of this Agreement at any time shall be construed as a waiver of that condition, provision or part or forfeit any rights to future enforcement thereof. No action taken pursuant to this Agreement, including any investigation by or on behalf of the State Contracting Agency, shall be deemed to constitute a waiver by the State Contracting Agency of compliance by the Contractor with any representation, warranty, covenant or agreement contained herein.

A.15.2 This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered by the parties hereto; provided, however, that if any amendment, modification, alteration or supplement is required by the State Contracting Agency in order to comply with applicable law or to receive the maximum amount of FFP or other federal funding available for the Project, the State Contracting Agency may make such amendment, modification, alteration or supplement by written notice to the Contractor.

#### **A.16 Officials Not to Benefit**

The Contractor shall comply with all applicable federal or state laws regulating ethical dealings with public officers and employees. In particular, and without limitation of the foregoing, the Contractor shall not pay any salaries, commissions, fees or make any payments or rebates to any employee of the State of Alaska, or to any designee of such employee, or favor any employee of the State of Alaska, or any designee of such employee, with gifts, gratuities or entertainment of significant cost or value or with services or goods sold at less than full market value. The Contractor agrees that its obligation to the State under this Section shall also be binding upon all Contractor Agents. The Contractor further agrees to insert the provisions of this Section in each contract or subcontract with a Contractor Agent performing work pursuant to this Agreement.

### **A.17 No Contingent Fees**

The Contractor warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, contingent fee, brokerage or other fee that is contingent upon the success that a person or concern has in securing a contract with the State, except employees or agencies maintained by the Contractor for the purpose of securing business in the ordinary course. For the breach or violation of this warranty, the State Contracting Agency may terminate this Agreement without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, contingent fee or brokerage or otherwise recover the full amount of the contingent fee.

### **A.18 Civil Rights of Clients**

- A.18.1 The Contractor shall comply with Title VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Section 594 of the Rehabilitation Act of 1973, the Food Stamp Act of 1977, Alaska Statute 18,80.200-280, and pertinent portions of the Code of Federal Regulation (CFR) for implementation of the foregoing.
- A.18.2 The Contractor shall make no distinction or discriminate against the client, recipient, applicant or beneficiary of the State Contracting Agency's federally assisted programs on the basis of race, color, age, national origin, sex, political belief, religious creed, or handicap. No client, recipient, applicant or beneficiary of these federally assisted programs shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the State Contracting Agency has responsibility.
- A.18.3 Distinction on the ground of race, color, age, national origin, sex, political belief, religious creed, or handicap includes:
- (a) Any type of segregation, separate or different treatment, or other discrimination on that ground;
  - (b) The imposition of any admission, enrollment, quota, eligibility, or other requirement or condition which individuals must meet in order to be provided any service or other benefit under the program or to be afforded an opportunity to participate in the program if the race, color, age, national origin, sex, political belief, religious creed, or handicap of individuals is considered in determining whether they meet any such requirement or condition;
  - (c) The use of membership in a group as a basis for the selection of individuals for any purpose if in selecting members of the group there is discrimination on the grounds of race, color, age, national origin, sex, political belief, religious creed, or handicap; and

- (d) The assignment of personnel to provide services, or on the basis of race, color, age, national origin, sex, political belief, religious creed, or handicap of the individual to be served.

A.18.4 In making a determination of whether a contractor is illegally discriminating in the provision of benefits or services, consideration shall be given to the purpose of the service as expressly stated in any federal statute, state statute, or local statute or ordinance adopted by an elected general purpose legislative body. In making such a determination it shall be acknowledged that certain federal, state or local funding is legally designated for specific groups by age, sex, handicap, income, or other specific and legal eligibility criteria. For example, programs for the aging, blind, disabled and youth provide services legally only for those groups. Also, institutions may legally serve a special age, sex, or handicap group depending upon their protective treatment, or rehabilitative needs and funding sources to provide the services.

#### **A.19 Fixed Price Contract**

A.19.1 The Contractor shall provide the State Contracting Agency with the Services and the Deliverables at the times specified in the RFP, the Proposal and this Agreement.

A.19.2 Subject to Section F.1, \$129,961,203 shall be the maximum amount to be paid to Contractor pursuant to this Agreement (“**Maximum Amount**”).

A.19.3 The price specified herein is fixed and not subject to measurement or recalculation should the quantities of work and/or materials differ from any estimates made at the time of contracting. Such price shall be inclusive of all works and expenditure, whether separately or specifically mentioned or described in the RFP, which are either necessary to carry out the Project and bring it to successful completion or which may become necessary to overcome difficulties in the Project before its completion.

A.19.4 The State Contracting Agency shall have no obligation to make any payment to the Contractor pursuant to this Agreement for any Deliverables or Services with respect to which the Contractor is in breach of this Agreement until and unless such breach is cured or waived by the State Contracting Agency in accordance with the terms of this Agreement.

#### **A.20 Title and Risk of Loss**

A.20.1 Title to all property (whether tangible or intangible, real or personal) furnished by the State Contracting Agency to the Contractor in connection with the Agreement shall remain in the State Contracting Agency.

