

BPMS ORDERING DOCUMENT AND EXHIBITS

EXHIBITS TO **BPMS LICENSE AND SUPPORT AGREEMENT**

- EXHIBIT 1 BPMS ORDERING DOCUMENT**
- EXHIBIT 2 SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**
- EXHIBIT 3 THIRD PARTY CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**
- EXHIBIT 4 SOURCE CODE ESCROW AGREEMENT**



EXHIBIT 1

BPMS ORDERING DOCUMENT

BPMS Ordering Document Date: _____, 2016

This BPMS Ordering Document, including all Schedules and Attachments referenced herein (collectively, the "**BPMS Ordering Document**"), is a Ordering Document to that certain BPMS License and Support Agreement, by and between DRS and BPMS Vendor, dated _____, 2016 (the "**BPMS License and Support Agreement**"). Capitalized terms used herein shall have the meanings ascribed to them in the BPMS Ordering Document or, if not defined herein, such terms shall have the meanings ascribed to them in the BPMS License and Support Agreement.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this BPMS Ordering Document effective as of the date written above.

**Approved
Washington State Department of
Retirement Systems**

**Approved
[BPMS Vendor]**

Marcie Frost, Director

[Name, Title]

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

[BPMS Vendor] Information
[BPMS Vendor] UBI Number: _____

Minority or Woman Owned Business
Enterprise

Mark S. Lyon, Assistant Attorney
General

Yes _____ No _____
(Certification Number)

Date: _____

TABLE OF CONTENTS

	<u>Page</u>
1. BPMS Solution Description, Fees and Payment Terms.....	4
2. Terms Relating to the BPMS Solution.....	4
2.1 DRS Business Process and Technical Requirements	4
2.2 Product Demonstrations	4
2.3 Design and Scalability Limitations.....	4
3. BPMS Vendor Tools and Utilities.....	5
4. BPMS Solution Performance.....	5
4.1 Approved Equipment Configuration	5
4.2 Performance Standards and Performance Credits	5
4.3 Design Limitations	5

SCHEDULES

Schedule 2.1	DRS Business Process and Technical Requirements
Schedule 2.2	Demonstrations and Demonstration Materials
Schedule 3	BPMS Tools and Utilities
Schedule 4.1	Approved Equipment Configuration
Schedule 4.2	Performance Standards and Performance Credits

TERMS AND CONDITIONS

1. **BPMS Solution Description, Fees and Payment Terms.** The Solution licensed to DRS under this BPMS Ordering Document, the Solution License Fees and initial annual Support and Maintenance Services Fees are as follows:

BPMS Solution Description	BPMS Solution License Fees (List Price)	BPMS Solution License Fees (Net Price)	Initial Annual Support and Maintenance Services Fees

The BPMS Solution License Fees and Support and Maintenance Services Fees through the Project Completion date of the BPMS Project are payable to Prime Vendor pursuant to the DRS' agreement with Prime Vendor. From and after Project Completion of the BPMS Project, Support and Maintenance Services Fees are payable to BPMS Vendor.

2. **Terms Relating to the BPMS Solution.**

2.1 **DRS Business Process and Technical Requirements.** The DRS Business Process and Technical Requirements for the BPMS Solution shall be comprised of the following items:

- (a) The responses to the business process and technical requirements set forth in **Schedule 2.1**;
- (b) The features, functionalities and business processes reflected in the Demonstrations and the responses to the Demonstrations Materials set forth in **Schedule 2.2**; and
- (c) Functionality required to meet Regulatory Requirements.

2.2 **Product Demonstrations.** If DRS decides to record BPMS Solution and ERA Demonstrations, the recording will be set forth in the DVD(s) attached to this BPMS Ordering Document as **Schedule 2.2**. BPMS Vendor represents and warrants to DRS that: (a) the Demonstrations were all based on the following version(s) of the Solution: _____; (b) all components of the BPMS Solution demonstrated are, as of the BPMS Ordering Document Date, made generally available by BPMS Vendor to its customers; (c) _____ are the Versions being provided to DRS under this BPMS Ordering Document; and (d) the representations and warranties set forth in **Section 6.1.3 of the BPMS License and Support Agreement** are hereby affirmed with respect to the Demonstrations.

2.3 **Design and Scalability Limitations.** BPMS Vendor represents and warrants to DRS that there are no software design or scalability limitations that would restrict the transaction volumes of DRS. BPMS Vendor further represents and warrants to DRS

that it has performed such due diligence as is required to ensure that none of these BPMS Solution limitations are reasonably expected to be exceeded by DRS.

3. BPMS Vendor Tools and Utilities. The BPMS Vendor Tools and Utilities are set forth in **Schedule 3**.

4. BPMS Solution Performance.

4.1 Approved Equipment Configuration. The Approved Equipment Configuration for the BPMS Solution is set forth in **Schedule 4.1**.

