

APPENDIX D
PROPRIETARY RIGHTS; CONFIDENTIALITY; DATA

D.1 Alaska MMIS and Deliverables

D.1.1 The State Contracting Agency shall own the Developed Materials and the overall MMIS (except that the State Contracting Agency shall not own the Contractor Materials (as defined below) or the Third Party Materials (as defined below) and shall have licenses (as described below) to such Contractor Materials and Third Party Materials which are included in the MMIS and Developed Materials), which shall include but not be limited to:

- (a) All Alaska MMIS software and supporting programs in their most current version, including the most current versions of source and object code;
- (b) All job control language (JCL) or other system instructions for operating the Alaska MMIS, in their most current version;
- (c) All data files in their most current version;
- (d) User and operational manuals and other documentation in their most current version;
- (e) System and program documentation describing the most current version of the Alaska MMIS;
- (f) Training programs (including related materials) for State staff for the operation and use of the Alaska MMIS in their most current version;
- (g) Any and all performance-enhancing operational plans and products in their most current version;
- (h) Training programs (including related materials) for providers and other billing agencies for claims submission, including both paper and electronic media claims (EMC), and use of the recipient Eligibility Verification System, Electronic Claims Capture, and Prospective Drug Utilization Review (DUR) criteria; and
- (i) All specialized or specially modified operating system software and specially developed programs, including utilities, software, electronic claims submission packages, and documentation, which are required for, or used in the operation of, the Alaska MMIS.

D.1.2 The Contractor shall provide two sets of all system and program documentation and related user manuals that are used in conjunction with the Alaska MMIS. Such documentation shall be provided in electronic format (compatible with Microsoft Corporation's then-generally available Office products) and in written format in accordance with the terms of the

RFP and this Agreement. Upgrades and revisions to such documentation shall be provided while the Contractor is providing Services therefor. There shall be no additional charge for the documentation or updates thereto, in whatever form provided. The Contractor's documentation shall be comprehensive, well structured and indexed for easy reference.

D.2 Contractor Materials

D.2.1 All designs, specifications, software, procedures, files, data and documentation (a) that were owned by or licensed to the Contractor as of the Effective Date and were developed or licensed without the use of any funds provided by the State or Federal government, (b) of which the Contractor acquired ownership or license rights after the Effective Date without the use of any funds provided by the State or the Federal government and which are not Developed Materials, and (c) which were developed by or on behalf of the Contractor after the Effective Date or outside the scope of this Agreement without the use of any funds provided by the State or Federal government and which are not Developed Materials (items (a) through (c) collectively, the "**Contractor Materials**") shall be and shall remain the property of Contractor. The Contractor Materials are licensed pursuant to Section D.2.2 below and are not part of the materials licensed pursuant to Section D.1.1 above or part of the Developed Materials (as hereinafter defined).

D.2.2 The Contractor hereby grants to the State and the United States Department of Health and Human Services a non-exclusive, royalty-free, irrevocable and perpetual license to Use the Contractor Materials necessary to operate the systems and processes that are the subject of this Agreement. For the avoidance of doubt, the license to the Contractor Materials set forth in this Section permits the State to authorize one or more third parties (including any successor contractors) to Use the Contractor Materials solely in conjunction with the State's Medicaid program (including the installation, integration, testing, deployment, maintenance and operation of the Alaska MMIS); provided that any such third party must acknowledge in writing to the State that: (a) it will maintain all Contractor Materials as confidential; (b) all Contractor Materials are proprietary to the Contractor; and (c) the Contractor Materials will only be used in connection with State's health and human services program (including but not limited to the installation, integration, testing, deployment, maintenance and operation of the Alaska MMIS).

D.3 Third Party Materials

D.3.1 All designs, specifications, software, procedures, files, data and documentation licensed from a third party that will be used in connection with the Alaska MMIS (collectively, "**Third Party Materials**") shall be and shall remain the property of their respective third party licensors. The Contractor shall be responsible for negotiating and obtaining the required rights and

licenses to the Third Party Materials used in connection with the Alaska MMIS, which rights and licenses shall include all of the rights set forth in Section D.1. In the event Contractor is unable to negotiate and obtain all of the rights specified in Section D.1 to a particular item of Third Party Materials, the Contractor shall so notify the Project Director in writing of its inability to obtain for the State such rights and the cost and viability of any other designs, specifications, software, procedures, files, data and documentation that can perform the requisite functions and with respect to which the Contractor has the ability to obtain such rights.

- D.3.2 The Contractor shall not introduce any Third Party Materials into the Alaska MMIS unless (a) such Third Party Materials are provided at established catalog or market prices and sold or leased to the general public, (b) the Contractor has provided the State with a complete and correct copy of all license terms applicable to such Third Party Materials, including all price and payment provisions related thereto, and (c) the State has approved such license terms in writing. The Contractor shall not, without the State's written permission, modify any Third Party Materials in any manner for use in the Alaska MMIS.
- D.3.3 With respect to any such State-approved Third Party Materials, unless otherwise agreed by the State in writing, Contractor shall (a) pay all license, maintenance, support and other fees for the Third Party Materials during the term of this Contract, and (b) verify in writing that the State and its designees have the right to obtain or renew the licenses for the Third Party Materials and purchase ongoing maintenance and support for such Third Party Materials, in each case on commercially reasonable terms.
- D.3.4 Unless otherwise mutually agreed to in writing, the Contractor shall, during the term of this Agreement, maintain any and all Third-Party Materials that are software products at their most current version or no more than one version back from the most current version at no additional charge.
- D.3.5 If the State is not named as the licensee under the applicable license agreement for any Third Party Materials that are to be used in connection with the Alaska MMIS then, upon expiration or termination of this Agreement for any reason, the Contractor shall do one of the following at its option and expense: (a) transfer and assign to the State the licenses for the Third Party Materials being used in the Alaska MMIS as of the effective date of such expiration or termination, (b) grant the State a non-exclusive, royalty-free, and irrevocable sublicense to Use such Third Party Materials in connection with the State's Medicaid program (including the installation, integration, testing, deployment, maintenance and operation of the Alaska MMIS), or (c) obtain from the third party licensor a license for the State to Use such Third Party Materials on the terms set forth in Section D.1 above in connection with the State's Medicaid program (including the installation, integration, testing, deployment, maintenance and operation of the Alaska MMIS).

D.4 Developed Materials

- D.4.1 **State Ownership of Custom Software:** The State Contracting Agency shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under 45 CFR subpart F. Further, the parties agree that, as between the State and the Contractor, the State shall own all right, title and interest in and to all designs, specifications, software or modifications thereof, procedures, files, data and documentation, and other Deliverables that are designed, developed, installed, enhanced or improved specifically for the State with any funds provided by the State or the Federal government pursuant to this Agreement. Such software or modifications thereof and associated documentation, designs, specifications, procedures, files, data and other Deliverables shall collectively be defined as “**Developed Materials**”. Except as provided in the first sentence of this Section D.4.1, designs, specifications, software, procedures, files, data and documentation that are designed, developed, or installed, enhanced or improved outside the scope of this Agreement and licensed hereunder to the State Contracting Agency shall not be Developed Materials, including but not limited to the following: the drug rebate system (DRAMS), the automated drug prior authorization system (Smart PA), retrospective DUR processing (CyberFormance) and web based access to pharmacy PA and other pharmacy related clinical data (CyberAccess). The Developed Materials shall be deemed “works made for hire” for copyright purposes, with all copyrights in such Developed Materials owned exclusively by the State.
- D.4.2 To the extent that all or any part of the Developed Materials do not qualify as a work made for hire under applicable law, the Contractor shall assign, and cause the Contractor Agents to assign, to the State all right, title, and interest in and to such Developed Materials. Title to the Developed Materials shall vest in the State as such Developed Materials are created. To the maximum extent permitted by law, the Contractor waives, and shall cause its Contractor Agents to waive, all moral rights in the Developed Materials.
- D.4.3 The State hereby grants to the Contractor a non-exclusive, royalty-free, irrevocable and perpetual license to reproduce and otherwise use (and authorize others to reproduce and otherwise use) the Developed Materials for any purpose; provided that such license is at all times subject to the nondisclosure and confidentiality provisions of this Agreement. For the avoidance of doubt, the license set forth in this Section does not apply to any State Data and no rights or licenses with respect to the State Data are granted herein.
- D.4.4 **Federal License:** The Contractor acknowledges and agrees that, pursuant to Federal Regulations governing software (as described in 12 CFR § 95.617 and 42 CFR § 433.112), the U.S. Department of Health and Human Services reserves a royalty-free, nonexclusive, irrevocable and perpetual license to

reproduce, publish or otherwise use and authorize others to use, for Federal Government purposes, any software, modifications to software and documentation that is designed, developed, or installed with Federal funding participation.

D.5 Records of Materials Used in the Alaska MMIS; Delivery of Materials

- D.5.1 The Contractor, as part of the Services provided hereunder, shall compile and, as changes are made, update a list of the Contractor Materials, Third Party Materials and Developed Materials in use in the Alaska MMIS. The Contractor shall provide the State Contracting Agency with a copy of such list (a) at contract initiation and on a quarterly basis during the term of this Contract, and (b) within five (5) business days of receipt of the State Contracting Agency's written request.
- D.5.2 Contractor agrees to deliver to the State Contracting Agency a usable, then-current copy of (a) the object code for all Contractor Materials, Developed Materials and Third Party Materials, (b) the source code for all Contractor Materials and Developed Materials, (c) the source code for all Third Party Materials if such source code was made available to the Contractor by the third party licensor, (d) the State Data, and (e) any other designs, specifications, software, procedures, files, data and documentation constituting the Alaska MMIS in each case (i) on the date of expiration or termination of this Agreement, and (ii) within fifteen (15) days from the receipt of a written request by the State Contracting Agency. Such requests may be made by the State Contracting Agency at any time prior to the expiration of this Agreement and for a period of three years thereafter.

