

BPMS LICENSE AND SUPPORT AGREEMENT

BY AND BETWEEN

***WASHINGTON STATE
DEPARTMENT OF RETIREMENT SYSTEMS***

AND

[BPMS SOLUTION PROVIDER]

_____, 2016

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SCHEDULES

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Exhibit 4	Source Code Escrow Agreement

BPMS LICENSE AND SUPPORT AGREEMENT

This BPMS License and Support Agreement ("**Agreement**") is made and entered into as of _____, 2016 (the "**Effective Date**"), by and between 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 98504 ("**DRS**"), and _____, a _____ corporation, with a principal place of business at _____ ("**BPMS Vendor**").

WHEREAS, on July 21, 2015, DRS issued a request for proposals ("**ERA RFP**") to provide support and maintain a Business Process Management Suite Solution ("**BPMS Solution**"), and to develop the Employer Reporting Application ("**ERA**") (the implementation of the BPMS Solution and development of the ERA are referred to as the "**ERA Project**") (each of which above defined terms are further defined herein).

WHEREAS, on Sept 1, 2016, _____ ("**Prime Vendor**") submitted to DRS its written response to the ERA RFP, as subsequently supplemented (the "**ERA RFP Response**", as further defined herein), and in the ERA RFP Response and otherwise Prime Vendor represented to DRS that Prime Vendor and/or BPMS Vendor had the solutions and support and maintenance services required to meet the requirements set forth in the ERA RFP and in the Agreement.

WHEREAS, BPMS Vendor separately reviewed the ERA RFP, and prior to Prime Vendor submitting the ERA RFP Response, those portions of the ERA RFP Response relating to the BPMS Solution. Further, prior to submitting the ERA RFP Response, BPMS Vendor worked with Prime Vendor to ensure that the DRS Business Process and Technical Requirements can be met with BPMS Vendor's solution, and BPMS Vendor had sufficient time and opportunity during the implementation planning study workshops and otherwise, to conduct comprehensive due diligence on the ERA Project.

WHEREAS, BPMS Vendor acknowledges that, in reliance on the representations made by Prime Vendor and BPMS Vendor in the procurement, including BPMS Vendor's participation with Prime Vendor during the implementation study workshops, negotiations and otherwise, the Demonstrations, presentations to DRS and the commitments and assurances made by BPMS Vendor herein, DRS selected Prime Vendor using BPMS Vendor as the BPMS Solution provider over other prospective providers for the ERA Project.

WHEREAS, DRS and BPMS Vendor want to specify the terms and conditions under which BPMS Vendor will provide the solution for the ERA Project, and for any future software licensed and/or provided to DRS by BPMS Vendor.

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

ARTICLE 1
SCOPE OF AGREEMENT, PARTNERING PRINCIPLES
AND RELATIONSHIP MANAGEMENT

1.1 Scope of Agreement. The Agreement shall apply to all Solutions and Support and Maintenance Services and other Services, as applicable, provided by BPMS Vendor to DRS, including the licensing of new or additional products as may be contracted for by the parties following the Effective Date, which shall all be subject to all applicable Washington state laws and policies related to competitive procurement.

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

PARTNERING PRINCIPLE #1	DIRECT SENIOR EXECUTIVE OVERSIGHT
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In a long-term strategic business relationship, direct senior executive oversight and involvement by the parties is needed to ensure all commitments and timeframes are met.

PARTNERING PRINCIPLE #2	STATE-OF-THE-ART PRODUCTS
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DRS will be making a significant investment in the products and services to be provided by BPMS Vendor, and DRS wants to ensure that BPMS Vendor remains a competitive solution provider. BPMS Vendor commits that the products provided to DRS shall be technologically competitive as measured against other commercially available products of the same types.

PARTNERING PRINCIPLE #3	COMPETITIVE PRICING AND PREDICTABILITY OF ON-GOING COSTS AND EXPENSES
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Products and Services provided to DRS by BPMS Vendor must be competitively priced. Costs and expenses must be predictable, clearly articulated, and understood by the parties prior to initiating a project or any change orders. Cost, personnel and other resource requirements must be clearly outlined for all parties.

PARTNERING PRINCIPLE #4

DECISION MAKING AUTHORITY

While ultimate decision making authority for implementations and project-related items rest with DRS, BPMS Vendor must manage its personnel and subcontractors, and discharge its duties within the agreed parameters and requirements to ensure projects are successfully implemented.

PARTNERING PRINCIPLE #5

TIME-TO-MARKET SOLUTIONS

In a long-term technology relationship, time-to-market for products is critical to DRS. BPMS Vendor must ensure performance on a timely basis and deliver and implement fully tested and operational products.

PARTNERING PRINCIPLE #6

QUALITY PERSONNEL TO SUPPORT THE RELATIONSHIP

Qualified personnel will be devoted by the parties to the relationship. The parties will commit their senior executives and management, as well as administrative, technical and other support personnel, to achieve the objectives of the relationship.

PARTNERING PRINCIPLE #7

OPEN ARCHITECTURE ENVIRONMENT

Products provided to DRS by BPMS Vendor will operate in an open architecture environment, and BPMS Vendor will make available to DRS all interfaces and supporting documentation specifications to promote interoperability among DRS' other systems and devices.

PARTNERING PRINCIPLE #8

COOPERATION WITH DRS' OTHER TECHNOLOGY PARTNERS

Given the various technology platforms supporting DRS, joint planning, open communication, and cooperation and collaboration between DRS and all of its technology partners will be required. As such, BPMS Vendor and its subcontractors, as necessary, will participate in these cooperative activities.

PARTNERING PRINCIPLE #9

ALIGNMENT OF ACCOUNTABILITY AND RESPONSIBILITY

Accountability and responsibility of roles will be aligned to ensure that each party is responsible for the aspects of a project or relationship that they control.

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

1.3.1 General. Each party shall allocate appropriate, quality resources to fulfill the objectives of the relationship including, as appropriate and applicable, resources to fulfill the development and Support and Maintenance Services obligations set forth herein and in an Ordering Document. If either party believes that the other has not allocated sufficient resources, the matter will be brought to the attention of the Executive Sponsors for resolution.

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

1.3.3 Executive Briefings. The relationship with BPMS Vendor will involve a significant investment and substantial commitment from DRS in the form of monies, personnel, time and effort. During the pendency of the ERA Project, the Executive Sponsors and other appropriate representatives from each party shall meet at least quarterly, or more frequently if needed, to discuss the overall relationship of the parties, the status of the ERA Project, the status of and any risks, issues and any problems or difficulties relating to the ERA Project and/or Services, whether timeframes are being met, and what actions BPMS Vendor can take to mitigate such risks, issues, problems or difficulties.

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

1.3.5 BPMS Vendor Contract Manager. BPMS Vendor shall designate an individual (the "**BPMS Vendor Contract Manager**") to be responsible primarily for ensuring BPMS Vendor's contractual compliance with the Agreement to ensure such compliance. In furtherance thereof, the BPMS Vendor Contract Manager shall, among other things:

- (a) Be fully knowledgeable about all the commitments made by BPMS Vendor in the Agreement and Ordering Documents, especially where such commitments may differ from BPMS Vendor's general business practices and policies;
- (b) Advise BPMS Vendor personnel and BPMS Vendor's subcontractors on the commitments made by BPMS Vendor to ensure BPMS Vendor personnel have a full and complete understanding of the level and scope of the commitments made under the Agreement, Ordering Documents;
- (c) Along with the BPMS Vendor Account Executive, serve as a point of contact to administer the Agreement;
- (d) Ensure that all policies and procedures relating to BPMS Vendor's administration of the Agreement are applied consistently by BPMS Vendor; and
- (e) Such other duties or responsibilities relating to the administration of the Agreement as may be reasonably requested from time-to-time by either party.

1.3.6 Compliance with DRS Security Policies and Procedures, BPMS Vendor Information Security Officer, and Security Certifications.

(a) **Compliance with Security Policies and Procedures.** BPMS Vendor shall comply with: (i) security requirements and obligations required by applicable Law; (ii) DRS Security Policies and Procedures; (iii) the then-current ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000 series of Information Security Management Systems standards [**DRAFTING NOTE: IF BPMS VENDOR DOES NOT COMPLY WITH THIS PARTICULAR STANDARD, INSERT APPROPRIATE STANDARD REFERENCE**]; and (iv) BPMS Vendor's security standards, policies, guidelines and procedures, provided that DRS Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with BPMS Vendor's security standards, policies, guidelines and procedures (**subsections (i) through (iv)** are collectively referred to as the "**Security Policies and Procedures**"). If there is a change in the Security Policies and Procedures from and after the Effective Date that BPMS Vendor determines increases its costs to provide Services or Support and Maintenance Services, BPMS Vendor may submit a Change Request detailing BPMS Vendor's reasonable increased costs to comply with such change. DRS will evaluate the Change Request and either sign a Change Order paying the amounts set forth therein, whereupon BPMS Vendor shall comply with the change in the Security Policies and Procedures, or waive BPMS Vendor's obligation to comply with such change. The BPMS Vendor Information Security Officer's participation shall not be chargeable to DRS.

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

- (i) Be responsible to ensure BPMS Vendor's initial and on-going compliance with the Security Policies and Procedures;

(ii) Upon DRS' request, an officer of BPMS Vendor shall provide a written certification to DRS, confirming BPMS Vendor's compliance with the Security Policies and Procedures; and

(iii) Upon DRS' request, including following any certification related to BPMS Vendor's compliance with the Security Policies and Procedures, meet with State of Washington's Security Program Representatives to discuss BPMS Vendor's certification, the Security Policies and Procedures or other related matters.

The BPMS Vendor Information Security Officer's participation shall not be chargeable to DRS.

(c) **Security Certifications.** [DRAFTING NOTE: REVISE IF BPMS VENDOR IS NOT CERTIFIED UNDER ISO OR OTHER APPLICABLE STANDARD; RETAIN BALANCE OF PARAGRAPH RELATING TO RECEIPT OF AUDIT RESULTS AND REMEDIATION OBLIGATIONS] BPMS Vendor represents and warrants to DRS that BPMS Vendor is certified under ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000, series of Information Security Management Systems standards ("**ISO Security Standards**"), and BPMS Vendor shall maintain such certifications on an on-going basis. BPMS Vendor shall provide DRS with a copy of such certifications upon request. BPMS Vendor shall provide DRS with full and complete copies of any ISO Security Standards audits and reviews, and other security audits, reports and reviews, whether conducted internally by BPMS Vendor or through a Third Party, within five (5) days of a request by DRS and within twenty (20) days of BPMS Vendor's receipt of such audits, reports and reviews. If there are deficiencies cited and/or recommendations made, the BPMS Vendor Information Security Officer, the BPMS Vendor Executive Sponsor and other appropriate personnel from BPMS Vendor shall meet to review the deficiencies and recommendations and develop a plan of action to address such items. The implementation of any measures to address deficiencies and/or recommendations shall not be chargeable to DRS.

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

- (a) First, and most senior, applicable Laws;
- (b) Second, the terms contained in the main body of the Agreement;
- (c) Third, the terms contained in any Schedules to the Agreement, provided that no order of precedence shall be given among them;
- (d) Fourth, the terms contained in any Exhibit to the Agreement (except for an Ordering Document), provided that no order of precedence shall be given among them;
- (e) Fifth, the terms contained in the main body of an Ordering Document;

(f) Sixth, the terms contained in any Schedule, Exhibit and/or Attachment to an Ordering Document, provided that no order of precedence shall be given among them;

(g) Seventh, any RFP Response or response to other written materials requesting BPMS Vendor's bid, and any verbal responses made during recorded negotiation sessions; and

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

All RFP Responses, including the ERA RFP Response with respect to the BPMS Solution, are incorporated in by reference and made a part of the Agreement.

1.5 Definitions and Construction. Capitalized terms used herein shall have the meanings ascribed to them in the Agreement, in **Schedule 1.5**, or in any other Schedule, Exhibit or Attachment. The words "include", "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". Any reference herein to a particular Article or Section number (e.g., "**Article 7**" or "**Section 7.1**"), shall be deemed a reference to all Sections of the Agreement that bear sub-numbers to the number of the referenced in the Article or Section (e.g., a reference to **Article 6** includes **Sections 6.1** through **6.15**, and a reference to **Section 9.7** includes reference to **Sections 9.7.1, 9.7.2, etc.**). The terms "hereof," "hereunder," "herein" and words of similar import will refer to the Agreement as a whole and not to any particular provision of the Agreement. Definitions in the Agreement apply equally to the singular and plural forms of the defined terms. Unless otherwise expressly specified, all references to "days" without any designation of "calendar" or "business" will be deemed to be references to calendar days and not business days. All references to "business days" shall mean Monday through Friday, excluding Holidays. When calculating the time period before which, within which or following which any act is to be done or step taken pursuant to the Agreement, the date that is referenced in calculating such period will be excluded (for example, if an action is to be taken within two (2) days of a triggering event and such event occurs on a Tuesday then the action must be taken by Thursday). If the last day of a business day period is a non-business day, the period in question will end on the next succeeding business day.

1.6 BPMS Vendor Agreements. Following the Effective Date, if BPMS Vendor acquires a new Affiliate and such new Affiliate is a party to one (1) or more agreements with DRS, DRS has the right, but not the obligation, to subject the products, software and services set forth in such Affiliate agreement to the terms of the Agreement, as set forth herein. Within thirty (30) days following DRS' written notice to BPMS Vendor that such Affiliate agreement products and services will be subject to the terms of the Agreement. Without limiting the generality of the foregoing, any such preexisting agreements shall be deemed merged into this Agreement and this Agreement shall control.

ARTICLE 2

ORDERING DOCUMENTS

2.1 Ordering Documents. DRS shall license Solutions, purchase Support and Maintenance Services and purchase development, consulting and other Services as may be

agreed to between the parties pursuant to the terms of an ordering document (an "**Ordering Document**"). The BPMS Ordering Document is attached as **Exhibit 1**. Future Ordering Documents developed by the parties shall use the BPMS Ordering Document as a framework for creating the new Ordering Document, and shall set forth such additional terms and conditions that are not contrary to or inconsistent with the terms of the Agreement. Additional terms may relate to additional technical consulting, testing solutions, developing additional Integrations, Interfaces and Extensions, and the like. Any future Ordering Documents shall be subject to all applicable Washington state laws and policies related to competitive procurement (including RCW 39.26.120).

2.2 Effectiveness of Ordering Documents. Each Ordering Document shall require a work authorization, duly authorized and signed by either the DRS Director or designee in order to create a binding obligation on DRS. BPMS Vendor acknowledges that DRS is not obligated under the Agreement to issue any Ordering Documents.

