

ATTACHMENT H

STANDARD LICENSING AND MAINTENANCE AGREEMENT

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SOFTWARE LICENSE AND MAINTENANCE AGREEMENT FORM

1. Agency Contract Number	2. DGS Solicitation Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Contractor Number	6. Project/Case Number	7. Alaska Business License Number	

This contract is between the State of Alaska,

8. Department of Corrections	Division Inmate Health	hereafter the State, and
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9. Contractor	hereafter the Contractor
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Mailing Address	Street or P.O. Box	City	State	ZIP+4
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10. **ARTICLE 1. Appendices:** Appendices referred to in this contract and attached to it are considered part of it.

ARTICLE 2. Performance of Service: Appendix A (General Provisions), Articles 1 through 15, governs the performance of services under this contract; Appendix B sets forth the indemnity and insurance provisions of this contract; Appendix C sets forth the terms and conditions; Appendix D sets forth the consideration and payment schedule; Appendix E sets forth the order schedule; and Appendix F sets forth the service level program.

ARTICLE 3. Period of Performance: The period of performance for this contract begins ____, and ends ____.

ARTICLE 4. Considerations: In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed \$_____in accordance with the provisions of Appendix D.

When billing the State, the Contractor shall refer to the Agency Contract Number and send the billing to:

11. Department of Corrections	Attention: Division of Inmate Health
Mailing Address 550 West Seventh Avenue, Suite 601, Anchorage, AK 99501	Attention: Kari Wheeler

12. CONTRACTOR	14. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.		
Name of Firm			
Signature of Authorized Representative			Date
Typed or Printed Name of Authorized Representative			
Title			
13. CONTRACTING AGENCY	Signature of Head of Contracting Agency or Designee	Date	
Department/Division	Date		
Corrections/Inmate Health			
Signature of Project Director	Typed or Printed Name John Schauwecker		
Typed or Printed Name of Project Director Laura Brooks	Title Procurement Manager		
Title Division Operations Manager			

NOTICE: This contract has no effect until signed by the head of contracting agency or Designee.
02-093 (12/29/08)SAF.DOC

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports

- 2.1 The department may, with reasonable notice given, inspect, in the manner and at reasonable times it considers appropriate, all the Contractor's facilities and activities pertinent to this contract.
- 2.2 The Contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes

Any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided in accordance with AS 36.30.620-632.

Article 4. Equal Employment Opportunity

- 4.1 The Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The Contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The Contractor shall send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the Contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The Contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in a contract or subcontract, as required by

this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.

- 4.5 The Contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination. If the State terminates for convenience, the State will not be able to recover fees paid for professional services rendered.

Article 6. No Assignment or Delegation

The Contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material

No claim for additional services, not specifically provided in this contract, performed or furnished by the Contractor, will be allowed, nor may the Contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor

The Contractor and any agents and employees of the Contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes

As a condition of performance of this contract, the Contractor shall pay all federal, State, and local taxes incurred by the Contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract.

Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents

Excluding Licensed Software, all designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the Contractor. The Contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The Contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the Contractor may retain copies of all the materials.

Article 11. Governing Law

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

Article 12. Conflicting Provisions

12.1 Unless specifically amended and approved by the Department of Law the General Provisions of this contract supersede any provisions in other appendices.

12.2 In the event a conflict exists among the following agreements and/or documents that have been dually accepted by the State and Contractor, the order of precedence for conflict resolution is as follows:

- (1) General Provisions (Appendix A) and Indemnity and Insurance (Appendix B)
- (2) Terms and Conditions (Appendix C)
- (3) Consideration and Payment Schedule Appendix D)
- (4) Order (Schedule (Appendix E)
- (5) Service Level Program (Appendix F)
- (6) The State of Alaska's Request for Proposals for Statewide Electronic Health Record Project (RFP 2013-2000-1332), dated February 8, 2013, and as amended
- (7) Contractor's Proposal, as modified during the Pre-award Phase, in response to the State of Alaska's Request for Proposals for Statewide Electronic Health Record Project (RFP 2013-2000-1332), dated February 8, 2013, and as amended

The Contractor specifically acknowledges and agrees that provisions in any form it appends hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska that are not conditioned on legislative appropriation, or (3) seek to limit liability of the Contractor for acts of Contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees

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

Article 15. Adverse Interests

During the term of this Contract and any renewals, the Contractor will not provide services nor enter into any agreement to provide services to a person or organization that has interests that are adverse to the State (as defined by the State). If the State believes that the Contractor is violating this paragraph, the State will notify the Contractor in writing. The State and the Contractor will meet and discuss the alleged violation within 30 days of such notice.