D.6 State Data

- D.6.1 All State Data is and shall remain the exclusive property of the State Contracting Agency. As used herein, the term "State Data" means (a) all data, fields, formats and files that are (i) provided by the State to the Contractor or a Contractor Agent or otherwise made available to the Contractor or a Contractor Agent in connection with this Agreement, (ii) migrated into, posted on or inputted into the Alaska MMIS, or (iii) collected, processed, stored, transferred, created, displayed, analyzed or reported in the operation of the Alaska MMIS, and (b) all reports, compilations, aggregations, abstracts, summaries and analyses of any of the foregoing.
- D.6.2 The Contractor shall not, and shall ensure that the Contractor Agents do not (a) use the State Data for any purpose other than in connection with the State's Medicaid program (including the development, maintenance and/or operation of the Alaska MMIS), (b) disclose, sell, assign, lease, or otherwise provide any State Data to any third party without the prior written approval of the Project Director, or (c) commercially exploit the State Data in any way.

D.6.3 All files containing State Data shall be returned to the State Contracting Agency by the Contractor at the expiration or termination of this Agreement or upon demand by the Project Director. In addition, the Contractor shall ensure that the media upon which such files are stored are prominently marked or inscribed so as to evidence the ownership of the State Data by the State Contracting Agency.

D.7 Nondisclosure and Confidentiality

D.7.1 Contractor agrees that all Confidential Information shall be used only for purposes of providing the Deliverables and performing the Services specified herein, and for no other purpose. The Contractor shall hold as confidential and will use at least the same level of care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the Confidential Information as it employs to avoid unauthorized access, storage, disclosure, publication, dissemination or use of its own information of a similar nature, but in no event less than reasonable care. The concept of "reasonable care" shall include compliance by the Contractor with all applicable federal and state law, including the Social Security Act and HIPAA.

D.7.2 If Confidential Information is required to be disclosed by the Contractor by law, regulation, governmental or regulatory authority, such Confidential Information may be disclosed pursuant to such requirement so long as the Contractor provides the State with written notice of the disclosure, to the extent such notice is permitted by law, within a reasonable time after receipt of notice of the required disclosure and, upon request of the State, shall seek to obtain confidential treatment of such information.

D.7.3 The Contractor shall promptly notify the Project Director in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the Confidential Information in violation of this Agreement. The Contractor shall be responsible to ensure that the Contractor Agents comply with Section D.6 and Section D.7.

D.7.4 The obligations under the parties under Section D.6 and Section D.7 shall survive after the termination of this Agreement.

D.7.5 Notwithstanding the above, Contractor acknowledges that the State Contracting Agency is subject to the public records act in Alaska, AS 40.25.110 – 40.25.220 (the "Act"), and that this Agreement shall be a public record as defined therein. Any specific information that is claimed by Contractor to be its proprietary information must be clearly identified as such by Contractor. To the extent consistent with the Act, the State Contracting Agency will maintain the confidentiality of all such information marked proprietary information. If a request is made to view Contractor's proprietary information, the State Contracting Agency will notify Contractor

of the request and allow Contractor the opportunity to pursue administrative and judicial remedies available to it under the Act.

D.7.6 The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

D.8 Press Releases

Press releases or other similar public communication by the Contractor relating to this Agreement shall be approved in advance by the Project Director, which approval shall not be unreasonably withheld.

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**APPENDIX E
REPRESENTATIONS AND WARRANTIES; COVENANTS**

E.1 General Representations and Warranties

- E.1.1 The Contractor represents and warrants to the State Contracting Agency as of the Effective Date and as of the date of receipt of each payment from the State Contracting Agency, as follows:
- (a) The Contractor (i) is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and (ii) has full power to own, lease, license and operate its properties and assets, to conduct its business as currently conducted and to enter into this Agreement and to consummate the transactions contemplated hereby;
 - (b) This Agreement has been duly authorized, executed and delivered by the Contractor and constitutes a valid and binding agreement of the Contractor, enforceable against the Contractor in accordance with its terms, except as such enforcement may be affected by bankruptcy or other insolvency laws;
 - (c) Neither the execution and delivery of this Agreement by the Contractor, nor the consummation by the Contractor of the transactions contemplated hereby, shall result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, agreement, order, law, rule or regulation to which the Contractor is a party or that is otherwise applicable to the Contractor;
 - (d) There is no action, suit, proceeding or investigation pending or, to the Contractor' knowledge, threatened, that questions the validity of this Agreement or the Contractor' right to enter into this Agreement or to consummate any of the transactions contemplated herein;
 - (e) The Contractor has all requisite knowledge, know-how, skill, expertise and experience to satisfy its obligations in a timely manner in accordance with the terms of this Agreement;
 - (f) The Contractor has the financial and management capacity and capabilities to satisfy its obligations in a timely manner in accordance with the terms of this Agreement and in particular (i) the Contractor has the financial stability to carry out at least six months of Services without reimbursement for the Services; and (ii) Contractor has the financial resources to fund the capital expenditures required under the Agreement without advances by the State Contracting Agency or assignment of any payments by the State Contracting Agency to a financing source;
 - (g) Neither the Contractor nor any of its Principals is (i) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of

contracts by any Federal or State agency or excluded in any fashion for any reason from participation in the Medicare, Medicaid or any other federally-funded health program, (ii) in default on any contractual obligation to the State of Alaska, (iii) a party to any agreement, undertaking or contract with the State of Alaska that has been terminated by the State for material breach, or (iv) controlled, directly or indirectly, by a person or entity that is so excluded, in default or the subject of termination. As used in this Section, the term "Principals" means the Contractor's officers, directors, owners and partners and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment and similar positions).

E.1.2 The Contractor shall obtain representations and warranties from each Contractor Agent in the form set forth in Section E.1.1. above, *mutatis mutandis*, which representations and warranties shall be made by the Contractor Agent for the benefit of the State Contracting Agency as of the effective date of the applicable subcontract and as of the date of receipt of each payment from the Contractor.

E.2 Services Warranty

E.2.1 Notwithstanding inspection and acceptance by the State Contracting Agency or any provision concerning the conclusiveness thereof, Contractor represents and warrants to the State Contracting Agency that all Services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement and have been performed in a professional manner.

E.2.2 "Acceptance," as used in this Section E.2, means the act of an authorized representative of the State Contracting Agency by which the State Contracting Agency approves specific services, as partial or complete performance of this Agreement.

E.2.3 The Contractor shall immediately correct or re-perform Services which are not in compliance with this Appendix. If the Contractor is required to correct or reperform, it shall be at no cost to the State Contracting Agency, and any Services corrected or re-performed by the Contractor shall be subject to this Section E.2 to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Project Director may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the State Contracting Agency thereby, or make an equitable adjustment in the contract price.

E.3 Additional Warranties

- E.3.1 In the performance of its obligations hereunder, the Contractor warrants that it shall comply with all applicable laws, ordinances, rules and regulations, including those laws, ordinances, rules and regulations applicable to the provision of the Services and the delivery of the Deliverables to the State.
- E.3.2 The Contractor warrants that it shall timely obtain and maintain all necessary approvals, licenses and permits from any public governmental or regulatory body, agency or authority applicable to its business and the performance of its obligations hereunder.
- E.3.3 The Contractor warrants that it shall not provide any Services or deliver any Deliverable in a manner that infringes, or constitutes an infringement or misappropriation of, any patent, trade secret, copyright, trademark, trade dress or other third-party intellectual property rights.
- E.3.4 The Contractor warrants that it shall be responsible for ensuring that the Alaska MMIS is, and during the term of this Agreement shall remain, in compliance with HIPAA. Without limitation of the foregoing, Contractor shall originate, develop, prepare, license and acquire, maintain and operate any Deliverable hereunder in a manner that ensures that the use of such Deliverable as part of the Alaska MMIS shall be fully compliant with HIPAA, including the Privacy, Security and Transactions Standards and any other administrative simplification standards promulgated thereunder.
- E.3.5 The Contractor warrants that it shall not insert, or permit or authorize the insertion, into any Deliverable of any software virus, worm, sniffer, time bomb, drop dead device, logic bomb, Trojan horse, trap door, back door or other computer instructions, software code, intentional devices or techniques that would have the effect of disabling, damaging or otherwise shutting down or permitting unauthorized access to all or any portion of the Alaska MMIS or that can or is designed to threaten, infect, vandalize, defraud, disrupt, damage, steal, take over or be used to take over operation of, allow or enable or be used to allow or enable unauthorized access to or use of, bypass, disable, or shut down all or any part of the Alaska MMIS or any component or part thereof, including its firewalls, security or user passwords or other similar protections, data or databases, hardware or software. The Contractor agrees to correct as soon as possible any Deliverables not in compliance with this covenant brought to its attention at any time.
- E.3.6 Any written commitment by the Contractor within the scope of this Agreement shall be binding upon Contractor. Failure of the Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Agreement. For purposes of this Section, a commitment by Contractor includes: (a) purchase prices, charges, discounts, and options committed to remain in force over a specified period of time; and (b) any warranty or representation

made by the Contractor in the Proposal or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in the Proposal or used to effect the sale to the State Contracting Agency.