4.2 Performance Standards and Performance Credits. The Performance Standards for the Approved Equipment Configuration and associated Performance Credits are set forth in **Schedule 4.2**.

4.3 Design Limitations. Prime Vendor represents and warrants to DRS that Prime Vendor is unaware of any software design or scalability issues with respect to the BPMS Solution.



SCHEDULE 2.1

DRS BUSINESS PROCESS AND TECHNICAL REQUIREMENTS

**[DRAFTING NOTE: TO BE ATTACHED FROM SYSTEM INTEGRATOR'S BPMS
RFP RESPONSE AS MAY BE UPDATED IN THE IPS WORKSHOPS]**

SCHEDULE 2.2

DEMONSTRATIONS AND DEMONSTRATION MATERIALS

[DRAFTING NOTE: TO BE ATTACHED]

**(SEE ATTACHED DEMONSTRATION MATERIALS AND
ENCLOSED DVDs FOR THE DEMONSTRATIONS)**

SCHEDULE 3

BPMS VENDOR TOOLS AND UTILITIES

Tool	Type	Description



SCHEDULE 4.1

APPROVED EQUIPMENT CONFIGURATION

(SEE ATTACHED)

SCHEDULE 4.2

PERFORMANCE STANDARDS AND PERFORMANCE CREDITS

The Performance Standards set forth below shall apply to the functioning of the BPMS Solution during periods in which DRS is receiving Support and Maintenance Services, and excludes a failure of DRS to operate the BPMS Solution in accordance with the Documentation or within the parameters set forth in the Approved Equipment Configuration, or caused by failures of network and equipment not in the control of BPMS Vendor. The Performance Credits set forth below are the amounts DRS can elect to assess BPMS Vendor. DRS shall evaluate each instance of non-performance related to a failure of BPMS Vendor to meet the Performance Standards, and will determine, in its discretion, whether to assess the Performance Credits.

Performance Standard Description	Performance Standard	Measurement Technique	Measurement and Reporting Period(s)	Performance Credits
Monthly BPMS Availability	The monthly BPMS Availability shall not be less than 99.9% of available hours in each month. If a Major Release is installed within a month, then the number of available hours used in calculating this percentage shall be reduced by either 1) four (4) hours or 2) eight (8) hours depending on the applicable measure defined within "Major Release BPMS Downtime."	DRS Proactive Monitoring	Monthly, commencing at completion of Phase 1 24 x 7 x 365 days a year.	If BPMS Availability drops below 99.9%; 7% of current year Support and Maintenance Service fees charged (based upon the maintenance fee for the year in which incident occurred). Credits apply on a per-monthly basis.
Major Release BPMS Downtime	The duration of downtime due to Major Release BPMS Downtime shall not exceed the following: If DRS installs Major Releases on a semi-annual basis, the duration of Major Release BPMS Downtime shall not exceed four (4) hours; if DRS installs one (1) Major Release per year, then the Major Release BPMS Downtime shall not exceed eight (8) hours. During the Major Release BPMS Downtime, BPMS Vendor shall provide access to at least one (1) technical resource, at no additional cost to DRS, to assist in planning and implementing such upgrade.	DRS Proactive Monitoring	Per Major Release installation event, commencing at completion of Phase 1.	If the Major Release BPMS Downtime is greater than four (4) hours, or eight (8) hours, as applicable; 7% of annual Support and Maintenance Services fees charged (based upon maintenance fees for year in which Major BPMS Release downtime occurred). Credits apply on a per-incident basis.

Performance Standard Description	Performance Standard	Measurement Technique	Measurement and Reporting Period(s)	Performance Credits
<p>BPMS Through-put Response Time</p>	<p>99th percentile Response Time for BPMS Functions (not including Administrative BI and BAM requests) will not exceed 50 milliseconds for 3 consecutive days.</p> <p>BPMS Functions are those which were provided by BPMS Vendor's BPMS toolset.</p>	<p>DRS Proactive Monitoring</p>	<p>Commencing at completion of Phase 1, to be measured and calculated by re-cording the 99th percentile of all Transactions during each two (2) hour time period. The results are reported daily, and only one instance of Performance Credits will be assessable for each 3-day incident.</p>	<p>If the response time for BPMS Functions is not achieved during a daily reporting period, and such latency is observed over 3 consecutive days; 1% of annual maintenance fees charged (based upon maintenance fees for the year in which incident occurred). Credits are based upon per 3-day incident basis.</p>