APPENDIX B1 INDEMNITY AND INSURANCE

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Procurement Officer prior to beginning work and must provide for a thirty-day prior notice of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

APPENDIX C TERMS AND CONDITIONS

1. DEFINITION OF TERMS

- 1.1. **“Active User”** means a user or a person whose status is set to “active” in the system.
- 1.2. **“Agreement”** means this Software License and Maintenance Agreement, including all of its Appendices and all instruments supplementing, amending, or confirming this Agreement.
- 1.3. **“Amendment”** means written documentation between Contractor and State evidencing their agreement to change particular aspects of this Agreement.
- 1.4. **“Authorized Contact”** means the employees of the State, or designate(s), identified on the Order Schedule as authorized to contact Contractor regarding service requests or inquiries.
- 1.5. **“Confidential Information”** means any data, files, software, information or materials (whether prepared by State or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized, that is classified confidential as defined by State classification and categorization guidelines: (i) provided by State to Contractor or a Contractor agent or otherwise made available to Contractor or a Contractor agent in connection with this Agreement, or (ii) acquired, obtained or learned by Contractor or a Contractor agent in the performance of this Agreement. Examples of confidential information include, but are not limited to: technology, prisoner personal, medical, behavioral health or offense related data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc.). The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.
- 1.6. **“Contractor”** means [TO BE ADDED AFTER CONTRACTOR SELECTION] and its successors.
- 1.7. **“Cure Period”** means the 45 day period that begins when either party receives notice of a breach of the terms and conditions of this Agreement.
- 1.8. **“Customer”** means the State of Alaska.
- 1.9. **“Documentation”** means all help screens, or other documentation describing the operation of the Licensed Software and interfaces, which are delivered (in printed or electronic form) with the Licensed Software by Contractor, any subsequent updates and new Releases of that documentation provided to State by Contractor, and any copies of that documentation. Documentation excludes all advertising, marketing materials, requests for proposal, proposals, demonstration materials and other promotional information.
- 1.10. **“Go-Live”** means the date upon which State first uses the Licensed Software and interfaces for Productive Use.
- 1.11. **“Hardware”** means the computing equipment upon which the Licensed Software operates.
- 1.12. **“Licensed Software”** means Contractor’s proprietary application software identified in the Order Schedule (Appendix E of this Agreement), including all, third party software required to meet all affirmed functional requirements and modifications and enhancements thereof.
- 1.13. **“Licensed User”** means a person who is authorized by the State to use the Licensed Software and who has an ID (profile) and password.

- 1.14. **“Maintenance”** means the type and level of maintenance and support services described in the Service Level Program (Appendix F of this Agreement) and Section 3 below.
- 1.15. **“Malfunction”** means a defect of the Licensed Software that degrades its use. Three levels of Malfunction classifications (Type A, Type B, and Type C) are defined in Appendix F.
- 1.16. **“Material Malfunction”** means an error, bug, or discrepancy that delays or inhibits the primary functionality of the Licensed Software or a Malfunction that has the potential to corrupt software data; also an accumulation of non-material Malfunctions that, considered together, satisfies the standard for materiality. Includes all Type A Malfunctions as defined in Appendix F.
- 1.17. **“Order Schedule”** means the Order Schedule (Appendix E of this Agreement) entered into by Contractor and State.
- 1.18. **“Productive Use”** means the Licensed Software and interfaces are being used by The State in a production environment, at all locations.
- 1.19. **“Release”** means each issuance of the Licensed Software, identified by the numeral to the left of the leftmost decimal point in the Licensed Software’s version designation (i.e., 5.1.0 designates the Licensed Software as part of Release 5).
- 1.20. **“Software Final Acceptance”** means the date upon which State certifies that the Licensed Software and interfaces are functioning in Productive Use, for all intended users, without Malfunction, after all acceptance testing, including final acceptance testing, is complete.