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APPENDIX F PAYMENT PROVISIONS

F.1 All Payments Subject to Contract Funding

- F.1.1 The parties acknowledge and agree that all payments to the Contractor specified in this Agreement are expressly subject to (a) the availability of federal and State funding, and, once the initial funding has been granted all future payments are further subject to such funding not being revoked, rescinded, reduced or withheld during the term of this Agreement, (b) the State's annual legislative appropriation, (c) approval by the CMS, and (d) approval by the Agency Head or the Agency Head's designate. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the federal government and/or the State for the Agreement, or is not allocated or allotted to the State Contracting Agency by the federal government and/or the State for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of the State Contracting Agency to make payments after the effective date of such nonallocation or nonfunding, as provided in the notice, will cease and terminate.
- F.1.2 If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the federal government and/or the State for the Agreement, or is not allocated or allotted in full to State Contracting Agency by the federal government and/or the State for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of State Contracting Agency to make payments will be delayed or be reduced accordingly or State Contracting Agency shall have the right to terminate the Agreement as provided in Section A.7. If such funding is reduced, State Contracting Agency in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed, with Contractor's charges for such Services and for associated Deliverables determined in accordance with those in the Proposal. In these situations, State Contracting Agency will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section A.7. Any obligation to pay by State Contracting Agency will not extend beyond the end of State Contracting Agency's then-current funding period.
- F.1.3 Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, State Contracting Agency in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

F.2 Payments

- F.2.1 During the DDI Phase, the State Contracting Agency shall pay to the Contractor the milestone payments specified in Exhibit F-1 upon completion

and acceptance of the applicable Deliverables as set forth in Exhibit F-1 (each, a “**DDI Milestone Payment**”). Such payment of the DDI Milestone Payments shall represent payment in full for all Services rendered and Deliverables provided by the Contractor in the DDI Phase.

- F.2.2 During the Operations Phase and Turnover Phase, the State Contracting Agency shall pay to the Contractor the fixed operating charges as set forth in Exhibit F-2 (“**Fixed Charges**”). Such payment of the Fixed Charges shall represent payment in full for all Services rendered and Deliverables provided by the Contractor in the Operations Phase and Turnover Phase.
- F.2.3 The State Contracting Agency shall pay each invoice submitted to it under this Agreement within thirty (30) days of receipt of a proper invoice prepared in accordance with this Appendix. All payments made pursuant to this Appendix are subject to the terms and conditions of this Appendix, including Section F.3 hereof.
- F.2.4 Contractor shall pay Contractor’s out-of-pocket expenses incurred in connection with providing the Services and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance and travel.
- F.2.5 The State Contracting Agency shall not be liable for the payment of any interest, penalties or other charges associated with overdue payments due under this Agreement.

F.3 Invoicing and Holdbacks

- F.3.1 During the Transition Phase, the Contractor shall invoice the State Contracting Agency for the Transition Milestone Payments and DDI Milestone Payments upon completion and acceptance of the applicable Deliverables.
- F.3.2 During the DDI Phase, the amount payable to the Contractor shall equal seventy five percent (75%) of the amount of the applicable DDI Milestone Payment, and the State Contracting Agency shall hold back twenty five percent (25%) of each such DDI Milestone Payment (the “**DDI Withheld Amount**”). The DDI Withheld Amount shall be disbursed to the Contractor in installments as follows: (a) seventy-five percent (75%) of the DDI Withheld Amount shall be paid within seven (7) days of the Operations Start Date, and (b) the remaining twenty-five percent (25%) of the DDI Withheld Amount shall be paid within seven (7) days of the date that the State Contracting Agency is notified by DHHS of certification for the Alaska MMIS; provided, however, that all payments of DDI Withheld Amounts shall be net of any Delay Credits or Performance Credits to which the State Contracting Agency is entitled under the terms of this Agreement.

- F.3.3 During the Operations Phase and Turnover Phase, the Contractor shall invoice the State Contracting Agency on a monthly installment basis in arrears for the approved Fixed Charges by the 10th day of the billing month. The invoice shall separate Medicaid and other State-only fees as required.
- F.3.4 All invoices submitted must meet with the approval of the Project Director or his or her designee prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by this Section F.3. Incorrect or incomplete invoices will be returned by the State Contracting Agency to Contractor for correction and reissue. Invoices must reference this Agreement and provide detailed information and in a format as requested by the State Contracting Agency.

F.4 Taxes

The Fixed Charges and DDI Milestone Payments are inclusive of all applicable income, sales, use, gross-receipts, excise, personal property, real property, intangibles or other similar taxes. The Contractor shall be solely responsible for remitting all the applicable taxes to the appropriate taxing authority in each jurisdiction.

F.5 Credits Against Amounts Owed

- F.5.1 If the Contractor fails to provide a fully tested and accepted Deliverable on the due date specified in the milestone schedule set forth in Exhibit F-1 during the DDI Phase, the State Contracting Agency shall receive a credit (each, a **"Delay Credit"**) in an amount equal to one percent (1%) of the DDI Milestone Payment associated with such Deliverable for each seven (7) day period following the Deliverable due date.
- F.5.2 If the Contractor fails to provide the Services in accordance with the Service Levels during the Operations Phase and Turnover Phase, the State Contracting Agency shall be entitled to a credit in an amount calculated as provided in this Agreement and Exhibit F-3 (**"Performance Credit"**) which shall be developed and mutually agreed upon by the parties during DDI, and the Contractor shall apply the resulting Performance Credits against the Fixed Charges or any other amounts owed to the Contractor hereunder. Exhibit F-3 shall be incorporated herein after it is agreed upon in writing by the parties.
- F.5.3 The State Contracting Agency may, notwithstanding any other provision of this Agreement, deduct the amount of any credits to which it is entitled under this Section from any amounts otherwise due to the Contractor.
- F.5.4 The parties agree that the Delay Credits (in the case of delays in the delivery of the Deliverables in the DDI Phase) and the Performance Credits (in the case of failures to provide Services in accordance with Services Levels in the Operations Phase) are a fair estimate of the damages that the State

Contracting Agency will incur for each event for which a Performance Credit or Delay Credit is granted in this Agreement, that the actual damages incurred by the State Contracting Agency in each such event may be difficult and costly to determine, and that the Performance Credits and Delay Credits are liquidated damages and not a penalty.

- F.5.5 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State Contracting Agency may have under this Agreement for Contractor's breach of this Agreement, including without limitation, the State Contracting Agency's right to terminate this Agreement, and the State Contracting Agency shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Agreement. However, the State Contracting Agency will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State Contracting Agency as liquidated damages may be deducted by the State Contracting Agency from any money payable to Contractor under this Agreement, or the State Contracting Agency may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills.

F.6 Erroneous Payments

- F.6.1 Contractor shall have the sole responsibility during the term of this Agreement for ensuring that erroneous payments (including overpayments, underpayments and duplicate payments) from the Alaska MMIS and all manually priced claims are promptly identified, reported to the Project Director and corrected. If an overpayment, underpayment or duplicate payment is made, and the payment is attributable to acts or omissions of the Contractor, the Contractor shall be liable to the State Contracting Agency for the difference between the amount paid erroneously and the amount that should have been paid using the correct guidelines and any Claims from beneficiaries relating to the failure to make appropriate payments.
- F.6.2 The Contractor shall (a) reimburse the State Contracting Agency for any overpayment or duplicate payment, or (b) make a correcting payment to account for any underpayment, in each case within sixty (60) days of discovery of the erroneous payment.

F.7 Most Favored Customer

Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting substantially similar qualifications or requirements as the State Contracting Agency. Except as otherwise herein provided, if Contractor shall, during the term of this Agreement, enter into arrangements with any other substantially similar

customer providing greater benefits or more favorable terms, Contractor shall be obligated to provide the same to the State Contracting Agency.

F.8 No Additional Payments

No payment beyond what is expressly set forth in this Appendix will be made to the Contractor for Services rendered and Deliverables provided pursuant to this Agreement except as expressly provided in Section C.6 (Change Control Procedures).

F.9 Additional Damages

Substantial failure of the Contractor to provide the Deliverables and/or render the Services specified in this Agreement may cause the State Contracting Agency to terminate this Agreement. In such event, the State Contracting Agency shall be entitled to reimbursement from the Contractor of all payments made (based on the identified portion of unacceptable work received) and may seek associated damages.

F.10 Limitation of the State's Liability

F.10.1 IN NO EVENT SHALL THE STATE CONTRACTING AGENCY'S AGGREGATE LIABILITY TO THE CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE PHASE OF THE PROJECT OR THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

F.10.2 THE STATE CONTRACTING AGENCY SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES.

* * *

APPENDIX G SCOPE OF WORK

G.1 Purpose

G.1.1 The State Contracting Agency is seeking to take advantage of recent technological advancements and replace its current Medicaid Management Information System with a system that meets all the requirements presented in the RFP. The State Contracting Agency is entering into this Agreement to obtain a fully functioning and operational Alaska MMIS.

G.2 Overview of Obligations

G.2.1 The Contractor shall (a) design, develop, integrate, install, test, deploy, maintain and operate of the Alaska MMIS in a way that will meet all the functional and operational requirements described in RFP; (b) provide the Deliverables and perform the Services specified in this Appendix and elsewhere in this Agreement; (c) ensure that the Alaska MMIS meets all applicable regulatory requirements and can be certified by CMS for enhanced federal funding; and (d) participate in a collaborative transition to turn the Alaska MMIS over to the State or its designee at the expiration or termination of this Agreement, in each case as described in greater detail in this Appendix.

G.3 Project Phases and Tasks

G.3.1 The Services to be rendered and the Deliverables to be provided by Contractor pursuant to this Agreement are divided into phases as follows:

- (a) **“DDI Phase”** pursuant to which the Contractor shall be responsible for the design, development, implementation, integration, testing, data conversion, and deployment of the systems and software required for the new Alaska MMIS;
- (b) **“Operations Phase”** pursuant to which the Contractor shall be responsible for the operation, maintenance and support of the data, systems and software for the new Alaska MMIS; and
- (c) **“Turnover Phase”** pursuant to which the Contractor shall be responsible for certain transition and turnover obligations to ensure that the Alaska MMIS can be operated independently by the State Contracting Agency or its designee without the assistance of the Contractor.