Performance Standard Description	Performance Standard	Measurement Technique	Measurement and Reporting Period(s)	Performance Credits
ERA Standard Transactions Response Time	<p>99th percentile Response Time for Standard Transactions which are pertaining to Business Operations (not including Administrative BI and BAM requests) will not exceed 50 milliseconds for 3 consecutive days.</p> <p>Standard Transactions are those which were provided by BPMS Vendor's BPMS toolset, and do not include DRS developed components.</p>	DRS Proactive Monitoring	Commencing at go-live, to be measured and calculated by re-cording the 99 th percentile of all Transactions during each two (2) hour time period. The results are reported daily, and only one instance of Performance Credits will be assessable each 3-day incident.	If the response time for Standard Transactions is not achieved during a daily reporting period, and such latency is observed over 3 consecutive days; 1% of annual Support and Maintenance Services fees charged (based upon maintenance fees for the year in which incident occurred). Credits are based upon per 3-day incident basis.
BPMS-specific Data Loss or corruption	Upon the occurrence of a BPMS Solution failure (not caused by natural disaster), no BPMS-specific data such as (not an exhaustive list) audit logs, security logs, process analytics data, process model definitions, business rules definition, etc. shall be lost or corrupted.	Number of data records or individual data elements lost or corrupted determined through journaling functionality	Per each BPMS Solution failure or data corruption event.	<p>For each BPMS Solution failure where BPMS-specific data was lost:</p> <ol style="list-style-type: none"> 1) If data is successfully recovered in full, 10% of annual Support and Maintenance Services fees charged (for year in which incident occurred). 2) If data is not successfully recovered in full, 50% of annual maintenance fees charged (for year in which incident occurred).

Performance Standard Description	Performance Standard	Measurement Technique	Measurement and Reporting Period(s)	Performance Credits
DRS-Specific Data loss or corruption	Upon the occurrence of a BPMS Solution failure (not caused by natural disaster), no DRS business data, including, without limitation, member information, employer information, <i>etc.</i> directly attributable to the BPMS failure shall be lost or corrupted.	Number of data records or individual data elements lost or corrupted determined through journaling functionality	Per each BPMS Solution failure or data corruption event.	<p>For each BPMS Solution failure where DRS-specific data was lost:</p> <ol style="list-style-type: none"> 1) If data is successfully recovered in full, 20% of annual Support and Maintenance Services fees charged (for year in which incident occurred). 2) If data is not successfully recovered in full, 100% of costs incurred by DRS which are directly related to data loss/corruption.

"Actual Available Time" means the number of hours during the applicable measurement period (whether monthly, quarterly or annually) that the BPMS Solution is accessible by DRS and its Authorized Users and performing its intended functions within the Performance Standards set forth in the table above. For purposes of this definition, "accessible" shall mean that all Interfaces and major features and functionality contained in the BPMS Solution, are fully functional and operational without any Level 1 Defects or Level 2 Defects and Response Times are within stated Response Time metrics. Actual Available Time shall not include Major Release Application Downtime.

"BPMS Availability" means Actual Available Time expressed as a percentage of Scheduled Available Time, and is calculated by dividing Actual Available Time by Scheduled Available Time. For example, if the Scheduled Available Time during a measurement period is one hundred (100) hours and the Actual Available Time is ninety-eight (98) hours, then Application Availability is ninety-eight percent (98%).

"BPMS Function" means requests sent to the BPMS Solution to process workflow, execute rules, trigger external modules, send/receive messages, transform data, check security permissions provided by BPMS Vendor's BPMS toolset, or use any Third Party vendor provided API.

"DRS Proactive Monitoring" means the process by which agent scripts capture BPMS Function Response Times. Scripts will monitor critical functionality in the production and DRS environments 24 x 7 x 365. Agents will report real time performance statistics and alerts when critical functionality exceeds the applicable Performance Standards.

"Level 1 Defect" and **"Level 2 Defect"** are defined in the Technology Agreement.

"Major Release" is defined in the Technology Agreement.

"Major Release BPMS Downtime" means the downtime of the entire BPMS Solution or any component there of resulting from the installation of a Major Release.

"Response Time" means the elapsed time to complete a given BPMS Function, as applicable.

"Scheduled Available Time" means all hours during the applicable measurement period (whether monthly, quarterly or annually) less total scheduled downtime for the applicable measurement period; provided, however, that if the applicable System experiences actual downtime during the allocated scheduled downtime period less than the full amount of scheduled downtime, then the amount of scheduled downtime not used shall not be deducted from the amount of Scheduled Available Time. Scheduled Available Time shall not include Major Release Application Downtime.

"Semi- Annual" means occurring twice a year; half-yearly.

"Standard Transactions" means the following transactions:

#	Transaction Title	Transaction Description
1	Enroll Employer	This transaction facilitates the enrollment of employers into a DRS retirement system, including DCP and assists employers in obtaining appropriate OASI status. This includes gathering employer enrollment information, requesting documents, the application process, checking the eligibility of the employer against RCWs, WACs and DRS business rules, and enrolling the employer into the appropriate retirement system.