2. LICENSED SOFTWARE TERMS AND CONDITIONS

2.1. License Grants, Restrictions, and Ownership

2.1.1. License Grant

Subject to the terms of this Agreement and its properly executed schedules and amendments, Contractor grants State the right to a perpetual, non-exclusive, non-sub- licensable, non-transferable license to use the Licensed Software only for the State's own internal use.

State may make copies of the Licensed Software and Documentation as needed to operate development, test, training, and back up environments. There will be no restriction on the number of users in non-production environments.

2.1.2. Material License Restrictions

State may not use, copy, modify, or distribute the Licensed Software or any portion thereof, or knowingly allow another party to do so, except as expressly permitted hereunder, or attempt or knowingly allow another party to attempt to decompile, reverse engineer, hack or otherwise gain unauthorized access to, use or modify the source code for the Licensed Software.

State may use the Licensed Software only to process State's own data and only for State's internal operations, and not for the benefit of any third party.

State may not use the Licensed Software for any illegal purpose or in violation of any applicable law.

2.1.3. Additional License Restrictions

State will not remove Contractor's copyright notice or other proprietary legends and labels from any Documentation or copies. State will permit Contractor to audit State's use of the Licensed Software no more than once per calendar year. For a State hosted solution, the contractor may inspect the State's hosting hardware during normal business hours upon reasonable notice to verify State's compliance with the terms hereof.

2.1.4. Title and Proprietary Rights

Contractor and its licensors are the sole and exclusive owners of all right, title, and interest in the Licensed Software, and of all patent rights, copyrights, trade secret rights, and other proprietary rights associated with the Licensed Software, including all portions, copies, or modifications.

Title to the physical media for the Licensed Software vests in State upon Contractor's shipment to State.

2.2. Limited Software Warranty

2.2.1. Malfunction Correction

Contractor warrants that it will correct Malfunctions in the Licensed Software; provided that: (a) any Malfunction for which State seeks warranty service is reproducible, (b) State is using the Licensed Software in accordance with Contractor's guidelines and system requirements, (c) Software Final Acceptance has not occurred or State is a current subscriber to the Software Service Level Program, and (d) a Malfunction for which State seeks warranty service is not caused by third party software or hardware or changes to the Licensed Software made by any party other than Contractor or its authorized representative, except for third party software or hardware Contractor required in order to operate Contractor's products and services. Contractor agrees that Type A Malfunctions will be given its highest priority with the problem corrected as soon as practicably possible using its most qualified experienced, and knowledgeable resources.

2.2.2. Malfunction Analysis

Contractor warrants that it will assist with identifying the cause of Malfunctions for which the State seeks Warranty service. If analysis determines that Malfunction is not the responsibility of the Contractor, State will reimburse Contractor for time spent at its then current hourly rates.

2.2.3. Intellectual Property Rights

The Contractor warrants that the Licensed Software does not infringe the intellectual property rights of others and that Contractor has the full right, authority and power to enter into this Agreement and to grant to the State the Licenses and rights conveyed by this Agreement and that the performance of Contractor's obligations hereunder does not breach or violate any agreement or other obligation to which Contractor is bound. Except as otherwise expressly advised prior to the effective date of this agreement, on or prior to the effective date, there is no demand, claim, lien, suit, action, or other proceeding that jeopardizes Contractor's ability to enter into this Agreement or perform its obligations hereunder. To the extent that a proceeding arises during the term of this Agreement, Contractor shall promptly notify State of the existence of such proceeding.

2.2.4. Protection Features

Contractor warrants that the Licensed Software, with the exception of product identified as third-party product on the Order Schedule, contains no protection features, contaminants, computer viruses, time locks, time bombs, back doors, trojan horses, or other software routines, codes, or instructions including any clock, timer, counter, or other limiting or disabling code that would cause any component of the Licensed Software or data generated there from to be modified, deleted, damaged, or otherwise rendered incapable of performing or otherwise limit or restrict the State from using the Licensed Software, or any part thereof. This restriction includes software routines designed to disable a computer program automatically or under the positive control of a person other than a State-authorized user.