A.20.2 Title to all property (whether tangible or intangible, real or personal) purchased by the Contractor or a Contractor Agent, for which the Contractor

has been reimbursed by the State Contracting Agency under this Agreement, shall pass to and vest in the State Contracting Agency upon acceptance of the Deliverable in which such property is included. Title to any Deliverable shall pass to the State Contracting Agency only on acceptance of the Deliverable. All risk of loss, regardless of the cause, shall remain with the Contractor until title to the Deliverable passes to the State Contracting Agency.

A.20.3 All property referenced in Sections A.20.1 and A.20.2 (collectively, “**Property**”) shall, unless otherwise approved in writing by the Project Director, be used by the Contractor only for the performance of its obligations under and subject to the terms of this Agreement.

A.20.4 The Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor’s willful misconduct or negligent acts or omissions or from the failure on the part of the Contractor to maintain and administer that Property in accordance with sound management practices. The Contractor shall ensure that the Property is returned to the State Contracting Agency in like condition to that in which it was furnished to the Contractor, reasonable wear and tear excepted. Upon the loss of, destruction of, or damage to any of the Property, the Contractor shall notify the Project Director thereof and shall take all reasonable steps to protect that Property from further damage.

A.20.5 The Contractor shall deliver to the State Contracting Agency or its designee all Property within thirty (30) days of the earlier of completion or termination of this Agreement.

#### **A.21 HIPAA Business Associate Agreement Requirements**

The Contractor shall comply with all applicable provisions of the Privacy, Security, and Transactions Standards and any other administrative simplification standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”). The Contractor shall execute a Business Associate Agreement in the form of Exhibit A-1.

#### **A.22 Other General Provisions**

A.22.1 If any covenant or provision hereof is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain between the parties hereto

to the maximum extent possible, consistent with applicable law and public policy.

A.22.2 This Agreement (and each amendment, modification and waiver in respect of it) may be executed in counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one instrument. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission (such as an email of a PDF file) shall be effective as delivery of a manually executed original counterpart of each such instrument.

A.22.3 Except as expressly provided herein, the parties' respective rights under the various provisions of this Agreement shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights allowed by law.

A.22.4 The Contractor shall, at the request of the State Contracting Agency, execute, acknowledge, deliver, file and record, and cause to be executed, acknowledged, delivered, filed and recorded, such further certificates, amendments, instruments, and documents and to do, and cause to be done, all such other acts and things, as may be required by applicable law, or as may, in the reasonable opinion of Project Director, be necessary or advisable to carry out the purposes of this Agreement.

A.22.5 Except for the provisions of Appendix B (Indemnification) this Agreement is for the sole benefit of the parties hereto and not for the benefit of any third party.

### **A.23 Entire Agreement**

A.23.1 This Agreement, together with the Work Plan, the RFP and the Contractor's Proposal referenced herein, contains the entire agreement between the parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements or understandings, whether written or oral, between the parties with respect to the subject matter hereof.

\* \* \*

## APPENDIX B INDEMNITIES AND INSURANCE

### B.1 Indemnification Obligations

The Contractor shall indemnify the State Contracting Agency, and each of its current, future and former officials, employees, representatives and agents (the “**State Indemnified Parties**”), and defend and save each of them harmless, from and against any and all losses, damages, liabilities, costs and expenses (including attorneys’ fees and expenses) (collectively, “**Losses**”) in connection with any and all suits, proceedings, investigations, claims or demands (collectively, “**Claims**”) arising from or occurring as a result of: (a) the breach by the Contractor of any term or provisions of this Agreement, including the inaccuracy, untruthfulness or breach of any representation or warranty made by the Contractor in this Agreement, (b) the negligence or willful misconduct on the part of the Contractor or the Contractor Agents in performing any obligations under this Agreement; (c) bodily injury or death to persons or physical damage to tangible or intangible personal or real property attributable to the acts or omissions of the Contractor or the Contractor Agents in performing any obligations under this Agreement; and (d) the use by the State in accordance with the terms of this Agreement of any Deliverable or Service developed and/or provided by the Contractor to the State pursuant to this Agreement, including any Claim that the use of and exercise of its rights to such Deliverable or Service infringes, violates or misappropriates a third party’s patents, copyrights, trade secrets, trademarks or other intellectual property rights; provided, however, that in each case (items (a) through (d) above) the Contractor shall not be obligated to indemnify the State Indemnified Parties for any Losses to the extent that such Losses arise as a result of negligence or willful misconduct on the part of the State Contracting Agency.

### B.2 Indemnification Procedures

B.2.1 If any Claim is commenced or threatened against a State Indemnified Party, written notice shall be given to the Contractor by the State Contracting Agency. Such notice shall be given as promptly as practicable. After such notice, if the Contractor acknowledges in writing to the State Contracting Agency that Section B.1 applies with respect to such Claim, then the Contractor shall be entitled to take control of the defense and investigation of the Claim and to employ and engage attorneys of its choice that are reasonably acceptable to the State Contracting Agency to handle and defend and/or settle the same, at the Contractor’s sole cost and expense. The Contractor shall deliver written notice of its election of taking such control of the Claim to the State Contracting Agency not fewer than ten (10) days prior to the date on which a response to such Claim is due or such lesser period as is reasonable given the nature of the Claim and the notice and response time permitted by law or the facts and circumstances. The State Contracting Agency shall cooperate in all reasonable respects and at the Contractor’s cost and expense with the Contractor and its attorneys in the