ARTICLE 3

SOLUTIONS, DELIVERABLES AND TOOLS AND UTILITIES

3.1 Solution License

3.1.1 Solution License – Grant of License. [DRAFTING NOTE: TERMS OF LICENSE MAY BE ADJUSTED DEPENDING ON THE FINAL PROPOSED LICENSING MODEL SELECTED] Subject to further terms and conditions of the Agreement, BPMS Vendor and/or its subcontractors grant to DRS and its Affiliates a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 12.12**), unlimited use, user and user type in connection with its business operations, non-assessable, irrevocable (except as provided in the last paragraph of **Section 7.3**), worldwide, fully paid (once all then-applicable Solution License Fees relating to the particular software item have been paid), multi-site and Enterprise-Wide license for DRS, its Affiliates and their Authorized Users to: (a) use the Solution and the Documentation; (b) at no additional Solution License Fee, to transfer and operate the Solution on a different operating system and/or on different equipment; and (c) make as many production and non-production copies of the Solution as DRS deems necessary, including for training and education, development and archiving. For purposes of the Agreement and without limiting the generality of the foregoing, the term "Enterprise-Wide" shall mean the right to use the Solution across the entire spectrum of business and operational activities involving DRS and its Affiliates, now and in the future, directly or indirectly, including any and all growth of DRS and its Affiliates.

3.1.2 Construction and Interpretation of License and Right to Use Terms. BPMS Vendor acknowledges that the intent of the scope of the Solution license is to make DRS' rights to use the Solution as broad as possible and, accordingly, the language in **Section 3.1.1** shall not be interpreted strictly or narrowly in favor of BPMS Vendor. Furthermore, if BPMS Vendor develops future limitations, qualifications and/or restrictions in how it licenses the Solution to its customers, such future limitations, qualifications and/or restrictions shall have no effect on the scope of the Solution license granted herein to DRS, and BPMS Vendor expressly disclaims the right to claim otherwise.

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

3.2 Documentation.

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

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

3.3 Performance and Other Tools, Utilities, Etc. BPMS Vendor shall grant to or acquire for DRS a royalty-free license during the term of the Agreement to all BPMS Vendor (or its Affiliate's or subcontractors)-owned utilities and tools used by BPMS Vendor to provide Services and/or in connection with a project, and, to the extent such licenses are sub-licensable by BPMS Vendor to DRS, a license to Third Party-owned utilities and tools used by BPMS Vendor to provide Services and/or in connection with a project, including all tools and utilities used by BPMS Vendor to provide project management, implementation, evaluation and operational, maintenance and support Services, and all tools and utilities used by BPMS Vendor to provide performance monitoring, testing, managing and support of the Solution (collectively, "**BPMS Vendor Tools and Utilities**"). BPMS Vendor shall provide training and education on the use of the BPMS Vendor Tools and Utilities. The BPMS Vendor Tools and Utilities shall be set forth in the applicable Ordering Document. For so long as the Agreement is not terminated and BPMS Vendor is providing Support and Maintenance Services to DRS, BPMS Vendor shall provide updated versions and/or all new BPMS Vendor Tools and Utilities as such updated versions are available, all at no additional cost to DRS.

3.4 *Integrations, Interfaces, Extensions and Other Software-Based Deliverables.*

3.4.1 *Development of Integrations, Interfaces, Extensions and Other Software-Based Deliverables.* From time-to-time, BPMS Vendor and DRS may agree to develop Integrations, Interfaces, Extensions and other software-based Deliverables, which agreement shall be memorialized pursuant to an Ordering Document. The Ordering Document shall specify the ownership rights, if any, as between DRS and BPMS Vendor, and any additional Support and Maintenance Services Fees for such developments. If no ownership rights are specified in such Ordering Document, ownership shall vest with BPMS Vendor, provided that DRS shall have a perpetual, unlimited, royalty-free, Enterprise-Wide license to such Integrations, Interfaces, Extensions or other software-based Deliverables. Custom-developed Integrations, Interfaces, Extensions and/or other software-based Deliverables shall be considered a Deliverable for purposes of the Agreement. With respect to each such Integration, Interface, Extension and other software-based Deliverable, BPMS Vendor shall provide to DRS the Documentation for all such Integrations, Interfaces, Extensions and software-based Deliverables, including, as applicable, API documentation, record layouts, design documentation, functional specifications, technical specifications, data transformations and data aggregations. DRS shall not be obligated to make and shall be excused from making any final payment due to BPMS Vendor for such development items until all such Documentation is received and accepted by DRS. BPMS Vendor shall make available to DRS for purchase at the additional Support and Maintenance Services Fees as specified in the Ordering Document on an annual basis Support and Maintenance Services for any Integration, Interface, Extension and/or other software-based Deliverable, which Support and Maintenance Services shall include retrofitting, installing, implementing and maintaining the compatibility of such Integration, Interface, Extension and/or software-based Deliverable to and with all Enhancements.

3.4.2 *Cooperation on Integrations and Interfaces.* BPMS Vendor acknowledges that DRS is working with a number of Third Parties to develop, maintain and support various DRS systems and that it may be necessary to implement one or more Integrations and Interfaces between and among a Solution and such systems. BPMS Vendor shall cooperate and work with DRS and such Third Parties, as applicable, to implement and use standard Integrations and Interfaces or develop and implement custom developed Integrations and Interfaces, in accordance with the terms of this Section, as necessary to allow information to pass from DRS' systems to the Solution, and vice-versa. Such cooperation may include, among other things, BPMS Vendor's attendance at meetings with DRS personnel and/or Third Parties and making available to DRS and Third Parties BPMS Vendor's API specifications, data schemas and other Documentation required for the development of the Integrations and Interfaces. BPMS Vendor shall attend DRS-requested telephonic meetings upon two (2) business days' notice by DRS and DRS-requested in-person meetings at DRS upon four (4) business days' notice by DRS. All such cooperation and meeting participation provided by BPMS Vendor during the pendency of or in connection with any project concerning the implementation of a Solution (by BPMS Vendor or a Third Party) shall be at no additional cost or expense to DRS.

3.5 *Technical Assistance and Knowledge Transfer.* BPMS Vendor shall transfer any knowledge it possesses which is needed or necessary for the day-to-day operation of the Solution to DRS employees and contractors designated by DRS so that DRS will be able to self-

configure, operate and support the Solution on a going forward basis ("**Knowledge**"). The transfer of Knowledge shall consist of BPMS Vendor instructing, educating and training DRS with respect to the following as they relate to the Solution, and configurations, Integrations, Interfaces, Extensions and other software-based Deliverables:

- (a) The Solution, its configurations, and any Integrations, Interfaces, Extensions and other software-based Deliverables;
- (b) Enhancements of the Solution;
- (c) All data files, file and data definitions and relationships, data definition specifications, data models, program and logic, Interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts;
- (d) All available maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by BPMS Vendor in the support and maintenance of the Solution, Integrations, Interfaces, Extensions and other software-based Deliverables;
- (e) Documentation;
- (f) Security requirements and methodologies implemented under the terms of the Agreement to prevent or detect unauthorized access, and any networking security tools;
- (g) Methodologies that address traffic management, workload balancing, segmentation, routing and overall network performance analysis;
- (h) The installation and maintenance of tools to support network performance analysis;
- (i) Management and troubleshooting, including how to install and utilize management and remote troubleshooting tools;
- (j) Maximizing the use of the Solution, Integrations, Interfaces, Extensions and other software-based Deliverables to perform key operational functions, including data backups, program downloads and security checks and how to automate such functions to minimize manual intervention; and
- (k) Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the Knowledge previously transferred to DRS hereunder.

3.6 Source Code.

3.6.1 Source Code Escrow Agreement. The Source Code and other Deposit Materials for all Solutions licensed to DRS hereunder shall be deposited in escrow to be located in the United States. The escrow deposits shall be subject to release, all in accordance with the terms and conditions of the Source Code Escrow Agreement. The

Source Code Escrow Agreement is supplementary to the Agreement. BPMS Vendor shall make and cause to be made deposits of the Deposit Materials for the Source Code Escrow Agreement within thirty (30) days of the Effective Date. If BPMS Vendor fails to deposit all such Deposits within the initial thirty (30) day time period, and thereafter, within the time frames specified in the Source Code Escrow Agreement, provided such failure is not cured by BPMS Vendor within thirty (30) days following receipt of written notice of such failure, without limiting any other rights and remedies that may be available to DRS, DRS shall have the right to: (a) seek specific performance of the Deposit obligations in the Source Code Escrow Agreement, and BPMS Vendor hereby waives all defenses associated with such remedy; (b) withhold payment of any and all amounts then due or that may become due to BPMS Vendor or, if no fees are then due or will become due, then DRS shall be entitled to a credit in the amount of One Thousand Dollars (\$1,000) per day until BPMS Vendor makes the deposits, which credit BPMS Vendor shall, at DRS' option, either pay directly to DRS or accrue and set-off against future amounts that will be payable; (c) obtain release of the Source Code and other Deposit Materials in accordance with the Source Code Escrow Agreement; and/or (d) terminate the Agreement for a BPMS Vendor Event of Default in accordance with **Article 7**.

3.6.2 Source Code License. Upon any release of the Deposits to DRS under the Source Code Escrow Agreement, DRS shall have a perpetual, non-exclusive, non-transferable (except as permitted under the terms set forth in **Section 12.12**), unlimited user, non-assessable, irrevocable, worldwide, fully paid and multi-site license (and sublicense with respect to Third Party Solutions) either directly or through a Third Party retained by DRS, to use, modify, adapt, execute, compile and create derivative works of the Deposits for DRS' internal use and uses consistent with the terms set forth in **Section 3.1.1** in order to support and enable DRS' continued use of the Solution.

3.7 DRS Participation in Product Development.

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

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

3.7.4 Development Participation. BPMS Vendor will provide DRS with written notice of any features and functionality that are planned in new releases and versions generally within thirty (30) days, but no later than sixty (60) days, after BPMS Vendor first identifies such for a particular release or version.

ARTICLE 4

SUPPORT AND MAINTENANCE

4.1 General. BPMS Vendor's obligations to support, enhance and maintain the Solution ("**Support and Maintenance Services**") are set forth in **Schedule 4.1**. Additional Support and Maintenance Services may be set forth in the applicable Ordering Document. Except as otherwise set forth in an Ordering Document, BPMS Vendor's Support and Maintenance Services obligations with respect to the Solution shall commence on the date the applicable Ordering Document is signed and shall be made available to DRS commencing on the effective date of the Ordering Document and shall continue for the longer of: (a) fifteen (15) years from the date of the applicable Ordering Document, subject to DRS maintaining currency with new Versions as set forth in **Schedule 4.1**; or (b) as long as BPMS Vendor makes support and maintenance services for the applicable Solution available to its customers generally (referred to as the "**Minimum Available Support Term**"). Subject to BPMS Vendor's obligation to make available Support and Maintenance Services to DRS during the Minimum Available Support Term, BPMS Vendor shall have the right to discontinue Support and Maintenance Services for a Solution by providing DRS with two (2) years prior written notice of such discontinuation, but only if BPMS Vendor generally is discontinuing support and maintenance services for such Solution for all of its customer base.

4.2 Technical User Satisfaction Surveys. As part of BPMS Vendor's annual ongoing Support and Maintenance Services, BPMS Vendor shall develop one (1) or more technical user surveys designed to elicit feedback from DRS' technical support staff regarding their satisfaction with the Support and Maintenance Services provided by BPMS Vendor. Such technical user surveys shall be subject to DRS' prior review and approval.

ARTICLE 5

PRICING AND PAYMENT TERMS

5.1 Solution Fees.

5.1.1 Solution License Fees. The Solution license fees ("**Solution License Fees**") and related payment terms for all Solutions licensed by DRS from BPMS Vendor pursuant to the Agreement shall be set forth in the applicable Ordering Document.

5.1.2 Support and Maintenance Services Fees. Support and Maintenance Services Fees shall be set forth in the applicable Ordering Document. Unless other terms are set forth in the applicable Ordering Document, Support and Maintenance Services Fees: (a) shall be charged at a rate not greater than eighteen percent (18%) of the applicable discounted Solution License Fees; (b) shall commence one (1) year after delivery of the Solution; (c) shall be paid quarterly in arrears; and (d) may be increased by BPMS Vendor once annually commencing two (2) years after delivery of the Solution, provided that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Support and Maintenance Services Fees. Annual increases shall

not carry forward from one year to the next, meaning that if BPMS Vendor elects not to increase the Support and Maintenance Services Fees in one year by the full amount allowed hereunder, BPMS Vendor shall not have the right to carry forward such "unused" increase into subsequent years. DRS shall have the right to require BPMS Vendor to provide documentation substantiating the CPI calculations. If BPMS Vendor notifies DRS of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DRS of invoices presented by BPMS Vendor, DRS shall be entitled to a refund or credit based on the actual increase that was permissible.

5.1.3 Service Rates. Fees for Services (other than Support and Maintenance Services) shall be set forth in the applicable Ordering Document and the service rates set forth in **Schedule 5.1.3** shall apply for all such Services acquired by DRS from BPMS Vendor (the "**Service Rates**"). The Service Rates may be increased by BPMS Vendor once annually commencing on the third (3rd) anniversary of the Effective Date; provided, however, that such annual increases shall not exceed CPI, with a cap of three percent (3%), in each case of the then-current Service Rates. Annual increases shall not carry forward from one year to the next, meaning that if BPMS Vendor elects not to increase the Services Rates in one year by the full amount allowed hereunder, BPMS Vendor shall not have the right to carry forward such "unused" increase into subsequent years. DRS shall have the right to require BPMS Vendor to provide documentation substantiating the percentage fee increase. If BPMS Vendor notifies DRS of a fee increase which exceeds the foregoing limits, then notwithstanding any prior payment by DRS of invoices presented by BPMS Vendor, DRS shall be entitled to a refund or credit based on the actual fee percentage increase that was permissible. In determining Service Rates for personnel, BPMS Vendor shall not differentiate Service Rates within a single job or personnel classification, and if BPMS Vendor's business practices now or in the future nonetheless make this distinction, BPMS Vendor shall use the lesser of the applicable rates. BPMS Vendor shall not increase a particular person's billing rate as a result of a promotion, change in job classification or otherwise without DRS' prior written consent, it being the understanding of the parties that DRS does not expect any rate changes during the course of a particular project. Additionally, BPMS Vendor shall bill DRS in increments of one-quarter ($\frac{1}{4}$) hour for all professional or consulting Services provided, and shall not bill DRS for travel time unless, and only to the extent, permitted by then-current DRS Policies, including applicable rules and regulations set forth in the Washington State Administrative and Accounting Manual, currently available at <http://www.ofm.wa.gov/policy/10.htm>.

