



Contract

Commodity and Service: License,
Implementation and Support of
Integrated Benefits
Administration System
(BAS)

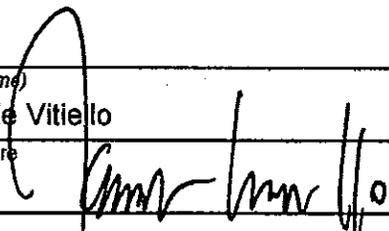
Contract No./Request for Bid/Proposal No:
ETC0003

Contract Period: Effective Date through June 30, 2021, with the option of two (2), three (3) year renewals.

1. This contract is entered into by the State of Wisconsin, Department of Employee Trust Funds (ETF) hereinafter referred to as the "Department", and Vitech Systems Group, Inc. hereinafter referred to as the "Contractor", whose address and principal officer appears on page 2. The Department is the sole point of contact for this contract.
2. Whereby the Department of Employee Trust Funds agrees to direct the purchase and the Contractor agrees to supply the contract requirements cited above in accordance with the State of Wisconsin standard terms and conditions and in accordance with the Agreement with Vitech Systems Group, Inc.
3. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) business days after the award of the contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Purchasing Agent, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.266.8989, or via e-mail at ETFProcurement@etf.wi.gov.
5. For purposes of administering this Contract, the Order of Precedence is:
 - A). This Contract with Vitech Systems Group, Inc.; and,
 - B). The Agreement with Vitech Systems Group, Inc.

Contract Number & Service: ETC0003 License and Implementation of Integrated Benefits Administration System (BAS)

State of Wisconsin	
Department of Employee Trust Funds	
By (Name)	
Robert J. Conlin	
Signature	
Title	
Secretary Department of Employee Trust Funds	
Phone	
608.266.0301	
Date (MM/DD/YYYY)	
02/28/2014	

Contractor to Complete	
Legal Company Name	
Vitech Systems Group, Inc.	
Trade Name	
Taxpayer Identification Number	
13-3785492	
Company Address (City, State, Zip)	
401 Park Avenue South, New York, NY 10016	
By (Name)	
Jamie Vitello	
Signature	
Title	
Sr. Vice President	
Phone	
212.868.0900	
Date (MM/DD/YYYY)	
2/28/2014	

SYSTEM LICENSE, IMPLEMENTATION, AND SUPPORT AGREEMENT

BY AND BETWEEN

THE WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS

("ETF")

AND

VITECH SYSTEMS GROUP, INC.

("VENDOR")

SYSTEM LICENSE, IMPLEMENTATION, AND SUPPORT AGREEMENT

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SYSTEM LICENSE, IMPLEMENTATION, AND SUPPORT AGREEMENT

This System License, Implementation, and Support Agreement is entered into between Vitech Systems Group, Inc. (hereinafter "*Vendor*"), having principal offices at 401 Park Avenue South, New York, NY 10016 and the Wisconsin Department of Employee Trust Funds ("*ETF*") having principal offices at 801 West Badger Road, Madison, WI 53713.

In consideration of the promises and mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Article 1.

DEFINITIONS AND TERMINOLOGY

In addition to terms parenthetically defined in different sections of this Agreement, the defined terms used herein shall have the meanings set forth in Appendix A. All defined terms can be used in all of their grammatical forms without changing their meaning. All references to the term "days" are to calendar days, unless otherwise explicitly stated. All references to an Article or Section of this System License, Implementation, and Support Agreement, the ETF RFP, or Vendor Proposal shall include all subsections thereof, unless otherwise explicitly stated.

Article 2.

GRANT OF LICENSE TO ETF

2.1. Scope of License. Subject to payment of the applicable license fees, Vendor grants to ETF a nonexclusive, nontransferable, non-assignable (except in conjunction with a transfer or assignment of the Agreement in accordance with Section 23.1) perpetual (unless terminated by Vendor for the limited circumstances set forth in Article 22) license to install, execute, modify, reproduce, and use the Licensed Programs in conjunction with the System for its own internal data processing and computing needs and to make such copies of each component of the Licensed Programs as needed for such use, including copies for archival, disaster recovery, testing, training, and backup purposes, each in accordance with and subject to the terms and conditions contained in this Agreement. Such rights shall extend to all Authorized Users, provided that the rights granted to those Authorized Users that are participating employers are limited to the right to use the Licensed Programs. The license grant provided herein shall not be deemed to limit ETF's ownership of the Work Product as provided in Section 11.3. This license does not include the specific licenses granted or terms of sale for any Third Party Equipment or Third Party Software agreed to in writing by ETF.

2.2. Source Code. Upon delivery of each Phase of the System, Vendor shall provide ETF with the then current Source Code Materials. Subject to payment of the applicable license fees, Vendor hereby grants to ETF a nonexclusive, nontransferable, non-assignable (except in conjunction with a transfer or assignment of the Agreement in accordance with Section 23.1) perpetual (unless terminated by Vendor for the limited circumstances set forth in Article 22) license to install, execute, modify, configure, reproduce, and use the Source Code Materials. As

part of such license, ETF shall be permitted to allow third party entities to do any of the foregoing on behalf of ETF, provided that ETF shall have such third party entities (i) undertake in writing to observe all applicable restrictions set forth in Section 2.3.1 and Article 18 with respect to such Source Code Materials as may be furnished to them by ETF, and (ii) agree in writing that Vendor may enforce the terms and conditions of this Agreement as to confidentiality and license restrictions against such entities provided further that ETF shall not disclose the Source Code Materials to any third party entity (other than in conjunction with a transfer or assignment of the Agreement in accordance with Section 23.1) unless ETF obtains Vendor's written consent to such disclosure, which consent may be withheld, conditioned, or delayed by Vendor only if Vendor reasonably believes that the third party entity selected by ETF is a Competitor of Vendor. If Vendor withholds its consent to a disclosure of the Source Code Materials, Vendor shall provide written justification for its decision to ETF within five (5) Business Days, including Vendor's rationale for concluding that such third party entity is a Competitor of Vendor. During the term of this Agreement, Vendor shall update the Source Code Materials at least once per year.

2.3. License Restrictions.

2.3.1 The Licensed Programs shall be used solely for the purpose of processing data of ETF, Authorized Users, and End Users on one or more database servers operated by ETF or an Approved Host. ETF shall not (i) except as permitted under this Agreement, license, sublicense, resell, rent, lease, distribute or otherwise transfer or market its rights under this Agreement; (ii) use or permit the use of the Licensed Programs to provide service bureau, outsourcing or other third party services; (iii) circumvent or disable any security or other technological features or measures of the Licensed Programs without the written consent of Vendor; and (iv) replicate any features, functions, integrations, or interfaces of the Licensed Programs for the purpose of licensing such features, functions, integrations, or interfaces of the Licensed Programs to others. In addition, ETF shall use reasonable efforts to assure the physical security of the Licensed Programs (to the extent the Licensed Programs are in the physical possession of ETF or an Authorized User) and to prevent the unauthorized copying, reproduction, publication, or utilization thereof. ETF shall, upon reasonable written notice, permit Vendor, or its representatives, to inspect any location on which ETF is using the Licensed Programs.

2.3.2 ETF is responsible and liable for the observance and proper performance by all Authorized Users of the terms and conditions of this Agreement. In order for an End User to access the publicly available portions of the Licensed Programs, ETF will require each End User to accept certain contractual terms with ETF either via a click-through agreement on the applicable website or by other means ("*End User Terms*"). Such End User Terms shall not contradict any terms set forth in this Agreement, shall be no less restrictive than this Agreement, and shall include, but not be limited to, (A) each End User acknowledging and agreeing that (i) its use of the publicly available portions of the Licensed Programs is solely as a client to ETF and pursuant to its contractual terms with ETF, and (ii) there is no contractual relationship between an End User and Vendor created by the use publicly available portions of the Licensed Programs; and (B) terms providing that Vendor shall not be liable for any direct, special, incidental, punitive, exemplary, indirect, or consequential damages relating to any End User claim in connection with such End User's use of the Licensed Programs. Requiring End Users to accept the End User Terms shall constitute compliance with the terms of this Section 2.3.2.

Provided ETF is in compliance with the terms of this Section 2.3.2, ETF shall have no liability to Vendor for any act or omission of an End User in connection with such End User's use of the Licensed Programs.

2.3.3 ETF acknowledges and agrees that to the extent that ETF wishes to modify any Embedded Software it will be the obligation of ETF, at ETF's expense, to procure a license from the applicable third party licensor prior to modifying the Embedded Software.

2.4. Documentation and Training. In connection with its installation of the System, Vendor shall provide ETF with Documentation and training for ETF Personnel as set forth in Article 17. Documentation that is Work Product shall be owned by ETF as set forth in Section 11.2. For any Documentation that is not Work Product, Vendor hereby grants to ETF the perpetual, non-exclusive, irrevocable right to use, modify, create derivative works of, and to make copies of such Documentation to facilitate ETF Personnel's permitted use of the System.

2.5. Precedence. This executed Agreement resolves any differences between the terms of the ETF RFP and the Vendor Proposal. In the event there is a conflict or ambiguity in or among the text of any of the documents constituting the Agreement between the parties, the order of precedence shall be: (i) the Wisconsin Standard Terms and Conditions (DOA-3054) as presented in Appendix E.2 to the RFP (this Agreement defines "costs in excess of the contract price" as referenced in Section E.2.13 to be limited by Section 16.21 of this Agreement); (ii) the Wisconsin Supplemental Terms and Conditions for Procurements for Services (DOA-3681) as presented in Appendix E.3 to the RFP; (iii) the Terms and Conditions of this Agreement; (iv) the ETF RFP and all additions and modifications thereto identified in Attachment A (excluding the aforementioned Appendix E.2 and Appendix E.3); and (v) the Vendor's Proposal and all additions and modifications thereto identified in Attachment A. In the event there is any conflict between Articles 1-23 of this Agreement and any of the appendices or attachments, Articles 1-23 shall control, unless explicitly stated otherwise. The order of precedence for the items identified in Attachment A shall be in the order they are listed. This Section shall survive the termination of this Agreement.

2.6. Exceptions. The exceptions identified and agreed upon as indicated in Attachment D hereto have been excluded from the requirements defined in the ETF RFP.

2.7. Assumptions. The assumptions identified and agreed upon as indicated in Attachment E hereto have been excluded from the requirements defined in the ETF RFP.

Article 3.

OBLIGATIONS OF VENDOR

In addition to obligations otherwise set forth in this Agreement, Vendor shall perform the obligations detailed in this Article 3.

3.1. Services and Deliverables. Except as provided in Attachments D and E, Vendor shall provide to ETF: (i) all the Deliverables set forth in this Agreement and meeting in all material respects all of the System Specifications; and (ii) all professional services set forth in the Agreement.

3.2. Personnel. Vendor shall make available on a timely basis, and maintain for all services provided hereunder, all qualified managerial, technical and clerical personnel necessary to fulfill its obligations hereunder. Vendor shall perform background checks on all Vendor Personnel providing services on ETF's Premises and/or having access to unscrambled ETF data that, at a minimum, adhere to the standards set forth in the then-current version of the *Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks*. More stringent background checks are permitted. Upon ETF's request, details regarding the Vendor's background check procedures shall be provided to ETF. A copy of the results of each criminal background check conducted by Vendor shall be made available to ETF upon its request. If ETF has reasonable concerns about any or all Vendor Personnel or Vendor's background checking procedures, ETF reserves the right to conduct its own background checks on Vendor Personnel.

3.3. Testing Support. Throughout Vendor Testing and User Acceptance Testing, Vendor shall provide dedicated staff that is separate and independent from the Vendor's development team to provide testing support and problem resolution until all Vendor and ETF testing is complete.

3.4. Cooperation. Vendor shall cooperate with ETF and all ETF Personnel in performing the Vendor services, completing the Project, and reasonably coordinating with other applicable modernization activities as contemplated by the ETF RFP and requested by ETF.

3.5. Public Records and Open Meetings. Vendor acknowledges that ETF is subject to the provisions of (i) the Wisconsin Public Records Act (Wis. Stat. § 19.31 *et seq.*) (the "*Public Records Law*"), which provides generally that all records relating to a public agency's business are open to public inspection, disclosure and copying in the manner provided in the Public Records Law, unless specifically exempted under the Public Records Law; and (ii) the Open Meetings Act (Wis. Stat. § 19.81 *et seq.*) (the "*Open Meetings Law*"), which provides generally for open meetings for public bodies. Accordingly, ETF cannot represent or guarantee that any information submitted by Vendor will be confidential. In the event ETF receives a request under the Public Records Law related to this Project, ETF's sole responsibility will be to notify Vendor of the request to allow the Vendor to seek protection from disclosure in a court of competent jurisdiction. Vendor acknowledges and agrees that (with the exception of Vendor's trade secrets as indicated in an appropriately executed Wisconsin form DOA-3027 submitted as part of the Vendor's response to the RFP) ETF shall be able to comply with such request without any liability under this Agreement and regardless if such information being requested is considered Vendor's confidential or proprietary information, unless Vendor obtains such judicial protection against such disclosure against the requester. ETF and Vendor acknowledge and agree that ETF has returned to Vendor the information included in Attachment D.25 of the Vendor Proposal.