G.3.2 The tasks in duration as well as actual performance dates for this Agreement shall be as described in this Agreement, including but not limited to the Proposal, and the Work Plan.

G.4 Performance Bonds and Withholding

- G.4.1 The Contractor shall deliver to the Project Director (a) a performance bond on terms acceptable to the State Contracting Agency covering the Contractor's obligations under the DDI Phase, and (b) a separate performance bond on terms acceptable to the State Contracting Agency covering the Contractor's obligations under the **Operations Phase and Turnover Phase**, as set forth in this Section.
- G.4.2 Each performance bond specified in this Section (each, a "**Performance Bond**") shall be issued on an annually renewable basis to the State Contracting Agency as security for the due performance and observance by the Contractor of all of the terms and conditions of this Agreement. If the Contractor shall fail to perform and observe any of this Agreement, then the State Contracting Agency shall be entitled to demand payment of the entire guaranteed amount under the then-applicable Performance Bond. In the event the amounts payable to the Contractor are increased from time to time pursuant to the Change Control Procedure, the State Contracting Agency shall be entitled to require that the applicable Performance Bond be increased accordingly. If any part of the Performance Bond shall be enforced by the State Contracting Agency, the Contractor shall on demand by the Project Director forthwith furnish a further Performance Bond for the amount so forfeited.
- G.4.3 The Contractor shall, prior to requesting approval from the Project Director to begin work on the DDI Phase, obtain a Performance Bond in an amount equal to fifty percent (50%) of the aggregate amounts payable in the DDI Phase to guarantee the Contractor's completion of its obligations in the DDI Phase. The Contractor shall maintain such Performance Bond at all times during the DDI Phase.
- G.4.4 The Contractor shall, prior to requesting approval from the Project Director for the start of operations of the new Alaska MMIS, obtain a Performance Bond in an amount equal to fifty percent (50%) of the aggregate amounts payable in the second contract year of the Operations Phase (inclusive of all operations line items) to guarantee the Contractor's completion of its obligations in the Operations Phase and Turnover Phase. The Contractor shall maintain such Performance Bond at all times during the Operations Phase and Turnover Phase period and until such time as the final payment due to the Contractor under this Agreement has been made by the State Contracting Agency.
- G.4.5 The Contractor shall ensure that (a) if a Performance Bond expires in accordance with its terms it is immediately replaced with the next Performance Bond specified herein so that there is no gap in the Performance Bonds specified herein, and (b) there is at all times during the term of this Agreement a Performance Bond in place and available for call

by the State Contracting Agency. The Contractor's failure to provide a Performance Bond having terms acceptable to the State Contracting Agency within the required times specified in this Section shall be deemed a material breach of this Agreement by the Contractor. The State Contracting Agency may, in addition to its other remedies, withhold any payments otherwise due to the Contractor under this Agreement until the Contractor has complied with the requirements of this Section.

- G.4.6 The provisions of this Section shall in no way affect the rights and remedies expressly reserved hereunder to the State Contracting Agency or bar the State Contracting Agency from claiming all expense, loss and damage incurred or sustained by the State Contracting Agency in the event of any breach by the Contractor of any of the provisions of this Agreement.
- G.4.7 Any change in, extension of time, or termination of this Agreement shall in no way release Contractor or any of its sureties from any of their obligations under the Performance Bonds. Such Performance Bonds shall contain a waiver of notice to the bonding company or companies of any changes to this Agreement, the Services, the Deliverables, the Work Plan, or the Specifications, or of any Change Orders less than 10% of the bond amount. Contractor shall promptly notify the sureties of any changes to this Agreement, the Services, the Deliverables, the Work Plan, or the Specifications, or of any Change Orders and such failure to notify may, at State Contracting Agency's discretion, be grounds for appropriate remedial action under this Contract. The Performance Bonds shall be issued by a licensed insurance company authorized to do business in the State of Alaska and made payable to the State of Alaska. The Agreement number and dates of performance shall be specified in the Performance Bonds. In the event that the State exercises an option to extend the Agreement for any additional period(s), Contractor shall extend the validity and enforcement of the Performance Bonds for such periods.
- G.4.8 An amount up to the full amounts of the Performance Bond may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by the State Contracting Agency in obtaining similar Deliverables, other products and Services to replace those terminated as a result of Contractor's breach.
- G.4.9 If Contractor fails to deliver Deliverables or to provide Services during the DDI Phase and System Change Orders during the Operations Phase which are priced and reimbursed separately from the Operations Phase monthly fixed prices and which satisfy Contractor's obligations hereunder, including without limitation maintaining the accuracy and schedule for the Work Plan, the State Contracting Agency shall have the right to withhold any payments due hereunder. The State Contracting Agency may withhold any such payments due hereunder to Contractor, without penalty or work stoppage by Contractor during the DDI Phase and on System Change Orders during the

Operations Phase which are priced and reimbursed separately from the Operations Phase monthly fixed prices. If Contractor fails to perform obligations and State Contracting Agency imposes liquidated damages for such failure as provided under the Contract, the State Contracting Agency shall reduce withheld amounts to the extent of such liquidated damages for such failures.

G.5 Start Date and Schedule

- G.5.1 The Contractor shall be required to (a) commence work under this Agreement no later than seven (7) days after the Effective Date, (b) prosecute the work diligently, (c) provide all Services and Deliverables in accordance with the deadlines and delivery dates specified in the Work Plan, and (d) complete a Fully Operational Alaska MMIS on or before the date that is specified in the Work Plan as the operations start date for the Alaska MMIS (the “Operations Start Date”).
- G.5.2 The final Work Plan shall be comprised of the Contractor’s Work Plan in the Proposal, as revised by the Contractor to reflect Project changes since Contractor’s initial submission. The Work Plan shall provide detailed information on all aspects of the Project, including but not limited to Services, Deliverables, Schedule, deadlines and delivery dates, task dependencies, identification of resource requirements and milestone payments. The Work Plan shall reflect all of the requirements in the RFP and include descriptions of all work to be performed by the State Contracting Agency and the Contractor in order to complete the Project successfully. Contractor shall deliver the revised Work Plan to the Project Director for review not later than 30 days after the Effective Date of the Agreement. In the event of failure of the parties to agree upon this Work Plan and/or if State Contracting Agency does not accept the Work Plan within 45 days of the Effective Date, State Contracting Agency may immediately terminate this Agreement without any further obligation to the Contractor, and, in State Contracting Agency’s discretion, pursue negotiations with an alternative vendor.
- G.5.3 The Contractor shall provide updates to the official Work Plan (which shall be maintained by the State Contracting Agency) regularly (no less than bi-weekly) and as otherwise necessary throughout the Project to accurately reflect the status of the delivery of the Deliverables and performance of the Services. Any such update changes must be agreed upon by the Project Director prior to their final incorporation into the Work Plan. However, unless otherwise specifically agreed to in writing, the Project Director’s agreement on a change to the official Work Plan shall not relieve Contractor of liability for liquidated damages and other damages arising from such failures to perform its obligations as required herein.

G.5.4 If, for any reason, the Contractor does not deliver the Fully Operational Alaska MMIS on or before the Operations Start Date then the Contractor will forfeit all monthly Fixed Charges for each month (or part thereof) of delay until the date that the Project Director approves the start of operations for the Alaska MMIS. In addition, if Project Director has not approved the start of operations for the Alaska MMIS as of the Operations Start Date, the Contractor shall be liable for all additional costs incurred by the State Contracting Agency to continue current MMIS operations.

G.6 Performance Standards and Service Levels

G.6.1 In performing the Services, the Contractor's level of performance shall meet or exceed the service levels set forth in the RFP and Exhibit F-3 (the "Service Levels").

G.6.2 Except as otherwise expressly provided herein, all Service Levels shall be measured and reported by the Contractor on a monthly basis.

G.6.3 The Contractor shall submit to the State Contracting Agency by the tenth (10th) day of each month a Monthly Performance Report which shall document the Contractor's performance with respect to the Service Levels during the previous month and explain deviations from the Service Levels, if any, including a plan for corrective action where appropriate.

G.6.4 The Contractor shall promptly notify the State Contracting Agency in writing if the State Contracting Agency becomes entitled to a Performance Credit for failure to meet a Service Level. Such notice shall specify each Service Level that the Contractor failed to meet, and the amount of the Performance Credit the State Contracting Agency is entitled to receive due to such failure under the Agreement. With respect to each Performance Credit that the State Contracting Agency elects to recover:

(a) Such Performance Credit shall be applied against the Contractor's next monthly invoice after the date that the State Contracting Agency notifies the Contractor that it is electing to recover such Performance Credit and to each monthly invoice thereafter until the Performance Credit is fully utilized.

(b) If there will be no Contractor invoices after such notice, the Contractor will pay the amount of any unused Performance Credits to the State Contracting Agency within thirty (30) days after the date of such notice.

G.6.5 If the Contractor fails to measure and report on any Service Level for any month as required under this Appendix, the Contractor shall be deemed to have missed such Service Level.

G.7 Federal Certification Requirements and Funding Levels

- G.7.1 The Contractor shall ensure that (a) the Alaska MMIS, and all of its component parts, meet all requirements established from time to time by the Federal government at all times during the term of this Agreement, including all certification and re-certification requirements, (b) the State Contracting Agency shall receive the maximum allowable enhanced FFP for the DDI Phase of the Alaska MMIS, retroactive to the Operations Start Date, (c) the State Contracting Agency shall receive the maximum allowable enhanced FFP for the Operations Phase and Turnover Phase. The Contractor shall provide on a timely basis, all information, data, forms, system modifications, documentation, correspondence, consultation, and assistance in training as needed to assist the State Contracting Agency in obtaining Federal certification and funding.
- G.7.2 If the Alaska MMIS, or any component part of it, is decertified (either retroactively or prospectively) prior to the expiration or termination of this Agreement, the Contractor will be liable for resulting damages if such decertification is attributable, directly or indirectly, to the acts or omissions of the Contractor.
- G.7.3 The Contractor shall be liable to the State Contracting Agency for the difference between the maximum allowable enhanced FFP and the FFP actually received by the State Contracting Agency, including any losses due to loss of certification, failure to obtain approval retroactive to the Operations Start Date, or delays in readiness to support certification. Contractor shall also be liable for exceptions, sanctions, disallowances and penalties which result from the State Contracting Agency not receiving timely certification due to Contractor's acts or omissions.
- G.7.4 All FFP damages claims assessed by the Federal government against the State Contracting Agency may be withheld from amounts otherwise payable to the Contractor under this Agreement until all such damages are satisfied in full.