5.2 Payment of Invoices.

5.2.1 General. BPMS Vendor shall issue all invoices promptly following the occurrence of the invoicing events specified in the Agreement and/or in the applicable Ordering Document, and all such invoices shall be directed to DRS for payment. The initial form of invoice to be used by BPMS Vendor is set forth in **Schedule 5.2.1**. In order for DRS to process invoices from BPMS Vendor for payment, each invoice from BPMS Vendor must include the items listed below. Failure to provide each of the items below, as applicable, on the invoice shall be grounds for rejecting the invoice and requiring BPMS Vendor to resubmit with such information. Receipt of the invoice by DRS shall be deemed to occur only when all of the applicable information below is set forth on the invoice. BPMS Vendor invoices shall include the following items, as applicable: The DRS BPMS License and Support Agreement number; BPMS Vendor's name, address, phone number and

Federal Tax Identification Number; a reasonably detailed description of the Services performed (including the date and hours worked) and/or Solution licensed, as applicable; price for each item, or BPMS Vendor's list price for each item and applicable discounts; applicable taxes, shipping costs, other applicable charges; total price; and payment terms including any available prompt payment discounts. If expenses are invoiced, BPMS Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of Fifty Dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. By submitting an invoice, BPMS Vendor certifies that the amount billed is accurate with respect to the fees, charges and expenses set forth therein and that such fees, charges and expenses are allowed pursuant to the Agreement. All invoices shall be issued in U.S. Dollars, and payment shall be made by DRS in U.S. Dollars.

5.2.2 DRS Billing Practices and Payment Structures. BPMS Vendor shall comply with DRS' standard billing practices, including providing supporting documentation as may be reasonably required to substantiate invoice amounts and the other requirements of this Section. Except as may be otherwise set forth in an Ordering Document, and, as may be limited by applicable Law, DRS shall not make any payments to BPMS Vendor in advance for any Services or Equipment. Modifications to payment terms, including any adjustment to the payment of holdback amounts, shall require an amendment to the Ordering Document or a Change Order, as determined by DRS.

5.2.3 Timeliness and Accuracy of Invoices. BPMS Vendor acknowledges that timeliness and accuracy of invoicing is a critical DRS business requirement, as BPMS Vendor's failure to do so may adversely impact DRS' ability to encumber funds within the proper fiscal year. Accordingly, and without limiting the generality of the terms set forth in **Sections 5.2.1** or **5.2.2**, BPMS Vendor shall issue each invoice hereunder within sixty (60) days after the date on which BPMS Vendor was authorized by the terms of the Agreement and/or the applicable Ordering Document to issue such invoice to DRS (for each such invoice, the "**Invoicing Deadline**") and such invoice shall be accurate and correct. DRS shall notify BPMS Vendor of any inaccurate invoice, and BPMS Vendor shall re-submit an accurate invoice. DRS is not obligated to pay or partially pay any inaccurate invoices.

5.2.4 Payment and Disputes. The parties agree that within thirty (30) days following its receipt of the applicable invoice, DRS shall pay the invoice, provided that: (a) it was accurately and timely issued as provided in **Sections 5.2.1** and **5.2.2**; and (b) such invoice is not disputed by DRS in accordance with the further terms of this Section. BPMS Vendor shall accept electronic funds transfers as the form of payment. If an invoiced amount is disputed in good faith by DRS, then DRS promptly shall notify BPMS Vendor of the dispute and, until resolution of the dispute occurs pursuant to **Article 11**, DRS shall have the right to withhold and suspend disputed payments. All of the parties' obligations under the Agreement shall continue unabated during the duration of the dispute resolution. If DRS claims that it has been inappropriately billed but it has already paid the disputed amount, the parties shall work to resolve the matter within ninety (90) days from the date of DRS' written notice of such overpayment, and each party shall provide the other with all relevant documentation in an effort to resolve the matter as quickly as possible. If BPMS Vendor determines that DRS was billed improperly, it promptly shall issue to DRS a credit memo that DRS can deduct on the next invoice billed.

5.2.5 Small Business, Minority and Women's Business Enterprise (MWBE) and Veteran-Owned Business Participation. [DRAFTING NOTE: THIS SECTION APPLIES ONLY IF VENDORS IS A SMALL BUSINESS, MINORITY, WOMEN'S, OR VETERAN'S BUSINESS. IF NOT, THIS SECTION WILL BE DELETED.] With each invoice for payment and within thirty (30) days of DRS' request, BPMS Vendor shall provide DRS an affidavit of amounts paid. The affidavit of amounts paid shall either state that BPMS Vendor still meets the definition of small business vendor and/or maintains its MWBE and/or Veteran-Owned certification, or state that its subcontractor(s) still meets the definition of small business and/or maintain(s) its/their MWBE and/or Veteran-Owned certification(s) and specify the amounts paid to each small business, certified MWBE or Veteran-Owned subcontractor under the Agreement. BPMS Vendor shall maintain records supporting the affidavit of amounts paid in accordance with **Section 12.2.6**.

5.3 Travel and Out-of-Pocket Expenses. BPMS Vendor shall be reimbursed for reasonable staffing accommodation, living and travel expenses, in accordance with DRS Travel Policies as set forth in **Schedule 5.3**. Travel and out-of-pocket expenses, if agreed to, may be subject to a not-to-exceed or other agreed arrangement(s) as may be set forth in an Ordering Document. Travel and out-of-pocket expenses must be submitted with receipts and other required substantiating documentation in accordance with the DRS Policies within sixty (60) days from the date chargeable to DRS. Travel and out-of-pocket expenses that do not receive pre-approval by DRS will not be eligible for reimbursement.

5.4 Set-Off Rights. BPMS Vendor shall comply with DRS' billing practices relating to the issuance of credit notes and/or memoranda relating to amounts due to DRS under this Agreement, including any credits and unresolved disputed amounts as described in **Section 5.2**. If BPMS Vendor fails to issue to DRS a credit note or memorandum on its next invoice to DRS for any amounts that become due to DRS in accordance with the above, then DRS shall have the right to set off such amounts against any amounts then due or that become due to BPMS Vendor under the Agreement. If DRS cannot effectuate a complete set-off due to insufficient amounts owed by DRS to BPMS Vendor, BPMS Vendor promptly shall refund unrealized set off amounts to DRS no later than twenty (20) days following its receipt of written notice from DRS requiring it to do so.

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

ARTICLE 6

REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 *Functionality and Performance Warranties.*

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

6.1.2 *Solution Performance.* BPMS Vendor represents and warrants to DRS that the Solution shall meet or exceed the Performance Standards set forth in the applicable and all Ordering Document when operating in the operating environment described in the applicable and all Ordering Document (the "**Approved Equipment Configuration**"). The representations and warranties set forth in this Section shall remain in effect for as long as the Approved Equipment Configuration is not exceeded, and for as long as DRS continues to purchase Support and Maintenance Services. If: (a) the Approved Equipment Configuration has changed so that DRS is no longer operating the Solution within the Approved Equipment Configuration parameters; and (b) DRS wants to maintain the effectiveness of the Performance Standards with respect to the Solution, then BPMS Vendor shall make recommendations that are reasonably necessary to ensure that the Solution continues to operate in accordance with the Performance Standards while operating within the re-established Approved Equipment Configuration, including that DRS purchase additional equipment and/or license additional software. If DRS implements such recommendations, the Performance Standards shall remain in effect for as long as the re-established Approved Equipment Configuration is not exceeded, after which the process described in this Section shall be repeated at DRS' request. Without limiting any other rights and remedies that may then be available to DRS, BPMS Vendor shall correct any failure of the Solution to operate in accordance with the performance warranties set forth in this Section by providing additional equipment, software or services to DRS at no additional cost to DRS. The terms of this Section shall apply so long as DRS is paying for Support and Maintenance Services and DRS has not made modifications (but excluding any configurations permitted by or made in accordance with the Documentation) to the Solution without the written consent of BPMS Vendor.

6.1.3 Demonstrations. BPMS Vendor represents and warrants to DRS that, for any Demonstrations provided to DRS in which a Solution was proposed, BPMS Vendor used only generally available versions and releases of the Solution when it developed the Demonstrations, including the use of actual file structures, APIs, layouts and screens; (b) the test data populated actual files and file structures used in the Solution to show the movement of data native in the system and was not simulated in (*i.e.*, splashed into) temporary Excel or other files created to show features, functionality or information flows that are not present in the Solution; and did not use any tools, utilities, or other techniques to replicate or simulate any portion of the Solution.

6.1.4 Certification of Third Party Equipment and Software.

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

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

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

6.1.5 Solution Design Limitations. Each Ordering Document involving the implementation of a Solution shall provide a representation and warranty regarding the design limitations with respect to the Solution, including transaction volume throughput, field and record sizes, scalability and capacity limitations. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as DRS is paying for Support and Maintenance Services.

6.1.6 Disabling Codes. BPMS Vendor represents and warrants to DRS that the Solution and any Deliverable provided by BPMS Vendor do not contain – and DRS shall not receive from any BPMS Vendor data transmission via the Internet, modem, tape or other BPMS Vendor-provided medium (including any connection to any BPMS Vendor web-site or bulletin board) – any virus, worm, trap door, back door, timer, clock, counter, time lock, time bomb, Trojan horse, file infectors, malware, rootkits, boot sector infectors or other limiting routine, instruction or design including surveillance software or routines or data gathering or collecting software or devices that could, if triggered, erase data or programming, collect data in a surveillance or other capacity, have an adverse impact on the Solution, or cause the Solution or any component thereof to become inoperable or otherwise incapable, in whole or in part, of being used in the full manner for which the software was intended to be used (a "**Disabling Code**"). If BPMS Vendor introduces a Disabling Code, at its sole cost and expense, BPMS Vendor shall, as applicable: (a) take all steps necessary to test for the presence of Disabling Codes; (b) remove the Disabling Code; (c) install and implement a new copy of the Solution at DRS, if applicable, without the presence of the Disabling Code; (d) restore any and all data and programming lost by DRS as a result of such Disabling Code (such restoration shall include, if needed, on-site technical assistance to extract data from corrupted data files, restoration of backup media, data log analysis, and the like). This representation and warranty shall survive the expiration or termination of the Agreement.

6.1.7 Exclusions. BPMS Vendor shall not be responsible for a breach of the representations and warranties set forth in **Section 6.1** to the extent such breach is caused by: (a) if an express responsibility of DRS and not BPMS Vendor, DRS' failure to properly install and maintain the Solution, but only if BPMS Vendor has provided DRS with written notice of such failure; (b) any alterations of or additions to the Solution performed by a party other than BPMS Vendor or a Third Party not acting on BPMS Vendor's behalf, at its direction or with its approval; or (c) use of the Solution in a configuration not set forth in the Documentation or an approved configuration.

6.1.8 Correction of Failure to Meet Functionality and Performance Warranties. Upon any failure to comply with the representations, warranties and/or covenants set forth in this Section, within the applicable time frames specified in **Schedule 4.1**, or within five (5) days if such time frames are not applicable to the breach, in each case following receipt of written notice from DRS of such failure, BPMS Vendor shall repair, replace or correct, at BPMS Vendor's sole cost and expense, the applicable component(s) of the Solution, including by providing any additional software and/or services that may be necessary. The remedies set forth in this Section shall be in addition to any Credits and/or any other rights and remedies that may be available to DRS.

6.2 Services Warranty. BPMS Vendor represents and warrants to DRS that it shall perform all Services in accordance with industry practices and standards generally applicable to

such Services; provided, however, that where the Agreement or an Ordering Document specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish such standard or criteria for performance.

6.3 *Open Systems Warranty and Covenants.* BPMS Vendor represents and warrants to DRS that, as of the Effective Date, the Solution (including Integrations, Interfaces, Extensions and other software-based Deliverables) is Compliant with current versions of IEEE 802.3, 802.11(g/n)(wireless), industry standards for wave form transmissions ANSI X3T9.5 (FDDI Specifications), EIA/TIA 568A (building wiring specifications), TCP/IP protocols, HTTP/HTTPs standards and other standards that may be set forth in an Ordering Document. BPMS Vendor covenants that the Solution and future releases and version of the Solution shall be Compliant with such standards, as such standards are updated from time-to-time. For purposes of the Agreement, the term "**Compliant**" shall mean that the Solution is compatible with the applicable standard and is able to utilize fully each and every feature and functionality of that release level without workarounds or additional programming. The representations and warranties set forth in this Section shall remain in effect for as long as the Agreement is not terminated.

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

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

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

6.7 Warranty of Title. BPMS Vendor represents and warrants to DRS that it has the full authority to provide, license or sublicense the Solution to DRS. This representation and warranty shall survive the expiration or termination of the Agreement.

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

6.9 Offshoring. BPMS Vendor represents, warrants and covenants to DRS that BPMS Vendor shall not: (a) except as may otherwise be set forth in an Ordering Document, perform any of its obligations under the Agreement from locations, or using employees, contractors and/or agents, situated outside the United States; or (b) directly or indirectly (including through the use of subcontractors) transmit any State Data outside the United States; or (c) allow any State Data to be accessed by BPMS Vendor employees, contractors and/or agents from locations outside the United States or transmitted to locations outside the United States. If an Ordering Document provides that Services may be provided offshore, to the extent any Law or regulation enacted after the Effective Date or any policy or circumstances exist or are created which have, or may have, an adverse impact on DRS with respect to legal compliance or its relationships with the State, its unions or otherwise, BPMS Vendor acknowledges and agrees that, to the extent technically feasible and commercially reasonable, it shall change the delivery of any affected offshore Services in a manner which enables DRS to avoid such adverse impact; or if the foregoing objective cannot be met to the satisfaction of the parties, then the parties shall engage in good faith negotiations to arrive at a mutually agreeable reasonable alternative. To the extent that an Authorized User is physically located outside of the United States and requests access to the Solution or Support and Maintenance Services from BPMS Vendor, BPMS Vendor's provision of access to the Solution or Support and Maintenance Services to such user physically located outside the United States shall not constitute a breach of this Section provided that BPMS Vendor otherwise complies with the terms of this Section.

6.10 State Data. BPMS Vendor represents and warrants to DRS that it shall not collect, use, store, display and/or transmit State Data (including in a summary, extracted, redacted or de-identified form) other than as necessary to fulfill its obligations under the Agreement. BPMS Vendor shall not restrict in any manner, DRS' access or ability to download State Data, and shall provide any access or other codes to permit DRS to access and download at its option, at any time and without the requirement to notify BPMS Vendor.

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

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

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

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

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

(e) Pay or agree to pay any person, other than *bona fide* employees working solely for BPMS Vendor or such Affiliates or any of BPMS Vendor's subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of the Agreement.