3.6. Vendor Records. Vendor shall keep and maintain under generally accepted accounting principles full, true and complete records, contracts, books, documents, staff work time records, executed documents, and other relevant information for services provided hereunder for ETF, or its designated representative in a manner sufficient for the purpose of financial audit, Project review or to otherwise determine compliance with Vendor's obligations hereunder. Vendor shall make available to ETF, its regulators, or any of their respective designated representatives such copies of records upon ten (10) Business Days advance written notice by ETF, provided that if the records to be disclosed include Vendor Confidential

Information and the disclosure will be to a party other than ETF, the State of Wisconsin, or the United States Government, ETF shall notify Vendor prior to the disclosure so that Vendor can seek a confidentiality agreement from the recipient. Vendor shall provide such records at its own expense and at no cost to ETF. Vendor shall retain all records relating to this Agreement for a period of five (5) years beyond the last to occur of (i) termination of this Agreement, (ii) completion of any required audit, or (iii) date of final payment. Vendor agrees to provide ETF with Vendors Audited Financial Statements in response to ETF's written request as described in the ETF RFP. ETF also agrees to destroy or return such Audited Financial Statements within 60 days. ETF can also ask for extensions beyond the initial 60 day period.

Article 4.

OBLIGATIONS OF ETF

In addition to obligations otherwise set forth in this Agreement, ETF shall perform the obligations detailed in this Article 4.

4.1. Availability of ETF Equipment and Facilities. ETF shall furnish and make available such ETF Equipment and ETF Facilities, as reasonably required for installation, operation, or maintenance of the System. Notwithstanding the foregoing, Vendor acknowledges that ETF has limited office space. ETF shall take such action as may be reasonably necessary to ensure that all ETF Facilities and ETF Equipment required for operation of the System or particular Phases of the System are complete and operable in accordance with the ETF RFP, at least three (3) Business Days prior to the date scheduled for delivery of the applicable Phase.

4.2. Access to Premises. Subject to any limitations set forth in the ETF RFP, ETF shall grant to Vendor such reasonable access to ETF Premises, and all ETF Facilities and ETF Equipment as may reasonably be necessary for Vendor to perform its obligations under this Agreement.

Article 5.

VENDOR'S PERSONNEL

5.1. Vendor Personnel. Vendor shall be fully and exclusively responsible for the management and performance of Vendor Personnel under this Agreement. Vendor shall be fully and exclusively responsible for payment for all Vendor Personnel wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, travel, temporary and permanent housing expenses, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless ETF and the State of Wisconsin, and shall provide ETF and the State of Wisconsin with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns. Vendor Personnel shall at all times adhere to all applicable laws and all of ETF's written policies and procedures that it has been provided related to data protection when it has ETF Confidential Information in its possession and/or is

accessing ETF Confidential Information, whether at ETF Premises or offsite. While at ETF Premises, Vendor Personnel shall also adhere to ETF's reasonable supervision and all provided written ETF Workplace Policies.

5.2. Key Personnel. "*Key Personnel*" assigned to perform services hereunder are identified in Attachment F of this Agreement. Such Key Personnel shall not be reassigned for at least one (1) year following the commencement of the portion of the Project for which they are responsible. As part of identifying the Key Personnel in Attachment F, Vendor has identified its Project Manager. Vendor has authorized its Project Manager to make binding decisions and commitments to ETF related to the Vendor's performance of the services and completion of the Project. Notwithstanding the foregoing, the Vendor's Project Manager shall not have authority to modify this Agreement.

5.3. Replacement of Personnel. Vendor Personnel, including Key Personnel, will be replaced as set forth in this Agreement.

5.4. Subcontractors.

5.4.1 Approved Subcontractors. Other than its Related Entities and Vendor individual contractors hired for staff augmentation purposes, Vendor shall not use subcontractors for the performance of Vendor's obligations under this Agreement, unless prior written consent is obtained from ETF in each case, such consent not to be unreasonably withheld, delayed or conditioned. All Related Entities shall be deemed subcontractors for purposes of this Agreement. Each subcontractor and its personnel shall be considered Vendor Personnel under this Agreement and Vendor shall be fully responsible for the management, compensation and performance of such subcontractors as provided in Section 5.1. Each contract between Vendor and an approved subcontractor (excluding subcontractors that are Related Entities but including individual contractors hired by Vendor for staff augmentation purposes) shall be in writing and contain provisions concerning ETF Confidential Information and intellectual property that are consistent with Vendor's obligations under this Agreement. For subcontractors that are Related Entities, Vendor represents and warrants that Vendor has in place written agreements with each such Related Entity concerning ETF Confidential Information and intellectual property that are consistent with Vendor's obligations under this Agreement. Additional or replacement subcontractors are also subject to prior written approval by ETF as set forth above. Vendor shall be fully responsible for the acts and omissions of any subcontractor as it relates to this Agreement, including but not limited to, any breach of this Agreement caused by the subcontractor. Upon request by ETF, Vendor shall provide a copy or a redacted copy (if necessary to protect confidential information) to ETF of each contract Vendor has with any such subcontractor so that ETF can determine if such contract complies with this Agreement. The failure of Vendor to identify and get approval of a subcontractor will be considered a material breach of this Agreement capable of being cured only by the immediate removal of the subcontractor from the Project at no penalty to ETF. In the event a subcontractor is unable to fulfill its obligations under this Agreement in any respects, Vendor shall, at no additional cost to ETF, either (i) find a replacement subcontractor that meets ETF's approval and can provide the same or equivalent products and services; or (ii) fulfill the subcontractor's obligations itself by delivering the same or equivalent products and services.

5.4.2 Public Records Law and Subcontractor Agreements. In the event ETF receives a request under the Public Records Law for any subcontractor agreement, Vendor acknowledges and agrees that ETF shall comply with such request without any liability under this Agreement, unless Vendor or the subcontractor obtains judicial protection against such disclosure against the requester. Vendor shall ensure that each of its subcontractor agreements shall permit ETF to comply with such Public Records Law requests as it relates to such subcontractor agreements.

Article 6.

ETF CONFIDENTIAL INFORMATION

6.1. Vendor is a Business Associate. With respect to Vendor's activities pursuant to the Agreement, Vendor acknowledges that it is a "Business Associate" of ETF, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Vendor acknowledges that certain of the information that Vendor will receive and use in providing its services is protected by HIPAA and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as passed as part of the American Recovery and Reinvestment Act of 2009.

6.2. ETF Confidential Information. Vendor shall presume that all information received or obtained by Vendor in the performance of its obligations is ETF Confidential Information, unless otherwise designated by ETF in writing. The ETF Confidential Information shall remain the property of ETF at all times.

6.2.1 Uses and Disclosures. Vendor shall keep ETF Confidential Information confidential and except as authorized by ETF in writing, Vendor may use ETF Confidential Information only to perform its obligations required under this Agreement. No ETF Confidential Information collected, maintained, or used in the course of this Agreement shall be disseminated by Vendor except as authorized by law and with the written consent of ETF, either during the term of this Agreement or thereafter.

6.2.2 Minimum Necessary. Vendor will make reasonable efforts to use, disclose, or request only the minimum amount of ETF Confidential Information necessary to accomplish the intended purpose and in relation to ETF Protected Health Information and Electronic Protected Health Information, Vendor shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of ETF Confidential Information to Vendor Personnel shall be limited only to those who need the information and only to the extent necessary to perform their responsibilities according to this Agreement.

6.2.3 Information Safeguards. Vendor shall provide reasonable and appropriate physical and logical protection for all ETF written and electronic information. Vendor shall encrypt and/or de-identify all electronic ETF Confidential Information its control or possession using industry standard encryption techniques and technology during transport and at rest.

6.2.4 Vendor Responsibility. Vendor shall remain the responsible authority in charge of all information collected, used or disseminated by Vendor in connection with the performance of its obligations under this Agreement.

6.2.5 Vendor Personnel. Vendor shall provide adequate supervision and training to the Vendor Personnel to comply with the terms of this Agreement. Vendor has, or will have before the applicable person or entity performs services hereunder, enforceable written agreements with all Vendor Personnel that obligates all such personnel not to disclose any of ETF Confidential Information acquired or accessed during the course of performance of services under this Agreement.

6.2.6 Return or Destruction of ETF Confidential Information. Upon termination or expiration of this Agreement, or earlier upon ETF's request, Vendor must return any and all ETF Confidential Information collected, maintained, or used in the course of the performance of this Agreement. As part of the foregoing requirements, Vendor shall purge and shall have all of its subcontractors purge all ETF Confidential Information from its computer systems, except automatically generated computer back-up or archival copies generated in the ordinary course of Vendor's or subcontractors' information systems procedures, provided that no further use is made of such copies. Upon ETF's request, Vendor shall certify in writing that it has complied with the foregoing requirements.

6.3. Limitations on Confidentiality. The restrictions set forth in Section 6.2 respecting confidentiality shall not apply to any ETF Confidential Information (excluding Personally Identifiable Information) which: (a) is in or becomes part of the public domain without breach of this Agreement or violation of any applicable law; (b) was properly in Vendor's possession prior to such disclosure, (c) was disclosed to recipient by a third party who did not obtain such ETF Confidential Information, directly or indirectly, from the other party subject to any confidentiality obligation; or (d) is required to be disclosed pursuant to a valid request under the Public Records Law and/or Open Meetings Law (as defined in Section 3.5). This Section 6.3 shall not apply to Personally Identifiable Information.

6.4. Subpoena. In the event that a subpoena or other legal process is served upon Vendor for records containing ETF Confidential Information, Vendor shall promptly notify ETF in advance of any disclosure of ETF Confidential Information and cooperate with ETF to object to and/or limit such disclosure, provided that ETF shall reimburse Vendor for all reasonable out-of-pocket expenses incurred by Vendor under this Section.

6.5. Reporting of Breach, Unauthorized Disclosure or Improper Use. Upon becoming aware of any breach, unauthorized disclosure or improper use of the ETF Confidential Information, Vendor shall report it within one business day to ETF's Privacy Officer as well as ETF's Contract Administrator and promptly consult with ETF to determine the exact nature of the information that has been breached, disclosed to unauthorized persons, or improperly used. Vendor's duty to report extends to Vendor's discovery of any breach, use or disclosure of Protected Health Information not allowed by this Agreement or in violation of 45 CFR Part 164 or HITECH. An occurrence of a breach, improper use or disclosure of Protected Health Information is considered to be discovered as of the first day on which such occurrence is known to Vendor, or, by exercising reasonable diligence, would have been known to Vendor. Vendor shall not provide any notification to any third party that is involved in a potential disclosure event unless directed otherwise by ETF or as required under applicable laws.

6.5.1 Specific Requirements relating to Protected Health Information. For any breach, unauthorized disclosure, or improper use of Protected Health Information that is not allowed by this Agreement or in violation of 45 CFR Part 164 or HITECH, Vendor shall immediately conduct an investigation and report to ETF in writing within four business days of Vendor's initial report, at least the following information:

- a. If available to the Vendor, the name and contact information of each individual who's Protected Health Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.
- b. A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.
- c. A description of the types of Protected Health Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).
- d. A brief description of what Vendor is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.
- e. The actions Vendor has undertaken or will undertake to mitigate any harmful effect of the occurrence.
- f. A corrective action plan that includes the steps Vendor has taken or will take to prevent similar occurrences.

6.5.2 Duty to Mitigate. Vendor will take prompt steps mitigate, to the extent practicable and in accordance with state law and this Agreement, any harmful effect that is known to Vendor of a breach, improper use or unauthorized disclosure of ETF Confidential Information. As applicable in cases of breach, unauthorized disclosure or improper user of ETF Protected Health Information, Vendor shall in addition mitigate in accordance with the provisions of HIPAA and HITECH.

6.5.3 Reimbursement of Costs. Vendor shall reimburse ETF for all reasonable cost of notifications and other measures that are required by law, whether in the form of individual letters and/or public notice. If the unauthorized disclosure of ETF Confidential Information includes the unauthorized disclosure of Personally Identifiable Information, and if it is determined that Vendor is at fault, Vendor, at Vendor's sole cost, shall provide and/or reimburse ETF for obtaining credit monitoring services for any individual whose Personally Identifiable Information is deemed to be part of the unauthorized disclosure.