investigation, trial and defense or settlement of such Claim and any appeal arising therefrom. The State Contracting Agency may participate in such investigation, trial and defense or settlement of such Claim and any appeal arising therefrom, through its own attorneys or otherwise, at its own cost and expense. No settlement of a Claim by the Contractor shall be entered into without the consent of the State Indemnified Parties unless (a) the only form of relief in such settlement is the payment of money, (b) such settlement will not have any adverse effect on any other Claims that have been or may be made against the State Indemnified Parties, and (c) such settlement includes an unconditional release of each State Indemnified Party of all liability on Claims that are the subject of such proceeding.

- B.2.2 After notice to the State Contracting Agency of the Contractor's election to assume full control of the defense of any such Claim, the Contractor shall not be liable for any legal expenses incurred thereafter in connection with the defense of that Claim by the State Indemnified Parties. If the Contractor does not promptly assume full control over and diligently pursue the defense of a Claim as provided in this Appendix, each State Indemnified Party shall have the right to defend, settle or otherwise resolve the Claim in such manner as he, she or it may deem appropriate, at the cost and expense of the Contractor.

### **B.3 Insurance**

- B.3.1 During the term of this Agreement the Contractor and each Contractor Agent shall maintain and keep in force, at its own expense, the following minimum insurance coverage and minimum limits:
- (a) Workers' Compensation Insurance: The Contractor and each Contractor Agent shall provide and maintain coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal Longshore and Harbor Workers' Compensation Act (USL&H) and Jones Act requirements. The policy must waive subrogation against the State.
  - (b) Commercial General Liability Insurance: covering all business premises and operations used by the Contractor and the Contractor Agents in the performance of Services under this Agreement with minimum coverage limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate.
  - (c) Business Automobile Liability Insurance: covering all vehicles used by the Contractor and the Contractor Agents in the performance of Services under this Agreement with minimum coverage limits of \$300,000 combined single limit per accident.
  - (d) Professional Liability Errors and Omissions, with coverage of not less than \$3 million on a per claims made basis.

B.3.2 Where specific limits are shown in Section B.3.1, it is understood that they shall be the minimum acceptable limits. If the Contractor's or a Contractor Agent's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

B.3.3 Standard ACORD Form. Certificates of insurance shall be furnished to the Project Director prior to beginning work and must provide for a 30-day prior notice of cancellation, nonrenewal or material change of conditions. No such cancellation, nonrenewal or material change shall affect the Contractor's obligation to maintain the insurance coverage required by this Appendix. Failure to furnish such standard ACORD form evidence of insurance or lapse of the policy is a material breach of this Agreement and shall be grounds for termination of this Agreement. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

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**APPENDIX C  
CONTRACT ADMINISTRATION**

**C.1 Contractor Personnel**

- C.1.1 The Contractor shall ensure that any personnel performing work under this Agreement, including personnel employed by any Contractor Agents, possess the appropriate qualifications and competence and are in all respects acceptable to the Project Director.
- C.1.2 The Contractor shall appoint an individual (the “**Contractor Project Manager**”), who shall serve, on a full-time basis, as the primary Contractor representative under this Agreement. The Contractor’s appointment of any Contractor Project Manager shall be subject to the Project Director’s prior approval. The Contractor Project Manager shall (a) be of a management level sufficient to assure timely responses from all Contractor personnel, (b) have overall responsibility for managing and coordinating the performance of the Contractor’s obligations under this Agreement, (c) be authorized to act for and on behalf of the Contractor with respect to all matters within the scope of this Agreement, and (d) work full-time during the DDI Phase from the locations in the State of Alaska designated by the Project Director. For purposes of this Appendix the Contractor Project Manager shall be deemed a member of the Key Personnel.
- C.1.3 The key personnel initially assigned by the Contractor to provide Services to the State Contracting Agency are identified in the portion of the Proposal that responds to Section 3.11 of the RFP (each a “**Key Person**” and collectively, the “**Key Personnel**”). With respect to each Key Person, the parties agree as follows:
- (a) Unless otherwise agreed by the Project Director in writing, each Key Person shall be dedicated to the Customer account either on a full-time basis or on a percentage basis as specified in the portion of the Proposal that responds to Section 3.11 of the RFP.
  - (b) The State Contracting Agency shall have the right to evaluate each Key Person and to accept or reject any such Key Person based upon the background, experience and other qualifications indicated by the individual. The Contractor shall only assign an individual to a Key Personnel position who is approved by the Project Director.
  - (c) The Contractor shall not replace or reassign any Key Person, unless the Project Director consents to such replacement or reassignment or such Key Person (i) voluntarily resigns from the Contractor (in which case Contractor shall not directly or indirectly hire such individual as a contractor or employee for a similar position for up to six months), (ii) is dismissed by the Contractor for misconduct (e.g., fraud, drug abuse, theft),