#	Transaction Title	Transaction Description
2	Update Employer	This transaction allows employers to submit updates to their employer profile information, pension plan information, DCP information and/or OASI status information. This includes the ability for employers to submit a change request, notification to DRS that a change request has been submitted, tracking and receiving documents from the employer and completing the change request.
3	Determine Member Eligibility	This transaction allows an employer to assess a member's eligibility to participate in a DRS retirement plan. This includes transactions to review retirement and membership status with DRS and other programs like First Class City and Higher Education Retirement Plans, identification of the employer's available systems, and evaluation of the position eligibility by applying RCWs, WACs, and business rules to confirm the reportable status of the member.
4	Enroll Member	This transaction enables employers to enroll their employees into a DRS retirement system, DCP or HERP. The first step in this process is to go through the Determine Member Eligibility process then based on if the employee is reportable, edit the enrollment information, create or update a member's profile, enroll them in the correct system and plan and create the employment record.
5	Update Member	This transaction provides the ability for employers and internal DRS team members to update member information which includes transactions with member profile data and separation dates edited against DRS business rules.
6	Plan Choice	This transaction facilitates the member's plan choice selection between plans 2 and 3 or HERP and Plan 3 for PERS, SERS, and TRS and the notification of that selection to DRS, the member and the employer. This includes notifications to members about their plan choice rights, reminders to the member about their plan choice, editing the plan choice decision against RCWs, WACs and business rules and recording the member's plan choice.
7	Earning Activity	This transaction provides the ability for the employer to submit all employee pension and/or DCP earning activity data to DRS including the ability to capture HERP data. This includes data regarding hours, compensation, employer/member contributions, earning periods, investment data, and reporting information. All information will be edited against RCWs, WACs and business rules.
8	Process Employer Report	This transaction provides a publicly accessible function for employers to submit member profile information, pension plan information and/or DCP information. This will include, for each employer, a data map that identifies how their data in the native format will be arranged to conform to DRS' common format. The ability to edit that report against RCWs, WACs and business rules to filter data that may need to be corrected by the employer and also commit the data that has been edited and is correct.
9	Process Employer Electronic Payments	This transaction allows employers to create and submit electronic payments to DRS. This will include setting up bank account information, verifying employee user information, being able to select a receivable to pay or to make a payment, create a payment advice based on payment type and amount and being able to review, save and submit that payment information.

#	Transaction Title	Transaction Description
10	User Profile	This transaction allows an employer to access their profile information and the ability to access other services and/or resources. This includes the ability to retrieve the user's information based upon their role and access levels and display the services/resources available for that user.
11	Member Lookup	This transaction provides a publicly accessible function for employers to lookup current employees, past employees or perspective employees that may have prior history in a Washington State retirement plan (and possibly First Class City and/or Higher Education Retirement Plans). Transactions for this process will include search capability against the mainframe and retrieval of data based on that search.
12	Review Employer Enrollment	This transaction will enable the requester to view information about eligibility for pension plan enrollment, enrollment in DCP and OASI participation. The transaction will solicit identifying information from the requester to help direct the requester to the most pertinent information. It will include a self-estimator for estimated cost to purchase prior service and provide an option to initiate the enrollment process.
13	Registration/Login	This transaction provides a publicly accessible function to facilitate the user registration and login into the employer reporting application with the other capabilities of recovering a user ID, forgotten password, changing their user ID and maintaining other user's access within their organization.

EXHIBIT 2

SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

WITNESSETH:

WHEREAS, _____, a _____ corporation with a place of business at _____ ("**BPMS Vendor**"), and the Washington State Department of Retirement Systems, an agency of the state of Washington, with a principal place of business at 6835 Capital Boulevard, SE, Tumwater, Washington 98501 ("**DRS**"), entered into that certain BPMS License and Support Agreement, dated _____, 2016 ("**BPMS License and Support Agreement**");

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

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

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

1. CONFIDENTIAL INFORMATION

The following terms shall have the meaning as described in the BPMS License and Support Agreement: Law(s) and DRS Confidential Information.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

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

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

2.3 Notification Obligation. If Subcontractor becomes aware of any unauthorized use or disclosure of

the Confidential Information by any person or entity, Subcontractor promptly and fully shall advise BPMS Vendor and DRS of all facts known to Subcontractor concerning such unauthorized use or disclosure.