6.6. Access, Amendment and Disclosure Accounting in relation to Protected Health Information. Upon ETF's request, Vendor agrees to provide ETF with access to any Protected Health Information held by Vendor in accordance with 45 CFR § 164.524 so that ETF can meet its access obligations under HIPAA and HITECH. Upon ETF's request, Vendor agrees to make any Protected Health Information held by Vendor available for amendment and incorporate any amendments requested by ETF to Protected Health Information held by the Vendor, in accordance with 45 CFR § 164.526. Upon ETF's request, Vendor agrees to make

available to ETF any information it holds that is required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

6.7. Accounting to ETF and Government Agencies. Vendor will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH. Vendor shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.

6.8. Agreement to Amend Provisions relating to Future Changes in HIPAA and HITECH Requirements. The parties to this Agreement recognize that federal laws relating to transactions, security and privacy are still evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on Vendor remain in compliance with the regulations then in effect.

6.9. Irreparable Harm. Vendor acknowledges that the disclosure of ETF Confidential Information by Vendor in violation of this Section will cause irreparable injury to ETF, its personnel, customers, and/or its members that is not adequately compensable in monetary damages. Accordingly, ETF will be entitled to seek injunctive relief without any requirement to post bond or other security therefor in any court of competent jurisdiction for the breach or threatened breach of this Article 6, in addition to any other remedies available to ETF in law or equity.

6.10. Documentation. All documentation that is required by 45 CFR Part 164 will be retained by the Vendor as required by law.

Article 7.

ETF PAYMENTS TO VENDOR

7.1. Payment Types and Fixed-Fees. The parties shall recognize the following (4) types of payments for this Agreement:

a. **Payments for System License Fees**

These payments are for Vendor's license fees for the Licensed Programs.

b. Payments for Professional Services

These payments are for Vendor's professional services for the Project, which shall include, but not be limited to, the Vendor providing Customizations, implementation of the System, Interfaces, training and Documentation. These fixed fees shall include all of Vendor's travel and out-of-pocket expenses.

c. Payments for Third-Party Equipment and Third-Party Software

These payments are for Third-Party Equipment and Third-Party Software to be purchased by Vendor on behalf of and for ETF as set forth in this Agreement. The listed fees shall include all shipping, delivery, maintenance and shipping related insurance expenses as agreed to in the formal request to purchase. ETF and Vendor shall mutually agree which Third-Party Equipment and Third-Party Software will be procured from Vendor and which Third-Party Equipment and Third-Party Software will be procured by ETF. Additionally, ETF and Vendor will mutually agree on any deviations or variations from the Third-Party Equipment and Third-Party Software proposed by Vendor.

d. Payments for Upgrade Subscription and Support and Maintenance Services

These payments are for the Upgrade Subscription and Support and Maintenance Services as set forth in this Agreement.

Vendor acknowledges and agrees that Attachment B and Attachment G lists all fees due for this Project and that Vendor shall not be permitted to exceed any of the fees listed in Attachment B and Attachment G unless pre-approved by ETF in a written amendment or written Change Order (as defined in Section 11.2) signed by both parties. ETF shall make payments to Vendor in accordance with the deliverable-based schedule set forth in Attachment B and Attachment G. The payment schedule includes estimated invoice dates that are subject to completion by Vendor of the related services and Acceptance by ETF of the related Deliverable noted in Attachment B and Attachment G. The estimated invoice dates are subject to change based upon updates to the Project Work Plan.

7.2. Invoices for Third Party Software and Third Party Equipment. Vendor shall invoice ETF for the fees for any Third Party Equipment and Third Party Software procured by Vendor as follows: (i) in the case of Third Party Equipment, upon delivery thereof to ETF, and (ii) in the case of Third Party Software, on or about the date of license grant to ETF. Vendor shall reasonably cooperate with ETF so that Third Party Software and Third Party Equipment are not delivered to ETF until they are needed.

7.3. Acceptance Conditions for Validation Milestones. ETF will accept the Deliverables identified in the "Deliverable" column of Attachment B as "Validation Complete" if the following criteria is satisfied: (i) the design and configuration activities for functional checklist items planned for related Sprints, per the Sprint Plan described in the Vendor Proposal and further formalized in the Project Work Plan, are at least eighty-five percent (85%) complete and all "Backlog Design Issues" (defined to mean those planned design and configuration activities that were not completed for a prior Validation) that were re-assigned from a prior

Validation by mutual agreement are completed, (ii) Vendor has delivered a related V3 release and prepared a dedicated environment for ETF to conduct validation testing, (iii) ETF has completed the execution of the validation testing scripts and logged Defects found, and (iv) Vendor has delivered Defect Corrections for any Defect that ETF requires be corrected in order to confirm the acceptability of the design.

7.4. Payment of Invoices. ETF will process payment for each undisputed invoice in a manner consistent with the policies and procedures of ETF, with payment for each accepted invoice no more than thirty (30) days after the receipt of the invoice unless Vendor and ETF agree to longer payment terms. For payments identified by a non-zero percentage in the column of Attachment B headed by “%,” invoices will not be accepted by ETF until ETF accepts the applicable Deliverable by issuing a Certificate of Acceptance. In the event ETF withholds payment of any disputed invoice, ETF shall not be deemed in default of its payment obligations hereunder, provided that it notifies Vendor of the reasons for such dispute in writing.

7.5. Taxes. ETF is exempt from all Federal, State and Local taxes, including, but not limited to, any sales and use taxes, on goods and services to be provided by Vendor and its subcontractors, and therefore not liable for any such taxes levied on or by Vendor in performance hereunder. No payment will be made by ETF for any taxes levied on Vendor's wage payments.

7.6. Hold-Back Amount. For payment of invoices, ETF shall remit payment less fifteen percent (15%) (the "*Hold-Back Amount*") as set forth in the ETF RFP, unless otherwise indicated in Attachment B.

Article 8.

THIRD PARTY EQUIPMENT AND SOFTWARE

8.1. Delivery; Expenses for Same; Risk of Loss. Expenses incurred for shipping, delivery, and shipping related insurance for all components of the System identified in the Agreement as Vendor's responsibility shall be allocated as agreed to in the formal request to purchase, including those for any Third Party Equipment and Third Party Software so identified and purchased from Vendor. If, prior to the purchase of Third Party Equipment or Third Party Software identified in the Agreement as Vendor's responsibility, Vendor becomes aware of improved products being available for the same or lesser cost to Vendor as the Third Party Equipment or Third Party Software originally proposed by Vendor, Vendor shall provide the improved product to ETF for the same or lesser cost. Vendor will arrange for delivery of such Third Party Equipment and Third Party Software to ETF Premises on or before the date(s) set forth in the Project Work Plan. For components of the System ordered by Vendor, Vendor shall bear the risk of loss until, in the case of Third Party Software, the date of license grant to ETF, and, for Third Party Equipment, until such component has been delivered to ETF. For avoidance of doubt, transfer of the risk of loss from Vendor to ETF in accordance with the foregoing sentence does not relieve Vendor from any of its obligations to deliver a System that conforms in all material respects to all System Specifications. ETF reserves the right to reject any Third Party Equipment or Third Party Software in the event such Third Party Equipment or Third Party Software does not meet the applicable System Specifications, or, at the time of receipt, is no longer manufactured, produced or supported by the third party supplier.

8.2. Dates of Delivery and Installation. Vendor shall have the right to specify delivery and installation dates for a particular Phase of the System later than those specified in the Project Work Plan, by written notice to ETF at least thirty (30) calendar days prior to the delivery or installation date(s) specified in the Project Work Plan. If ETF reasonably determines that ETF will be unable to prepare ETF Facilities or install ETF Equipment, if required, prior to the scheduled date for installation of the System, absent an Event of Force Majeure as set forth in Section 20.1, ETF shall so notify Vendor as soon as ETF becomes aware of such delay. In view of any such delay, the parties shall work together to promptly remedy such delay and shall comply with Section 9.5.

8.3. Installation and Configuration. Regardless of whether Vendor provides the Third Party Equipment or such Third Party Equipment is obtained separately by ETF, the Vendor shall cooperate with ETF in the installation and configuration of all Third Party Equipment at the ETF Premises to the extent required under the Project Work Plan and this Agreement.

Article 9.

PROJECT MANAGEMENT AND DELAYS

9.1. Project Management. Vendor shall be responsible for planning, scheduling and completing all Project tasks as set forth in this Agreement.

9.2. Project Work Plan. The parties have agreed to an initial Project Work Plan that sets forth a high level work plan for the Project. Within sixty (60) days after the Project Start Date, Vendor will prepare and submit a complete Project Work Plan for ETF's written approval. The Project Work Plan shall include the Deliverables, the completion dates for such Deliverables, and a Gantt chart including all such dates. The Project Work Plan is a Document Deliverable under this Agreement. Vendor acknowledges and agrees that the Project will not proceed until ETF's Project Director provides written approval of the Project Work Plan in accordance with Section 9.3, such approval not to be unreasonably withheld, delayed or conditioned.

9.3. Project Management Documentation. Within thirty (30) days after the Project Start Date, ETF shall provide Vendor an initial Requirements Traceability Matrix. Thereafter, Vendor shall maintain the Requirements Traceability Matrix to keep track of all Project requirements and Deliverables. For all Document Deliverables, ETF shall have a reasonable period of time as specified in the Project Work Plan, or if not so specified, five (5) Business Days or such longer period as permitted under Section C.6.1.5.1 of the ETF RFP, to review and approve the Document Deliverable. All Document Deliverables shall be of a reasonable length and Vendor shall not deliver multiple revisions of such Document Deliverables in a timeframe that will prevent ETF to timely review the Document Deliverables. Vendor shall promptly correct any deficiencies noted by ETF in the documentation or the Document Deliverables and Vendor shall be solely responsible for any delays in the Project caused by such corrections. Vendor shall maintain for the duration of the Project an electronic document repository of all updated written documentation and Deliverables provided to ETF that is electronically accessible to all ETF personnel, including over the internet. Vendor shall maintain the security of such

repository and limit access to it to only those Vendor Personnel who need access to perform its obligations hereunder.

9.4. Updating Project Documents and Reduction of ETF Requirements. Vendor is responsible for updating and maintaining all project management documentation, including but not limited to the Project Work Plan, Requirements Traceability Matrix, and the System Specifications throughout the implementation process; provided that no such changes will be considered agreed upon until approved in writing by ETF, such approval not to be unreasonably withheld, delayed or conditioned. Vendor will make such updates as frequently as changes are agreed to by the parties. Vendor shall submit all updated project management documents to ETF for its approval in accordance with Section 9.3. Vendor acknowledges and agrees that none of the project management documents, whether or not approved by ETF, shall be able to abrogate any of the ETF RFP requirements or a Change Order executed by the parties, Vendor shall be required to meet all the ETF RFP requirements, regardless of whether the project management documents include the requirement or not. Notwithstanding the foregoing, an ETF RFP requirement can be eliminated from the Project in the event Vendor specifically proposes the elimination of the ETF RFP requirement in writing to ETF and such proposal is agreed to in writing by the ETF Secretary (or his/her designee).

9.5. ETF-Caused Delays. Except for ETF's failure to pay undisputed amounts owed to Vendor under this Agreement or ETF's material breach of Article 18, ETF's failure to perform its responsibilities set forth in this Agreement shall not be deemed to be grounds for termination by Vendor. Vendor acknowledges that ETF may not be able to meet the time frames specified in the Project Work Plan or that ETF may determine that it is necessary to delay and/or modify the timing and sequencing of the implementation as provided in the Project Work Plan. While ETF is committed to the Project and will use reasonable efforts to provide staff and resources necessary to satisfy all such time frames, ETF shall not be deemed in default for any delays in the Project, provided ETF uses its reasonable efforts to accomplish its designated responsibilities and obligations as set forth in the Project Work Plan, and provided further that, if applicable as set forth below, the parties reach a mutually agreed Change Order. In addition, ETF may, at its option, delay the Project or any part thereof. Vendor and ETF agree to adjust the applicable Project Work Plan to take into account any ETF-caused delays; provided, however, that Vendor shall continue to perform any and all activities not affected by such ETF-caused delay. In the event an adjustment to a Project Work Plan causes Vendor scheduling conflicts or personnel unavailability and Vendor promptly notifies ETF of such conflicts or unavailability, ETF and Vendor shall prepare a revised, mutually agreeable Project Work Plan in accordance with Section 9.4, which may delay the commencement and completion dates of the Project and shall take into consideration the readjusted time frames and any necessary resequencing of the activities. Such readjustment, rescheduling or modification of the Project for any and all delays shall be at no additional cost to ETF if the aggregate delays are less than or equal to sixty (60) days and no single delay is more than ten (10) days in length. If the readjustment, rescheduling or modification of the Project for any and all ETF-caused delays are more than sixty (60) days in the aggregate, or if a single ETF-caused delay is more than ten (10) days in length, the parties shall enter into a Change Order in accordance with Section 11.2, including any supplemental charges justified by the ETF-caused delay.