6.12 Compliance with Federal and State Programs. With respect to BPMS Vendor and BPMS Vendor's employees and subcontractors providing Services to DRS:

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

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

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

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

(e) Upon any of the occurrences described above, BPMS Vendor shall provide written notice immediately to DRS in accordance with **Section 12.1**.

6.13 Additional Representations and Warranties. BPMS Vendor agrees that its performance under the Agreement shall include, in addition to the warranties set forth in this Article, all representations and warranties that may be set forth in an Ordering Document.

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

6.15 Disclaimer of Representations and Warranties. **THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THE AGREEMENT AND IN ANY SCHEDULE OR EXHIBIT TO THE AGREEMENT, INCLUDING IN ANY ORDERING DOCUMENT, ADDENDUM OR ATTACHMENT, CONSTITUTE THE ONLY REPRESENTATIONS AND WARRANTIES OF THE PARTIES AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

ARTICLE 7

TERM AND TERMINATION

7.1 Term.

7.1.1 Term of Agreement. The Agreement shall commence on the Effective Date and remain in effect until the date that no obligations remain under any Ordering Document, unless the parties mutually agree in writing to terminate the Agreement, DRS terminates the Agreement pursuant to **Section 7.1.3**, or a party elects to terminate the Agreement following the occurrence for an Event of Default or under the circumstances described in **Section 12.5**.

7.1.2 Term of Ordering Documents. Each Ordering Document shall commence on its effective date and remain in effect: (a) with respect to an Ordering Document, until the obligations under the Ordering Document have been fulfilled, provided that an Ordering Document may provide that certain terms and conditions may survive; (b) the parties mutually agree in writing to terminate the Ordering Document; (c) DRS terminates the Ordering Document pursuant to **Sections 7.1.3** or **7.1.4**, or in accordance with other termination provisions of the Agreement; or (d) a party elects to terminate the Ordering Document following the occurrence of an Event of Default or under the circumstances described in **Section 12.5**.

7.1.3 Termination for Convenience. DRS shall have the right to terminate the Agreement in whole or in part, any Ordering Document, including any Ordering Document involving the purchase of Services, and/or any line or category of Services being provided under an Ordering Document, including Support and Maintenance Services (in whole or in part), without cause and for its convenience and without further liability (except as provided in this Section) upon ten (10) days prior written notice to BPMS Vendor. Following any such termination, DRS will only be responsible for: (a) subject to the terms of **Section 5.3**, actual, documented reimbursable expenses incurred by BPMS Vendor prior

to receipt of the written notice of termination; (b) the value (at the applicable rates under the Agreement) of any Services provided by BPMS Vendor prior to (and/or, if authorized as provided above in this Section, after) receipt of the written notice of termination; and (c) Solution License Fees according to the following:

(i) if DRS elects to retain any Solution Module or Modules, then DRS shall pay the remaining balance of such Solution License Fees, if any, and the terms of **Article 3, Sections 6.5 through 6.8, and Articles 8 through 12** shall remain in effect; or

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

Upon BPMS Vendor's receipt of written notice of termination pursuant to this Section, to the extent not previously delivered, BPMS Vendor shall deliver to DRS all Deliverables developed by BPMS Vendor, whether completed or in draft form. In determining the fees owed under **subsection (b)** above with respect to partially completed Deliverables developed under a fixed fee arrangement, BPMS Vendor shall disclose to DRS: (d) the number of hours already expended by BPMS Vendor toward achieving the milestone or Deliverable ("**E**"); and (e) the number of hours still needed by BPMS Vendor to complete the Deliverable or milestone ("**N**"). The percent complete for the Deliverable or milestone will be represented by the fraction of: $E/(N+E) \times 100$. For example, if BPMS Vendor has expended sixty (60) hours towards completing a Deliverable or milestone and BPMS Vendor estimates that it will take ninety (90) additional hours to complete such Deliverable or milestone, the Deliverable or milestone will be calculated to be forty percent (40%) complete (*i.e.*, $60/(60+90) \times 100 = 40\%$). DRS shall then have the option of requiring BPMS Vendor to complete the Deliverable or milestone for the applicable unpaid Deliverable or milestone fee, or pay BPMS Vendor a *pro rata* amount of such Deliverable or milestone fee based on the percent complete as calculated above.

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

7.1.5 Survival. Any terms of the Agreement and/or any Ordering Documents that would, by their nature or through the express terms of the Agreement or the applicable Ordering Document, survive the expiration or termination of the Agreement and/or the applicable Ordering Document shall so survive, including the terms of **Sections 3.1, 3.3,**

3.4, 3.6, 5.2 through 5.5, 6.1.3, 6.1.5 through 6.1.7, 6.3 through 6.15, and Articles 7 through 12.

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

(a) BPMS Vendor's failure to correct a Level 1 Defect or provide a workaround reasonably acceptable to DRS within the timeframes set forth in the Agreement, and if no timeframe is specified, then within five (5) days, or BPMS Vendor's material breach of any of its other Support and Maintenance Services obligations, each of such acts of non-compliance shall constitute a BPMS Vendor Event of Default;

(b) A material breach of BPMS Vendor's representations, warranties and covenants set forth in **Article 6**, which breach shall constitute a BPMS Vendor Event of Default, provided that: (i) such breach is not cured within the applicable time frames, if any, set forth in the Agreement, or if no time frame for curing such breach is specified, then within five (5) days following BPMS Vendor's receipt of written notice of such breach; or (ii) if the breach reasonably cannot be cured within the time frames specified in the foregoing **subsection (i)**, BPMS Vendor has failed to provide to DRS within five (5) days following its receipt of written notice of such breach a written plan to cure such breach that is acceptable to DRS in its sole discretion;

(c) A party's breach of its confidentiality and other obligations set forth in **Article 6**, which shall constitute an Event of Default by the breaching party;

(d) BPMS Vendor's failure to maintain insurance coverage as specified in **Sections 12.3**, provided that such failure is not cured by BPMS Vendor within thirty (30) days following receipt of written notice of such failure, which failure shall constitute a BPMS Vendor Event of Default;

(e) BPMS Vendor's failure to make any Deposit(s) required under the Source Code Escrow Agreement in accordance with the terms set forth therein, provided that such failure is not cured within thirty (30) days following receipt of written notice of such failure, which shall constitute a BPMS Vendor Event of Default;

(f) DRS' failure to pay any undisputed invoice in accordance with the terms of **Section 5.2.4**, which failure shall constitute a DRS Event of Default;

(g) A party's material breach of any other representation, warranty or covenant set forth in the Agreement, which material breach shall constitute an Event of Default by the non-performing party, provided that: (i) such failure is not cured within the applicable time frames, if any, set forth in the Agreement, or if no time frame for curing such breach is specified, then within ten (10) days following the non-performing party's receipt of written notice of such failure; or (ii) if the breach reasonably cannot be cured within the time frames specified in the foregoing **subsection (i)**, the non-performing party has failed to provide to the other party within seven (7) days following its receipt of written notice of

such failure a written plan to cure such failure that is acceptable to such other party in its sole discretion;

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

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

7.3 Rights and Remedies of BPMS Vendor Upon an Event of Default of DRS.

Upon the occurrence of a DRS Event of Default, BPMS Vendor shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 7.2** occur that would give rise to a DRS Event of Default but DRS has effected a cure within the applicable time frames set forth in **Section 7.2**, if any, or thereafter, then BPMS Vendor nonetheless shall be entitled to the remedies set forth in **subsections (b) and (c)** below.

(a) Subject to DRS' rights as set forth below, fully or partially terminate the Agreement and/or the affected Ordering Document(s); and/or

(b) Subject to the terms of **Article 8**, recover damages from DRS; and/or

(c) Any other additional remedies that may be set forth in an Ordering Document.

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

7.4 Rights and Remedies of DRS Upon an Event of Default of BPMS Vendor.

Upon the occurrence of a BPMS Vendor Event of Default, DRS shall be entitled to all of the remedies described below in this Section. In addition, if one (1) or more events as described in **Section 7.2**

occur that would give rise to a BPMS Vendor Event of Default but BPMS Vendor has effected a cure within the applicable time frames set forth in **Section 7.2**, if any, or thereafter, then DRS nonetheless shall be entitled to recover damages from BPMS Vendor, subject to the terms of **Article 8**.

- (a) Fully or partially terminate the Agreement, the affected Ordering Document (or Schedule or Exhibit thereto), Statement of Work or other document, or the affected line or category of Services being provided under an Ordering Document; and/or
- (b) Subject to the terms of **Article 8**, recover damages from BPMS Vendor; and/or
- (c) If a Disclosure Event has occurred, obtain the Deposits from escrow in accordance with the terms of the Source Code Escrow Agreement for use as provided in the Agreement, and in such event, obtain the transfer of Knowledge as described in **Section 3.5**; and/or
- (d) For terminated Services, obtain a refund of any pre-paid but unearned Services fees; and/or
- (e) Obtain from BPMS Vendor transition Services in accordance with **Section 7.5**; and/or
- (f) Any other additional remedies that may be set forth in an Ordering Document.

7.5 Transition Services. Upon an expiration or a complete or partial termination of the Agreement or one (1) or more Ordering Documents, DRS shall have the right, at DRS' option, for up to thirty six (36) months (the "**Transition Period**"), to all or any combination of the following:

- (a) Continue to receive from BPMS Vendor all Support and Maintenance Services (at the applicable rates under the Agreement);
- (b) If DRS will be transitioning to a new system or software solution (irrespective of whether DRS' license to use any Solution has been terminated as provided in **Section 7.3**), receive from BPMS Vendor all Services reasonably necessary to effectuate an orderly transition to such new system or software solution, including:
 - (i) Providing assistance to DRS in transferring data files to an industry-standard format designated by DRS;
 - (ii) Meeting with the successor system supplier, either in person or by telephone, as requested by DRS;
 - (iii) Providing to DRS all data formats, data definition file layouts and schematics;
 - (iv) Providing to DRS functional and technical specifications, and the source code and related documentation (including internally documented and separated documented instructions and materials) for Integrations, Interfaces,

Extensions and other software-based Deliverables , if any;
and

(v) Providing to DRS such other materials and information as may be needed or required by DRS to effectuate the transition.

(c) If DRS' license to use any Solution has been terminated as provided in **Section 7.3**, continue to use the applicable Solution for the purposes set forth herein and subject to the restrictions set forth herein; and

(d) Obtain from BPMS Vendor the transfer of Knowledge described therein.

All Services (excluding Support and Maintenance Services, unless provided at DRS' option on a time-and-materials basis) provided by BPMS Vendor during the Transition Period shall be provided at the Service Rates or other applicable rates set forth in the Agreement. Notwithstanding the foregoing, if the Agreement or any Ordering Document is completely or partially terminated due to the occurrence of a BPMS Vendor Event of Default, BPMS Vendor shall provide such transition Services at no cost to DRS.

ARTICLE 8

LIMITATIONS ON LIABILITY

8.1 Cap on Damages. EXCEPT AS SET FORTH IN SECTION 8.2:

(A) WITH RESPECT TO BPMS VENDOR'S LIABILITY TO DRS, BPMS VENDOR'S CUMULATIVE LIABILITY TO DRS FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL NOT EXCEED TWO (2) TIMES THE FEES PAID OR TO BE PAID UNDER THE AGREEMENT (INCLUSIVE OF ALL ORDERING DOCUMENTS); AND

(B) WITH RESPECT TO DRS'S LIABILITY TO BPMS VENDOR, DRS SHALL BE LIABLE TO BPMS VENDOR ONLY FOR UNPAID AND UNDISPUTED INVOICES FOR SERVICES AND EXPENSES (INCLUDING ANY INVOICES FOR SERVICES LATER DETERMINED TO BE VALID).

8.2 Exclusions from Limitations on Liability. Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in **Section 8.1** shall not apply: (a) to claims arising as a result of bodily and personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) to claims arising as a result of damage to real property or tangible personal property (including loss of data) caused by a party or its employees, agents and/or subcontractors; (c) to BPMS Vendor's failure to comply with its obligations set forth in **Section 1.3.6** or **Articles 9** or **10**; (d) to any amounts paid by BPMS Vendor as Credits; and (e) any negligence or willful misconduct on the part of the employees, agents and/or representatives of BPMS Vendor and/or its subcontractors.

8.3 Restoration of Liability Cap. If, at any time the total aggregate liability of BPMS Vendor for claims asserted by DRS under or in connection with the Agreement exceeds fifty percent (50%) of the liability cap set forth in **Section 8.1(A)**, DRS may demand that BPMS Vendor

increase such liability cap by the amount required to restore such liability cap to the highest value of such cap under the Agreement within thirty (30) days following its receipt of a written request from DRS to do so. If BPMS Vendor fails or refuses to issue a written notice increasing the amount of such liability cap in accordance with the foregoing sentence, DRS shall have the right to terminate the Agreement and/or any Ordering Document (in whole or in part) by delivering a written notice of termination to BPMS Vendor. Any termination pursuant to this Section shall not constitute a termination under any other provision of the Agreement.

8.4 Costs of Cure. To the extent a party elects to cure any failure by it to comply with its obligations under the Agreement, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the cap on damages described in **Section 8.1**.

ARTICLE 9

DATA RIGHTS, CONFIDENTIALITY AND SECURITY

9.1 Ownership of and Access to Data. Each party is and shall remain the owner of all right, title and interest in and to any data that it owned prior to the Effective Date, and in and to any data to which it may hereafter acquire ownership. Without limiting the generality of the foregoing, DRS shall own all right, title and interest in and to State Data. Except as otherwise provided in the Agreement, no party shall be obligated to convey any right, title and/or interest in any data to the other. At all times, DRS shall have access to any State Data retained or held in possession by BPMS Vendor, and such data shall be exportable and downloadable at no additional cost or expense to DRS.

9.2 Confidential Information.

9.2.1 Uses of Confidential Information. The Receiving Party shall not directly or indirectly use the Disclosing Party's Confidential Information except as necessary to perform the Receiving Party's obligations and/or exercise the Receiving Party's rights under the Agreement.

9.2.2 Safeguarding Confidential Information. The Receiving Party shall exercise the same degree of care and protection with respect to Confidential Information that the Disclosing Party uses with respect to its own Confidential Information, but in all events at least a reasonable degree of care.