- (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to illness or disability.
  - (d) The Contractor shall provide the period of overlap specified in the portion of the Proposal that responds to Section 3.11 of the RFP for all Key Persons (or, if not specified in the Proposal, a six-month period of overlap) if the Key Person in a later phase of the Project is different from the comparable position in the earlier phase of the Project. For purposes of illustration only, if the systems operation manager is not the same person as the systems development manager and the Proposal call for a three-month period of overlap, the Contractor shall assure a three month overlap on their respective tenure on the Project, except in the circumstances described in Section (c)(i) through (c)(iv) above.
- C.1.4 In the event that any Key Person or any other employee of the Contractor or a Contractor Agent performing work under this Agreement is found to be unacceptable to the Project Director for any reason, the Project Director may notify the Contractor of such fact and the Contractor shall promptly remove said person and, if requested by the Project Director, provide a suitable, qualified replacement with the same or better level of skill, knowledge and experience within fifteen (15) days of the date of receipt of the Project Director's notice.
- C.1.5 The Contractor shall not hire on a full-time, part-time, or other basis during the period of this Agreement any managerial, professional or technical personnel of the State Contracting Agency that are or have been at any time during the term of this Agreement in the employ of the State Contracting Agency, except regularly retired employees, without the written consent of the Project Director. Further, the Contractor shall not knowingly engage on this Agreement on a full-time, part-time, or other basis during the period of this Agreement any retired employee who has not been retired for at least one year, without the prior written consent of the Project Director.

## **C.2 Conduct of Contractor Personnel**

- C.2.1 While on site at any State facility, the Contractor and the Contractor Agents shall comply with the requests, standard rules and regulations of the State Contracting Agency regarding security, safety and health, storage of materials, personal and professional conduct (including the wearing of a particular identification badge or personal protective equipment, and adhering to facility regulations and general safety practices or procedures) generally applicable to such State facility. The Project Director may remove from and refuse entry and re-admission to a State facility any person who is, in the opinion of the Project Director, not conforming with these requirements.
- C.2.2 The Contractor shall ensure that no property in which the State has an interest, including hardware, equipment, software or other tangible or

intangible materials, are removed from any State facility without the Project Director's prior written consent. The Contractor shall immediately notify the Project Director in writing of any known or suspected breach of security in relation to this Agreement and give the State Contracting Agency its full co-operation in any resulting investigation.

C.2.3 The Contractor shall supply on request details (including name, social security number, address and date of birth) of any person employed by Contractor or a Contractor Agent who might have access to a State facility under this Agreement.

C.2.4 The Contractor and the State Contracting Agency shall each be solely responsible for the management, direction, control, supervision, and compensation of its own employees, respectively. Neither party shall be deemed a joint employer of the other's employees, each party being responsible for any and all claims by its employees, subject to Appendix B (Indemnification). Neither party's employees shall be deemed "leased" employees of the other for any purpose.

### **C.3 Standard of Care**

When providing Deliverables and performing Services pursuant to this Agreement, the Contractor shall, and shall cause the Contractor Agents to, provide such Deliverables and perform such Services in a professional manner and in a way that meets or exceeds the Contractor Standard of Care. As used herein, the term "**Contractor Standard of Care**" means the exercise of degree of skill, diligence and prudence which is expected from a skilled, experienced and nationally recognized and reputed contractor engaged in the same type of undertaking under similar circumstances and acting generally in accordance with applicable laws, rules, regulations, codes and industry standards.

### **C.4 Status Reports and Notice of Adverse Impact**

C.4.1 The Contractor shall provide the State Contracting Agency and its designated agents and representatives with written reports of the progress of the work required under this Agreement, any anticipated problems (resolved or unresolved), and any indication of delay in schedules or target dates specified herein. The status reports shall be provided by the Contractor in accordance with the schedule specified in the RFP or, if not specified in the RFP, on a weekly basis.

C.4.2 The Contractor shall promptly notify the Project Director in writing of any factor, occurrence, condition or event coming to its attention that may adversely affect or delay proper and timely completion of the provision of Deliverables or Services specified in this Agreement and/or the ability of either party to perform its obligations specified herein. Any such notice shall be accompanied by a description of the Contractor's proposed remedy for the particular factor, occurrence, condition or event. The provision by

the Contactor of any notice pursuant to this Section shall not relieve the Contractor of its obligations under this Agreement.

#### **C.5 Agreements with Employees**

The Contractor shall, and shall cause each Contractor Agent to, obtain and maintain in effect written agreements with each of its employees who provide Deliverables or perform Services pursuant to this Agreement. Such agreements shall contain terms sufficient for the Contractor to comply with all provisions of this Agreement and to support all grants and assignments of rights and ownership hereunder. Such agreements also shall impose an obligation of confidence on such employees with respect to the State's confidential information that is no less onerous than the obligation of confidence set forth in this Agreement.