G.8 Continuity of Services

- G.8.1 The Contractor recognizes that the Services provided under this Agreement are critical to the discharge by the State of important public functions and must be continued without interruption and that, upon expiration or termination of this Agreement, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
- (a) Furnish phase-in training and other knowledge transfer and turnover activities specified in the RFP; and
 - (b) Diligently pursue and fully cooperate to effect an orderly and efficient transition to a successor.

- G.8.2 The Contractor shall provide sufficient experienced personnel during the Turnover Phase to ensure that the Services called for by this Agreement are maintained at the required level of proficiency.
- G.8.3 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the Services required by this Agreement. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- G.8.4 The Contractor will ensure that all consents or approvals of third parties required to allow the Contractor and Contractor Agents to provide the transition assistance required following the termination or expiration of this Agreement have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to the State Contracting Agency.

G.9 Additional Specific Obligations

In addition to the obligations set forth herein, the Contactor shall perform the specific obligations set forth in Exhibit G-4.

G.10 Guaranty

Within 10 Days of the Effective Date, Contractor shall provide the State Contracting Agency with a Guaranty in the form of Appendix J, which is attached hereto and incorporated by this reference, executed by its parent company. The State Contracting Agency may invoke the Guaranty as well as all other remedies available under this Agreement, in law or equity.

* * *

APPENDIX H DEFINITIONS

“Acceptance” has the meaning set forth in Section E.2.2.

“Agency Head” means the commissioner or head of the State Contracting Agency.

“Agreement” has the meaning set forth in Section A.1.1.

“Alaska MMIS” or **“MMIS”** means the Medicaid Management Information System as described in the RFP that will be installed, integrated, tested, deployed, maintained and operated by the Contractor in accordance with the terms set forth in this Agreement. The Alaska MMIS consists of all CMS and State required components and functionality, including: a pharmacy POS; claims processing and reporting modules; a Data Warehouse/Decision Support System; and the SURS, MARS and TPL and DUR capabilities; prior authorization and drug rebate functions. The Alaska MMIS also includes all ancillary components such as privacy and security functionality, automated tracking and reporting on system and other performance measures, optical scanning equipment and software, automated voice response functionality, translator and messaging products or services, Webportal/internet programs, codes and screens, and all interfaces, documentation, manuals, and publications required for the operation, maintenance and use of the Alaska MMIS. The MMIS is also comprised of the Developed Materials (which shall be owned by the State), the Contractor Materials (which shall be owned by Contractor) and Third Party Materials (which shall be owned by third party licensors).

“Change Control Procedure” has the meaning set forth in Section C.6.1.

“Change Request” has the meaning set forth in Section C.6.3.

“Claims” has the meaning set forth in Section B.1.

“CMS” means the Center for Medicare and Medicaid Services.

“Confidential Information” means any data, files, software, information or materials (whether prepared by the State Contracting Agency or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is (i) provided by the State to the Contractor or a Contractor Agent or otherwise made available to the Contractor or a Contractor Agent in connection with this Agreement, or (ii) acquired, obtained or learned by the Contractor or a Contractor Agent in the performance of this Agreement. The Confidential Information shall include the State Data, the terms of this Agreement and all discussions and negotiations related thereto.

“Contractor” means the vendor providing Deliverables and/or Services pursuant to this Agreement, as identified on the Cover Sheet.

“Contractor Agent” means a permitted subcontractor and any other agent or representative of the Contractor that provides services or delivers deliverables pursuant to this Agreement.

“Contractor Materials” has the meaning set forth in Section D.2.1.

“Contractor Project Manager” has the meaning set forth in Section C.1.2.

“Contractor Standard of Care” has the meaning set forth in Section C.3.

“Cover Sheet” means the Standard Agreement Form for Professional Services Contracts (Form 02-093).

“DDI Milestone Payment” has the meaning set forth in Section F.2.2.

“DDI Phase” has the meaning set forth in Section G.3.1.

“DDI Withheld Amount” has the meaning set forth in Section F.3.3.

“Delay Credit” has the meaning set forth in Section F.5.1.

“DHHS” means the U.S. Department of Health and Human Services.

“Deliverables” means the reports, documents, templates, studies, strategies, operating models, technical designs, technical architectures, software objects, software programs, source code, object code, specifications, documentation, abstracts and summaries thereof, and all other work product and materials which are to be, or are, originated, prepared, licensed or acquired for the State Contracting Agency and delivered by or for the Contractor (either independently or in concert with the State Contracting Agency or third parties) to the State Contracting Agency pursuant to and during the course of the Contractor’s performance under this Agreement.

“Developed Materials” has the meaning set forth in Section D.4.1.

“Documentation” shall mean the Alaska State plan; Alaska Medicaid Manual; Alaska PMO Manual; provider billing manuals; MMIS & operational reports; Procedure Manuals; User Manuals & Guidelines; Detailed System Designs; Data Element Dictionaries; Client Specification Documents; Edit/Audit Manuals; Transaction cross-walks; Alaska Companion Guides; Alaska Pricing Manual; Alaska Collocode Table; Interfaces, loads, and file transfer mapping documents, processing specifications, and layouts; Guideline documents; Specification documents; training materials and presentations; fiscal agent & SOA website layouts, formats, and contents; electronic file formats and claim formats; MMIS Application components such as source code, program listings, run books, operator logs, job balancing procedures, Abend procedures, platform specifications, operating system specifications, application languages, back-up procedures, disaster recovery plan, security plan, business continuity plan, system alerts, etc.; Data Center operations documentation; ITS plan; Requirement Analysis Documents; MMIS Certification documents; Alaska Bidders’ Library; SOA business rules and processes.

“Effective Date” means the date that the Cover Sheet was signed by the Project Director.

“Enhancement Hours” has the meaning set forth in Section C.9.2.

“Enhancement Modifications” has the meaning set forth in Section C.9.1.

“Error” has the meaning set forth in Section C.12.6.

“**FFP**” means Federal Financing Participation, as such term is defined in the applicable Federal regulations.

“**Fixed Charges**” has the meaning set forth in Section F.2.3.

“**FTE**” has the meaning set forth in Section C.9.2.

“**Fully Operational**” means, when used with respect to the Alaska MMIS, that the MMIS (i) is established and operational with five (5) years of claim data on line; (ii) processes correctly all claim types, claims adjustments, and other financial transactions; (iii) maintains all system files; (iv) produces all required reports; (v) meets all system specifications; (vi) supports all required interfaces, (vii) performs all other functional and operational requirements specified in the RFP, and (viii) has been fully tested and finally accepted by the State Contracting Agency in accordance with this Agreement.

“**HIPAA**” has the meaning set forth in Section A.21.

“**Impact Statement**” has the meaning set forth in Section C.6.5.

“**Key Person**” and/or “**Key Personnel**” has the meaning set forth in Section C.1.3.

“**Losses**” has the meaning set forth in Section B.1.

“**Maximum Amount**” has the meaning set forth in Section A.19.2.

“**Operations Phase**” has the meaning set forth in Section G.3.1.

“**Operations Start Date**” has the meaning set forth in Section G.5.1.

“**Operations Transition Date**” means the date that both (i) approval from the Project Director has been received for the start of operations for the Alaska MMIS, and (ii) the final payment for the DDI Phase has been made by the State Contracting Agency.

“**Performance Bond**” has the meaning set forth in Section G.4.2.

“**Performance Credit**” has the meaning set forth in Section F.5.2.

“**Principals**” has the meaning set forth in Section E.1.1.

“**Project**” means the project described in the RFP (including all phases of the project described therein) for which the Contractor will provide Services and Deliverables to the State Contracting Authority.

“**Project Director**” means the person designated as the project director from time to time by the Agency Head or, in the absence of such designation, the person who signs this Agreement on behalf of the State Contracting Agency and any successor or authorized representative of such person.

“**Property**” has the meaning set forth in Section A.20.3.

“Proposal” means the Contractor’s successful proposal submitted in reply to the RFP, including any written amendments or clarifications that have been authorized by the State Contracting Agency.

“RFP” means the State Contracting Agency’s request for proposal #[*insert number*], including any written amendments or clarifications thereto that have been authorized by the State Contracting Agency and the State’s written responses to questions posed by the Contractor.

“Service Levels” has the meaning set forth in Section G.6.1.

“Services” means the services to be provided by the Contractor or a Contractor Agent pursuant to this Agreement.

“SOU” has the meaning set forth in Section C.6.7.

“Specifications” means the technical, functional, and other written specifications and requirements for the Deliverables, including but not limited to requirements in the RFP and the Response, Deliverables which have received Acceptance, the Service Levels, the Documentation, all applicable State and Federal laws and regulations, and any detailed design deliverable which will include such other Specifications in it. Acceptance criteria for each Deliverable would be agreed upon based on these Specifications. References in the RFP and the Agreement to requirements shall be deemed to refer to the applicable Specifications.

“State” means the State of Alaska, including without limitation the State Contracting Agency and all of the State’s other agencies.