2.2.5. Technical Currency

Contractor warrants that the Licensed Software will remain technically current and will not require State to use third-party database software, network technology, computing hardware, or operating systems that are not supported by their respective manufacturers or that require the payment of a maintenance premium for annual support.

2.2.6. Merchantability and Fitness Warranties

Contractor warrants that the licensed software and any part thereof is merchantable and fit for the purposes represented in Contractor's response to RFP, demonstration materials, this agreement, and the separate agreement for implementation services.

2.3. Licensed Software Exchange

As long as a current Agreement is in place, Contractor shall fulfill State's request to exchange the Licensed Software for other available Contractor-owned software products that have pricing, features, and functionality substantially similar to those products licensed by State. Such determination shall be under the control of the State.

3. SERVICE LEVEL PROGRAM TERMS AND CONDITIONS

3.1. Maintenance Services

While the State has a Service Level Program in effect, Contractor will directly provide to the State Maintenance for the Licensed Software. Contractor warrants that Maintenance will include the following (collectively, the "Maintenance Services"):

- a. Make available to the State general technical information and assistance with problem determination, isolation, verification, and resolution during the hours and on the terms specified in the purchased Service Level Program, attached hereto as Appendix F.
- b. Correct Malfunctions in the Licensed Software in accordance with the terms specified in the purchased Service Level Program, attached hereto as Appendix F.
- c. Provide the State updates, program patches, and instructions for its implementation and use.
- d. Provide the State with new Releases of the Licensed Software at no additional cost when generally made available to all customers.
- e. Modify or upgrade the Licensed Software as reasonably necessary and commercially practical so that it can be configured to conform to material changes in applicable federal and state laws.

Contractor will not materially degrade its Maintenance practices while a Service Level Program is in effect.

3.2. Support for Prior Releases

While the State has a Service Level Program in effect, Contractor will provide Maintenance in accord with the purchased Service Level Program for the release initially installed and any future releases regardless of the release DOC is currently using.

3.3. Malfunction Classification

Contractor will maintain staffing sufficient to resolve Malfunctions 24 hours a day, 365 days a year. While the State has a Service Level Program in effect, the State will classify Malfunctions and the Contractor will provide the minimum service levels and timelines as follows:

- 3.3.1 **Standard service hours – Monday-Friday 8:00 am to 5:00 pm Alaska standard time, excluding State holidays.** During these times, while the maintenance and support program is in effect, Contractor will provide minimum service levels and timelines as follows:

Type A Malfunction – Contractor will respond to all reported Type A Malfunctions within 30 minutes of receiving notification of the Type A Malfunction. Correction of this type of Malfunction will begin immediately. Contractor will assign qualified technical staff for continuous work until the reported Malfunction has been resolved. If such a problem is not resolved within eight hours after receipt of a Type A Malfunction notice from State, Contractor will escalate its efforts toward resolution by adding staff and/or sending technical/support staff to the State's location.

Type B Malfunction – Contractor will respond to all reported Type B Malfunctions within two hours of receiving notification of the Type B Malfunction. This type of Malfunction will be corrected within two business days.

Type C Malfunction – Contractor will respond to all reported Type C Malfunctions within four hours of receiving notification of the Type C Malfunction. This type of Malfunction will be corrected by Contractor within five business days.

- 3.3.2. **After hours service – Monday-Friday before 8:00 am and after 5:00 pm Alaska standard time, on weekends, and State holidays.** During these times, while the maintenance and support program is in effect, Contractor will provide minimum service levels and timelines as follows:

Type A Malfunction – Contractor will respond to all reported Type A Malfunctions within two hours of receiving notification of the Type A Malfunction. Correction of this type of Malfunction will begin immediately. Contractor will assign qualified technical staff for continuous work until the reported Malfunction has been resolved. If such a problem is not resolved within the sooner of 16 hours after receipt of a Type A Malfunction notice from State, or within eight hours after the start of the next State regular business day, Contractor will escalate its efforts toward resolution by adding staff and/or sending technical/support staff to the State’s location.

Type B Malfunction – Contractor will respond to all reported Type B Malfunctions within two hours after the start of the next regular State business day. This type of Malfunction will be corrected within one business day after that start.