Article 10.

TESTING, ACCEPTANCE AND COMPLETION

10.1. Vendor Testing. Vendor shall be responsible for all test planning and preparation throughout the Project and shall identify and prepare, test plans, test variants, test scenarios, test cases, test scripts, test data, and expected results for the entire System and all testing levels, including but not limited to Vendor Testing and User Acceptance Testing (the "*Testing Materials*"). These Testing Materials will incorporate all requirements of the Test Specifications and will be subject to the approval process in Section 9.3. Prior to Vendor Testing for a Phase, ETF shall perform verification and validation testing as set forth in the Project Work Plan. Vendor shall perform all Vendor Testing for each Phase, prior to ETF performing User Acceptance Testing for the Phase. Vendor shall keep track of all errors and problems during testing and implement and maintain a risk management strategy and methodology. Vendor shall install and configure the Deliverables and maintain a testing and training environment for such purposes, separate and apart from the production environment. Vendor shall designate an internal group of Vendor Personnel that are independent from the Vendor development team to conduct all Vendor testing. Vendor shall be finished with Vendor Testing when it completes all testing required for the applicable Phase as set forth in the Project Work Plan and Testing Plan. Upon completion of testing, Vendor shall issue a written certification signed by the Vendor Project Manager and the lead of its testing group certifying in writing that all Vendor Testing requirements were completed satisfactorily and that User Acceptance Testing can begin (the "*Certificate of Vendor Testing Completion*"). Unless agreed to otherwise by the parties, to the extent Vendor is conducting Vendor Testing at ETF Premises, ETF shall have the right to have ETF Personnel engaged in such Vendor Testing. Vendor shall supply the Certificate of Vendor Testing Completion to ETF with the applicable Testing Materials demonstrating the results of the Vendor Testing.

10.2. Regression Testing. Without limiting Vendor's other testing obligations under this Agreement, Vendor shall conduct Regression Testing as set forth in the ETF RFP in the manner set forth in the Vendor Proposal.

10.3. User Acceptance Testing. User Acceptance Testing shall be conducted by ETF in accordance with this Agreement, including but not limited to Section C.7.4.4 of the ETF RFP.

10.4. Live Date and Support. Vendor shall provide the cutover support in accordance with this Agreement, including but not limited to Section C.7.5 of the ETF RFP.

10.5. Completion. Completion of a Phase shall not occur until the acceptance criteria for the Phase that is set forth in Table 5 of the ETF RFP is achieved and a Certificate of Acceptance for the Phase is executed by authorized signatories of both Vendor and ETF.

Article 11.

CUSTOM PROGRAMMING

11.1. Customizations. As may be required by this Agreement to meet the System Specifications, the parties acknowledge that the Licensed Programs must be configured and/or modified. Vendor agrees to develop all Customizations for each Phase prior to installation of each Phase of the System and in accordance with the Project Work Plan.

11.2. Change Orders. In the event ETF requests a change to the scope of the Project, the ETF Project Director shall deliver such request in writing to the Vendor's Project Manager. Within ten (10) Business Days of the receipt of such a request, Vendor shall provide a written change order proposal (a "Change Order Proposal") that shall include: (i) a description of the change, the tasks involved in completing the work requested, and the level of effort involved in implementing the change; (ii) the estimated date by which such change will be completed; (iii) any consequential changes that will need to occur in the Project Work Plan; (iv) the fees and costs for implementing such change; and (v) the latest day by which written approval can be given to Vendor so that Vendor can implement the change in line with Vendor's Change Order Proposal. In the event the Vendor desires to initiate a change to the scope of the Project, it shall provide to ETF a Change Order Proposal that meets the foregoing requirements and also clearly explains the basis under this Agreement that gives rise to the need for a change. Vendor shall bear all costs in preparing a Change Order Proposal. ETF shall have no obligation to accept or agree to any Change Order Proposal, provided that Vendor may invoke the Conflict Resolution procedures set forth in Section 23.6 in the event ETF rejects a Change Order Proposal that Vendor reasonably believes is justified. A Change Order Proposal that is acceptable to ETF and Vendor shall become a Change Order under this Agreement when it is signed by the ETF Secretary (or his designee) and the Vendor Senior Vice President (or his designee). The parties agree that specific requirements may change as mutually agreed in writing by the respective Project managers. Prior to preparing a Change Order Proposal, the parties shall first determine whether the proposed change in the scope can be accomplished without charge in exchange for the removal or modification of other requirements previously agreed to in writing by the parties. The parties shall maintain a change request reporting mechanism and provide a change control plan/methodology for the duration of the Project.

11.3. Ownership. All Work Product is owned by ETF and shall be delivered to ETF or otherwise disposed of by Vendor only as directed by ETF. All Work Product shall be considered ETF Confidential Information. Vendor agrees that if any Work Product is copyrightable, it shall be deemed to be a "work made for hire" as such term is defined in the Copyright Laws of the United States. If, for any reason, any Work Product is excluded from the definition of "work made for hire," Vendor hereby assigns and conveys to ETF the entire right (including all patent rights, copyrights, and all other intellectual property rights), title and interest in and to such work. Vendor shall cooperate with ETF or its designees and execute all documents of assignment, declarations and other documents which may be prepared by ETF or its designees, and take other necessary actions as reasonably directed by ETF or its designees to effect the foregoing or to perfect, protect or enforce any proprietary rights resulting from or related to this Agreement. For those Vendor Personnel who create Work Product hereunder, Vendor represents and warrants that it has written agreements with such Vendor Personnel

assigning to Vendor ownership of all right, title and interest (including all patent rights, copyrights and other intellectual property rights) in all Work Product created in the course of performance the Vendor Personnel's obligations under the Project. Subject to Vendor's confidentiality obligations under Article 6, ETF hereby grants Vendor a non-exclusive, non-transferable right to modify, publish, create derivative works, copy, distribute, and produce and use the Work Product for the purpose of Vendor fulfilling its obligations hereunder and in support of or enhancement of the Licensed Programs for ETF and Vendor's other customers. This Section 11.3 shall survive termination of this Agreement for any reason. Vendor hereby agrees that ETF shall have a non-exclusive, irrevocable, fully-paid up license to use, copy, and modify all Vendor Technology contained in, or necessary for ETF's use of, the Work Product, in connection with its use, copying and modification of such Work Product.

Article 12.

INTERFACES

12.1. Interfaces; Bridging. Vendor shall provide and install for the cost specified in Attachment B of this Agreement, any and all Interfaces set forth in the ETF RFP and in accordance with the terms and time frames provided in the Project Work Plan.

12.2. Method of Interface Development. Prior to ETF's Acceptance of any Interface, Vendor shall provide to ETF a draft Interface specification for that Interface containing information obtained from both Vendor and the third party vendor of the program or application with which the specific Interface forms a "bridge." Subsequent to preliminary approval by ETF, the Vendor and the pertinent third party vendor shall prototype the Interface and perform appropriate testing to confirm that the interface will perform as expected. Subsequent to the successful completion of preliminary Interface testing, Vendor shall complete the Interface specifications, ETF shall approve same, and Vendor shall complete the implementation of the Interface pursuant to this Agreement and based on the approved Interface specifications.

12.3. Modification of Interfaces. If an Interface problem occurs with Licensed Programs, software provided by third parties, an Enhancement or other System modification, or if a modification to the Interfaces is required, Vendor will cooperate with the third party vendors to modify the Interfaces pursuant to as necessary to meet the requirements of the Interface warranties set forth in Section 16.7. Such modifications shall be at no additional cost to ETF. Prior to Acceptance of an Interface, the resolution of such Interface problems and the development and/or installation of such Interface modifications shall be completed. Acceptance of an Interface will occur concurrently with Acceptance of the applicable Phase as defined in Section 10.3, provided the requirements for the Interfaces set forth in this Article 12 and the ETF RFP are met.

12.4. Interface Specifications and Documentation. Prior to Acceptance of the Interfaces, Vendor shall provide to ETF documentation including, without limitation, record layouts and specifications for each and every Interface obtained by ETF from Vendor pursuant to this Agreement, and based on the Interface specifications developed by ETF and Vendor after the Implementation Date and/or listed in an exhibit hereto, as applicable (the "*Interface Documentation*"). ETF shall be entitled to withhold Acceptance of the Interfaces and the

applicable Phase of which the Interface is a part until Vendor provides and ETF receives such Interface Documentation.

Article 13.

WARRANTY PERIOD SERVICES

13.1. In addition to the Support and Maintenance Services, Vendor shall during the Warranty Period provide and be responsible for using all reasonable diligence and diagnostic assistance to correct Defects in the time periods and in the manner set forth in Sections 16.5 and 16.6 at no additional charge to ETF.

13.2. Through the end of the Warranty Period, should the proposed Third Party Equipment and Third Party Software prove inadequate to support the Licensed Programs and Customizations in terms of functionality, performance, availability, or scalability as set forth in the System Specifications, Performance Specifications, and ETF RFP, Vendor shall, within thirty (30) days of receiving notice from ETF that the System does not comply in such manner, provide all additional hardware and software components necessary to bring the solution into compliance with the System Specifications, Performance Specifications, and ETF RFP at no additional cost to ETF. Notwithstanding the foregoing, if the Project as set forth in the Project Work Plan is extended for any reason other than a Vendor-caused delay, Vendor's obligations in this Section 13.2 shall not apply to such extended period.

Article 14.

UPGRADE SUBSCRIPTION AND SUPPORT AND MAINTENANCE SERVICES

14.1. After implementation of the System, Vendor shall provide to ETF the Upgrade Subscription and Support and Maintenance Services for the greater of: (i) two (2) years from the end of the Warranty Period, or (ii) the remaining portion of the Initial Term. After the initial term for Upgrade Subscription and Support and Maintenance Services ETF shall have the option to extend the Upgrade Subscription and Support and Maintenance Services for up to two (2) additional three (3) year terms prior to the expiration of the then current term for such Upgrade Subscription and Support and Maintenance Services. Upgrade Subscription and Support and Maintenance Services may be terminated by ETF at any time by providing sixty (60) days advance written notice to Vendor. If the Upgrade Subscription and Support and Maintenance Services are terminated at any time or are not renewed by ETF, Vendor shall cooperate with ETF to transition responsibility for the Upgrade Subscription and Support and Maintenance Services from Vendor to ETF Personnel, at Vendor's then current hourly rates to the extent the actual time spent is outside of the scope of the current services provided in this Agreement. ETF, to transition responsibility for the Support and Maintenance Services from Vendor to ETF Personnel. Fees for Upgrade Subscription and Support and Maintenance Services during the Initial Term and the first two (2) Renewal Terms shall be as set forth in Attachment G. Adjustments to fees for Upgrade Subscription and Support and Maintenance Services thereafter shall be made no more frequently than once per twelve (12) month period, and any increase in such fees shall not exceed the lesser of (i) two (2%) percent, or (ii) the percentage change in the

Index for the immediately preceding calendar year. Vendor shall provide notice of any such fee increase ninety (90) days in advance of such fee increase taking effect.

Article 15.

ADDITIONAL SUPPORT, FEES, AND CHARGES

15.1. Unless otherwise set forth in a Change Order, ETF is not obligated to reimburse Vendor for expenses (i.e., transportation, lodging, meals, per diem, etc.) for additional services requested hereunder and that all such expenses are contained within the hourly rates noted by Vendor in the proposal, subject to modification by mutual agreement for special circumstances.

15.2. Vendor's hourly rates during the Initial Term shall be as set forth in Attachment G. Adjustments to Vendor's hourly rates thereafter shall be made no more frequently than once per twelve (12) month period, and any increase in such hourly rates shall not exceed the lesser of (i) two (2%) percent, or (ii) the percentage change in the Index for the immediately preceding calendar year. Vendor shall provide notice of any such rate increase ninety (90) days in advance of such rate increase taking effect.

15.3. Subject to space availability, ETF may enroll its employees in Vendor's training classes, held at Vendor's facility for regular or advanced training at Vendor's published rates. This provision in no way impacts the training to be provided by Vendor in accordance with Article 17 and the requirements noted in the ETF RFP.