9.2.3 Disclosures of Confidential Information. Except as permitted under this **Section 9.2.3**, the Receiving Party shall not directly or indirectly publish, transmit, release, disclose or otherwise make available the Disclosing Party's Confidential Information to any other person without the prior written consent of the Disclosing Party, which consent may be withheld in the Disclosing Party's sole discretion. Notwithstanding the foregoing:

(a) the Receiving Party may disclose the Disclosing Party's Confidential Information as expressly permitted under the terms of the Agreement;

(b) DRS may disclose BPMS Vendor's Confidential Information to: (i) Authorized Users; and (ii) Third Parties who or that have a need to know in

connection with the Solution or Services or the exercise or enforcement of rights or obligations under the Agreement, provided that any such Third Party has executed a confidentiality agreement with DRS that includes within the scope of the confidential information thereunder the portions of BPMS Vendor Confidential Information that will be disclosed or for Third Parties that have not signed a confidentiality agreement with DRS as of the Effective Date, such Third Party executes the Third Party Confidentiality Agreement and Non-Disclosure Agreement set forth in **Exhibit 3**;

(c) BPMS Vendor may disclose DRS Confidential Information to the employees and authorized agents of BPMS Vendor that have a need to know in connection with the Solution or Services, provided that the employees and agents have executed a confidentiality agreement with BPMS Vendor containing confidentiality provisions no less protective than the terms contained herein (and including within the scope of the confidential information thereunder the portions of the DRS Confidential Information that will be disclosed);

(d) BPMS Vendor may disclose DRS Confidential Information to authorized subcontractors that have a need to know in connection with the Services, provided that: (i) such subcontractor executes the Subcontractor Confidentiality and Non-Disclosure Agreement set forth in **Exhibit 2**; and (ii) the employees and agents of such subcontractor have executed a confidentiality agreement with subcontractor containing confidentiality provisions no less protective than the terms contained herein (and including within the scope of the confidential information thereunder the portions of the DRS Confidential Information that will be disclosed);

(e) the Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's accountants, attorneys, financial advisors and other similar advisors who or that have a need to know such Confidential Information;

(f) provided the disclosure is made in accordance with **Section 9.3**, DRS may disclose BPMS Vendor Confidential Information pursuant to a public records request;

(g) provided the disclosure is made in accordance with **Section 9.4**, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent legally required to disclose;

(h) provided the disclosure is made for the purposes set forth in **Section 9.5**, DRS may disclose BPMS Vendor Confidential Information to other states and governmental institutions.

9.3 Public Records Disclosures. BPMS Vendor acknowledges that DRS is a public organization and that the terms and conditions of the Agreement (including all Ordering Documents) and other BPMS Vendor information including BPMS Vendor Confidential Information, Documentation and Deliverables may be subject to disclosure under applicable Law, including Washington State's Public Records Act (RCW 42.56). If such a disclosure request is made of DRS, DRS shall, generally within ten (10) business days prior to release, notify BPMS Vendor of

any such request, in order to provide BPMS Vendor time to seek judicial relief if it believes such information should not be released. Subject to a court of competent jurisdiction issuing an order prohibiting such release or the requesting party notifying DRS in writing prior to DRS' planned release that it has rescinded its request for disclosure, DRS shall release and disclose all requested information without liability therefore.

9.4 Legally Required Disclosures. If the Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party, to the extent permitted by Law: (a) shall not disclose the Confidential Information without providing the Disclosing Party with reasonable prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement; (b) if, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party or any of its employees are nonetheless, in the written opinion of the Receiving Party's counsel (a copy of which opinion shall be delivered to the Disclosing Party), legally compelled to disclose Confidential Information to any tribunal or otherwise stand liable for contempt or suffer other censure or penalty, the Receiving Party or its employees may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises the Receiving Party that it is legally required to disclose; and (c) shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

9.5 Notification and Mitigation. If the Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party, the Receiving Party promptly and fully shall notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure and shall mitigate any potential harm and further use or disclosure of such Confidential Information.

9.6 Return of Confidential Information. Subject to the further terms of this Section, and except as otherwise permitted under this Agreement, at any time upon written request by the Disclosing Party, the Receiving Party promptly shall: (a) return to the Disclosing Party, or at the Disclosing Party's request, delete or destroy, all Confidential Information (and all copies thereof) of the Disclosing Party then in its possession or control, in whatever form, or, in the case of a written request by the Disclosing Party, the Confidential Information specified in such request as then in the Receiving Party's possession or control, in whatever form; and (b) unless the Disclosing Party otherwise consents in writing, deliver to the Disclosing Party, or at the Disclosing Party's request, delete or destroy, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or under the control of the Receiving Party. Notwithstanding the foregoing: (c) the Receiving Party may retain copies of the Disclosing Party's Confidential Information to the extent required by Law and/or to the extent otherwise permitted under the Agreement; and (d) if any return, deletion or destruction of Confidential Information will have an adverse effect on a party's ability to exercise its rights and/or perform its obligations under the Agreement, then the parties shall discuss reasonably available alternatives to such return, deletion or destruction.

9.7 **Security.**

9.7.1 Data Security Program. BPMS Vendor shall maintain in effect at all times a comprehensive data security program that includes reasonable and appropriate administrative, technical and physical security measures designed to detect, prevent and mitigate the risk of identity theft and protect against the destruction, loss, unauthorized access, disclosure, use and/or alteration of data (whether or not encrypted), including DRS Confidential Information, in BPMS Vendor's possession or under BPMS Vendor's control, and which shall be no less rigorous than those measures that are required to be maintained by BPMS Vendor or DRS to comply with applicable Laws. BPMS Vendor will provide the data security program to DRS for its review, and DRS shall have the right to provide feedback and comment on BPMS Vendor's data security program.

9.7.2 Security Breaches. If BPMS Vendor discovers or is notified of the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of DRS Confidential Information or any attempt to access DRS Confidential Information that is reasonably likely to result in the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of DRS Confidential Information (each such event, a "**Security Event**"), BPMS Vendor shall without undue delay and unless prohibited by Law: (a) promptly (and not more than within three (3) days) notify DRS of the Security Event; (b) investigate the Security Event and provide reasonable cooperation with DRS' investigation of the Security Event, including periodic updates with respect to BPMS Vendor's investigation of the Security Event; (c) if the source of the Security Event is not within the control of BPMS Vendor, provide reasonable cooperation with DRS' development of a risk assessment, root cause analysis and corrective action plan, including DRS' mitigation and remediation activities; and (d) comply to the extent applicable to BPMS Vendor personnel, and provide reasonable cooperation with DRS in complying, with the requirements of all applicable Personal Information Laws and other applicable Laws. If the source of the Security Event is within the control of BPMS Vendor personnel, BPMS Vendor shall: (e) promptly provide a written report to DRS that sets forth BPMS Vendor's risk assessment, root cause analysis and corrective action plan; (f) implement the corrective action plan and mitigate the effects of the Security Event as soon as practicable; and (g) provide DRS periodic updates with respect to BPMS Vendor's mitigation and corrective action efforts.

9.7.3 Personal Information and Data Breach Notification Laws. BPMS Vendor acknowledges that DRS Confidential Information may include Personal Information pertaining to residents in Washington State and other states that have enacted Personal Information and Data Breach Notification Laws, including RCW 19.55.010 and RCW 42.56.590 requiring under some circumstances individual notice and other reporting requirements within forty days of discovery of the Security Event. Having acknowledged the foregoing, in addition to its obligations set forth in **Section 9.7.2**, BPMS Vendor shall comply with the requirements of all applicable Personal Information and Data Breach Notification Laws. If and to the extent any unauthorized access, disclosure or use of DRS Confidential Information: (a) is attributable to a breach by BPMS Vendor of its obligations under the Agreement, including the failure of BPMS Vendor to comply with the DRS Security Policies and Procedures; and (b) triggers notice or other requirements under a Personal Information or Data Breach Notification Law, BPMS Vendor shall bear the costs incurred by DRS and any Agency in complying with its or their legal obligations relating to such unauthorized access, disclosure or use of DRS Confidential Information, including

the reasonable costs of providing notices, a toll-free call center / help desk, credit monitoring services and identity theft insurance to affected individuals for up to two (2) years. Nothing contained herein shall be deemed to release BPMS Vendor from its indemnification obligations as set forth in **Article 10**.

9.8 HIPAA. If BPMS Vendor (or any subcontractor) will, or will likely, have access to protected health information (as defined in the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as amended, "**HIPAA**") of DRS, BPMS Vendor and any applicable subcontractor(s) shall execute the then-current form of Business Associate Agreement of DRS.

9.9 Survival. The terms of this Article shall survive the expiration or termination of the Agreement.

ARTICLE 10

INDEMNIFICATION

10.1 General. Subject to the further terms of this Article, BPMS Vendor (the "**Indemnifying Party**") shall assume all risk of and responsibility for, and shall indemnify, defend and hold harmless DRS, the State, and their respective officers, employees, contractors, officials, consultants, volunteers, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from and against all claims, demands, suits, actions, recoveries, judgments and actual costs and expenses (including all attorneys', advisors and consultant fees and costs) in connection therewith on account of any Third Party claim arising out of or relating to: (a) bodily injury, including death, and real property and tangible personal property damage arising from or resulting directly or indirectly from the Solution, Services or Deliverables provided under the Agreement and/or from the acts or omissions of the employees, agents or representatives of BPMS Vendor and/or its subcontractors; (b) any failure of BPMS Vendor or its employees, agents and/or representatives to comply with the terms of **Article 9**; (c) any failure of BPMS Vendor or its employees, agents and/or representatives to comply with the obligations set forth in **Section 12.15**; (d) DRS' rights to indemnity set forth in **Section 12.5**; (e) BPMS Vendor's failure to timely deliver any Regulatory Modifications to DRS as required under **Schedule 4.1**; (f) a breach of BPMS Vendor's obligations set forth in the Agreement which results in a fine or penalty to an Indemnified Party; or (g) the negligence or willful misconduct of the employees, agents or representatives of BPMS Vendor and/or its subcontractors in the performance of its or their obligations under the Agreement. The indemnity provisions in this Section shall not be limited by reason of any insurance coverage required under the Agreement. BPMS Vendor's indemnity obligations under this Section may be reduced to the extent DRS is found to have been contributorily negligent.

10.2 Infringement. Subject to the further terms of this Article, BPMS Vendor shall indemnify, defend and hold harmless the Indemnified Parties from and against any claim asserted or any claim, suit or proceeding brought by a Third Party against the Indemnified Parties alleging that the Solution or any deliverables, or any part thereof, or DRS' use of the Solution or deliverables constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other Intellectual Property Right. BPMS Vendor shall pay all damages awarded or agreed to settlement payments, and any actual costs and expenses, including attorneys' fees, litigation costs (including the costs and expenses of any appellate

bonds) arising from any such claim and incurred by the Indemnified Parties; provided, however, that the Indemnified Parties, after receiving notice thereof, promptly shall advise BPMS Vendor of any such claim, suit or proceeding and, at BPMS Vendor's expense, cooperate with BPMS Vendor in the defense thereof. If BPMS Vendor reasonably believes that any such claim, suit or proceeding may be successful, BPMS Vendor shall, at no additional cost to the Indemnified Parties, either: (a) procure for the Indemnified Parties the right to continue using the portion of the Solution or deliverables subject to such claim, suit or proceeding; or (b) replace or modify the Solution or deliverable so that it no longer is subject to any such claim, suit or proceeding while maintaining equivalent or better functionality and performance capabilities. No undertaking of BPMS Vendor under this Section shall extend to any alleged infringement or violation to the extent that such infringement or violation arises from adherence to design modifications, specifications, drawings, or written instructions that BPMS Vendor is specifically directed by DRS to follow, or relates to uses of the Solution or deliverable in combination with other systems, furnished either by BPMS Vendor or others, which combination was not recommended or otherwise approved by BPMS Vendor, where the lack of the combination would not, in and of itself, be infringing.

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

10.4 Procedures for Indemnification.

10.4.1 General. Promptly after becoming aware of same, the Indemnified Parties shall notify BPMS Vendor of any Third Party claim covered under the terms of **Sections 10.1 or 10.2**, as applicable, for which the Indemnified Parties seek indemnification.

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

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

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

ARTICLE 11

DISPUTE RESOLUTION

11.1 Administrative-Level Performance Review. If a dispute relating to the Agreement arises between the parties, the BPMS Vendor Account Executive and the DRS Project Director may, but shall not be obligated to, meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the initial request for a meeting, or if

the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through an executive-level performance review as provided in **Section 11.2**.

11.2 Executive-Level Performance Review. For disputes that are not resolved at the level specified in **Section 11.1**, the Executive Sponsors may, but shall not be obligated to, meet and attempt to resolve the dispute. If such representatives are unable to resolve the dispute within five (5) business days after the parties have commenced negotiations, or ten (10) days have passed since the initial request for negotiations at this level, or if the parties do not agree to invoke this level of dispute resolution, then the parties may seek to resolve the dispute through mediation as hereinafter provided or, if the parties do not agree to submit the dispute to mediation, to seek any and all rights and remedies that may be available to them as provided in the Agreement.

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

11.4 Redress in Court; Injunctive Relief. Informal dispute resolution under this Article shall not be a pre-condition to any action by a party to enforce its rights under the Agreement. In addition to other remedies available at law or in equity, either party may seek injunctive relief from a court of competent jurisdiction.

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

ARTICLE 12

MISCELLANEOUS

12.1 Notices. Any written notice required or permitted to be delivered pursuant to the Agreement shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via e-mail, with a confirmation copy sent via overnight mail; or (d) one (1) business day after deposit with a national overnight courier, in each case addressed to the following address:

If to DRS:

Washington State Department of
Retirement Systems
PO Box 48380
6835 Capital Boulevard, S.E.
Tumwater, Washington 98501
Attention: Legal/Legislative Manager
E-mail: _____

and

with a copy to:

Washington State Attorney General's
Office
PO Box 40108
7141 Cleanwater Lane, S.W.
Olympia, WA 98504-0108
Attention: _____
Email: _____

If to BPMS Vendor:

Attention: _____
E-mail: _____

and

with a copy to:

Attention: _____
E-mail: _____

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

12.2 Audits and Requests for Records.

12.2.1 Financial Audits. At any time up to and including six (6) years following the termination of the Agreement, DRS (itself or through its Third Party auditor or a State auditor) shall have the right upon reasonable advance written notice and on an annual basis to fully audit the books and records of BPMS Vendor to the extent reasonably necessary to confirm the accuracy and appropriateness of all invoices issued under the Agreement, including all supporting details, and to verify compliance with applicable Laws. All such audits shall be conducted between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time. If any audit demonstrates that BPMS Vendor has overcharged or undercharged DRS, then either: (a) BPMS Vendor promptly shall refund the overcharges to DRS; or (b) following receipt of BPMS Vendor's invoice, DRS shall pay the undercharge to BPMS Vendor. Further, if any overcharge is in excess of five percent (5%) of the aggregate charges incurred during the period to which the audit relates, then BPMS Vendor shall reimburse DRS for the reasonable costs and expenses incurred to conduct such audit.