“State Contracting Agency” means the department of the government of the State of Alaska for which this Agreement is to be performed, as identified on the Cover Sheet.

“State Data” has the meaning set forth in Section D.6.1.

“State Indemnified Parties” has the meaning set forth in Section B.1.

“System Maintenance” has the meaning set forth in Section C.8.1.

“Third Party Materials” has the meaning set forth in Section D.3.1.

“Turnover Phase” has the meaning set forth in Section G.3.1.

“Use” means (i) to make, have made, use, copy, reproduce, maintain, modify, enhance, display, perform, demonstrate and create derivative works, and (ii) to authorize one or more third parties to do any of the foregoing.

“Work in Progress” has the meaning set forth in Section A.6.4.

“Work Plan” means the overall plan of activities for the Project, and the delineation of Services to be performed and Deliverables to be produced with regard to the Project, as submitted with

the Proposal and as updated in accordance with Section G.5. The Work Plan and each amendment thereto shall be subject to acceptance by the State Contracting Agency.

* * *

**APPENDIX I
BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made and entered into effective the 1st day of October, 2007 by and between the State of Alaska Department of Health Care Services (hereinafter called "the State") and Alaska Health Partners (hereinafter called "Business Associate").

RECITALS

The State is operating its Medicaid program as a "Covered Entity" as that term is defined under 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule") and 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule") which were promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

In the course of the performance of services for the State, Business Associate and its partners, employees, agents, advisors, consultants and subcontractors, may be given access to "Protected Health Information" ("PHI") as that term is defined in the Privacy and Security Rules and "Electronic Protected Health Information" ("E PHI") as that term is defined in the Security Rule.

To the extent Business Associate is given access to PHI and E PHI by or on behalf of the State, Business Associate is a "business associate" (as that term is defined under the Privacy and Security Rules) of the State.

The State and Business Associate have entered into an agreement effective October 1, 2007 (the "Services Agreement") in which Business Associate has agreed to provide specified services to the State.

The State and Business Associate intend that this Agreement shall be an addendum to the Services Agreement for the purpose of ensuring that all of their business related to the Services Agreement is conducted in compliance with HIPAA, the Privacy Rule and the Security Rule, and that this Agreement shall govern Business Associate's use and disclosure of all PHI and E PHI obtained or created by Business Associate from or on behalf of the State.

COVENANTS

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State and Business Associate hereby agree as follows:

A. Definitions. For purposes of this Agreement:

1. "Administrative Safeguards" shall have the same meaning as the term "Administrative Safeguards" in 45 C.F.R. § 164.304.
2. "Designated Record Set" shall have the same meaning as the term "Designated Record Set" in 45 C.F.R. § 164.501.
3. "Electronic Protected Health Information" or "E PHI" shall have the same meaning as the term "Electronic Protected Health Information" in 45 C.F.R. § 160.103 except, for purposes of this Agreement, the term shall be limited to Electronic Protected Health Information received or obtained by Business

Associate from the State or created, received, maintained or transmitted by Business Associate on behalf of the State.

4. "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).
 5. "Notice of Privacy Practices" shall have the same meaning as the term "Notice of Privacy Practices" in 45 C.F.R. § 164.520.
 6. "Physical Safeguards" shall have the same meaning as the term "Physical Safeguards" in 45 C.F.R. § 164.304.
 7. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 160.103 except, for purposes of this Agreement, the term shall be limited to Protected Health Information received or obtained by Business Associate from the State or created, received, maintained or transmitted by Business Associate on behalf of the State. As provided in 45 C.F.R. § 160.103, the term PHI includes EPHI.
 8. "Required By Law" shall have the same meaning as the term "Required by Law" in 45 C.F.R. § 164.103.
 9. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 10. "Security Incident" shall have the same meaning as the term "Security Incident" in 45 C.F.R. § 164.304.
 11. "Technical Safeguards" shall have the same meaning as the term "Technical Safeguards" in 45 C.F.R. § 164.304.
 12. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule or the Security Rule.
- B. Permitted Uses and Disclosures of PHI. Business Associate may use and disclose PHI only for the following purposes:
1. Business Associate may use and disclose PHI as necessary to perform its obligations under the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the State.
 2. Business Associate may use and disclose PHI as Required by Law.
- C. Privacy and Security Obligations. Business Associate shall:
1. Not use or further disclose PHI other than as permitted or required by this Agreement, or as Required by Law.
 2. Use appropriate safeguards to prevent the use or disclosure of PHI other than as authorized under this Agreement.

3. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI and that prevent use or disclosure of EPHI other than as provided for by the Agreement.
4. Promptly report to the State: (a) any use or disclosure of PHI or EPHI by Business Associate that is not provided for by this Agreement and of which Business Associate becomes aware; or (b) any Security Incident of which Business Associate becomes aware. This report shall be made as soon as practicable, but in no event later than three (3) business days after becoming aware of the reportable event. The Business Associate shall, in consultation with the State, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of the reportable event.
5. Ensure that any agent or subcontractor to whom Business Associate provides PHI or EPHI agrees to the same restrictions and conditions that apply to Business Associate with respect to such PHI or EPHI.
6. Within a reasonable time after receiving notice from the State, make available Business Associate's internal practices, books and records relating to the use and disclosure of PHI or EPHI to the State and, upon the State's request, to the Secretary for purposes of determining the State's compliance with the Privacy Rule or the Security Rule.
7. At termination of the Services Agreement, if feasible, return or destroy all PHI that Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protection of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

D. Access Obligations

1. Business Associate shall develop and implement all procedures necessary in order for the State to comply with 45 C.F.R. § 164.524. Under such procedures, Business Associate shall be responsible for reviewing such request, informing the Individual of the disposition of the request, and, if appropriate, providing PHI in response to the Individual's request within the time periods specified in 45 C.F.R. § 164.524.
2. Business Associate shall develop and implement all procedures necessary in order for the State to comply with 45 C.F.R. § 164.526. Under such procedures, Business Associate shall be responsible for reviewing such request, informing the Individual of the disposition of the request, and, if appropriate, authorizing any amendment of PHI in response to an Individual's request or filing the Individual's statement of disagreement within the time period specified in 45 C.F.R. § 164.526.
3. Business Associate shall develop and implement all procedures necessary in order for the State to comply with 45 C.F.R. § 164.528. Under those procedures, Business Associate shall be responsible for keeping records of all disclosures for which the State must account under 45 C.F.R. § 164.528 and authorizing any

accounting of disclosures of PHI in response to an Individual's request for such an accounting.

E. Breach of Agreement; Termination; Term

1. *Breach of Agreement.* In the event that the State becomes aware of a pattern or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, the State will notify Business Associate of such breach. Business Associate shall promptly cure the breach. If Business Associate fails to expeditiously cure the breach, the State may terminate the Services Agreement. If Business Associate does not cure the breach and the State determines that termination is not feasible, the State may report the breach to the Secretary. If the Services Agreement is terminated, Business Associate shall return or destroy all PHI as specified in Section C(7) of this Agreement.
2. *Term.* This Agreement shall be effective as of the date set forth above. This Agreement shall terminate when all of the PHI is destroyed or returned to the State, or, if it is infeasible to return or destroy PHI, Business Associate has taken adequate steps to ensure that protections are extended to such information in accordance with the termination provisions in Section C(7) of this Agreement.

F. Obligations of the State. To the extent it may affect Business Associate's use or disclosure of PHI, the State shall notify Business Associate of:

1. Any limitations on the use or disclosure of PHI set forth in the State's Notice of Privacy Practices.
2. Any changes or revocation of permission by an Individual to use or disclose that individual's PHI.
3. Any restriction to the use or disclosure of PHI that the State has agreed to in accordance with 45 C.F.R. § 164.522.

G. Re-Negotiation. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with applicable federal and state laws, including regulations promulgated pursuant to HIPAA, and amendments and changes to such laws and regulations. If the parties are unable to negotiate a modification that the State, in its reasonable discretion, determines is consistent with its obligations under federal or state law, then the State may terminate this Agreement by providing five (5) days' notice to Business Associate.

H. General Provisions

1. *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the parties, and any successor to the operations and business of the parties whether by operation of law or otherwise, including the parties' heirs, legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in this Agreement.

2. *Assignment.* This Agreement shall not be assignable by either party without the other's prior written consent.
3. *Notices.* Except as provided in Section H(4) of this Agreement, all notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, postage pre-paid, addressed to the party for whom it is intended at its or his address as first set forth below. Any address for the giving of notice may be changed by giving notice to that effect to the other party. Each such notice shall be deemed to have been given on the date of its receipt by the party for whom it was intended.

Notice to the State shall be addressed as follows:

Procurement Officer
State of Alaska
HCS/MMIS - DDI
4400 Business Park Blvd., Building B, Suite 34
Anchorage, AK 99503
Phone: 907.269.6097
Fax: 907.770.1019

Notice to Business Associate shall be addressed as follows:

Legal Division
ACS State Healthcare, LLC
9040 Roswell Road, Suite 700
Atlanta, GA 30350

With copy to:

General Counsel
Affiliated Computer Services, Inc.
2828 N. Haskell Avel
Building One, 10th Floor
Dallas, TX 75204
Fax: (214) 823-5746

4. *E-Mail Notices.* Notices, requests, instructions or other communication between the State and Business Associate under Sections C(4), D(2), or F of this Agreement may be made by electronic mail at the e-mail address below. Any e-mail address for the purpose of the foregoing communications may be changed by giving notice to that effect to the other party. Each such notice shall be deemed to have been given on the date of its receipt by the party for whom it was intended.