15.4. If Vendor distributes a newsletter (whether electronically or in print) designed to keep its customers generally informed about the use and operation of Licensed Programs, features of new Releases and Enhancements, and current additional support offering, Vendor shall provide ETF with one (1) copy of the newsletter without charge and make additional copies (if only provided in print) available for a reasonable charge.

15.5. Vendor shall consider and evaluate the development of Enhancements for the specific use of ETF and shall respond to ETF's requests for additional services pertaining to the Licensed Programs, provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Vendor and ETF and in accordance with the rates specified in Attachment G.

Article 16.

WARRANTY; REMEDIES

16.1. Warranty of Conformity to Specifications. During the Warranty Period, Vendor represents and warrants that the System (i) will operate without Defect; and (ii) will operate in material conformity with the System Specifications. Vendor, at its own expense, upon receipt of written notice from ETF, shall make all corrections and modifications necessary to the System and each component or portion thereof, so that the System will so operate. If a Defect is discovered during the Warranty Period but, despite the exercise of reasonable diligence by ETF,

written notification of such Defect reaches Vendor within ten (10) Business Days after the conclusion of the Warranty Period, such Defect shall be deemed to have been reported during the Warranty Period.

16.2. Warranty of Right to License; Noninfringement. Vendor represents and warrants that it is the owner of the Licensed Programs and that it has the right to convey the licenses set forth in Article 2 hereof, and that ETF's use of such Licensed Programs, the design of the System as a whole, and the execution of the Licensed Programs on the Vendor approved Equipment do not infringe, misappropriate, or otherwise violate any third party rights, including but not limited to any patent rights, copyrights, trade secret rights, trademark rights, or other proprietary or contractual rights. Notwithstanding the foregoing, it is agreed that Vendor shall not be in breach of this warranty for any infringement, misappropriation or violation of third party rights to the extent based upon (a) any modification of the System by ETF or by a third party at the direction of ETF that is not approved in writing by Vendor; (b) Third Party Equipment and/or Third Party Software; or (c) unauthorized use of the System if infringement, misappropriation or violation of third party rights could have been avoided without such unauthorized use.

16.3. No Claims. Vendor further represents and warrants that, as of the Effective Date, there is no action, suit, claim, investigation or proceeding pending, or to the best of Vendor's knowledge, threatened against, by or affecting Vendor or the System or any component thereof 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 which, if adversely determined, might materially adversely affect the use of the System or any component thereof or restrict Vendor's ability to consummate the transactions contemplated hereby or provide the services under this Agreement. Vendor further represents and warrants that it knows of no basis for any such action, suit, claim, investigation or proceeding.

16.4. Service Warranty. Vendor represents and covenants that it shall perform all services, including, but not limited to, professional services and Support and Maintenance Services, and provide the Deliverables required by this Agreement in a timely, professional and workmanlike manner, and in accordance with industry practices and standards; provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

16.5. Correction of Defects. Vendor shall correct verifiable and reproducible Defects reported to Vendor or discovered by Vendor during the Warranty Period. After the initial release of a Defect Correction, Vendor shall include each Defect Correction in all subsequent Releases of the Licensed Programs. Vendor will provide reasonable diagnostic assistance for all Defects reported to Vendor or discovered by Vendor during the Warranty Period, and Vendor shall resolve all such Defects at no additional charge to ETF. Upon ETF reporting a Defect, the Defect shall be categorized as a Critical System Failure, High System Error, Medium System Error or Low Error in accordance with Section C-9.3 of the Vendor Proposal, and Vendor shall respond to the Defect and provide Defect Corrections in accordance with same.

16.6. Vendor Obligations Under Warranty. Vendor shall correct or modify such portion of the System or any components thereof that contains a Defect that has been reported by ETF or its representatives by notice to Vendor, or discovered by Vendor, during the Warranty Period. Vendor shall remain responsible for correcting Defects remaining after the Warranty Period that were reported by ETF or its representatives to Vendor within the Warranty Period, or discovered by Vendor within the Warranty Period. Vendor shall use its reasonable efforts to perform all warranty services and Support and Maintenance Services in a manner which minimally disrupts ETF's daily operation.

16.7. Cooperation with Third Parties and Interfaces. During the Warranty Period Vendor represents and warrants that any and all Interfaces shall operate in all material respects in conformance with specifications therefor and operate with the versions of software between which the Interface serves. Vendor further represents and warrants that it will maintain the operation of its portion of the Interfaces.

16.8. System Performance. During the Warranty Period, Vendor represents and warrants that the System shall perform in accordance with the performance specifications set forth in the ETF RFP as qualified by Vendor Proposal (the "*Performance Specifications*"), so long as: (a) the System is not used in excess of normal processing requirements as agreed between the parties, (b) the nonperformance is not caused by ETF's acts or omissions or use of equipment which Vendor has previously indicated in writing as being improper, or (c) no coding or configuration change has been made to the Licensed Programs or any related third party hardware or software by any party or than the Vendor, unless such coding or configuration change was approved in writing (for the purposes of this section "in writing" shall include e-mail or defect tracking system) by Vendor Project Manager.

16.9. Complete System. During the Warranty Period, Vendor represents and warrants that no additional third party software or equipment is required or necessary to operate the System in accordance with System Specifications and the Performance Specifications, other than Embedded Software or as is listed in Attachment C, Attachment D or Attachment E. In the event any additional equipment or software is needed to comply with this Section, Vendor shall promptly provide, test, install, and appropriately configure the additional software and hardware at ETF Premises, free of charge and at no additional cost to ETF and ETF shall reasonably cooperate with Vendor in its fulfillment of these obligations.

16.10. Releases Warranty. During the Warranty Period, Vendor represents and warrants that any and all Releases of the Licensed Programs shall operate in all material respects with published specifications therefor and without material defect.

16.11. Disabling Code. Vendor represents and warrants that it has not introduced into the System and any component thereof at any time before the Live Date any virus, malware, worm, trap door, back door, timer, clock, counter or other limiting routine, copy protection mechanism, dongle key, instruction or design that would erase data or programming or otherwise cause the System or any component thereof to become inoperable or incapable of being used in the full manner for which it was designed and created including, without limitation, any such timers or other limiting routines that Vendor may configure within the System, any limitations that are triggered by: (a) the Licensed Programs being used or copied certain number of times, or

after the lapse of a certain period of time; (b) the Licensed Programs being installed on or moved to a central processing unit or system that has serial number, model number or other identification different from the central processing unit or system on which Licensed Programs were originally installed; or (c) the occurrence or lapse of any similar triggering factor (each a "Disabling Code"). Vendor shall use reasonable care to protect ETF's Equipment from the introduction of a Disabling Code and require that all Vendor Personnel take all precautions not to introduce any Disabling Code while performing services under this Agreement. Notwithstanding anything contained herein to the contrary, in the event Disabling Codes introduced by Vendor are identified by Vendor or ETF, Vendor shall take all reasonable steps necessary, at no additional cost to ETF to: (i) restore any and all data lost by ETF as a result of such Disabling Code, to the extent that such recovery is technically feasible; (ii) provide a replacement component of the System without Disabling Code, (iii) test the replacement component of the System for the presence of Disabling Codes; and (iv) install and implement such replacement component of the System.

16.12. New Versions. During the Warranty Period and for as long as ETF obtains Upgrade Subscription and Support and Maintenance Services, Vendor shall provide, at no additional cost to ETF, the license to all Releases of the Licensed Programs to ETF. For the avoidance of doubt, any services required, including but not limited to, to implement and/or configure such Release shall be requested and shall be charged either via a fixed price Change Order or at Vendor's then current time and materials hourly rates.

16.13. New Equipment. Vendor represents and warrants that all Third Party Equipment and replacement or repair parts delivered to ETF by or through Vendor shall be new (i.e., unused and not reconditioned or refurbished).

16.14. Applicable Laws and Standards. Vendor represents and warrants that it complies with all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances in performance of the services hereunder.

16.15. Legal Requirements. Prior to the date of Acceptance of the last Phase of the Project (the "*Date of Final Acceptance*") and for as long as ETF obtains Upgrade Subscription and Support and Maintenance Services from Vendor, Vendor covenants that Vendor shall make all modifications necessary to keep the System in compliance with Federal laws and guidelines, as specified in Sections C.6.3.7.2 and C.8.4.1.1 of the ETF RFP (the "*Legal Modifications*"). The Legal Modifications shall be at no charge to ETF, except that Vendor may invoice ETF at Vendor's then-current rates for any time incurred by Vendor in developing and implementing Legal Modifications after the Date of Final Acceptance that exceeds two hundred fifty (250) hours in a calendar year.

16.16. Conditions Precedent to Vendor Obligations. No such warranties or obligations shall apply to the extent that any of the following causes the warranty failure:

- a. the System or relevant portion thereof has been installed, relocated or operated by ETF in a manner inconsistent with the provisions of this Agreement, or installed, relocated or operated by ETF in a manner inconsistent with the third party manufacturer's instructions;

- b. the System or relevant portion thereof has been modified by a party other than Vendor Personnel without the written approval of Vendor;
- c. the breach of warranty was caused by software code created or provided by ETF or an Authorized User without the written approval of Vendor; or
- d. the breach of warranty was caused by ETF's use of the System in combination with any hardware or software other than hardware and software identified in the ETF RFP and Third Party Equipment or Third Party Software specified by Vendor.

16.17. Guaranteed Most Favorable Pricing. Vendor represents and warrants that the pricing granted by Vendor to ETF is comparable to or better than the pricing offered by Vendor to other customers of substantially similar complexity with substantially similar requirements contracting under the same material terms and conditions. As used herein, material terms and conditions include those terms related to price and Vendor's performance. In the event that Vendor makes a general price reduction such prices shall be made available to ETF upon the date the general price reduction becomes effective and the same shall be incorporated into this Agreement.

16.18. Date Compliance. Vendor represents and warrants that the Licensed Programs are designed to be used prior to, during, and after any transition from one year to another, one century to another and one fiscal year to another. ETF represents and warrants that all existing interfaces, files and data stored or currently used contain valid century information at the Live Date.

16.19. Open Source Code. Vendor covenants that the Licensed Programs, Customizations, Interfaces and all other components of the System will not contain any open source code as of the Live Date other than that which is identified in Attachment C. It is understood and agreed that future releases of the Licensed Programs may contain additional open source code. Upon ETF's request Vendor shall identify all open source code used in any future Release of the Licensed Programs. For any open source code that is part of the Licensed Programs, Customizations, Interfaces or any other component of the System, Vendor shall provide a copy of the applicable open source code license agreement to ETF upon request, and Vendor commits to provide support for the open source code as if it were Vendor's own code.

16.20. Security Controls. Vendor covenants to implement industry standard security features in the System and that the System complies with a security plan agreed to by the parties. Vendor shall deliver the security plan to ETF within one hundred and twenty (120) days from the Project Start Date.

16.21. Limitation on Liability. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT OR REFERENCED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES RESPECTING THE SYSTEM, ALL SERVICES PROVIDED UNDER THIS AGREEMENT AND THE PARTIES' OBLIGATIONS, EXPRESSED OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except for: (a) damages that arise from Vendor's bad faith,

willful misconduct, Vendor's breach of its obligations with respect to Personally Identifiable Information; or (b) Vendor's indemnification obligations set forth in Article 19, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOST PROFITS ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM OR ANY COMPONENTS THEREOF, HOWEVER CAUSED, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. Further, except for: (a) damages that arise from Vendor's bad faith, willful misconduct, Vendor's breach of its obligations with respect to Personally Identifiable Information; or (b) Vendor's indemnification obligations set forth in Article 19, unless prohibited by Wisconsin Law EACH PARTY HEREBY AGREES THAT IN NO EVENT SHALL THE OTHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED (A) PRIOR TO COMPLETION OF THE WARRANTY PERIOD, THE AMOUNT OF ALL FEES PAID TO VENDOR PURSUANT TO THIS AGREEMENT OR (B) AFTER COMPLETION OF THE WARRANTY PERIOD, THE AMOUNT OF ALL UPGRADE SUBSCRIPTION AND SUPPORT AND MAINTENANCE SERVICES FEES PAID AND INCURRED BUT NOT YET PAID BY ETF TO VENDOR IN THE TWELVE (12) MONTHS THAT IMMEDIATELY PROCEED WHEN THE CLAIM IS BROUGHT.