12.2.2 Solution Usage Confirmation. Confirmation of DRS' usage of the Solution shall be accomplished through an attestation process as follows: If BPMS Vendor believes that DRS is in violation of **Section 3.1**, at BPMS Vendor's written request, which request shall describe in detail the facts and circumstances giving rise to such belief and explain why BPMS Vendor believes that such facts and circumstances constitute a violation of **Section 3.1**, an officer of DRS shall promptly provide a written attestation to BPMS Vendor stating that DRS is in compliance with the terms of such section or stating the specific degree of non-compliance and DRS' immediate efforts to establish compliance, provided, however, that such attestation shall not create a separate cause of action in

connection with a claim of breach under the Agreement. If BPMS Vendor disagrees with the attestation provided by DRS, the matter shall be referred to the Executive Sponsors for resolution.

12.2.3 Operational and Security Audits by DRS. Upon prior written notice to BPMS Vendor, BPMS Vendor shall make available to DRS and its auditors and inspectors (including internal and external personnel) for the purpose of performing such audits or inspections access at all reasonable times to: (a) the data and records relating to the Services and BPMS Vendor's other obligations under the Agreement; and (b) BPMS Vendor's internal controls and systems as may be reasonably necessary to examine BPMS Vendor's performance of the Services and compliance with its duties, responsibilities and obligations under the Agreement including the safeguarding of DRS Confidential Information. BPMS Vendor shall provide to such auditors such assistance and support as they may reasonably request. If any audit reveals deficiencies, BPMS Vendor shall review the findings with DRS. If DRS and BPMS Vendor mutually agree that there are deficiencies to be corrected, BPMS Vendor shall prepare and deliver to DRS a detailed plan that is reasonably acceptable to DRS for correcting all such deficiencies.

12.2.4 Washington State Audits. Any audits permitted by Law or permitted under **Section 12.2** may be conducted by the state of Washington or a Third Party on its behalf. BPMS Vendor shall provide to the state of Washington such assistance and support as reasonably requested. If any audit reveals deficiencies, BPMS Vendor shall review the findings with the state of Washington and DRS. If the state of Washington, DRS and BPMS Vendor agree that there are deficiencies to be corrected, BPMS Vendor shall prepare and deliver to the state of Washington and DRS a detailed plan that is reasonably acceptable to correct all such deficiencies.

12.2.5 Resolutions of Disagreements with Audits. If DRS and BPMS Vendor do not agree with the results of any audit, the Executive Sponsors shall meet to attempt to resolve the matter. If the Executive Sponsors cannot resolve the matter, either party may require that the matter be submitted to an independent, nationally-recognized, reputable auditing firm ("**Independent Auditor**") to review the results of the audit and whether the deficiencies in dispute exist. The cost of the Independent Auditor shall be shared equally by the parties. If requested by such Independent Auditor, each party shall permit such firm to conduct interviews of applicable personnel and engage in such other due diligence activities to verify whether such deficiencies exist and/or the audit findings can be confirmed. The Independent Auditor shall be tasked by the parties to issue a written opinion on its findings and such written opinion shall be binding on the parties with respect to the deficiencies cited therein. If the written opinion of the Independent Auditor confirms deficiencies with respect to BPMS Vendor, BPMS Vendor shall prepare and deliver to DRS a detailed plan that is reasonably acceptable to DRS for correcting all such deficiencies. BPMS Vendor shall implement all such corrections within the time frame set forth in the plan. BPMS Vendor shall bear all costs and expenses associated with correcting all deficiencies. Any audits shall be conducted so as to be non-disruptive to a parties operations and business. User-level access may be granted to DRS applications to support such audits, and if necessary, will be coordinated between the parties.

12.2.6 Maintenance of Records. BPMS Vendor and its subcontractors shall maintain books, records, documents and other evidence relating to the Agreement, including BPMS Vendor performance, Minority and Women's Business Enterprise participation, protection and use of State Data and DRS' Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of the Agreement. BPMS Vendor shall retain all such records for six (6) years after the expiration or termination of the Agreement. Records involving matters in litigation related to the Agreement shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of the Agreement, whichever is later. Where BPMS Vendor ordinarily and regularly in the course of business creates and maintains its books, records, documents and other evidence relating to the Agreement electronically, BPMS Vendor shall retain such electronically stored information in an electronic format that remains usable, searchable, retrievable and authentic for the periods set out herein, unless the parties specifically agree in writing to an alternative. BPMS Vendor shall incorporate in its subcontracts with subcontractors the terms and conditions of this Section. Books, records, documents, and other evidence of accounting procedures and practices related to BPMS Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from DRS' or its auditors' review unless the cost or any other material issue under the Agreement is calculated or derived from these factors.

12.3 Insurance.

12.3.1 Required Coverages. At BPMS Vendor's sole cost and expense, BPMS Vendor shall procure and maintain in effect from and after the Effective Date and for the duration of the Agreement the insurance coverages described in the attached **Schedule 12.3.1**. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in the state of Washington or be eligible surplus lines insurers acceptable to DRS and having agents in Washington upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any insurance or self-insurance available to DRS shall be in excess of, and non-contributing with, any insurance that BPMS Vendor is required to procure and maintain. BPMS Vendor's insurance policies shall apply on a primary basis. To the extent that claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, BPMS Vendor shall procure additional insurance as needed to continually meet and maintain the coverage amounts set forth on **Schedule 12.3.1**.

12.3.2 Additional Insureds and Evidence of Coverage. By endorsement to all liability policies except for the Professional Liability/Errors & Omissions and Internet Policies insurance and Workers' Compensation insurance, DRS, its Affiliate and the state of Washington shall be named as additional insureds for all liability arising from the Agreement. On or before the Effective Date, thereafter upon each insurance policy renewal, and otherwise promptly following DRS' request from time to time, BPMS Vendor shall provide DRS with certificates of insurance, together with copies of all applicable endorsements, evidencing BPMS Vendor's compliance with the requirements set forth in this **Section 12.3**. If at any time during the period when insurance is required by the Agreement,

an insurer fails to comply with the requirements of the Agreement, as soon as BPMS Vendor has knowledge of any such failure, BPMS Vendor shall immediately notify DRS and immediately replace such insurance with insurance meeting the Agreement requirements set forth herein. Within ten (10) business days following BPMS Vendor's receipt of DRS' written request, BPMS Vendor shall provide (or cause to be provided) to DRS a certified copy of any insurance policies that are required under this **Section 12.3**.

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

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

12.3.5 Subcontractor Insurance. If BPMS Vendor elects to have an approved subcontractor provide any Services to DRS, prior to providing any such Services, BPMS Vendor must furnish to DRS a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by BPMS Vendor and DRS pursuant to **Section 12.4**.

12.3.6 Worker's Compensation Coverage. Prior to performing Services under this Agreement, BPMS Vendor shall provide or purchase worker's compensation coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Agreement. DRS will not be responsible for payment of premiums or for any other claim or benefit for BPMS Vendor, or any Subcontractor or employee of BPMS Vendor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should BPMS Vendor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, DRS may deduct the amount of premiums and any penalties owing from the amounts payable to BPMS Vendor under this Agreement and transmit the same to the responsible State agency.

12.4 Approval of Service Subcontractors. BPMS Vendor shall obtain DRS' prior written consent, which DRS may withhold in its sole discretion, before entering into an agreement with any subcontractor who may be retained by BPMS Vendor to provide Services of any kind under the Agreement. DRS may condition the approval of any subcontractor on the receipt of the proposed subcontract between BPMS Vendor and the subcontractor, to ensure that the subcontracted Services or other items are adequately covered. If DRS determines, in its sole discretion, that any previously-approved BPMS Vendor subcontractor is not satisfactorily performing its obligations, DRS reserves the right to require BPMS Vendor to replace such subcontractor with another subcontractor or for BPMS Vendor to directly perform such obligations. BPMS Vendor shall ensure that all such subcontractor agreements include provisions naming DRS as a direct

and intended third party beneficiary or otherwise granting DRS the right to directly enforce BPMS Vendor's rights against such subcontractor and provisions substantially the same as those set forth in **Articles 9 and 10** of the Agreement. DRS shall not be bound by the terms of such agreements entered into by BPMS Vendor, and such agreements shall not contain any obligations with respect to DRS, including a guarantee of payments to such subcontractor. Any approval by DRS of BPMS Vendor's right to use a subcontractor shall be conditioned upon the following: (a) the agreement between BPMS Vendor and subcontractor not imposing or seeking to impose any liabilities or obligations on DRS, including the pass throughs of any termination fees, damages or costs in the event BPMS Vendor is required to replace the subcontractor; (b) DRS' ability to obtain a full assignment of such agreement upon written notice by DRS to the subcontractor following any default by BPMS Vendor under the Agreement and/or the applicable Ordering Document; (c) BPMS Vendor being responsible for managing all subcontractor relationships; (d) BPMS Vendor being liable for the acts and omissions of any subcontractor under the Agreement or any Ordering Document; (e) DRS and BPMS Vendor agreeing to the level and types of insurance to be obtained by subcontractor; (f) BPMS Vendor and subcontractor incorporating the terms required by **Section 12.2.6** into their agreement; and (g) subcontractor executing and delivering to DRS the Subcontractor Confidentiality and Non-Disclosure Agreement, the form of which is set forth in **Exhibit 2**. BPMS Vendor agrees that assignment of any subcontractor agreement to DRS shall in no way diminish, reduce, modify or affect BPMS Vendor's obligations and liabilities to DRS hereunder, and BPMS Vendor shall remain responsible for all such obligations and liabilities. BPMS Vendor further agrees that it shall indemnify, defend and hold harmless the Indemnified Parties for the actions of its subcontractors.

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

12.6 Notice of Financial Impacts. BPMS Vendor shall provide written notice to DRS within five (5) business days following the occurrence of any event that will or may be likely to have a material adverse impact upon BPMS Vendor's ability to perform its obligations hereunder, and shall meet promptly (but in no event longer than ten (10) business days) thereafter with DRS to discuss BPMS Vendor's ability to continue to perform its obligations under the Agreement in light of such event.

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

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

12.9 Severability. If any provision of the Agreement and/or any Ordering Document is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Agreement and/or such Ordering Document.

12.10 Waiver; Waiver of Non-Competition. No delay or omission by a party to exercise any right occurring upon any non-compliance or default by the other party with respect to any of the terms of the Agreement and/or any Ordering Document shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. Additionally, BPMS Vendor irrevocably waives any rights which it may have, by contract or otherwise, to require another person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DRS or the State, and BPMS Vendor further agrees that it will not in the future, directly or indirectly, induce or solicit any person or entity to refrain from submitting a bid or proposal to, or providing products or services to, DRS or the State.

12.11 Governing Law; Exclusive Jurisdiction. The Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of the Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the Laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any claim against DRS shall be initiated by BPMS Vendor within one (1) year after the claim arises, or be barred. Any suit or proceeding relating to the Agreement shall be brought only in the State courts located in Thurston County, Washington. **THE PARTIES EACH CONSENT TO THE SOLE AND EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS LOCATED IN THURSTON COUNTY, WASHINGTON.**

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

12.13 Counterparts. The Agreement and any Ordering Documents may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

12.14 Public Announcements. Without the prior written consent of DRS, which consent may be withheld in DRS' sole discretion, BPMS Vendor shall not make or publish, directly or indirectly, any statements, articles, public or private announcements (including any announcement made via e-mail or any posting on the Internet or any BPMS Vendor website), media releases, press conferences, advertising or similar publicity in any form relating to the fact that the parties have entered into the Agreement, the name, image or logo of DRS or any Agency (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, BPMS Vendor shall not, without DRS' prior written approval: (a) make any references to Third Parties that DRS is a customer of 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 BPMS Vendor.

12.15 DRS Policies. BPMS Vendor, its employees, agents and permitted subcontractors shall comply with all DRS policies, procedures, orders and directives (whether in final or "draft" form) that DRS provides in writing to BPMS Vendor, including those set forth on **Schedule 12.15** and all standards referenced therein and the State Travel Policy found in the Washington State Administrative and Accounting Manual (currently set forth in <http://www.ofm.wa.gov/policy/10.htm>) (collectively, the "**DRS Policies**"). BPMS Vendor personnel will conduct themselves in a manner that is consistent with preserving DRS' reputation and their staff will not engage in any actions or behaviors that could result in negative attention from the public, press, legislature or DRS customers. BPMS Vendor acknowledges and agrees that the DRS Policies and the list of DRS Policies set forth on **Schedule 12.15** may change from time-to-time and that DRS may add, delete and/or change the DRS Policies and/or the list of DRS Policies set forth on **Schedule 12.15**, in its discretion. DRS shall notify BPMS Vendor when policies change, and shall provide the changes.

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

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

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

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

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

12.21 Security Interest. The following terms and conditions shall apply if DRS elects to finance, in whole or in part, the purchase of the licenses under this Agreement:

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

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

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

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

IN WITNESS WHEREOF, authorized representatives of the parties have executed this BPMS License and Support Agreement 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: _____

Mark S. Lyon, Assistant Attorney General

Minority or Woman Owned Business
Enterprise

Date: _____

Yes _____ No _____
(Certification Number)

SCHEDULE 1.5

DEFINITIONS

[DRAFTING NOTE: DEFINITIONS SCHEDULE TO BE UPDATED AFTER THE ORDERING DOCUMENT AND ASSOCIATED SCHEDULES ARE COMPLETED]

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

"**ADA**" is defined in **Section 12.16**.

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

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

"**Agreement**" is referenced in the preamble and means this BPMS License and Support Agreement, entered into by and between DRS and BPMS Vendor, effective as of the Effective Date, inclusive of all Schedules and Exhibits.

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

"**Approved Equipment Configuration**" is defined in **Section 6.1.2**, and the Approved Equipment Configuration for the BPMS Solution is set forth in **Schedule 5.1** of **Exhibit 1**.

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

"**BPMS Ordering Document**" means the Ordering Document for the ERA Project, attached as **Exhibit 1** to the Agreement.

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

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

"**BPMS Vendor Contract Manager**" is defined in **Section 1.3.5**.

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

"**BPMS Vendor Enhancement Correction Team**" is defined in **Section 1.2.2(i)(B)** of **Schedule 4.1**.

"**BPMS Vendor Tools and Utilities**" is defined in **Section 3.3**.

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

"**Compliant**" is defined in **Section 6.3**.

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

Confidential Information shall not include information that was: (c) in the public domain at the time of disclosure to the Receiving Party; (d) after disclosure, published or otherwise made a part of the public domain through no fault of the Receiving Party; (e) in the possession of the Receiving Party at the time of disclosure to the Receiving Party, if the Receiving Party was not then under an obligation of confidentiality with respect thereto; (f) after disclosure to the Receiving Party, received by the Receiving Party from a Third Party who had a lawful right to disclose such information to the Receiving Party without any obligation to restrict the Receiving Party's further use or disclosure of such information; or (g) independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. For purposes of this provision, information is in the public domain if it is generally known (through no fault of the Receiving Party) to Third Parties who are not subject to nondisclosure restrictions with respect to such information.