2.4 Return of Confidential Information.

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

3. GENERAL PROVISIONS

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

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

3.3 Waiver. No delay or omission by BPMS Vendor or DRS to exercise any right occurring upon Subcontractor's non-compliance or default with respect to any of the terms of this Subcontractor NDA Agreement shall impair any such right or power or be construed to be a waiver thereof. A



waiver by BPMS Vendor or DRS of any of the covenants, conditions or agreements to be performed by Subcontractor shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

3.4 Public Disclosures. Without the prior written consent of DRS, which consent may be withheld in DRS' sole discretion, Subcontractor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including, without limitation, any announcement made via e-mail or any posting on the Internet or any BPMS Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into this Subcontractor NDA Agreement or that DRS and BPMS Vendor have a contractual relationship, the name, image or logo of DRS or any department of the State (or any variation or combination of such name, image or logo), as well as the name or image of any DRS employee or contractor of DRS. Without limiting the generality of the foregoing, Subcontractor shall not, without DRS' prior written approval: (a) make any references to third parties that DRS is a customer of Subcontractor or BPMS Vendor; (b) include or make any reference to DRS or DRS' name in any proposals to third parties; or (c) provide DRS contact information to existing or prospective customers of Subcontractor or BPMS Vendor.

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

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

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

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

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

3.10 Exclusive Agreement; Modifications.

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

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

[SUBCONTRACTOR]

By: _____

Printed Name: _____

Title: _____

EXHIBIT 3

THIRD PARTY CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

WITNESSETH:

WHEREAS, _____, a _____ corporation with a place of business at _____ ("**BPMS Vendor**"), and the Washington State Department of Retirement Systems, an agency of the state of Washington, with a principal place of business at, 6835 Capital Boulevard, SE, Tumwater, Washington 98501 ("**DRS**"), entered into that certain BPMS License and Support Agreement, dated _____, 2016 ("**BPMS License and Support Agreement**");

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

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

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

1. CONFIDENTIAL INFORMATION

BPMS Vendor Confidential Information shall have the meaning as described in the BPMS License and Support Agreement.

2. NON-DISCLOSURE AND RESTRICTED USE OF CONFIDENTIAL INFORMATION

2.1 Nondisclosure and Restricted Use.

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

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

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

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

3. GENERAL PROVISIONS

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



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

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

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

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

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

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

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

[THIRD PARTY]

By: _____

Printed Name: _____

Title: _____



EXHIBIT 4

SOURCE CODE ESCROW AGREEMENT

(SEE ATTACHED)

ESCROW AGREEMENT

This Escrow Agreement ("**Escrow Agreement**"), is made and entered into on this the ___ day of _____, 2016 ("**Effective Date**") by and among the Washington State Department of Retirement Systems, an agency of the state of Washington, with a principal place of business at 6835 Capital Boulevard, SE, Tumwater, Washington 98501 (hereinafter, "**Beneficiary**"), [_____], a _____ corporation, with a place of business at _____ (hereinafter, "**Depositor**"), and _____, as escrow agent (hereinafter, "**Escrow Agent**").

WHEREAS, Depositor and Beneficiary have entered into that certain BPMS License and Support Agreement, dated as of _____, 2016 (the "**Underlying Agreement**") which, among other things, provides for the license by Depositor to Beneficiary of certain software programs (as further defined in the Underlying Agreement, the "**Software**") in accordance with the terms and provisions thereof; and

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

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

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

ARTICLE 1 CREATION AND MAINTENANCE OF ESCROW; ESCROW AGENT OBLIGATIONS

1.1 Creation and Maintenance of Escrow. On a quarterly calendar basis, Depositor shall deposit with Escrow Agent the current release of the Deposits for any generally available Software licensed by Beneficiary from Depositor. With each Deposit, Depositor shall prepare and deliver to Escrow Agent a description of the Deposits in the form attached to this Escrow Agreement as **Attachment B**. Depositor warrants to both Escrow Agent and Beneficiary at the time of each delivery to Escrow Agent of the Deposits, it has the full right and authority to deposit the Deposits.

1.2 Escrow Agent Obligations.

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

(b) Upon completing the inspection described in **subsection (a)** for each Deposit, Escrow Agent promptly shall notify Beneficiary that Deposits have been received from Depositor by issuing to Beneficiary a complete

and executed document in the form attached to this Escrow Agreement as **Attachment B**. If Escrow Agent determines that the Deposits received from Depositor do not match the item descriptions or quantities on the Depositor-prepared form of **Attachment B**, Escrow Agent will: (i) note the discrepancies in writing on Escrow Agent's form of **Attachment B**; and (ii) date, sign and mail Escrow Agent's form of **Attachment B** to Beneficiary and Depositor.

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

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

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

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

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

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

(iv) professional liability (\$15,000,000); and

(v) umbrella liability (\$10,000,000) (excluding commercial crime).

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

(f) Escrow Agent acknowledges Depositor's assertion that the Deposits contain proprietary data and that Escrow Agent has an obligation to preserve and protect the

confidentiality of the Deposits. Except as permitted in this Escrow Agreement, Escrow Agent shall not divulge, disclose or otherwise make the Deposits available to any third person, or make any use of the Deposits, without the express prior written consent of Depositor.