16.22. Liquidated Damages. Liquidated damages will be applied if any or all of the following Deliverables are delivered by Vendor more than twenty-five (25) Business Days after the delivery date set forth in the then-current Project Work Plan: (i) 1st Functional Rollout into Production (Phase 4a); (ii) 2nd Functional Rollout into Production (Phase 4b); and (iii) 3rd Functional Rollout into Production (Phase 4c) (each a "*Major Deliverable*"). Liquidated damages are prescribed in this Section 16.22 because it will be impracticable and extremely difficult to ascertain and determine the amount of damages that ETF will incur as a result of the Vendor's failure to complete a Major Deliverable as mutually agreed to by the parties in writing. The damages are intended to be a reasonable estimate of ETF's anticipated financial loss and damage and not as a penalty. It is, therefore, agreed that Vendor may be required to pay, beginning on the twenty-sixth (26th) Business Day after the delivery date set forth in the then-current Project Work Plan, liquidated damages for each Business Day Vendor fails to deliver any or all Major Deliverables, in the amount of one thousand dollars (\$1000.00) for each Business Day and every Business Day until such Major Deliverable is delivered as mutually agreed, up to a total amount of one hundred twenty thousand dollars (\$120,000.00) per Major Deliverable. Notwithstanding the foregoing, Vendor shall not be liable for liquidated damages to the extent that any late delivery of a Major Deliverable was the result of an ETF-caused delay. The value of any liquidated damages incurred under this Section 16.22 shall be provided to ETF in the form of a credit that may be used by ETF for up to three (3) years after the date of the missed Major Deliverable. In the event that Liquidated Damages are charged against Vendor under this Section 16.22, then the timeline set forth in the Project Work Plan for each subsequent Major Deliverable shall be extended by the number of days for which Liquidated Damages were charged.

Article 17.

TRAINING

17.1. Training and Documentation. Vendor will provide ETF, at no additional charge, with training services and the training documentation specified in this Agreement, including but not limited to the training described in Section C.7.3 of the ETF RFP.

17.2. Additional Training and Seminars. For as long as ETF purchases Upgrade Subscription and Support and Maintenance Services from Vendor, in the event Vendor conducts seminars, training sessions or similar events which are generally made available to Vendor's clients receiving similar services, Vendor shall invite ETF to attend upon the same terms and conditions as such other clients. If Vendor offers to pay the cost of such events and/or expenses incurred by all other clients in such events, Vendor shall pay for such expenses by ETF on the same basis as Vendor pays for all other clients.

Article 18.

ETF'S USE AND PROTECTION OF VENDOR CONFIDENTIAL INFORMATION

18.1. Acknowledgment of Proprietary Materials; Limitations on Use. ETF acknowledges that the Licensed Programs and any improvements, modifications, enhancements thereto or derivative works thereof, including but not limited to Customizations and Enhancements thereto, Documentation, and all associated intellectual property rights, are asserted by Vendor to be the property of Vendor and that Vendor holds the copyright interests therein, provided that Vendor claims no proprietary interest in or to any Work Product, even if such Work Product is contained in the Customizations, Enhancements, or Documentation. No Vendor Confidential Information collected, maintained, or used in the course of this Agreement shall be disseminated by ETF either during the term of this Agreement or thereafter, except as authorized by this Agreement, by law, or with the written consent of Vendor. ETF may use Vendor Confidential Information only to perform its obligations required under this Agreement. ETF shall remain the responsible authority in charge of all Vendor Confidential Information collected, used or disseminated by ETF in connection with the performance of its obligations under this Agreement. ETF shall provide supervision and training to ETF personnel in regard to the terms of this Agreement that apply to Vendor Confidential Information. ETF acknowledges that the Source Code of the Licensed Programs is treated by Vendor as secret and proprietary information of Vendor of substantial value, and ETF shall treat such information so received in confidence. ETF shall not use, copy, disclose, nor permit any ETF employees to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement. Notwithstanding the foregoing, such covenant shall not be interpreted to prohibit ETF from exercising the Source Code license for the Licensed Programs as provided in Section 2.2, retaining reputable third-party entities to maintain the System, and from disclosing to such entities such information as is necessary to allow them to maintain the System. In such event, ETF shall have such third party entities (i) undertake in writing to observe all applicable restrictions set forth in Section 2.3.1 and this Article 18 with respect to such Source Code Materials as may be so furnished to them by ETF, and (ii) agree in writing that Vendor may enforce the terms and conditions of this Agreement as to confidentiality and license restrictions

against such entities, provided further that ETF shall not disclose the Source Code Materials to any third party entity (other than in conjunction with a transfer or assignment of the Agreement in accordance with Section 23.1) unless ETF obtains Vendor's written consent to such disclosure, which consent may be withheld, conditioned, or delayed by Vendor only if Vendor reasonably believes that the third party entity selected by ETF is a Competitor of Vendor. If Vendor withholds its consent to a disclosure of the Source Code Materials, Vendor shall provide written justification for its decision to ETF within five (5) business days, including Vendor's rationale for concluding that such third party entity is a Competitor of Vendor. Nothing in this Section 18.1 shall preclude ETF from using the System in the presence of third parties, so long as, ETF is doing so in the normal course of its business operations.

18.2. Proprietary Legends. Without Vendor's prior written consent ETF shall not remove any copyright notice or other proprietary or restrictive notice or legend contained or included in any material provided by Vendor, and ETF shall reproduce and copy all such information on all copies made hereunder, including such copies as may be necessary for archival or backup purposes; provided, however, that this does not include any obligation to reproduce any copyright notice or other restrictive notice or legend on any documents that are produced as a result of using the System or on materials that are considered Work Product.

18.3. Assistance of ETF. At the written request and expense of Vendor, ETF will provide reasonable assistance to Vendor in identifying any use, copying, or disclosure of any portion of the Licensed Programs by any present or former ETF Personnel in any manner that is contrary to the provisions of this Agreement.

18.4. Limitations on Confidentiality. The restrictions set forth in Sections 18.1-18.3 respecting confidentiality shall not apply to any Vendor Confidential Information which: (a) is in or becomes part of the public domain without breach of this Agreement or violation of any applicable law; or (b) is required to be disclosed pursuant to a valid request under the Public Records Law and/or Open Meetings Law (as defined in Section 3.5); or (c) is required to be disclosed by ETF pursuant to any order or directive of a court or governmental agency of competent jurisdiction; provided, however that where legally permitted, ETF has furnished Vendor notice of such directive or order prior to disclosure.

18.5. Reporting of Unauthorized Disclosure. Upon becoming aware of any unauthorized disclosure or use of the Vendor Confidential Information, ETF shall, as soon as practicable, report it to Vendor.

18.6. Irreparable Harm. ETF acknowledges that the disclosure of Vendor Confidential Information by ETF in violation of this Section will cause irreparable injury to Vendor, its personnel and/or customers that is not adequately compensable in monetary damages. Accordingly, ETF will not object to Vendor seeking injunctive relief without any requirement to post bond or other security therefor in any court of competent jurisdiction for the breach or threatened breach of this Article 18 in addition to any other remedies available to Vendor in law or equity.

Article 19.

INDEMNIFICATION

19.1. Scope of Indemnification for Intellectual Property Rights Infringement.

Vendor agrees to defend, indemnify and hold harmless ETF and all Authorized Users, and their respective directors, officers, employees, agents, and attorneys, and all elected officials ("*Indemnified Parties*") from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for ETF's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office, reasonable attorneys' fees otherwise incurred by ETF and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claim or enforcing this Section 19.1) or liability arising from or in connection with, whether actual or threatened, a third party claiming that the System or any component thereof infringes, misappropriates or violates a patent, copyright, trade secret, or any other proprietary or contractual right of such third party, provided that, notwithstanding anything to the contrary in Section 19.6, Vendor shall have no duty to defend, indemnify and hold harmless the Indemnified Parties under this Section 19.1 to the extent the claim, action, loss, damage, expense, cost, or liability results from (a) any modification of the System by ETF or by a third party at the direction of ETF that is not approved in writing by Vendor; (b) Third Party Equipment and/or Third Party Software; or (c) unauthorized use of the System if infringement, misappropriation or violation of third party rights could have been avoided without such unauthorized use.

19.2. ETF Remedy Upon Injunction of System Use. If a temporary or a final injunction is obtained against the Licensed Programs, System and/or any component or use thereof by reason of an infringement or misappropriation of a patent, copyright, trade secret, or other proprietary or contractual right of a third party, Vendor will, at its option and expense, either:

- a. Procure for ETF the right to continue using the System, the Licensed Programs, and/or infringing component thereof; or
- b. Replace or modify the System, the Licensed Programs, or such infringing component thereof for ETF in a timely manner so that it no longer infringes or misappropriates such patent, copyright, trade secret, or other proprietary or contractual right, so long as the utility or performance of the System is not adversely affected by such replacement or modification and the System continues to materially conform with the System Specifications.

If Vendor is unable to perform either of these options in a commercially reasonable amount of time, then ETF shall cease use of and return the Vendor the infringing Licensed Program, System and/or any component thereof and may also return any other Licensed Program or component rendered unusable as a result thereof and Vendor shall refund to ETF all fees paid by ETF for such items under this Agreement (excluding amounts paid for Third Party Software, Third Party Equipment, and Upgrade Subscription and Support and Maintenance Services) depreciated on a straight-line basis over a ten (10) year period starting from the Live Date for the complete System. For example, if such claim occurs in the second year after the Live Date for

the complete System and neither remedy is provided in a commercially reasonable period of time, Vendor shall refund eighty percent (80%) of all fees paid by ETF under this Agreement for the items returned or rendered unusable (excluding amounts paid for Third Party Software, Third Party Equipment, and Upgrade Subscription and Support and Maintenance Services). Vendor shall refund such fees to ETF within six (6) months of the failure to perform either remedy. Any refund required by the terms of this Section 19.2 shall not be subject to the limitations of Vendor's liability under Section 16.21.

19.3. Scope of Other Indemnification. In addition to Section 19.1, Vendor shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for ETF's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office, reasonable attorneys' fees otherwise incurred by ETF and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claim or enforcing this Section 19.3) or liability arising from or in connection with the following: (a) Vendor's performance of or failure to perform any duties or obligations under any agreement between Vendor and any third party; (b) injury to persons (including death or illness) or damage to property caused by the act or omission of Vendor or Vendor Personnel; (c) any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the Vendor's performance of this Agreement; (d) any claims or losses resulting to any person or third party entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under this Agreement in a manner not authorized by this Agreement, or by Federal or State statutes or regulations; and (e) any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

19.4. Indemnification Notice. ETF shall give Vendor prompt written notice of such claim, suit, demand, or action (provided that a failure to give such prompt notice will not relieve Vendor of its indemnification obligations hereunder except to the extent Vendor can demonstrate actual, material prejudice to its ability to mount a defense as a result of such failure). ETF will cooperate, assist, and consult with Vendor in the defense or investigation of any claim made or suit filed against ETF resulting from Vendor's performance under the Agreement.

19.5. No Indemnification Obligations. Vendor shall, as soon as practicable, notify ETF of any claim made or suit filed against Vendor resulting from Vendor's obligations under this Agreement. ETF has no obligation to provide legal counsel or defense to Vendor if a suit, claim, or action is brought against Vendor or its subcontractors as a result of Vendor's performance of its obligations under this Agreement. In addition, ETF has no obligation for the payment of any judgments or the settlement of any claims against Vendor arising from or related to this Agreement. ETF has not waived any right or entitlement to claim sovereign immunity under this Agreement.

19.6. Vendor's Duty to Indemnify. Vendor shall comply with its obligations to indemnify, defend and hold the Indemnified Parties harmless as provided herein, regardless of whether or not such claim, damage, loss or expense is caused or alleged to be caused in whole or in part by the negligence or strict liability of ETF or any other party to be indemnified hereunder.

Vendor shall be entitled to control the defense of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; however, Vendor shall consult with ETF regarding its defense of any claim and not settle or compromise any claim or action in a manner that imposes restrictions or obligations on ETF, requires any financial payment by ETF, or grants rights or concessions to a third party with respect to the System or and component thereof, without first obtaining ETF's prior written consent. Vendor shall have the right to assert any and all defenses on behalf of the Indemnified Parties, including sovereign immunity.

Article 20.

FORCE MAJEURE

20.1. Event of Force Majeure. Neither party shall be liable for any costs or damages due to nonperformance under this Agreement arising out of any cause or event not within the reasonable control of such party and without its fault or negligence, including, but not restricted to, failure of Internet or communication lines, telephone, or other interconnect problems, errors, configuration problems; or severe weather, earthquakes, labor disputes, fire, flood, explosion, act of God, terrorist attack, war, insurrection, riot, government regulation or act, vandalism, strike, quarantine, failure of transmission or power supply (such causes or events hereinafter referred to as "*Events of Force Majeure*").

20.2. Notice Requirement. Each party shall give the other party prompt notice of the occurrence of any Event of Force Majeure that may cause delay hereunder, and the date of performance by any party that gives such notice shall be extended for a period not exceeding the period of delay caused by the Event of Force Majeure so identified.