"**Corporation**" is defined in **Section 12.21(b)**.

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

"**Credits**" means any Performance Credits, Support Credits or other credits as may be due under the Agreement.

"**CSC**" is defined in **Section 1.4** of **Schedule 4.1**.

"**Data Protected by Law**" refers to data regulated and/or protected by Law, and includes all Personal Information.

"**Defect**" is defined in **Section 3.1** of **Schedule 4.1**.

"**Deliverables**" means Integrations, Interfaces, Extensions, other software-based programs, Documentation, designs, diagrams, configurations, functional specifications, technical specifications, data transformations, data aggregations, schematics, architectural renderings, prototypes, screen layouts and other documents and materials developed or prepared by BPMS Vendor, either alone or jointly with DRS.

"**Demonstration**" means BPMS Vendor's on-site demonstration of the Solution to DRS.

"**Demonstration Materials**" means use case business scenarios, scripts, repository functionality (including version controls and taxonomy), and other related materials provided by DRS for BPMS Vendor's use in connection with its Demonstration.

"**Disabling Code**" is defined in **Section 6.1.6**.

"**Disclosing Party**" means the party that, directly or indirectly, has disclosed Confidential Information to the other party.

"**Documentation**" means collectively the following items, which shall be interpreted in the following order of precedence: (a) first, any DRS Business Process and Technical Requirements or other features or functionality described in an Ordering Document; (b) second, any Deliverables created and approved in writing by DRS; (c) third, any Demonstrations and Demonstration Materials; and (d) fourth, all of the written, printed, electronic or other format materials published or otherwise made available by BPMS Vendor to DRS.

"**DRS**" is referenced in the Recitals and means the Washington State Department of Retirement Systems and any successors and assigns.

"**DRS Business Process and Technical Requirements**" means the business process and technical requirements and Performance Standards that may be described or referenced in and/or attached to an Ordering Document. With respect to the BPMS Solution, the DRS Business Process and Technical Requirements are set forth in **Section 2.1** of the BPMS Ordering Document. The DRS Business Process and Technical Requirements originally set forth in an Ordering Document shall be replaced by the specifications set forth in any approved written design document, and shall become the replacement DRS Business Process and Technical Requirements, but only

to the extent the business and technical requirements are specifically addressed in such approved written design document.

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

"**DRS Policies**" is defined in **Section 12.15**.

"**DRS Security Policies and Procedures**" means the following security standards, protocols, policies and procedures: (a) DRS' security policies and procedures, currently located at <http://ofm.wa.gov/ocio/policies/documents/141.10.pdf>, including the Washington State Office of the Chief Information Officer (OCIO) Securing Information Technology Assets (Standard No. 141.10) dated August 19, 2013; (b) National Institute of Standards and Technology (NIST) Special Publications 800-53 Security and Privacy Controls for Federal Information Systems and Organizations (currently located at <http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf>); (c) NIST Special Publication 800-95 Guide to Secure Web Services (currently located at <http://csrc.nist.gov/publications/nistpubs/800-95/SP800-95.pdf>); (d) Open Web Application Security Project (OWASP) Guide to Building Secure Web Applications (currently located at <http://www.um.es/atika/documentos/OWASPGuide2.0.1.pdf>); and (e) IRS Publication 1075 Tax Information Security Guidelines For Federal, State and Local Agencies (currently located at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>) and FIPS 140-2 Security Requirements for Cryptographic Modules (currently located at <http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>), each of which as may be updated from time-to-time.

"**E**" is defined in **Section 7.1.3**.

"**Effective Date**" means the date, if any, on which the Agreement is countersigned by DRS.

"**Emerging Products**" is defined in **Section 3.7.3**.

"**Enhancement**" means any releases, versions, improvements, modifications, upgrades, updates, fixes and additions to a Solution, no matter how designated, classified or marketed, that BPMS Vendor makes available to its customers as part of its general support and maintenance services.

"**Enhancement Defects**" are defined in **Section 1.2.2(i)** of **Schedule 4.1**.

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

"**ERA**" is defined in the Recitals.

"**ERA Project**" is defined in the Recitals.

"**ERA RFP**" is defined in the Recitals.

"**ERA RFP Response**" is defined in the Recitals.

"**Events of Default**" is defined in **Section 7.2**.

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

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

"**Final Resolution**" is defined in **Section 3.1 of Schedule 4.1**.

"**Force Majeure Event**" is defined in **Section 12.5**.

"**GLB**" is defined in **Section 12.16**.

"**HIPAA**" is defined in **Section 9.8**.

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

"**Incident**" is defined in **Section 3.1 of Schedule 4.1**.

"**Incident Report**" and "**Incident Resolution Report**" are defined in **Section 3.3 of Schedule 4.1**.

"**Incident Response**" is defined in **Section 3.1 of Schedule 4.1**.

"**Indemnified Parties**" and "**Indemnifying Party**" are defined in **Section 10.1**.

"**Independent Auditor**" is defined in **Section 12.2.5**.

"**Information Security Officer**" is defined in **Section 1.3.6(b)**.

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

"**Integrations**" means a software-based Deliverable that Integrates two or more components of a Solution.

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

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

"**Interim Resolution**" is defined in **Section 3.1 of Schedule 4.1**.

"**Interoperate**" or "**Interoperability**" means that computer programs communicate, execute programs or transfer data seamlessly, and without the use of a point-to-point interface or batch or similar process, by and among the other computer programs in which they are intended to communicate.

"**Invoicing Deadline**" is defined in **Section 5.2.3**.

"**ISO Security Standards**" is defined in **Section 1.3.6(c)**.

"**Issue**" is defined in **Section 3.1 of Schedule 4.1**.

"**ITIL**" is defined in **Section 1.8 of Schedule 4.1**.

"**Knowledge**" is defined in **Section 3.5**.

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

"**Level 1 Defect**" and "**Level 1 Incident**" are defined in **Section 3.1 of Schedule 4.1**.

"**Level 2 Defect**" and "**Level 2 Incident**" are defined in **Section 3.1 of Schedule 4.1**.

"**Level 3 Defect**" and "**Level 3 Incident**" are defined in **Section 3.1 of Schedule 4.1**.

"**Minimum Available Support Term**" is defined in **Section 4.1**.

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

"**Multi-Party Incident**" is defined in **Attachment A to Schedule 4.1**.

"**N**" is defined in **Section 7.1.3**.

"**OIMS**" is defined in **Section 1.4 of Schedule 4.1**.

"**Ordering Document**" is defined in **Section 2.1**.

"**OWASP**" means the Open Web Application Security Project standards and pronouncements, as adopted and/or published from time-to-time, including the OWASP Top Ten Project pronouncements.

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

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

"**Performance Credits**" means the financial consequences, if any, associated with failure of Solution to conform to the applicable Performance Standards.

"**Performance Standards**" means the standards for performance for a Solution as set forth in an Ordering Document.

"**Personal Information**" means: (a) State Data from which a natural person can be identified by reference to an identification number, including an individual's Social security number, driver's

license number or Washington identification card number, or an account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (b) such other definition as may be set forth in Personal Information and Data Breach Notification Laws.

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

"Prime Vendor" is defined in the Recitals.

"Product Migration" is defined in **Section 1.2.7** of **Schedule 4.1**.

"Product Roadmap" is defined in **Section 3.7.2**.

"Project Completion" means the date DRS has provided written confirmation that the requirements for implementing a Solution by BPMS Vendor or another Third Party have been met.

"RCA" is defined in **Section 2(c)** of **Schedule 4.1**.

"RCW" means the Revised Code of Washington.

"Receiving Party" means the party that, directly or indirectly, has received Confidential Information from the other party.

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

"Regulatory Requirements" means the Americans with Disabilities Act (Title I), including any rules, regulations, guidelines and bulletins, as may be issued and promulgated, and as amended from time-to-time.

"Release" is defined in **Section 1.2.1** of **Schedule 4.1**.

"RFP Response" means BPMS Vendor's response to a request for proposal or other solicitation by DRS, including any supplements and clarifications thereto.

"Security Event" is defined in **Section 9.7.2**.

"Security Policies and Procedures" is defined in **Section 1.3.6(a)**.

"Service Rates" are set forth on **Schedule 5.1.3**.

"Services" means any and all services acquired by DRS from BPMS Vendor, including Support and Maintenance Services.

"Solution" means all software licensed or provided by BPMS Vendor to DRS, including: (a) all BPMS Vendor-proprietary software (including Integrations, Interfaces, Extensions, other software-based Deliverables, owned by BPMS Vendor); (b) all Integrations, Interfaces, Extensions and other software-based Deliverables provided but not owned by BPMS Vendor to DRS; (c) all

Third Party Solutions; (d) all beta, pre-release or pre-generally available release versions of any of the foregoing; and (e) all Enhancements of any of the foregoing.

"**Solution License Fees**" is defined in **Section 5.1.1**.

"**Solution Optimization Assessment**" is defined in **Section 1.7** of **Schedule 4.1**.

"**Source Code**" is defined in the Escrow Agreement.

"**Source Code Escrow Agreement**" means that certain Escrow Agreement, by and between BPMS Vendor, DRS and _____, dated _____, 2016, and attached as **Exhibit 4**.

"**State**" means the state of Washington.

"**State Data**" means any and all information provided by DRS or any Agency to BPMS Vendor, including any Confidential Information and Data Protected by Law. For the purposes of the Agreement, State Data does not cease to be State Data solely because it is transferred or transmitted beyond DRS' immediate possession, custody or control.

"**State Program**" is defined in **Section 12.21(a)**.

"**Subcontract Agreement**," "**Subcontractor NDA Agreement**" and "**Subcontractor**" are defined in **Exhibit 2**.

"**Support and Maintenance Services**" is defined in **Section 4.1**.

"**Support and Maintenance Services Fees**" means the then-current fees DRS pays BPMS Vendor to receive Support and Maintenance Services.

"**Support Credits**" are the credits described in **Attachment B** to **Schedule 4.1** for BPMS Vendor's failure to meet the Support Standards.

"**Support Standards**" are the service level agreements associated with the provision of Support and Maintenance Services, as described in **Attachment B** to **Schedule 4.1**.

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

"**Third Party NDA Agreement**" is defined in **Exhibit 3**.

"**Third Party Solution**" means all Third Party software licensed, sublicensed or otherwise provided by BPMS Vendor to DRS under the terms of the Agreement.

"**Transition Period**" is defined in **Section 7.5**.

"**Trustee**" is defined in **Section 12.21(b)**.

"**UCITA**" is defined in **Section 12.17**.

"**Version**" is defined in **Section 1.2.1** of **Schedule 4.1**.

SCHEDULE 4.1
SUPPORT AND MAINTENANCE SERVICES

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SCHEDULE 4.1

SUPPORT AND MAINTENANCE SERVICES

BPMS Vendor shall provide Support and Maintenance Services for each Solution in accordance with its general support offering to its customers and the terms set forth in this Schedule, provided that, in the event of a conflict between BPMS Vendor's general support offering and the terms and conditions set forth in this Schedule, the terms and conditions of this Schedule shall control. The Services referenced herein shall be included within the Support and Maintenance Services Fees paid by DRS to BPMS Vendor, except as otherwise expressly set forth herein. The terms of this **Schedule 4.1** shall only apply during the term of the Agreement while DRS is paying for Support and Maintenance Services. Without limiting the foregoing, BPMS Vendor shall provide Support and Maintenance Services for any Third Party Solutions that BPMS Vendor licenses to DRS in accordance with the terms of this Schedule, including the terms set forth in **Section 1.4** of this **Schedule 4.1**.

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

1.1 Defect and Incident Identification and Resolution.

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

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

1.1.3 Configuration Assistance. At DRS' request, and at the Service Rates, BPMS Vendor shall provide configuration assistance to DRS to implement changes required to implement Regulatory Modifications and other changes to business rules as may be requested from time-to-time by DRS. Nothing contained

herein shall diminish BPMS Vendor's obligation to make Regulatory Modifications to the Solution to ensure that the Solution has the capability of being configured to meet the Regulatory Requirements.

1.2 Solution Enhancements.

1.2.1 General. BPMS Vendor shall provide all Enhancements to DRS, and shall develop and provide to DRS all Enhancements necessary to: (a) maintain compatibility with all Third Party Solutions, including Enhancements to such Third Party Solutions; (b) maintain compatibility with current, generally available versions of Internet Explorer, Chrome, Firefox, Safari, and other browsers to which BPMS Vendor then maintains compatibility (as described in the Documentation) or that are specified in the DRS Business Process and Technical Requirements to which BPMS Vendor has agreed in an Ordering Document; (c) maintain compatibility with changes to database, operating system and other software used by DRS in conjunction with the Solution (as described in the Documentation); and (d) meet Regulatory Requirements. To the extent technically feasible and functionally compatible, BPMS Vendor shall maintain compatibility between the Solution and the latest releases of software of Third Party vendors, e.g., BPMS Vendor shall maintain the Solution's compatibility with then-current release level of applicable database products in DRS' environment. BPMS Vendor shall ensure that all Enhancements and Regulatory Modifications successfully complete the testing process set forth in **Section 1.2.2** of this **Schedule 4.1** prior to delivery to DRS and shall deliver such Enhancements to DRS on the earlier of: (d) when five percent (5%) of BPMS Vendor's customers receive such Enhancements; or (e) when at least five (5) of BPMS Vendor's other significant customers receive such Enhancements. Notwithstanding the foregoing, DRS shall have the right to remain on any Release of the Solution that is the later of: (f) one (1) Release behind the then-current release; or (g) twenty-four (24) months from the installation of the existing release. For purposes herein, Releases are classified by BPMS Vendor as of the Effective Date in accordance with the following taxonomy: "X.Y", where "X" represents a new version (a "**Version**") and "Y" represents a new release (a "**Release**"). Releases currently are issued generally on an annual basis. If BPMS Vendor changes the taxonomy of its Enhancements and/or the general time intervals in issuing Versions or Releases, then the parties shall apply the new taxonomy on a basis to align to the original taxonomy. For example, if BPMS Vendor begins to issue Releases quarterly, then **subsection (c)** above will be deemed to read "8 Releases behind" to align with the annual cycle, i.e., 4 Releases/year x 2 years = 8 Releases. Subject to the right of DRS to remain on back Releases as provided above, DRS acknowledges that future Enhancements may require that DRS purchase additional equipment and/or Third Party software (and to have such items supported and maintained) and/or professional Services in order to continue to be eligible for Support and Maintenance Services and/or maintain the Solution performance warranty.