#### **C.6 Change Control Procedures**

- C.6.1 The State Contracting Agency and the Contractor acknowledge that during the term of this Agreement the services, software, systems, hardware and equipment required for the Alaska MMIS will undergo changes in order to meet the requirements of the RFP and the business needs of the State Contracting Agency. The change control provisions in this Appendix ("**Change Control Procedure**") shall apply to all Alaska MMIS changes and project phases. Additional specific provisions apply to each category of system changes as further described below.
- C.6.2 Each change shall be classified using one of the following four categories: (1) DDI Change, which shall be handled in accordance with Section C.7 below; (2) System Maintenance change, which shall be handled in accordance with Section C.8 below; (3) Enhancement Modification, which shall be handled in accordance with Section C.9 below; and (4) Additions and deletions, which shall require a written, executed amendment to this Agreement, as further described in Section C.10 below.
- C.6.3 For all changes (other than changes made during the DDI Phase in accordance with Section C.7.1), the administrative process for approval of change requests shall commence with the preparation of a change request by the party initiating the request ("**Change Request**"). Each Change Request shall, unless otherwise specified in the RFP, contain at a minimum the following:
- (a) if the Change Request is initiated by the State Contracting Agency, it shall include: (i) the category of the change using the classification system in Section C.6.2; (ii) a description of the requested change, including the business need; and (iii) known system and/or operational impacts; and
  - (b) if the Change Request is initiated by the Contractor, it shall include: (i) the category of the change using the classification system in Section C.6.2; (ii) a description of the requested change, including the business need; (iii)

system and/or operational impacts; (iv) targeted dates for completion; (v) the effect the change will have on any then-current schedules; and (vi) the cost and resources required to implement the requested change.

C.6.4 When either party receives a Change Request from the other, such party shall review the proposal and reject or accept the proposal in writing within a reasonable period of time, but in no event more than fifteen (15) days after receipt of the Change Request. If federal or state laws, rules, regulations, policies or guidelines adopted, promulgated, judicially interpreted or changed subsequent to the Effective Date of this Agreement necessitate additions or modifications to the performance requirements of this Agreement, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any appropriate Change Orders. If the State Contracting Agency submits to Contractor a Change Request to comply with such laws, rules, regulations, policies or guidelines and if the parties are able to reach an agreement on the scope of activities to perform the Change Order but are not able to agree in writing on the revised price and schedule for such activities within 15 days of Contractor's response to such a Change Request, the Project Director may make a determination of the revised price and Schedule, and Contractor shall proceed with the work for up to 60 calendar days according to such price and schedule which shall be included in the resulting Change Order, subject to the dispute resolution process under Section A.8.5. Nothing in this Section C.6.4 shall in any manner excuse Contractor from proceeding diligently with the Agreement as changed by the Change Order until the earliest of (1) completion of the mediation process described in Section A.8.5, (2) completion of the work set forth in the change order, or (3) 60 calendar days.

C.6.5 Upon request by the State Contracting Agency, the Contractor shall provide the State Contracting Agency an impact statement ("**Impact Statement**") that sets forth in detail the following: (a) a written amount of the increase or decrease in cost (if any) of or resulting from making the change described in the proposed Change Request; (b) the additional resources (if any) to be provided by each party to complete the change described in the proposed Change Request; (c) the new or changes to existing Services or Deliverables to be provided by the Contractor in connection with the change described in the proposed Change Request; (d) time schedules for implementation of the change described in the proposed Change Request; (e) reports, completion criteria, and testing methodology; and/or (f) such other information as may be reasonably requested by the State Contracting Agency. If a Change Request from the State Contracting Agency requires that the Contractor reduce or eliminate one or more elements of the Services or Deliverables or the functionality to be provided hereunder, then Contractor's Impact Statement shall include a calculation of the resources and expenses related to the elements of the Services or Deliverables or functionality being

reduced or eliminated and the cost savings to the State Contracting Agency resulting from such reduction or elimination.

- C.6.6 If Change Request is rejected by the receiving party, the rejection shall include written reasons for such rejection. If the requesting party disagrees with the rejection, it may seek a remedy through the dispute resolution process set forth in this Agreement.
- C.6.7 If the Change Request is accepted by both parties, the parties shall mutually agree on the changes. Such changes shall be made only in a written Statement of Understanding (“SOU”) which shall include (a) a description of the system or operational changes to be made, including a description of any new Services to be rendered or Deliverables to be provided, (b) the agreed upon cost or credit, (c) a payment schedule, (d) the resources, including time, materials and staff, required to complete the change, (e) an implementation schedule with a fixed date for completion, (f) the reports, completion criteria, and testing methodology, and (g) the specific remedies for a failure to complete the changes in a timely and satisfactory manner. If an Impact Statement has been prepared in connection with the Change Request, such Impact Statement will be attached to and form part of the SOU.
- C.6.8 The Contractor shall maintain an automated tracking system that meets the approval of the Project Director and RFP requirements to track all Change Requests, SOUs and contract amendments.
- C.6.9 Changes that are not otherwise included in the costs associated with relevant phases shall be made by the Contractor in accordance with the terms of the SOU; provided, however that the hourly rates for any work associated with a change shall in no event exceed the rates specified in Exhibit C-1.
- C.6.10 Notwithstanding the provisions contained above, if the parties agree in writing that a particular change is an emergency, the Contractor shall make the change within a shorter agreed-upon timeframe, or on a specified date approved by the State Contracting Agency. At no time shall the Contractor proceed with any Change Request, emergency or otherwise, in the absence of an SOU that has been executed and delivered by the Project Director.