20.3. Postponement of System Shipment. If requested by written notice received from ETF after either party is given notice of any Event of Force Majeure, Vendor shall postpone shipment of the System for such period as ETF may request by written notice to Vendor. To the extent any such postponement affects the cost, scope and schedule of the Project, ETF and Vendor shall enter into an appropriate Change Order in accordance with the Change Order procedures under this Agreement.

20.4. Limitation on Period of Force Majeure. No Event of Force Majeure shall be an excuse for permanent nonperformance but shall be an excuse only for delays in performance and only to the extent that such delays are directly attributable to such cause. Accordingly, should any Event of Force Majeure delay performance in any material respect for a period of more than six (6) months, either party shall have the option to rescind this Agreement upon the provision of written notice to the other party.

20.5. Exculpation. Neither party shall be liable for any delay or failure in the performance of its obligations under this Agreement that directly results from any failure of the other party to perform its obligations as set forth in this Agreement.

Article 21.

INSURANCE

21.1. Insurance Coverage. Vendor shall procure and maintain insurance, which shall protect the Vendor and ETF, subject to the terms and conditions of the policy(s), from any losses, demands, proceedings, damages, costs, charges, claims, and expenses for bodily injury, property damage, and/or personal injury, which may arise out of Vendor carrying out its obligations under this Agreement. Vendor is required to maintain insurance coverage issued by insurers maintaining a minimum A.M. Best rating of A-X or better, or if such ratings are no longer available, a comparable rating from a recognized insurance rating agency, with the insurer domiciled in the United States of America. No insurance may be maintained through "self-insurance" unless approved in writing in advance by ETF. All general liability insurance policies required to be obtained by Vendor under this Agreement shall have the following endorsements: (a) coverage is "primary" and "non-contributory"; (b) ETF named as an Additional Insured; (c) personal injury and property damage liability; and (d) negligence liability. In addition, Vendor shall obtain insurance insuring against breaches of fiduciary duty and errors and omissions. For avoidance of doubt, Vendor's procurement and maintenance of insurance in accordance with this Article 21 does not limit Vendor's indemnification obligations under this Agreement.

21.2. Insurance Minimums. Vendor is required to obtain and maintain the following types of insurance coverage at its own expense for the duration of this Agreement, all of which needs to comply with the following minimum requirements (i) worker's compensation (at statutory required levels); (ii) unemployment insurance (at statutory required levels); (iii) commercial general liability, personal injury and advertising liability, bodily injury and property damage, including products liability and completed operations (with a minimum of \$1,000,000 per occurrence); (iv) automobile liability for all owned, non-owned and hired vehicles (with a minimum of \$1,000,000 per occurrence); (v) fiduciary liability and errors and omissions insurance covering liability for financial loss due to error, omission, negligence, and breach of fiduciary duty in the amount of at least \$1,000,000; and (vi) umbrella liability (with a minimum limit of \$3,000,000 per year) in addition to the primary insurance for all of the foregoing items in items (i), (iii), and (iv).

21.3. Proof of Insurance. Vendor is required to submit to ETF a Certificate of Liability Insurance (CLI) evidencing the coverages and endorsements required under this Agreement as a condition precedent to the commencement of Vendor's obligations under this Agreement and any time such CLI is requested by ETF. Vendor shall provide ETF with at least thirty (30) days advance written notice of any proposed material changes in the required policies. All policies must contain a waiver of all rights of subrogation against ETF.

21.4. Subject to ETF Approval. If at any time, any of the policies shall be or become unsatisfactory to ETF as to form or substance, or any of the carriers issuing such policies shall be or become unsatisfactory to ETF, the Vendor shall promptly obtain a new and satisfactory policy in replacement and provide a CLI evidencing such new coverage to ETF. Vendor shall deliver a renewal policy or CLI to ETF at least thirty (30) days prior to expiration date of each expiring policy. In the event of any insolvency, bankruptcy, or failure of Vendor's insurance company,

Vendor shall promptly deliver to ETF a CLI evidencing that it has obtained the insurance required by this Agreement from a new company.

21.5. Insurance for Subcontractors. All subcontractors used hereunder shall comply with all the insurance requirements provided in this Agreement, provided that coverage limits applicable to a subcontractor may be reasonably adjusted to reflect the scope of work contemplated for that subcontractor. Vendor shall disclose to ETF insurance coverages of its subcontractors under this Agreement for ETF's review and approval, as a condition precedent to the appointment of a subcontractor and the commencement of such subcontractor's obligations.

Article 22.

TERM AND TERMINATION

22.1. Term. This Agreement shall become effective upon the Effective Date and, unless earlier terminated according to the terms of this Agreement, shall last in perpetuity for ETF's right to use the System in accordance with Article 2 and for a period that expires June 30, 2021 for all other services contemplated under this Agreement ("*Initial Term*"). At the expiration of this Initial Term or a subsequent renewal term, ETF may, at its option, renew or extend Upgrade Subscription and Support and Maintenance Services as set forth in Section 14.1 (each a "*Renewal Term*"). At the sole discretion of ETF, the Support and Maintenance Services under this Agreement may be extended for a reasonable time after the Initial Term or after any Renewal Term as may be necessary to obtain a new contract or renew this Agreement. Any such reasonable time extension shall not exceed twelve (12) months. Regardless of whether the Upgrade Subscription and Support and Maintenance Services are renewed, ETF's perpetual license rights shall continue as set forth in this Agreement.

22.2. Termination for Convenience or After Completion of a Phase. ETF may, in its sole discretion and with no penalty, terminate this Agreement or any portion thereof at any time by providing Vendor sixty (60) days' advance written notice of its intent to terminate. Upon such termination, Vendor shall invoice ETF for all unpaid fees and costs, ETF shall pay all fees and costs that had been incurred until the effective date of termination as specified in the notice of termination, and ETF shall not be liable for any other cost, overhead, profits, or damages. ETF may, in its sole discretion and with no penalty, terminate this Agreement at the end of a Phase by providing thirty (30) days' advance written notice to Vendor. Upon such termination, Vendor shall invoice ETF for all unpaid fees and costs that can be allocated to a Phase or Deliverable that was completed, as provided in Section 10.5, and ETF shall not be liable for any other cost, overhead, profits, or damages. ETF shall pay fees and costs in accordance with this Section 22.2; provided, that ETF and Vendor first agree to and execute a general release and covenant not to sue (the "*Waiver*"). Such Waiver shall not apply to either party's confidentiality obligations under this Agreement or to any other obligations under any Section of this Agreement that survives the termination of this Agreement.

22.3. Termination by Vendor for Cause. Unless otherwise prohibited under this Agreement, Vendor may terminate this Agreement in the event that ETF fails to discharge any material obligation or remedy any material default under this Agreement for a period continuing more than sixty (60) days after the Vendor provides ETF with written notice specifying such

default and provided that the Conflict Resolution procedures in Section 23.6 have failed. Notwithstanding the foregoing, Vendor shall not be permitted to terminate the license to the System or any Phase after the applicable Live Date unless such uncured material default is an uncured material breach of Article 18.

22.4. Termination by ETF. ETF may, in addition to any other remedy available to it, terminate this Agreement or any portion thereof:

(a) Immediately upon providing written notice to Vendor, if Vendor materially breaches the obligations to maintain insurance coverage as specified in Article 21;

(b) Immediately upon providing written notice to Vendor, if Vendor fails to provide the complete Project Work Plan within sixty (60) days of the Project Start Date, unless any such delay is approved by ETF or the failure to provide the Project Work Plan is not due to Vendor's acts or omissions;

(c) Immediately upon providing written notice to Vendor, if Vendor fails to discharge any material obligation or remedy any material default under this Agreement for a period continuing more than fifteen (15) days after ETF provides Vendor with written notice specifying such default; or

(d) Immediately upon providing written notice to Vendor, if Vendor fails to avoid any material breach of Article 6.

22.5. Rights and Remedies. In the event that a party rightfully terminates this Agreement in its entirety or in part, other than by ETF under Section 22.2, prior to the issuance of a Certificate of Acceptance for all Phases, such party may in addition to and without limiting the other remedies set forth in this Section 22.5, exercise any other remedy provided by law or equity and/or seek further monetary damages. All rights and remedies of such party shall be cumulative of, and in addition to, all other rights and remedies granted such party at law or in equity, whether or not such party shall have instituted any suit or action in connection with the default of the other party under this Agreement. In the event of any breach justifying termination of this Agreement by Vendor, ETF may at its option exercise the following remedies: (a) terminate this Agreement in its entirety or in part as provided in Section 22.4; (b) upon such a termination, approve or reject, in accordance with the approval process set forth in this Agreement, any Phase or component of the System and retain rights to use any such approved Phase or component(s) for which it makes payment; (c) upon such a termination, receive a refund for all components and/or Phases rejected for material non-conformity in accordance with the approval process in this Agreement as well as for all other components and/or Phases rendered unusable in ETF's opinion as a result of such a termination (even if such component or Phase already was accepted by ETF), provided that ETF shall cease use of all components and/or Phases for which it receives a refund; (d) terminate the provision of Upgrade and Support and Maintenance Services and receive a refund of previous amounts paid for future Upgrade and Support and Maintenance Services; and/or (e) retain Support and Maintenance Services for non-rejected System components for which payment is made and receive a pro rata refund based on

Phases or components rejected by ETF. Any refund required by the terms of this Section 22.5 shall not be subject to the limitations of Vendor's liability under Section 16.21.

22.6. Cure. A failure or delay in performance by either party under this Agreement shall not constitute basis for termination of the Agreement under this Article 22 if such performance is effectively completed prior to the giving of notice of termination.

22.7. Survival. Article 2, Article 6, payment obligations under Article 7 that accrue prior to the date of termination, Section 16.2, Section 16.21, Article 18, Article 19, Section 22.5, this Section 22.7, Article 23, and Appendix A shall survive termination of this Agreement.

Article 23.

MISCELLANEOUS

23.1. Assignment. The obligations of Vendor under this Agreement shall be considered personal obligations of Vendor, performable solely by Vendor. Vendor shall not delegate, assign, subcontract, or otherwise transfer, in whole or in part, this Agreement without the prior written consent of ETF. Any assignment or transfer made without ETF's advance written approval shall be null and void. Notwithstanding the foregoing, Vendor is permitted to subcontract to the approved subcontractor(s) identified in Section 5.4 and any additional approved subcontractors pursuant to Section 5.4. ETF may assign this Agreement to another State of Wisconsin agency, board, or commission upon thirty (30) days written notice to Vendor. No assignment shall relieve either party of its obligations hereunder. This Agreement will be binding upon the parties' permitted successors and permitted assignees.

23.2. Notices of Material Changes. Vendor shall notify ETF in writing within ten (10) Business Days of any material changes in senior officers providing or overseeing the services identified herein, significant legal actions instituted against the Vendor, or any significant investigations, examinations, or other proceedings commenced by a governmental agency relating to the kinds of services identified herein. Notices required in this Section shall be serviced on ETF by registered or certified mail.

23.3. Notice. Notice to either party to this Agreement shall be deemed received when at the earlier of when acknowledged as received or five (5) days after being mailed by certified mail, U.S. Postal Service, postage prepaid, or upon delivery, after being mailed by Federal Express or an equivalent delivery provider with a reliable tracking system, to the proper address. Mail shall be addressed as follows:

If to ETF:

Wisconsin Department of Employee Trust Funds
801 West Badger Road
Madison, WI 53713
Attention: Secretary
Email: ETFSecOfc@etf.wi.gov

Facsimile: (608) 267-0633

With a copy to:

Wisconsin Department of Employee Trust Funds
801 West Badger Road
Madison, WI 53713
Attention: General Counsel
Email: ETFSecOfc@etf.wi.gov
Facsimile: (608) 267-0633

If to Vendor:

Vitech Systems Group, Inc.
401 Park Avenue South
New York, New York 10016
Attention: James Vitiello, Senior Vice President
Email: jvitiello@vitechinc.com
Facsimile: (212) 868-9798

With a copy to:

Vitech Systems Group, Inc.
401 Park Avenue South
New York, New York 10016
Attention: General Counsel
Email: legal@vitechinc.com
Facsimile: 646.746.8590

or to such other address(s) as may be notified to the other pursuant to the provisions of this Section 23.3. Notwithstanding the foregoing, e-mail notification is permitted, provided that it is not related to contractual matters, including but not limited to: notices of breach of the Agreement, notices of termination of the Agreement, Acceptance, Certificates of Acceptance, acceptance of Change Orders, and notices of disputes.