1.2.2 Quality Assurance Testing. BPMS Vendor shall create and maintain one (1) or more test environments as appropriate or advisable to adequately test the Solution provided under the BPMS Ordering Document (and such other Solution in the future as may be mutually agreed to by the parties and set forth in an Ordering Document) and any Enhancements. BPMS Vendor shall test each Enhancement in the test environment prior to delivery to DRS in accordance with BPMS Vendor's quality assurance process which, at a minimum, shall test for: (a) vulnerabilities and compliance with security obligations, including running tests, which test results shall

be provided to DRS; (b) operation and performance of the Enhancement in accordance with the applicable Performance Standards; (c) browser compatibility in accordance with **Section 1.2.1(b)** of this **Schedule 4.1**; (d) database and operating system compatibility in accordance with **Section 1.2.1(c)** of this **Schedule 4.1**; and (e) any regression problems using existing DRS usage and test cases and test data. BPMS Vendor shall correct any Defects and other non-conformities discovered during such testing and shall deliver each Enhancement to DRS only after such Enhancement has been approved by BPMS Vendor's quality assurance lead. BPMS Vendor also shall deliver or make available to DRS contemporaneously with the delivery of each Enhancement detailed Documentation describing such Enhancement. With respect to any Enhancement labeled in writing by BPMS Vendor as an emergency fix intended to correct a Level 1 Defect or Level 2 Defect, BPMS Vendor shall exercise all commercially reasonable efforts to test such emergency fix in accordance with the requirements of this Section, and in all events shall conduct sufficient and adequate regression testing.

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

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

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

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

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

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

(ii) Costs for Personnel. If the reported Enhancement Defect (through a root cause analysis or otherwise) is shown not to be a Defect in

the Enhancement or Solution, then DRS shall reimburse BPMS Vendor on a time and materials basis at the Service Rates for the personnel and expenses incurred in providing the personnel set forth in **subparagraph (i)** above.

1.2.3 Process Improvement. At DRS' request, BPMS Vendor shall provide to DRS a detailed description of BPMS Vendor's quality assurance process and/or a plan for improving or remedying any problems identified by DRS with respect to BPMS Vendor's quality assurance process.

1.2.4 Special Provisions Pertaining to Deliverables Including Integrations, Interfaces, Extensions and Other Software-Based Deliverables. As part of BPMS Vendor's Support and Maintenance Services and at no additional cost to DRS, BPMS Vendor shall retrofit any then-existing Deliverables, including custom-developed Interfaces for which DRS is paying Support and Maintenance Services Fees, to ensure that such then-existing Deliverables will be compatible with any Enhancements provided by BPMS Vendor, and continue to function and operate as originally designed.

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

1.2.6 Reductions in Functionality. If BPMS Vendor removes, reduces or disables any feature or functionality of Solution that is then being used by DRS and that existed prior to such Enhancement or modification, then at DRS' request and at no cost or expense to DRS, BPMS Vendor shall either: (a) provide substantially equivalent replacement functionality to DRS that is reasonably acceptable to DRS; or (b) modify, adjust or customize such Solution for DRS' use, and continue to provide Support and Maintenance Services for such modified or customized Solution, so that the applicable feature or functionality remains available to DRS along with all of the other features and functionality of the enhanced or modified Solution, provided such replacement or modified or customized Solution shall be treated as an Enhancement under the terms of the Agreement. DRS acknowledges that BPMS Vendor may introduce an Enhancement that changes how a feature or function is expressed or used in the Solution, and, provided that the feature or function is not removed, reduced or disabled, such Enhancement may require that DRS expend additional costs or expenses to implement such Enhancement.

1.2.7 Protection Against Product Obsolescence. If following Project Completion for the affected Solution, BPMS Vendor promotes and/or markets a replacement or successor product to the Solution or makes an infrastructure change, such as a change to the database, middleware, storage area networks and the like, the effect of which will require DRS to expend additional funds (each, a "**Product Migration**"), then BPMS Vendor shall provide DRS: (a) at no additional cost a license to the replacement or successor software; and (b) if such Product Migration occurs within five (5) years following Project Completion of the affected Solution, BPMS Vendor shall provide all Services relating to such Product Migration to DRS at the lesser of: (i) the Service Rates, less a forty percent (40%) discount; and (ii) the lowest rate paid by any of other customer of BPMS Vendor.

1.2.8 Enhancement Documentation. Without limiting the other obligations set forth herein, all Documentation for the Enhancements shall comply with the terms set forth in **Section 3.2** of the Agreement.

1.3 Third Party Solutions.

1.3.1 General. BPMS Vendor shall serve as the primary point of contact for, and shall provide the Defect Analysis for, any Support and Maintenance Services requests initiated by DRS that relate to Third Party Solution. If BPMS Vendor cannot resolve the Defect through its actions as an intermediary, BPMS Vendor shall facilitate direct contact between the Third Party and DRS.

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

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

1.5 Environments. BPMS Vendor shall be obligated to provide Support and Maintenance Services at no additional cost to DRS for all of the equipment configurations specified in an Ordering Document or BPMS Vendor's Documentation.

1.6 Alternative Arrangement for Support and Maintenance Services. To the extent DRS elects not to renew the Support and Maintenance Services on an annual or other term basis due to a complete or partial termination of the Agreement, provided that DRS is then operating on a supported release of the Solution, BPMS Vendor shall

make its general support services available to DRS on a month-to-month basis at the then-current Support and Maintenance Services Fees, pro-rated on a monthly basis.

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

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

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

2. DRS Responsibilities.

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

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

2.3 Remote Access. Subject to the further terms below, for Solutions operated by DRS, DRS shall provide BPMS Vendor with both on-site and remote access to

the Solution via the network configuration described in the DRS only section of the BPMS Vendor website. DRS shall be responsible for all telecommunication services and remote programming support connections charges. When accessing DRS' Solution, BPMS Vendor shall, and shall cause any approved subcontractor to, comply with DRS Policies. DRS may disconnect such access and/or disable any userids issued to BPMS Vendor for such access during any hours of operation and, thereafter, shall provide notice to BPMS Vendor of such disconnection or disablement within a reasonable time frame. If DRS disconnects such access or disables BPMS Vendor's passwords, BPMS Vendor shall remain responsible for maintaining and supporting the Solution, provided that DRS acknowledges that such disconnection or disablement may adversely affect the Defect resolution time frames set forth in **Section 4** of this **Schedule 4.1** and the ability of BPMS Vendor to deliver technical services to address the Issues or Defects.

2.4 DRS Assistance in Resolving Defects. DRS shall provide such assistance and cooperate with BPMS Vendor in helping to identify and address Defects. If DRS delays providing assistance, the total elapsed time of the delays shall be subtracted from the applicable time intervals in which BPMS Vendor is obligated to comply with respect to Support Credits set forth in **Attachment B**.

3. Incident Response.

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

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

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

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

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

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

"**Issue**" means any of the following: (a) any presently identified event, circumstance or problem that adversely affects the ability to meet project requirements, or a Deliverable Due Date or Critical Milestone Due Date, whether by BPMS Vendor, DRS or a Third Party; or (b) any event, problem, difficulty or circumstance which affects or may affect the Solution or the operation of the Solution by DRS, including the failure to meet the Performance Standards. Issues shall not include Defects (see definition of Defects)

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

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

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

"**Level 1 Incident**" means: (a) any security breach; or (b) any failure of a Solution or any part thereof to conform to the Documentation or Performance Standards that directly or significantly impacts the ability to use the Solution, or materially exposes DRS or its Authorized Users to liability because of operational, financial or information deficiencies; or (c) a Service Request that is urgent.

"**Level 2 Incident**" means: (a) any failure of a Solution or any part thereof to conform to the Documentation or Performance Standards that adversely affects DRS' or its Authorized Users' use of the Solution; or (b) a Service Request that is of an important, but not urgent, nature.

"**Level 3 Incident**" means: (a) any failure of the Solution or any part thereof to conform to the Documentation or Performance Standards that causes minor problems to occur with the Solution that can be circumvented without difficulty or disruption to DRS' or its Authorized Users' operations; or (b) a Service Request that relates to a nominal matter that does not need prompt attention.

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

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

expected resolution dates, and, for Defects, a status of where the Defect correction is in the BPMS Vendor correction and quality assurance process.

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

4. Support Standards and Support Credits. Attachment B to this Schedule 4.1 sets forth the Support Standards and Support Credits that are applicable to the Support and Maintenance Services. The Support Credits are in addition to any other rights and remedies that may be available to DRS upon BPMS Vendor's failure to achieve the Support Standards set forth in Attachment B, including those set forth in Article 7 of the Agreement.

ATTACHMENT A TO SCHEDULE 4.1

MULTI-VENDOR SOURCING PROCEDURES

This Attachment describes the operational processes that will govern the interactions between BPMS Vendor, DRS and Third Parties relating to the Interoperability of DRS' systems. Upon detecting an Incident, DRS will make an initial determination of whether the Incident relates to the Solution or a Third Party system. If DRS believes that the Incident relates to the Solution, DRS will notify BPMS Vendor and BPMS Vendor will respond and resolve the Incident as set forth in **Schedule 4.1**, including **Attachment B** to this **Schedule 4.1**. If DRS believes that the Incident relates to the Solution and a Third Party system ("**Multi-Party Incident**"), DRS will notify BPMS Vendor of the applicable Third Party, and BPMS Vendor and the Third Party will respond and resolve the Multi-Party Incident as set forth in **Schedule 4.1**, including **Attachments A** and **B** to this **Schedule 4.1**.

1. Help Desk Interaction Process.

- (a) If DRS opens a ticket with BPMS Vendor related to a Multi-Party Incident, BPMS Vendor's Help Desk will coordinate and cooperate with applicable Third Party as necessary to resolve the Incident or Defect, including as provided in **Attachment B** to this **Schedule 4.1**. In order to resolve the Multi-Party Incident within the timeframes set forth in **Attachment B** to this **Schedule 4.1**, BPMS Vendor's Help Desk shall proactively communicate with the Help Desks of the applicable Third Party, while notifying DRS in writing (including through e-mail) of the time and substance all such communications.
- (b) BPMS Vendor and the applicable Third Party will transfer and track calls sent to and from their respective Help Desks. All information needed by DRS to confirm the proper Help Desk pass offs from one desk to another will be made available to DRS at times and formats as mutually agreed upon by the parties.

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

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

- (a) A triage event will be scheduled to include representatives from BPMS Vendor, the Third Party and DRS, if any Level 1 or Level 2 Incident is transferred (even once) back to the Help Desk that originally opened the ticket.
- (b) If BPMS Vendor and the applicable Third Party are unable to mutually determine the appropriate party responsible to resolve the ticket, DRS will have the right to assign it to either BPMS Vendor the Third Party.
- (c) If a Multi-Party Incident assigned to BPMS Vendor for resolution by DRS is transferred to a Third Party and eventually determined through root cause analysis ("**RCA**") to be a BPMS Vendor responsibility, for purposes of measuring Interim

Resolution and Final Resolution times, the entire time the ticket was unresolved shall be used in the calculation (*i.e.*, both the time that the ticket was with BPMS Vendor and the Third Party). This will provide an incentive for all providers to resolve the ticket expeditiously.

- (d) Without limiting the other terms of this Attachment, DRS may choose to have BPMS Vendor conduct an RCA for any Multi-Party Incident.

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

ATTACHMENT B TO SCHEDULE 4.1

SUPPORT STANDARDS AND SUPPORT CREDITS

1. **Support Service Levels.** Set forth below are the Support and Maintenance Services service levels as well as personnel to be committed if BPMS Vendor does not meet such service levels. A failure to meet such service levels or provide such personnel will entitle DRS to the Support Credits as described below.
2. **Incident Response Times.** The Support Standard categories and the related Support Standards set forth below shall apply to the CSC Incident Response obligations.

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

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

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

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

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

SCHEDULE 5.1.3

SERVICE RATES

[LIST AGREED TO SERVICE RATES]

SCHEDULE 5.2.1

FORM OF BPMS VENDOR INVOICE

(SEE ATTACHED)

SCHEDULE 12.3.1

INSURANCE COVERAGES

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
Workers' Compensation	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy must include a waiver of subrogation in favor of DRS, the State of Washington and its Affiliates.
Employer's Liability	<ul style="list-style-type: none"> • Each Accident: \$1,000,000 • Disease, Each Employee: \$1,000,000 • Disease, Policy Limit: \$1,000,000 	N/A	Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease
Commercial General Liability	\$5,000,000	\$10,000,000	The policy must include a waiver of subrogation in favor of DRS and its Affiliates.
Business Automobile Liability	\$1,000,000	\$5,000,000	Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, The policy must include a waiver of subrogation in favor of DRS and its Affiliates.
Professional Liability/Errors & Omissions	\$25,000,000	\$50,000,000	Must include coverage for Internet and information technology professional services, ASP, web portal, security/privacy. The policy must include a waiver of subrogation in favor of DRS and its Affiliates.
Cyber-Security and Privacy Breach	\$25, 000, 000	\$50, 000, 000	As a separate policy or in coordination with other coverages, must include but is not limited to coverage for first-party costs and third-party claims from: <ol style="list-style-type: none"> 1. failure to protect data, including unauthorized disclosure, use or access, 2. security failure or privacy breach, 3. failure to disclose such breaches as required

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
			<p>by law, regulation or contract,</p> <ol style="list-style-type: none"> 4. notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, 5. interruptions of business operations, 6. network security failure, 7. communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), 8. computer fraud, 9. forgery, 10. money and securities, 11. employee dishonesty, 12. cyber-extortion, 13. cyber-terrorism, 14. EFT, computer, and electronic transmissions fraud and theft; and 15. other cyber-liability or cyber-crime expenses, and provide for associated crisis management and public relations expense. <p>The policy must include a waiver of subrogation in favor of DRS and its Affiliates.</p>
Crime, ID Theft and Cyber Extortion	\$25,000,000	\$50,000,000	<p>Must include coverage which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty and provide for crisis management and public relations expense. The policy must include a waiver of subrogation in favor of DRS and its Affiliates.</p>

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/Claim	Annual Aggregate	
Umbrella or Excess Liability	The greater of: (a) the fees due and to be due under the BPMS Ordering Document; and (b) \$50,000,000	The greater of: (a) the fees due and to be due under the BPMS Ordering Document; and (b) \$50,000,000	Umbrella policy providing excess limits over the primary policies. For Workers' Compensation, Employer's Liability, Commercial General Liability and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of DRS and its Affiliates.

SCHEDULE 12.15

DRS POLICIES

[DRAFTING NOTE: TO BE PROVIDED]

(SEE THE CD INCLUDED IN THE CLOSING BOOK)