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

1.3 Limitation of Liability. UNDER NO CIRCUMSTANCE SHALL ESCROW AGENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF THIS ESCROW AGREEMENT UNLESS ESCROW AGENT PERFORMS ITS DUTIES HEREUNDER IN A NEGLIGENT, WILLFUL OR MALICIOUS MANNER. EXCEPT AS PROVIDED HEREIN, ESCROW AGENT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED TO EITHER DEPOSITOR OR BENEFICIARY EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF OR A BREACH OF ANY CONTRACTUAL DUTY BY ESCROW AGENT, ITS EMPLOYEES, AGENTS AND/OR SUBCONTRACTORS, AND IN SUCH EVENT ESCROW AGENT'S TOTAL LIABILITY WITH REGARD TO ALL CLAIMS ARISING UNDER OR BY VIRTUE OF THIS AGREEMENT OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT, SHALL NOT EXCEED THE SUM OF \$250,000 (TWO HUNDRED AND FIFTY THOUSAND US DOLLARS). THE LIMITATIONS SET FORTH IN THIS SECTION 1.3 SHALL NOT APPLY TO ESCROW AGENT'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, INCLUDING ANY INTENTIONAL ACT NOT TO RELEASE THE DEPOSITS AS REQUIRED IN SECTION 4.2.

ARTICLE 2

TERM AND TERMINATION OF ESCROW AGREEMENT

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

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

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

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

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

(d) upon a written notice of termination by either Beneficiary or Depositor in connection with Escrow Agent's assignment of this Escrow Agreement pursuant to **Section 11.3**; provided, however, that such termination shall not be effective until: (i) Beneficiary and Depositor have entered into a replacement escrow agreement with a successor escrow agent and provided to Escrow Agent a joint, written instruction to deliver the Deposits to the successor escrow agent; and (ii) Escrow Agent has delivered the Deposits to the successor escrow agent; or

(e) subject to **Section 2.4**, by Escrow Agent at the end of the initial term or at the end of any annual renewal term, for any reason, by providing Depositor and Beneficiary with at least six (6) months' prior written notice (in accordance with **Section 11.4**) of its intent not to renew this Escrow Agreement.

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

2.4 Resignation of Escrow Agent. If Escrow Agent terminates this Escrow Agreement pursuant to **Section 2.2(e)**, Depositor and Beneficiary shall, within the six (6)-month notice period provided by Escrow Agent, enter into a replacement escrow agreement and shall jointly appoint and designate in a joint written instruction to Escrow Agent a successor escrow agent. Following such appointment and designation, Escrow Agent shall forthwith deliver the Deposits to the successor escrow agent. If the parties do not appoint a successor escrow agent within the six (6)-month period, Escrow Agent may agree to extend the notice period and con-

tinue to hold the Deposits in escrow under this Escrow Agreement for a time period mutually agreed by the parties or apply to a court of competent jurisdiction for the appointment of a successor escrow agent (with any costs incurred in connection therewith borne by Depositor and Beneficiary equally). Under the circumstances described in this **Section 2.4**, this Escrow Agreement shall terminate when Escrow Agent delivers the Deposits to the successor escrow agent.

ARTICLE 3 **RELEASE EVENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5
INDEMNIFICATION OF ESCROW AGENT

Escrow Agent, by reason of its execution of this Escrow Agreement, shall not assume any responsibility or liability for any transactions between Depositor and Beneficiary other than for the performance of Escrow Agent's obligations with respect to the Deposits held by it in accordance with this Escrow Agreement. The party on whose behalf, or pursuant to whose direction, Escrow Agent acts, shall indemnify, defend and hold harmless Escrow Agent from any and all liability, damages, costs or expenses, including reasonable attorneys' fees, which may be sustained or incurred by Escrow Agent as a result of taking such action. Absent any such direction, the parties shall jointly and severally indemnify and hold harmless Escrow Agent from any and all liability, damages, costs or expenses, including reasonable attorneys' fees which arise in connection with this Escrow Agreement, except for any liability, damages, costs or expenses that may be sustained or incurred as a result of: (a) the negligent or willful misconduct of Escrow Agent, its employees or agents; or (b) Escrow Agent's breach of its duties under this Escrow Agreement. Escrow Agent is not a party to, or bound by, any provisions contained in the Underlying Agreement, and with respect to the Deposits acts as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the Underlying Agreement, or with respect to the form or execution of the same, or the identity, authority or right of any person executing the same or depositing the Deposits. This indemnification shall survive the termination of this Escrow Agreement.