Notice to the State shall be addressed as follows:

Notice to Business Associate shall be addressed as follows:

5. *Severability.* If any provision of this Agreement is or becomes unenforceable, the remainder of this Agreement shall nevertheless remain binding to the fullest extent possible, taking into consideration the purposes and spirit of this Agreement.
6. *Entire Agreement.* This Agreement contains the entire understanding of the parties hereto with regard to the subject matter hereof, and supersedes all other agreements and understandings, written and oral, relating to the subject matter hereof. This Agreement may not be amended or modified, nor may any of its provisions be waived, except by a writing executed by both of the parties hereto or, in the case of a waiver, by the party waiving compliance.
7. *Waiver.* The waiver of any one breach of the Agreement shall not be construed as a waiver of any rights or remedies with respect to any other breach or subsequent breach.
8. *Survival.* Any provision of this Agreement, which by its terms is intended to survive the termination or expiration of this Agreement shall so survive.
9. *Governing Law.* This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of Alaska, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Agreement to the substantive law of another jurisdiction.
10. *No Third Party Rights.* This Agreement is intended only to regulate the relations among the parties and does not create or grant any other person any rights or benefits.
11. *Counterparts.* This Agreement may be executed in one or more counterpart copies, each of which shall be deemed an original and together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

THE STATE OF ALASKA

BUSINESS ASSOCIATE:

ACS STATE HEALTHCARE, LLC

By: 
Date: 9/27/07

By: 
Date: 09/07/2007

**APPENDIX J
GUARANTY**

PARENT GUARANTY

GUARANTY (this "Guaranty") dated as of Sept. 26th, 2007 from Affiliated Computer Services, Inc. (the "Guarantor"), a Delaware corporation having offices at Dallas, Texas, in favor of the State of Alaska ("Third Party").

WHEREAS, by that certain Standard Agreement Form for Professional Services Contract (the "Agreement"), by and between Third Party and ACS State Healthcare, Inc. ("Contractor"), a wholly owned subsidiary of Guarantor, entered into as of Oct 1, 2007 Contractor is providing a system and associated services to Third Party; and

WHEREAS, the execution and delivery of this Guaranty by Guarantor is a material inducement to Third Party to enter into the Agreement.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees with Third Party as follows:

1. Guarantor, unconditionally and irrevocably, guarantees that Contractor shall pay all amounts due and perform all of its obligations under the Agreement in accordance with the provisions of the Agreement. This Guaranty is irrevocable, unconditional and absolute, and if for any reason any such payments are not paid or such obligations are not performed, as the case may be, in whole or in part by Contractor when due, then, Guarantor will pay or perform the same or cause the same promptly to be paid or performed. In no event shall the Guarantor have any obligations to Third Party which are different from those of Contractor pursuant to the Agreement. Accordingly, it is expressly understood and agreed that all conditions, limitations, exclusions, adjustments and remedies applicable to Contractor's obligations with respect to the Agreement, shall likewise be applicable to any determination of any obligations of Guarantor under this Guaranty. The parties agree that all terms contemplated under the Agreement shall at all times apply to Guarantor's obligations under this Guaranty and any amounts paid by Contractor (or any of its respective subsidiaries) in the form of a settlement or award under the Agreement will be deducted from any calculation of damages or other amounts awarded or settled upon between Guarantor and Third Party for the purposes of determining maximum amounts awardable.
2. The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following: (i) any permitted assignment or subcontracting of any of Contractor's interests under the Agreement; or (ii) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization of, or other similar proceeding affecting Guarantor or Contractor or any of their respective assets.
3. In the event of the rejection or disaffirmance of the Agreement by Contractor or its trustee in bankruptcy pursuant to bankruptcy law or any other law affecting creditors' rights,

Guarantor will, and does hereby (without the necessity of any further agreement or act) assume the obligations and liabilities of Contractor under the Agreement to the same extent as if (a) Guarantor were the originally named party under the Agreement and (b) there had been no rejection or disaffirmance, and Guarantor will confirm such assumption in writing at the request of Third Party upon or after such rejection or disaffirmance.

4. Notice of acceptance of this Guaranty and notice of any obligations or liabilities contracted or incurred by Contractor is hereby waived by Guarantor. This Guaranty will remain in full force and effect as to any renewal, modification, change order, or extension of the Agreement, and will survive the termination of the Agreement until the expiration of all applicable statutes of limitations for claims which could be made by Third Party thereunder.

5. In the event Third Party notifies Contractor of its default under the Agreement, Third Party is not required to, but may, simultaneously furnish Guarantor with copies of all such notice(s). Guarantor waives notice of any amendments, change orders, extensions of time for performance, or changes in the work under the Agreement.

6. The Third Party hereby agrees that this Guaranty may not be enforced by Third Party without it first exhausting the mediation process in Section A.8.5 of the Agreement. At the end of such mediation process between Third Party and Contractor, Guarantor could pursue its rights in a contract claim proceeding under AS 36.30.620 if it chooses to not perform Contractor's obligations to the extent such performance is remaining under the Agreement or required following the dispute resolution process between Contractor and Third Party, but Guarantor shall not have the right to pursue remedies duplicative of or redundant with remedies of Contractor in the Agreement at that time. If the Third Party has exercised its right to receive payments pursuant to this Guaranty at the end of the mediation process and the Third Party and the Guarantor proceed to a contract claim proceeding under AS 36.30.620, 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 payments shall receive from the other party the prevailing party's reasonable costs and fees, including reasonable attorneys fees, which arise solely from so pursuing 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 Third Party shall pay the Guarantor prejudgment interest at the maximum rate allowed by AS 9.30.070 on any portion of the award previously paid to the Third Party by the Guarantor pursuant to this Guaranty if Guarantor is such prevailing party.

7. Guarantor represents and warrants to Third Party that Guarantor has full corporate power and authority to enter into and perform this Guaranty, and that this Guaranty is a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

8. This Guaranty shall be construed in accordance with and governed by the laws of the State of Alaska, without regard to conflict of laws provisions thereof. Exclusive venue for any action related to or under this Guaranty shall be in the Superior Court of the State of Alaska. This Guaranty may not be modified or amended except by a written agreement duly executed by Guarantor and Third Party. This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. 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 claims proceeding under this Guaranty regarding recovery of attorney's fees and costs.

9. NOTICES

All notices required by this Guaranty shall be in writing and shall, unless and until different or additional addresses are substituted, be sent as follows:

To Third Party:

Procurement Officer
State of Alaska
HCS/MMIS - DDI
4400 Business Park Blvd., Building B, Suite 34
Anchorage, AK 99503
Phone: 907.269.6097
Fax: 907.770.1019

To the Guarantor:

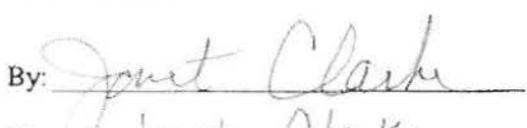
Affiliated Computer Services, Inc.
2828 North Haskell Avenue
Dallas, TX 75204
Attn: General Counsel
Telephone:
Fax: (214) 823-5746

IN WITNESS WHEREOF, each of Guarantor and Third Party has caused this Guaranty to be executed as of the date first set forth above.

Guarantor:
Affiliated Computer Services, Inc.

Third Party:
State of Alaska

By: 

By: 

Name: John H. Rexford

Name: Janet Clarke

Title: EVP & Chief Financial Officer

Title: Asst. Commissioner

Date: September 10, 2007

Date: September 26, 2007

**EXHIBIT C-1
HOURLY RATES**

DESCRIPTION	HOURLY RATE
1 Clerical	\$ 45.00
2 Clerical - Specialized	\$ 56.00
3 Supervisor	\$ 85.00
4 Manager	\$ 125.00
5 Technical	\$ 100.00
6 Technical - Advanced	\$ 115.00
7 Technical - Specialized	\$ 125.00
8 Project Manager	\$ 135.00
9 Medical - Senior Clinical (physician/pharmacist)	\$ 318.00
10 Medical - Other Clinical (nurse/pharmacy tech)	\$ 110.00

**EXHIBIT F-1
PAYMENTS**

Milestone per RFP section 3.9.2	Description	Payment Percentage	Contract Price	Payment Amount	Holdback Amount	Early End Date
DDI 1	Project Initiation	5%	\$ 1,617,333.90	\$ 1,213,000.43	\$ 404,333.48	12/31/2007
DDI 2	Requirement Verification	20%	\$ 6,469,335.60	\$ 4,852,001.70	\$ 1,617,333.90	8/31/2008
DDI 3	Systems Design	10%	\$ 3,234,667.80	\$ 2,426,000.85	\$ 808,666.95	10/31/2009
DDI 4	Conversion	10%	\$ 3,234,667.80	\$ 2,426,000.85	\$ 808,666.95	5/31/2010
DDI 5	MMIS Development	10%	\$ 3,234,667.80	\$ 2,426,000.85	\$ 808,666.95	10/31/2009
DDI 6	Testing (excluding Acceptance Testing)	10%	\$ 3,234,667.80	\$ 2,426,000.85	\$ 808,666.95	10/31/2009
DDI 7	Acceptance Testing	10%	\$ 3,234,667.80	\$ 2,426,000.85	\$ 808,666.95	4/30/2010
DDI 8	Implementation	25%	\$ 8,086,669.50	\$ 6,065,002.13	\$ 2,021,667.38	5/31/2010
		Totals	\$ 32,346,678.00	\$ 24,260,008.50	\$ 8,086,669.50	
	Go Live	75%	\$ 6,065,002.13			6/1/2010
	Certification	25%	\$ 2,021,667.38			3/1/2011

Bond at all times during the Operations Phase and Turnover Phase period and until such time as the final payment due to the Contractor under this Agreement has been made by the State Contracting Agency.