## C.7 DDI Change

- C.7.1 All changes that are made to the Alaska MMIS during the DDI Phase that are for the purpose of meeting functional specifications and/or satisfying the requirements specified in the RFP are part of the design and development process and included in the cost, tasks, deliverables, approvals and project implementation schedule of the DDI Phase. Costs associated with these changes during the DDI Phase are included in the DDI Phase costs. No additional costs shall be charged to the State Contracting Agency for these changes made during the DDI Phase as described in the Work Plan or if the

State Contracting Agency chooses at its option by notice to Contractor within the first 30 days after the start of the term to extend the term for DDI up to 32 months or such other mutually agreed upon time in the Work Plan.

- C.7.2 If a party requests changes to the functional specifications and/or requirements specified in the RFP during the DDI Phase, the party initiating such request shall prepare a Change Request, and such Change Request shall be subject to the change control provisions for Enhancement Modifications set forth in Section C.9 below, with payments to the Contractor, if any, made in accordance with Section C.9.3.

## C.8 System Maintenance

- C.8.1 Contractor shall perform equipment, hardware, software and system maintenance and support to ensure that the Alaska MMIS continuously meets all functional specifications and requirements specified in the RFP (“System Maintenance”). System Maintenance shall be provided by the Contractor at the direction of the State Contracting Agency during the term of this Agreement. System Maintenance may result from a determination by the State Contracting Agency or by the Contractor that a deficiency exists within the operational Alaska MMIS, or that continued or improved efficiency can be maintained or achieved through the activity. Examples of various types of maintenance can include: correction of deficiencies and errors; activities to meet ongoing CMS certification requirements; file maintenance activities for updates to tables and databases; changes to edit disposition parameters for established edit or audit criteria; changes to parameters of reports; updated or new data values.
- C.8.2 All costs associated with System Maintenance are included in the Operational Phase fixed costs. No additional costs shall be charged to the State Contracting Agency for System Maintenance.
- C.8.3 If the Contractor considers that any maintenance change requested by the State Contracting Agency constitutes a change in the functional specifications and/or requirements specified in the RFP, the Contractor shall so advise the State Contracting Agency in writing within fifteen (15) days of receiving the request. If the Project Director agrees with the Contractor on classification of this work order, he/she will re-classify the work order as an Enhancement Modification under Section C.9. If the Project Director denies the Contractor’s request for reclassification of the work order, the Contractor may seek remedy through the dispute resolution process set forth in this Agreement.
- C.8.4 In the event that any software maintenance release or software upgrade supplied by the Contractor during the term of this Agreement has the effect of preventing the Alaska MMIS or any part thereof from satisfying or performing in accordance with the functional requirements of the RFP or otherwise adversely affects the functionality or features of the Alaska MMIS

or any part thereof, then the Contractor shall promptly retrofit or take such other corrective action as may be necessary to ensure that the Alaska MMIS or any such affected part, as modified to include each such software maintenance release or software upgrade, shall satisfy, and perform in accordance with, the functional requirements of the RFP and restore all pre-existing functionality and features as well as provide any new features and functionality provided by any of the foregoing modifications, in each case without any additional charge to the State Contracting Agency.

## C.9 Enhancement Modifications

- C.9.1 It is anticipated by the parties that during the term of this Agreement the State Contracting Agency will request changes to the functional specifications and/or requirements specified in the RFP that are not System Maintenance changes (“**Enhancement Modifications**”). Examples of Enhancement Modifications can include: new capabilities not specified in the RFP; new edits and audits not defined in the RFP nor offered in the proposed system; certain changes to established report, screen, or tape formats, new data elements, or report items; or a new input form or interface.
- C.9.2 The Contractor is required to dedicate four (4) Full Time Equivalent (“**FTE**”) staff with a minimum of 150 hours each, or a total of 600 hours of effort, per month for each month during the term of this Agreement to be used for the State Contracting Agency’s anticipated Enhancement Modification requirements. This cost is included in the Operations Phase fixed cost. Any unused hours remaining at the end of a calendar month will be added to the hours for the next calendar month and will be carried forward and accumulate for subsequent calendar months and contract years. At the expiration or termination of this Agreement, the Contractor shall reimburse the State Contracting Agency for all accumulated and unused hours at the hourly rate specified in Exhibit C-1 for a system analyst engaged in system modification work. The required dedicated FTE hours for a given period plus all accumulated and unused FTE hours for such period are referred to collectively herein as the “**Enhancement Hours.**” The Contractor shall keep an accurate record of the number of Enhancement Hours expended in each month during the term of this Agreement and make written reports of accrued Enhancement Hours in such manner and at such times as the Project Director may reasonably require.
- C.9.3 If the State Contracting Agency requests an Enhancement Modification (including an enhancement requested during the DDI Phase pursuant to Section C.7.2), and the work required to complete the Enhancement Modification will result in the State Contracting Agency exceeding the then-available Enhancement Hours, then (a) the Contractor shall specifically and conspicuously state the number of additional FTE hours required to complete the Enhancement Modification in the text of the SOU, (b) the Contractor shall be reimbursed for the Enhancement Modification upon its

completion and acceptance by the State Contracting Agency according to the level of effort stated in the SOU that is in excess of the then-available Enhancement Hours, and (c) any such reimbursement shall be made at the hourly rates specified in the SOU or on a fixed price basis; provided, however that such hourly rates shall in no event exceed the rates specified in Exhibit C-1.