ARTICLE 6
COMPLIANCE WITH ORDERS OF COURT

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

ARTICLE 7
LOCATION AND CONDITION OF DEPOSITS

Except to the extent provided otherwise herein, the parties acknowledge that the Deposits will be stored in accordance with Escrow Agent's standard escrow operating procedures. Escrow Agent shall maintain the environmental conditions within the vault within normal operating temperatures and humidities. For purposes of this Escrow Agreement, "normal operating temperatures and humidities" means temperatures and humidities at or near the range usually maintained for ordinary computer media storage. Depositor and Beneficiary

hereby agree not to hold Escrow Agent liable for any damages or claims resulting from loss of data that may occur: (a) solely as a result of self-destruction or disintegration of a tape or disk; (b) solely because of defects in the tapes or disks on which the data is stored; or (c) solely because such tapes or disks are sensitive to the normal operating temperatures and humidities in Escrow Agent's vault.

ARTICLE 8
FEES AND EXPENSES OF ESCROW AGENT

8.1 General. Except as otherwise provided herein, Depositor shall pay the fees set forth in **Attachment D** or, subject to the terms set forth in **Attachment D**, in Escrow Agent's then-current fee schedule, which fee schedule shall be provided to Depositor and Beneficiary sixty (60) days prior to any fee change. Subject to the foregoing, such fees are subject to periodic review by the management of Escrow Agent in accordance with its pricing policies.

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

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

8.4 Renewal Fees. Each year during the term of this Escrow Agreement, Escrow Agent shall invoice Depositor for the renewal fees sixty (60) days prior to the anniversary of the Effective Date. If the renewal fees are not received thirty (30) days prior to the anniversary of the Effective Date, Escrow Agent shall notify Depositor and Beneficiary that the renewal fees have not been received by providing Depositor and Beneficiary with a notice in the form of **Attachment C**. Such notice shall be sent in accordance with the notice procedures specified herein. If the renewal fees are not received by the anniversary of the Effective Date, Escrow Agent may terminate this Escrow Agreement in accordance with the terms set forth in **Sections 2.2 and 2.3**.

ARTICLE 9
ANNUAL REPORTS

Escrow Agent shall keep reasonably detailed and complete records of the activities undertaken and materials prepared pursuant to this Escrow Agreement. Escrow Agent shall issue to Depositor and Beneficiary an annual report profiling the Deposit account or otherwise make the information described in this Article available to Depositor and Beneficiary (e.g., via online access). Such annual report shall identify Depositor

and Beneficiary, their respective then-current designated contacts, selected special services and the Deposit history, including the begin and end dates of any Beneficiary Verifications under **Article 10** (provided that such information has been provided to Escrow Agent) and/or releases of the Deposits and any instructions related thereto. Subject to Beneficiary's verification rights under **Article 10**, upon reasonable notice, during Escrow Agent's normal business hours and during the term of this Escrow Agreement, Depositor or Beneficiary shall be entitled to inspect the records of Escrow Agent pertaining to this Escrow Agreement. Neither Depositor nor Beneficiary shall be entitled to remove or replace any of the Deposit Materials during such inspections.

ARTICLE 10
VERIFICATION PROCESS

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

In addition to the verification procedures set forth in **Attachment E**, either Depositor, Beneficiary or both can engage Escrow Agent to provide additional verification services. The terms of such additional verification services, including the scope of verification services, applicable fees and charges, timeline, etc. shall be set forth in a separate written agreement between the applicable parties.

ARTICLE 11
MISCELLANEOUS

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

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

11.3 Assignment. Subject to the remaining provisions of this **Section 11.3**, none of Beneficiary, Depositor or Escrow Agent shall assign or otherwise transfer this Escrow Agreement, in whole or in part (whether by operation of law or otherwise), to any third party without the prior written consent of the other parties; provided, however, that Escrow Agent may assign this Escrow Agreement to a third party without the written consent of the other parties if Escrow Agent merges with such third party, is acquired by such third party or has substantially all of its assets acquired by such third party and such third party agrees in writing to assume all of Escrow Agent's obligations and liabilities under this Escrow Agreement. Notwithstanding the foregoing, upon Depositor's or Beneficiary's permitted assignment or transfer of the Underlying Agreement to a third party in accordance with the terms of the Underlying Agreement, this Escrow Agreement automatically shall be assigned or transferred to such third party, and the assigning or transferring party promptly shall deliver a written notice of

same to Escrow Agent. The terms and conditions of this Escrow Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns, whether such transfer or assignment occurs by merger, consolidation, purchase, operation of law or otherwise. All assignments or other transfers of this Escrow Agreement in violation of the terms set forth in this Section shall be null and void and have no force or effect.