Type C Malfunction – Contractor will respond to all reported Type C Malfunctions within four hours after the start of the next regular State business day. This type of Malfunction will be corrected within five business days after that start.

- 3.3.3. Malfunction classifications – “Malfunction” means a defect of the Licensed Software that degrades its use. Three levels of malfunction classifications are:

Type A Malfunction – This is a software, hardware or contractor hosting environment related error, bug, discrepancy, degradation in performance or any other issue that delays or inhibits the primary functionality of the licensed EHR software causing any EHR functions to be inaccurate or unusable.

Type B Malfunction – Type B Malfunction – This is a defect of the licensed software or hosting environment that degrades its use, including defects that cause the software to produce incorrect results or perform at level below industry accepted levels.

Type C Malfunction – This is a defect that causes only minor impact on the use of the software. This includes all Malfunctions that are not considered Type A or Type B.

3.4. **Operating Environment**

Contractor will provide all identified support levels for licensed software and interfaces.

For proposals for a contractor hosted solution, contractor will provide hosting services to assure for industry standard backups, disaster recovery, maintenance of server performance, and updating of licensed software, for a minimum of four years from the date the State issues its Software Final Acceptance.

If the proposal is for a State hosted solution, and The State and the contractor agree that the contractor provided hosting hardware has become defective, the

Contractor may decertify the EHR hosting hardware system at any time prior to the expiration of this four-year period, if Contractor, at no cost to the State, moves the State to a new hosting hardware system of the State's choice that is then certified by the Contractor. This will include the purchase, installation and configuration of the new hosting hardware replacing that which became defective and of the Contractor's software products into the new EHR hosting system, including baseline and all interfaces, conversion of data from the defective EHR hosting system to the new system, testing of the system, and training necessary to operate and maintain the new system.

3.5. Term and Renewal

The initial term for the chosen Service Level Program will begin upon Productive Use of the Licensed Software and end four years later.

Contractor will invoice for Maintenance fees for the State's Licensed Software annually after July 1st of each year to align with the State's fiscal year (the fiscal year is July 1st through June 30th of the following year). The contractor will be required to perform a reconciliation each year on actual licenses used. At least two months before the expiration of each year of Maintenance, Contractor will provide to the State an invoice for the Maintenance fees for the State's Licensed Software for the following year and perform a reconciliation each year based on actual licenses used. Service periods less than one year will be prorated.

If Maintenance has terminated and State desires to reinstate Maintenance, Contractor will promptly reinstate Maintenance if State pays Contractor: (a) all outstanding undisputed invoices, (b) the Maintenance fees for the next Renewal Term, and (c) a reinstatement fee equal to the amounts that the State would have paid had there been no gap in Maintenance coverage.

Contractor agrees to continue to offer Maintenance to State so long as the Licensed Software remains eligible for Maintenance under Contractor's standard Maintenance practices and/or Contractor continues to make Maintenance available for the Licensed Software to other Contractor customers. Contractor will provide the State not less than six months prior written notice if the Contractor generally discontinues offering Maintenance to customers of the licensed products and services. The Contractor will not provide this notice during the initial five years following Software Final Acceptance.

3.6. Termination of Maintenance for Convenience

State may elect to terminate Maintenance at any time effective upon thirty days written notice to Contractor. If State has prepaid Maintenance fees as of the date of termination, Contractor will refund to State the unearned portion of those prepaid Maintenance fees up to the date of Contractor's receipt of the notice of termination.

4. GENERAL TERMS AND CONDITIONS

4.1. Fees and Payment Terms

Except as otherwise specified in the Order Schedule, all undisputed invoices are payable in U.S. dollars within thirty days from the date of Contractor's invoice.

4.2. State Responsibilities and Access

State will reasonably cooperate with Contractor and will:

- a. Give Contractor physical access to State's site during normal working hours (or as otherwise agreed), and facilities, and other reasonable administrative and infrastructure support as needed for Contractor to deliver services;
- b. Give Contractor remote Internet access to the servers on which the Licensed Software resides;
- c. Make available knowledgeable State staff to answer questions and make decisions when necessary relating to the business and functional aspects of the services being performed by Contractor;
- d. Provide timely responses and approvals to Contractor;
- e. Conduct regular backups of the Licensed Software servers and all related State data, with backups made available to Contractor if needed for data restoration;
- f. Give Contractor reasonable notice before (1) implementing major updates to the operating system or database management system supporting Licensed Software, (2) moving Licensed Software to a server with different processor characteristics, or (3) Hardware on which the Licensed Software resides is moved to a new location in the network.