The Contractor shall ensure that (a) if a Performance Bond expires in accordance with its terms it is immediately replaced with the next Performance Bond specified herein so that there is no gap in the Performance Bonds specified herein, and (b) there is at all times during the term of this Agreement a Performance Bond in place and available for call by the State Contracting Agency. The Contractor's failure to provide a Performance Bond having terms acceptable to the State Contracting Agency within the required times specified in this Section shall be deemed a material breach of this Agreement by the Contractor. The State Contracting Agency may, in addition to its other remedies, withhold any payments otherwise due to the Contractor under this Agreement until the Contractor has complied with the requirements of this Section.

3.8 Contract Funding

Approval or continuation of a contract resulting from this RFP is contingent upon State legislative appropriation and federal approval.

3.9 Contract Payment

No payment will be made until the contract is approved by the Commissioner of DHSS or the Commissioner's designee. Under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract.

The State is not responsible for and will not pay local, State, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the Project Director.

Allowed payments for each phase are described below. All payments are subject to the agreement terms and conditions.

3.9.1 Operational Takeover Phase I

The State will pay the Contractor for work accomplished and approved at key milestones in the Operational Takeover Phase, as defined below, at the amounts identified in the Contractor's final cost proposal. The requirements for each milestone will be negotiated between the Contractor and the State. The Operational Takeover Phase is divided into two components: (1) Operational Takeover Implementation Component; and (2) Operational Takeover Maintenance Component.

3.9.1.1 Operational Takeover Milestones

Milestone Operational Takeover 1	Five percent (5%) of the Phase I price upon the State's acceptance and approval of the initial Operational Takeover work plan.	5%
Milestone Operational Takeover 2	Twenty percent (20%) of the Phase I price upon State's acceptance and the approval of the Requirements Analysis Document.	20%
Milestone Operational Takeover 3	Ten percent (10%) of the Phase I price upon State's acceptance and the approval of the System Takeover and Testing Document.	10%
Milestone Operational Takeover 4	Ten percent (10%) of the Phase I price upon the State's acceptance and the approval of the Takeover DSS Implementation Extract Document.	10%
Milestone Operational Takeover 5	Fifteen (15%) of the Phase I price upon the State's acceptance and the approval successful testing of all MMIS and POS operations.	15%
Milestone Operational Takeover 6	Thirty percent (30%) of the Phase I price upon the State's acceptance and the approval of the Operational Takeover Implementation.	30%
Milestone Operational Takeover 7	Ten percent (10%) of the Phase I price upon the State's acceptance and approval of Post Implementation Evaluation Remediation.	10%

3.9.1.2 Operational Maintenance Payments

Upon implementation of the Operational Takeover MMIS, the Contractor will be paid for work in equal monthly installments of the annual fixed operations fees, as identified on Pricing Schedule A (the Pricing Schedule in Attachment H must include two years of operations and an optional third year) in the successful Offeror's final cost proposal, for all operations components, for each year of the contract. Such reimbursement shall represent payment for all responsibilities and activities defined in this contract for the Operational Takeover Maintenance Component, with the exception of postage.

Postage costs will be separately reimbursed at direct cost and will be subject to separate reporting procedures.

3.9.2 DDI Phase II

The State will pay the Contractor for work accomplished and approved at key milestones in the DDI Phase, as defined below, at the amounts identified in the successful Offeror's final cost proposal for the DDI Phase. Deliverables are specified in the RFP, and requirements for each milestone will be negotiated between the Contractor and the State.

Milestone DDI 1	Payment upon completion and the State's acceptance and approval of the project initiation activities.	5%
Milestone DDI 2	Payment upon completion and the State's acceptance and approval of the Requirements Verification Activities.	20%
Milestone DDI 3	Payment upon completion and the State's acceptance and approval of the System Design Activities.	10%

Milestone DDI 4	Payment upon completion and the State's acceptance and approval of the Conversion Activities.	10%
Milestone DDI 5	Payment upon completion and the State's acceptance and approval of the MMIS development.	10%
Milestone DDI 6	Payment upon completion and the State's acceptance and approval of Testing activities (excluding Acceptance testing).	10%
Milestone DDI 7	Payment upon completion and the State's acceptance and approval of the Acceptance Test activities.	10%
Milestone DDI 8	Payment upon completion and the State's acceptance and approval of the MMIS Implementation.	25%

3.9.3 Operations Phase III

After successful design, development, and implementation of the MMIS; the Contractor will be paid for work accomplished and approved in equal monthly installments of the annual fixed operations fees, as identified on the Pricing Schedule A of the successful Offeror's final cost proposal. Approved payments will be made by the State for completion and acceptance of work related to all operations (Phase III) activities defined in Section 5 of the RFP, with the exception of postage. Postage costs will be reimbursed separately at direct cost and will be subject to separate reporting procedures.

3.9.3.1 Escalation Factor

Fixed operating fees for operations work accomplished in Phase III must include anticipated inflation, projected by the Offeror for system operations in later years.

3.9.4 Turnover Phase IV

There will be no separate payment for the turnover phase. The payment for this phase is included in the fixed monthly fee for the Operations Phase. The State will pay the Contractor the Operations Withheld amount upon State's acceptance and approval of the Turnover Plan and all Turnover activities.

3.9.4.1 No Additional Payments

No payment beyond that described in Section 3.9.1 through 3.9.3 will be made to the Contractor for services required pursuant to this contract without a formal contract amendment.

3.10 Data Compliance Warranty

The Contractor warrants, for the term of this contract, that all delivered computer programs, documentation, reports, procedures, and other deliverables and items or services used in providing the services described within this RFP and within any amendments will comply with the specifications as stated in the contract, its attachments and the approved system design documents. The Contractor's liability with respect to this warranty will be limited to correction of errors, omissions, and design deficiencies throughout the system and replacement of incorrect

**EXHIBIT F-2
NEW SYSTEM OPERATIONS SHEET**

	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Component Identifier	Component	Annual Cost	Multiplier	Initial Five Year Operations Phase (2009 - 2014)	One Yr Extension (2014-15)	One Yr Extension (2015-16)	One Yr Extension (2016-17)	Total Per Component
4a	Claims Processing	\$ 5,603,373	5 years	\$ 28,016,864	\$ 5,603,373	\$ 5,603,373	\$ 5,603,373	\$ 44,826,983
4b	Pharmacy Benefit Management System (all components)	\$ 757,118	5 years	\$ 3,785,590	\$ 757,118	\$ 757,118	\$ 757,118	\$ 6,056,945
4c	Prior Authorization	\$ 352,396	5 years	\$ 1,761,982	\$ 352,396	\$ 352,396	\$ 352,396	\$ 2,819,171
4d	Web portal / Web Services	\$ 119,892	5 years	\$ 599,459	\$ 119,892	\$ 119,892	\$ 119,892	\$ 959,134
4e	SURS	\$ 299,473	5 years	\$ 1,497,365	\$ 299,473	\$ 299,473	\$ 299,473	\$ 2,395,783
4f	Interfacing / Messaging (translator)	\$ 64,034	5 years	\$ 320,168	\$ 64,034	\$ 64,034	\$ 64,034	\$ 512,269
4g	Hardware Hosting / Maintenance	\$ 153,485	5 years	\$ 767,424	\$ 153,485	\$ 153,485	\$ 153,485	\$ 1,227,879
4h	MMIS Program Maintenance	\$ 4,163,959	5 years	\$ 20,819,793	\$ 4,163,959	\$ 4,163,959	\$ 4,163,959	\$ 33,311,669
4i	DW/DSS Operations and Maintenance	\$ 688,087	5 years	\$ 3,440,433	\$ 688,087	\$ 688,087	\$ 688,087	\$ 5,504,693
								\$ 97,614,525
4j	TOTALS	\$ 12,201,816	5 years	\$ 61,009,078	\$ 12,201,816	\$ 12,201,816	\$ 12,201,816	Grand Total Operations

**EXHIBIT F-2
NEW SYSTEM OPERATIONS SHEET**

Component Identifier	Column A Component	Column B Annual Cost	Column C Multiplier	Column D Initial Five Year Operations Phase (2009 - 2014)	Column E One Yr Extension (2014-15)	Column F One Yr Extension (2015-16)	Column G One Yr Extension (2016-17)	Column H Total Per Component
4a	Claims Processing	\$ 5,603,373	5 years	\$ 28,016,864	\$ 5,603,373	\$ 5,603,373	\$ 5,603,373	\$ 44,826,983
4b	Pharmacy Benefit Management System (all components)	\$ 757,118	5 years	\$ 3,785,590	\$ 757,118	\$ 757,118	\$ 757,118	\$ 6,056,945
4c	Prior Authorization	\$ 352,396	5 years	\$ 1,761,982	\$ 352,396	\$ 352,396	\$ 352,396	\$ 2,819,171
4d	Web portal / Web Services	\$ 119,892	5 years	\$ 599,459	\$ 119,892	\$ 119,892	\$ 119,892	\$ 959,134
4e	SURS	\$ 299,473	5 years	\$ 1,497,365	\$ 299,473	\$ 299,473	\$ 299,473	\$ 2,395,783
4f	Interfacing / Messaging (translator)	\$ 64,034	5 years	\$ 320,168	\$ 64,034	\$ 64,034	\$ 64,034	\$ 512,269
4g	Hardware Hosting / Maintenance	\$ 153,485	5 years	\$ 767,424	\$ 153,485	\$ 153,485	\$ 153,485	\$ 1,227,879
4h	MMIS Program Maintenance	\$ 4,163,959	5 years	\$ 20,819,793	\$ 4,163,959	\$ 4,163,959	\$ 4,163,959	\$ 33,311,669
4i	DW/DSS Operations and Maintenance	\$ 688,087	5 years	\$ 3,440,433	\$ 688,087	\$ 688,087	\$ 688,087	\$ 5,504,693
								\$ 97,614,525
4j	TOTALS	\$ 12,201,816	5 years	\$ 61,009,078	\$ 12,201,816	\$ 12,201,816	\$ 12,201,816	Grand Total Operations