#### **C.10 Additions and Deletions**

C.10.1 Notwithstanding any other provision of this Agreement to the contrary, if an enhancement, modification or change to the Alaska MMIS will result in an increase or decrease to the total overall cost to be paid by the State Contracting Agency to the Contractor of more than \$100,000.00 or add or subtract more than 60 days, either in delay to the implementation of the system in the DDI Phase or cumulative work hours in Operations Phase, a contract amendment shall be required, and no additional work shall commence nor shall work be reduced until the contract amendment is executed by both parties. Contract amendments will be subject to the requirements of AS 36.30.400.

#### **C.11 Inspection, Evaluation, and Approval**

The Contractor will be responsible for the completion of all work set out in this Agreement. All work is subject to inspection, evaluation, approval and acceptance by the Project Director. The State Contracting Agency may employ all reasonable means to ensure that the work is progressing and being performed in compliance with this Agreement.

#### **C.12 Deliverable Review and Acceptance**

C.12.1 The provisions of this Section C.12 shall apply to all Deliverables (including Deliverables provided pursuant to a Change Request), except to the extent the RFP or another Appendix or the Change Request contains express deviations from the terms of this Section.

C.12.2 Each of the Deliverables shall be accompanied by a Deliverable Transmittal Document, signed and dated by the Contractor Project Manager and the Contractor Quality Manager, where applicable. The Deliverable Transmittal Document will be the mechanism for communication concerning the status of that Deliverable. The Deliverable Transmittal Document shall (a) set forth the nature and condition of the Deliverable, (b) reference all RFP requirements the Deliverable is intended to satisfy, and (c) specify the medium of delivery and the date of delivery. The medium of the Deliverable Transmittal Document (e.g. paper, fax, electronic) shall be approved in advance by the Project Director.

- C.12.3 The countersignature of the Project Director on a Deliverable Transmittal Document will be required for acceptance of each Deliverable, unless otherwise provided in this Appendix.
- C.12.4 For Deliverables that are comprised of reports, documents, templates, studies, strategies, operating models, technical designs, technical architectures, specifications or documentation for software (but not the software itself), the Contractor shall deliver, and the State Contracting Agency shall evaluate, the proposed final version of such Deliverable. Contractor must test a Deliverable and confirm in writing that it meets applicable Acceptance criteria before Contractor delivers it for the State Contracting Agency to review or test. The time period for evaluation of such Deliverable, if not otherwise specified in the RFP or the Work Plan, shall be ten (10) business days from the date of its receipt by the State Contracting Agency. In the event that the Deliverable contains errors and/or requires corrections, the State Contracting Agency shall specify the errors and corrections needed and the Contractor shall deliver an amended version of such Deliverable within ten (10) business days following receipt of notice of such need for corrections from the State Contracting Agency unless a different date is agreed to by the parties in writing and in accordance with this Agreement. In addition, the parties agree to extend the review periods by the State Contracting Agency to the extent reasonably required by the State Contracting Agency and agreed to in writing by the parties if previous delays in delivery of Deliverables by Contractor results in Contractor simultaneously delivering more than one significant or critical path Deliverable for review.
- C.12.5 For Deliverables that are comprised of software objects, configurations, data dictionaries, schema, tables, records, any other system-oriented products, software programs, source code or object code the Contractor shall deliver, and the State Contracting Agency shall evaluate, the proposed final versions of each such Deliverable. Contractor must test a Deliverable and confirm in writing that it meets applicable Acceptance criteria before Contractor delivers it for the State Contracting Agency to review or test. The time period for evaluation of such Deliverable, if not otherwise specified in the RFP or the Work Plan, shall be ten (10) business days from the date of receipt by the State Contracting Agency of the applicable Deliverable Transmittal Document. However, if the Deliverable encompasses the full MMIS, or a major component thereof, the review period shall be thirty (30) business days unless otherwise agreed to in writing in the Work Plan. If the State Contracting Agency identifies Errors in any Deliverable, then the Contractor shall correct such Errors within ten (10) business days following receipt of notice of such Errors from the State Contracting Agency and the State Contracting Agency shall thereafter submit a written acceptance or rejection to the Contractor concerning such Error correction within ten (10) business days of delivery of a requested Error correction unless a different date is agreed to by the parties in writing and in accordance with this

Agreement. In addition, the parties agree to extend the review periods by the State Contracting Agency to the extent reasonably required by the State Contracting Agency if Contractor simultaneously delivers more than one significant or critical path Deliverable for review.