Contractor shall comply with all of State's security procedures regarding such access. Contractor shall use such access solely for performing its obligations hereunder and Contractor shall be liable for any breach of State's systems arising from Contractor's access or use of State's passwords or access rights.

4.3. Confidentiality

Contractor agrees that all Confidential Information shall be used only for purposes of providing the Licensed Software and performing the services specified herein and shall not disseminate or allow dissemination of Confidential Information except as provided for in this section. Contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the Confidential Information. "Reasonable care" means compliance by Contractor with all applicable federal and State laws, including the Social Security Act (SSA) and the Health Insurance Portability and Protection Act (HIPPA). Contractor must promptly (within 24 hours) notify the State in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

If Confidential Information is requested to be disclosed by Contractor pursuant to a request received by a third party and such disclosure of the Confidential Information is required under applicable State or federal law, regulation, governmental or regulatory authority, Contractor may disclose the Confidential Information after providing State with written notice of the requested disclosure (to the extent such notice to State is permitted by applicable law) and giving the State opportunity to review the request. If Contractor receives no objection from the State, it may release the Confidential Information within 30 days. Notice of

the requested disclosure of Confidential Information by Contractor must be provided to the State within 24 hours after Contractor's receipt of notice of the requested disclosure and, upon request of the State, Contractor shall seek to obtain legal protection from the release of the Confidential Information.

4.4. **Limitation of Liability**

Except for (a) the Contractor's indemnity obligations hereunder, (b) the Contractor's breach of its confidentiality obligations, or (c) damages arising out of the Contractor's intentional misrepresentation, gross negligence or willful misconduct, both parties agree that the Contractor's liability for any damages relating to this Agreement shall not exceed the greater of (1) 1.75 times the fees payable to the Contractor as provided for herein, or (2) 1.75 times the actual amounts received by the Contractor during the term.

4.5. **Remedies**

4.5.1. **State Remedies**

Contractor is responsible for the cure of all breaches of the Limited Software Warranty (Section 2.2 of this Appendix) and/or Service Level Program Terms and Conditions (Section 3 of this Appendix) within the Cure Period. All such cures shall maintain the same or substantially similar levels of performance and capability of the Licensed Software.

If Contractor does not comply with the Limited Software Warranty or Service Level Program Terms and Conditions within the Cure Period, State may recover damages of the types and within the limitations established in this Agreement.

4.5.2. **Contractor Remedies**

- a. If State fails to cure a breach of the Material License Restrictions (Section 2.1.2) within the Cure Period, Contractor's sole and exclusive remedy is to, at Contractor's option, suspend or terminate this Agreement.
- b. If State fails to pay an undisputed invoice for the Licensed Software within 30 days of notice of late payment, Contractor's sole and exclusive remedy is to, at Contractor's option, suspend or terminate this Agreement.
- c. If State fails to pay an undisputed invoice for Maintenance Services within 30 days of notice of late payment, Contractor's sole and exclusive remedy is to, at Contractor's option, suspend or terminate Maintenance Services.
- d. If Contractor learns that the State has exceeded the maximum number of Licensed Users under this Agreement, State shall, at its discretion, either:
 - (i) Remove unauthorized users from the Licensed Software to comply with this Agreement
 - (ii) Purchase additional licenses in accord with Appendix D
- e. All other uncured State breaches shall be subject to the dispute resolution process.

4.6. **Breach of Agreement**

The failure of a party to enforce any right under this Agreement may not be deemed a waiver of any subsequent breach of this Agreement.

No delay, failure, or default in performance of any obligation by either party, except obligations to make payments hereunder, constitutes a breach of this Agreement to the extent caused by events beyond the reasonable control of the defaulting or delayed party.