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

If to Depositor:

Attention: _____

Attention: _____

If to Beneficiary:

Washington State Department of Retirement Systems
6835 Capital Boulevard, SE
Tumwater, WA 98501
Attention: Chief Information Officer

With a copy to:

Attorney General of Washington
7141 Clearwater Dr. SW
Olympia, WA 98504-0121
Attention: Assistant Attorney General

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

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

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

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

11.8 Governing Law; Exclusive Jurisdiction. This Escrow Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Escrow Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Escrow Agreement shall be brought only in the State courts located in Thurston County, Washington. **THE PARTIES EACH CONSENT TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS LOCATED IN THURSTON COUNTY, WASHINGTON.**

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

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

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

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

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

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

~ Signature Page Follows ~



Appendix D.10 BPMS Ordering Document and Exhibits
Employer Reporting Application Project

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

DEPOSITOR:

ESCROW AGENT:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

BENEFICIARY:

Washington State Department of Retirement Systems

By: _____

Title: _____

Date: _____

ATTACHMENT A DEPOSITS

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

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

for an additional fee (collectively "**Third Party Support Tools**").

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



ATTACHMENT B
DESCRIPTION OF DEPOSIT MATERIALS

Washington State Department of Retirement Systems
6835 Capital Boulevard, SE
Tumwater, Washington 98501
Attention: Chief Information Officer

Re: Escrow Account No. [_____]

Ladies and Gentlemen:

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

<u>Received</u>	<u>Label Description</u> <u>Item of Deposit</u>	<u>Updates</u>	<u>Date Received</u>
_____	1. Source Code	_____	_____
_____	2. Additional Programs	_____	_____
_____	3. Load Instructions	_____	_____
_____	4. Escrowed Third Party Software	_____	_____
_____	5. Depositor Support Tools	_____	_____
_____	6. Third Party Support Tools	_____	_____
_____	7. Specifications	_____	_____
_____	8. Security Requirements	_____	_____
_____	9. Traffic Management Methodologies	_____	_____
_____	10. Performance Analysis Tools	_____	_____
_____	11. Third Party Performance Analysis Tools	_____	_____
_____	12. Encryption Keys	_____	_____
_____	13. Programmer List	_____	_____
_____	14. Other Information	_____	_____

Please check as applicable:

Deposit Type: Initial _____ Supplemental _____

Environment: _____

Special Instructions: _____



Appendix D.10 BPMS Ordering Document and Exhibits
Employer Reporting Application Project

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

_____,
Escrow Agent

By: _____

Title: _____

Date: _____

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

_____,
Depositor

By: _____

Title: _____

Date: _____



ATTACHMENT C
NOTICE

Washington State Department of Retirement Systems
6835 Capital Boulevard, SE
Tumwater, Washington 98501
Attention: Chief Information Officer

Attorney General of Washington
7141 Clearwater Drive SW
Olympia, WA 98504-0121
Attention: Assistant Attorney General

RE: Escrow Account No. [_____]

Dear Sir or Madam:

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

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

Sincerely,

Name

Title

Date



ATTACHMENT D
ESCROW FEES

[TO BE DEVELOPED DURING IPS]

Initialization Fee

(First-year fee only: Includes all contract review, modification and set-up of account.) **\$2,500**

Annual Renewal Maintenance Fee

(Annual fee: Includes escrow deposit maintenance, all account activity notifications, unlimited escrow deposit material updates, online account information access, electronic depositing option, and two (2) cubic ft. storage allowance.) **\$1,725**

Additional Items Menu

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

Subject to the notice requirements set forth in **Section 8.1** of this Escrow Agreement, Escrow Agent shall have the right to increase the fees set forth in this **Attachment D** once annually commencing on the first anniversary of the Effective Date, provided that such annual increases shall not exceed the lesser of the most recent increase in the CPI and three percent (3%), and provided further that the fees payable hereunder shall never exceed the fees then charged by Escrow Agent to its customers generally. "**CPI**" means the official Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics, United States Department of Labor, or any successor index.

ATTACHMENT E VERIFICATION PROCESS

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

2. Beneficiary Verification.

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

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

2.3 Inaccurate, Incomplete or Insufficient Deposits. If it is discovered during Beneficiary Verification that the Deposits are inaccurate, incomplete or insufficient in any way, Beneficiary and Depositor shall jointly create a detailed written list of deficiencies ("**List of Deficiencies**").

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

2.4 Personnel. During Beneficiary Verification, Depositor shall permit members of Beneficiary's internal audit staff and/or a third party contractor(s) retained by Beneficiary (provided the contractor has signed a confidentiality and non-disclosure agreement with Beneficiary), to be present at the Verification Location and to verify, audit and inspect the Deposits pursuant to this **Section 2**. Additionally, at Beneficiary's request, Depositor shall make available at the Verification Location one (1) or more persons who are knowledgeable about the Deposits including, without limitation, the operation of the Source Code, to answer any questions as part of Beneficiary Verification.

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

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