- C.12.6 As used in this Agreement, the term "**Error**" (or "error," "problem," "defect" or "deficiency," or similar term whether or not capitalized) means any defect, deficiency, failure or malfunction in a Deliverable that causes (i) a deficiency of its functionality or performance, including compatibility, or (ii) a failure to conform to the applicable Specifications, requirements, acceptance criteria and user documentation.
- C.12.7 Acceptance of a Deliverable shall be in writing and shall not be withheld if a Deliverable (a) conforms all applicable Specifications, including requirements (including all applicable RFP requirements, quality standards, acceptance criteria, legal requirements and industry standards), and (b) performs in accordance with all applicable Specifications. The parties shall negotiate the terms of and agree upon a Format and Content Deliverable which shall describe the applicable acceptance criteria for each Deliverable.
- C.12.8 The failure of a Deliverable to meet its Specifications and otherwise satisfy all other applicable Acceptance criteria by the third submission (i.e., the initial submission to the State Contracting Agency plus two re-tries under Sections C.12.4 or C.12.5 above) or any subsequent set of acceptance tests shall, at the election of the State Contracting Agency, constitute a material breach of this Agreement by the Contractor and give the State Contracting Agency the right to pursue its available remedies, including at its option, to: (a) continue reviewing or performing Acceptance tests on the Deliverable and require Contractor to continue until Errors are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance tests; (c) set-off from the price for the Deliverable to the extent the State Contracting Agency determines the Errors for the Deliverable have not been corrected and its value to the State and the value of other previously accepted Deliverables, which are impacted or affected by such Deliverable, are diminished and provide Acceptance for the applicable Deliverable; or (d) after completion of the process set forth in Section 12 and providing Notice of default to Contractor, immediately terminate this Agreement, in whole or in part, without penalty or liability to the State Contracting Agency, and return the Deliverable to Contractor and other Deliverables impacted or affected by the rejected Deliverable. If the State Contracting Agency terminates this Agreement under this Section, Contractor shall, within 20 days thereafter, refund to the State Contracting Agency all payments made to Contractor for the returned Deliverables and Services rendered therefor. However, Contractor shall not be required to pay such refund until after the State Contracting Agency and Contractor complete the process in Section A.8.5 up through the end of the mediation process if not resolved previously, before pursuing a contract claim under AS

36.30.620. If the State Contracting Agency has collected a refund from Contractor prior to the conclusion of a contract claim under AS 36.30.620 – 36.30.630 or a settlement, the prevailing party in the contract claim proceeding or a settlement agreement on Contractor’s claim that the State Contracting Agency was not entitled to receive such refund shall receive from the other party the prevailing party’s reasonable costs and fees, including reasonable attorneys fees, which arise solely from so presenting its case in the contract claim proceeding or settling such claim, unless the settlement agreement expressly provides for a different allocation of costs and fees. In addition, the State Contracting Agency shall pay prejudgment interest at the maximum rate allowed by AS 36.30.623 on any portion of the award previously refunded to the State Contracting Agency by the Contractor if Contractor is such prevailing party. The Project schedule shall not change as a result of time required by the Contractor to correct Errors, unless otherwise agreed in writing by the Project Director.

C.12.9 By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the specifications and objectives stated or referred to in the RFP and this Agreement. By unconditionally giving acceptance for a Deliverable, the State Contracting Agency represents only that it has reviewed the Deliverable and detected no Errors of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of acceptance for the work completed.

### **C.13 System Acceptance**

C.13.1 The foregoing notwithstanding, (a) final acceptance testing of a given Deliverable shall require completion, installation and acceptance of all relevant or material dependencies and other necessary items, and (b) acceptance of a given Deliverable based on stand-alone or unit testing or testing in a non-production environment shall be subject to the Contractor’s obligation to correct as described herein any latent defects and other failure(s) to meet its specifications or other applicable acceptance criteria that are discovered in subsequent end-to-end or integration testing, production testing or other testing.

C.13.2 If the State Contracting Agency has made payment for a Deliverable that subsequently is determined to have a latent defect or is otherwise subsequently determined to have failed to meet its specifications or other acceptance criteria in subsequent end-to-end or integration testing, production testing, scale testing or other testing, the State Contracting Agency shall, in addition to its other remedies, have a right of set-off against its payment obligations for Services rendered or Deliverables provided subsequent to such Deliverables until the latent defect or other failure to meet specifications or acceptance criteria is corrected by the Contractor.

C.13.3 The State Contracting Agency shall not be deemed to have waived any rights to accept or reject a particular Deliverable or Service under this Section in the event it fails to deliver any of the notices described herein. Notwithstanding the foregoing, in the event the State Contracting Agency fails to deliver any of the notices described herein, the Contractor shall send the State Contracting Agency's Project Director a written notice that the Contractor has not received the State Contracting Agency's formal acceptance or rejection of a particular Deliverable within the time frame(s) specified in this Section. Such notice shall specifically reference this Section, describe the Deliverable at issue and conspicuously note the failure of the State Contracting Agency to accept or reject such Deliverable within the period specified herein. The State Contracting Agency shall make every reasonable effort to respond to the Contractor's notice in a timely manner.

C.13.4 In the event of an early termination of this Agreement, the Contractor shall provide the State Contracting Agency with all partially or wholly completed Deliverables and other work-in-progress with respect to the terminated work within thirty (30) days after the termination date.

#### **C.14 Source Code.**

The State Contracting Agency shall have the right to receive the source code for the application software parts of the Contractor Materials and the application software parts of Third Party Materials pursuant to an escrow agreement between Contractor and a software escrow organization if Contractor fails to perform its obligations described in Sections C.8.1, C.8.4, and E.2.3, and other System Maintenance, operations and support obligations in the Contract following Acceptance of the System. The parties agree to share equally the costs of initiating and maintaining the software escrow.

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