4.7. Communications

All binding communications between the parties under this Agreement must be in writing and sent by personal delivery or by receipted delivery service to State or Contractor at the respective addresses set forth below. Documents may be sent PDF electronically if approved by the Project Director or Procurement Officer:

State of Alaska	[Contractor Name]
Division of Corrections	[Contractor's address]
Attn: Laura Brooks	
550 W. 7 th Ave, Suite 1800	[Contractor's address]
Anchorage, Alaska 99501	[Contractor's address]

4.8. No Hire of Certain Employees

Contractor agrees that until one year after the termination and non-renewal of the Maintenance Period, Contractor will not hire, employ, retain (directly or indirectly), or contract for services directly with any current or former employee of State, without receiving prior written consent from State.

4.9. Effective Date

Although executed between the parties at or near the time of commencement of the implementation phase of Contractor's products and services, and although the parties acknowledge that they are bound by the terms of this Agreement, this Software License and Maintenance Agreement shall not commence until the State issues its written Software Final Acceptance.

APPENDIX D CONSIDERATION AND PAYMENT SCHEDULE

LICENSE FEES

1. Upon execution of this Agreement (20%): **\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)**
2. Upon satisfaction of Licensed Software delivery requirements (80%): **\$(TO BE INSERTED AFTER CONTRACTOR)**

Unless Contractor is notified in writing of specific Malfunctions, the State shall provide written certification of satisfaction of Licensed Software delivery requirements 90 days after:

1. Representative samples of all user roles are employing the Licensed Software including all Third Party Software and Interfaces described in the proposal to support the medical/administrative, behavioral health, pharmacy and dental functions of DOC:
2. Representative staff from all geographic locations specified in the project plan are employing the Licensed Software including all Third Party Software and Interfaces described in the proposal to support the medical/administrative, behavioral health, pharmacy and dental functions of DOC:

In the event that one or more of the above delivery requirements are not met due to a delay caused by the State that is unrelated to the functioning of the Licensed Software, the State shall provide written certification of satisfaction of Licensed Software delivery requirements 90 days after the last of the above delivery requirements is met prior to the delay, unless Contractor is notified in writing of specific Malfunctions.

In the event of a failure in performance resulting from acts beyond the reasonable control of either party including, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, strike, walkout, communication line or power failure, failure in operability or destruction of the State's Computer System or failure or inoperability of any software other than the Licensed Software, certification of satisfaction of Licensed Software delivery requirement shall be provided so long as:

1. The software has been in Productive Use for a minimum of 90 days
2. The Contractor has not been notified in writing of specific Malfunctions

Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

In the event that the Contractor is notified of specific Malfunctions, the 90-day period shall begin again once all identified Malfunctions have been corrected.

ANNUAL SUPPORT AND MAINTENANCE FEES

Contractor will invoice State based on the payment schedule set out below. State will pay the invoices based on the terms of the Agreement. Year 1 payment will be due upon installation of initial configured software ready for test. Succeeding payments will be due every 12 months thereafter for initial four-year term, and annually thereafter for subsequent renewals.

Payment Amount	
Year 1	\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)
Year 2	\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)
Year 3	\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)
Year 4	\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)
Year 5	\$(TO BE INSERTED AFTER CONTRACTOR SELECTION)

*Upon contract renewal, Contractor may request price adjustments 30 days prior to the renewal date as described in section 3.07 of the RFP. In no event should any maintenance fees for any software products be increased during the period covered by this contract and in any year thereafter by more than the lower of: (a) three percent (3%) of the previous year's maintenance fees. Notwithstanding the foregoing, in no event should the maintenance factor used to calculate the annual maintenance fees exceed the "then current" factor in effect used generally by the Contractor to calculate annual maintenance fees for other licensees in the United States.

ADDITIONAL LICENSES

The State shall have the right to purchase additional licenses as needed at the same unit price in the Order Schedule.

The State shall pay additional Maintenance at the applicable percentage for the Maintenance program in which the State is enrolled at the time of purchase. When additional licenses are purchased during a then-current Maintenance period, fees shall be prorated to reflect the amount due for the remainder of the Maintenance period.

APPENDIX E ORDER SCHEDULE

**[TO BE INSERTED AFTER CONTRACTOR
SELECTION]**

APPENDIX F SERVICE LEVEL PROGRAM

[TO BE INSERTED AFTER CONTRACTOR SELECTION]