23.4. Controlling Law; Jurisdiction and Venue; Waiver. All questions as to the execution, validity, interpretation, construction and performance of this Agreement shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to this Agreement or a party's obligations hereunder shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States Western District for Wisconsin (if jurisdiction is proper in federal court), or upon appeal, to the appellate courts of corresponding jurisdiction, and Vendor hereby consents to the exclusive jurisdiction and exclusive venue therein and hereby waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Vendor may now or hereafter be

entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Vendor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.

23.5. Entire Agreement; Ambiguities; Counterparts. This Agreement constitutes the entire agreement between Vendor and ETF with respect to Vendor's development, delivery, installation, maintenance and enhancement of the System and ETF's use thereof. To be effective, any Change Order, amendment, modification, or alteration to this Agreement must be in writing and signed by both parties. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned but shall be resolved by applying the most reasonable interpretation under the circumstances. This Agreement shall not be construed against any party by reason of its preparation. This Agreement may be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23.6. Conflict Resolution. In the event a conflict arises between Vendor and ETF which cannot be resolved in the normal course:

- a. The parties acknowledge and agree that time is of the essence in the resolution of conflicts. Accordingly, the parties shall act expeditiously to resolve any such conflict.
- b. Vendor shall continue without delay to carry out all its responsibilities under this Agreement which are not affected by the conflict. Should Vendor fail to perform its responsibilities under this Agreement that are not affected by the conflict without delay, any and all additional costs incurred by Vendor and ETF as a result of such failure to proceed shall be borne by Vendor and Vendor shall not make any claim against ETF for such costs. ETF's non-payment of fees in breach of this Agreement that are overdue by sixty (60) days is a conflict that will always be considered to affect Vendor's responsibilities.
- c. The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by delivering written notice to the other party as set forth under Section 23.3. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. After such notice, the parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between authorized negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

LEVEL	VENDOR	ETF	ALLOTTED TIME
First	Project Manager –	Project Director –	10 Business Days
Second	Vice President –	CIO –	20 Business Days
Third	President –	Secretary –	30 Business Days

The allotted time for the First level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the Invoking Party's notice was originally received by the other party. If the third level parties cannot resolve the issue within thirty (30) Business Days of the Invoking Party's original notice, then the issue shall be designated as a "dispute" at the discretion of the Invoking Party and, if so, shall be resolved in accordance with Section 23.7. The time periods herein are in addition to those time periods for a party to cure provided elsewhere in this Agreement, and do not apply to claims for equitable relief (i.e., injunction to prevent disclosure of confidential information). ETF may withhold payments on disputed items pending resolution of the dispute.

23.7. Disputes and Resolution Thereof. If Vendor and ETF cannot resolve a dispute according to the procedures set forth in Section 23.6, then the parties may proceed to litigation.

23.8. Independent Contractors. Nothing in this Agreement is intended or shall be construed to give Vendor discretionary authority or discretionary responsibility in the management of ETF's business operations or administration of the ETF plan. The relationship of Vendor (or any of its officers, directors or employees) to ETF (or any of its officers, directors, or employees) is intended to be only that of an independent contractor and service provider and not employee, agent, fiduciary or other similar relationship. This Agreement shall not be construed so as to create a partnership, employee-employer relationship, or joint venture between Vendor and ETF. The relationship of the Vendor to ETF shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Agreement. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Agreement. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of ETF or the State of Wisconsin for any purpose whatsoever. Vendor is solely responsible for all work performed under this Agreement and assumes prime contractor responsibility for all services offered and products to be delivered under the terms of this Agreement. ETF considers the Vendor to be the sole point of contact with regard to all contractual matters.

23.9. Authority to Contract. Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed. Each party further represents that it has not entered into nor will it enter into any agreements that would conflict with its obligations hereunder or would render it incapable of satisfactorily performing hereunder.

23.10. Waiver. Neither party shall, by mere lapse of time, without giving notice thereof, be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

23.11. Final Payment. The making of final payment by to Vendor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Agreement, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Agreement. Vendor's acceptance of final payment under this Agreement shall constitute a waiver of all claims by Vendor against ETF for payment under this Agreement, other than those claims previously filed in writing on a timely basis and still unsettled.

23.12. Severability. The provisions of this Agreement shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of this Agreement, for any reason, is declared to be invalid, unenforceable, or illegal, the parties or court shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

23.13. Publicity. Vendor shall not provide to the public any press releases or similar communication about this Agreement or its contents without the written approval of ETF. Vendor may identify ETF as a customer of Vendor so long as such identification does not imply or suggest that ETF approves, endorses, certifies, or recommends Vendor, its products, or its services.

23.14. Conflict of Interest. Vendor hereby certifies that it does not have any interest, direct or indirect, that would conflict with or compromise the performance of its obligations hereunder in violation of applicable law. Vendor hereby certifies that it has not and will not pay or cause to be paid any money, fees, political contributions or other things of value to any lobbyist or third party for the purpose of influencing any ETF procurement decision as a result of or in relation to the services provided to ETF by Vendor hereunder, without ETF's written consent. Vendor hereby certifies that it has not and will not accept any money, fees, or other things of value from any third party as a result of or in relation to the services provided to ETF, without ETF's informed written consent. In addition, Vendor agrees to act as a fiduciary to ETF in regard to any payments, fees, or other things of value, nevertheless, received from a third party in relation to providing services under this Agreement to ETF, unless Vendor's acceptance and retention of such item was fully disclosed to and approved by ETF in writing. Vendor agrees to exercise independent professional judgment, without conflict of interest, in providing services to ETF. Vendor shall periodically inquire of its officers, directors, employees, and subcontractors so that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to ETF. Upon any ETF request, Vendor shall certify in writing as to its compliance with this Section.

23.15. Certification Concerning Financial Contacts or Solicitation. Vendor represents and warrants that to the best of its knowledge no employee of ETF or fiduciary whose position in ETF enables such person to influence the award of this Agreement or any competing

agreement, and no spouse or economic dependent of such person is or will be employed in any capacity by Vendor herein, or does or will have any direct or indirect financial interest in this Agreement.

23.16. Warranty Against Contingent Fees. Vendor represents and warrants that no person or selling agency has been employed or retained to solicit and/or secure this Agreement upon an agreement or understanding of commission, percentage, brokerage, or contingency fee except bona fide employees maintained by Vendor for the purpose of securing business. For breach or violation of this provision, ETF shall have, at its sole discretion, the right to immediately terminate this Agreement without liability other than for services already performed, seek the remedies set forth in Article 22, or deduct from the Agreement price or to otherwise recover, the full amount of such commission, percentage, brokerage, or contingency.

23.17. Independent Price Determination. By signing this Agreement, Vendor certifies that its prices in this Agreement have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any competitor. No attempt was made by Vendor to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

23.18. Assurance of Compliance With Civil Rights Laws. Vendor hereby represents and warrants that it is an equal opportunity employer and has adopted policies to implement the purpose and provisions of the Civil Rights Act of 1964, 42 USC § 2000(e) et seq. to assure that no person is denied employment on the basis of race, creed, color, sex or national origin in connection with its performance of this Agreement. Vendor further represents and covenants that it will comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because race, color ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy disability or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

23.19. Multi-term Funding Cancellation. When the Secretary of ETF makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Agreement, ETF shall be able to terminate the Agreement by providing notice to Vendor and ETF shall own and/or have rights to use, in the manner as provided herein, all documents, Equipment, Licensed Programs, Work Product and other items that have been accepted and paid for by ETF. Such a determination that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

23.20. Non-solicitation. Each party agrees that, without the prior consent of the other party, it shall not offer employment to or discuss employment with any of the other party's personnel until one (1) year after this Agreement expires or is terminated, provided the foregoing provision will not prohibit a party from offering employment to or discussing employment with any of the other party's personnel where such personnel has responded to a general non-targeted solicitation of employment in the ordinary course of business.

23.21. Non-Collusion and Acceptance. The undersigned party for Vendor attests, subject to the penalties of perjury, that he/she is the representative, agent, member or officer of

the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

APPENDIX A

DEFINITIONS

1. **"Acceptance"** means the issuance of a Certificate of Acceptance by ETF.
2. **"Agreement"** means (a) the Terms and Conditions, (b) the ETF RFP and all additions and modifications thereto listed on Attachment A; and (c) the Vendor Proposal and all additions and modifications thereto listed on Attachment A.
3. **"Approved Host"** means a hosting service provider approved by Vendor, such approval not to be unreasonably withheld or delayed, which is not a Competitor of Vendor and whose servers are located within the continental United States. The Wisconsin Department of Administration Division of Enterprise Technology is deemed to be an Approved Host.
4. **"Authorized User"** means ETF Personnel, members of the ETF boards, participating employers, ETF third party administrators, and other third party contractors and agencies providing services to ETF.
5. **"Base Program"** means the standard software in both source code form belonging to Vendor or one of its Related Entities and that is identified in the Vendor Proposal, including all Releases therefor, and all documentation relating thereto.
6. **"Business Day"** means Monday through Friday, excluding holidays observed by ETF.
7. **"Business Hours"** means ETF's normal business hours, which are 7:45 AM to 4:30 PM Central Time.
8. **"Certificate of Acceptance"** means a written certification signed by an authorized representative of ETF indicating that ETF is satisfied that a Deliverable, Phase or the System, as applicable and completed, materially performs in accordance with the System Specifications.
9. **"Certification of Vendor Testing Completion"** shall have the meaning set forth in Section 10.1.
10. **"Competitor of Vendor"** means (a) the following persons or entities engaged in the development, licensing, or distribution of software containing functionality substantially similar to the Licensed Programs: Accenture, CedarCrestone, CPAS Systems Inc., Deloitte Consulting LLP, HP Enterprise Services, JEA Pension System Solutions, Levi, Ray & Shoup, Morneau Shepell, Oracle, Sagitec Solutions, Sierra Systems, Tegrity Technologies, and Xerox; (b) means any person or entity agreed by the parties in writing to be a Competitor of Vendor; and (c) any other person or entity whose business is the development or licensing of administration software for public pension systems. Notwithstanding the foregoing, an entity, including an entity listed in part (a) of this definition, shall not be considered a Competitor of Vendor and therefore disqualified from providing services to ETF that involve access to the Licensed Programs even if the business of such entity includes the development or licensing of

administration software for public pension systems, provided that the activities for which ETF wishes to engage such entity will not involve personnel of such entity who are engaged in the public pension system software development or licensing activities of such entity. By way of example and not limitation, Deloitte LLP (and its subsidiaries) shall not be considered a Competitor of Vendor merely because a subsidiary, Deloitte Consulting LLP, engages in the business of developing and licensing administration software for public pension systems, provided that the activities for which ETF wishes to engage Deloitte LLP or a subsidiary thereof will not involve personnel from the public pension system software practice of Deloitte Consulting LLP.

11. **"Customizations"** means the source code and object code of any modification or addition to the Base Program required under Article 11 hereof for the System to comply with the System Specifications or to implement an Enhancement.

12. **"Defect"** means any failure by the System to conform in any material respect with applicable System Specifications, including but not limited to any failure of Licensed Programs to conform with the System Specifications in any material respect. However, any nonconformity resulting from ETF's material misuse, improper use, alteration, or damage of Licensed Programs or ETF's combining or merging Licensed Programs with any hardware or software not supplied by, authorized, or identified as compatible by Vendor, shall not be considered a Defect.

13. **"Defect Correction"** means either a modification or addition that, when made or added to the System and/or any component thereof, establishes material conformity of the System and/or any component thereof to the functional System Specifications therefor, or a procedure or routine that, when observed in the regular operation of the System and/or any component thereof, eliminates the practical adverse effect on ETF of such nonconformity or Defect.

14. **"Deliverables"** means each deliverable, Licensed Program, Interface, Document Deliverable, and/or Work Product provided as part of a Phase of the Project.

15. **"Document Deliverable"** means the Documentation and any other report or document required to be delivered by Vendor under this Agreement.

16. **"Documentation"** means all specifications, manuals, documents, drawings, demonstrations, presentation materials, and other tangible items pertaining to the System or a particular Phase of the System that have been provided by Vendor to ETF, whether during or before this Agreement, as well as the documentation and functional requirements required by the ETF RFP, the requirements set forth in the Requirements Traceability Matrix, and the documentation for the Licensed Programs generally made available by Vendor to its customers. In the event of any conflict or inconsistency between the items identified in the Agreement and the documentation for the Licensed Programs made generally available, the items in the Agreement shall control. When requested by ETF, Documentation shall be provided in electronic form.

17. **"Effective Date"** shall be the earliest date the Agreement is signed by both Vendor and ETF.

18. **"Electronic Protected Health Information ("EPHI")"** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined by 45 CFR § 160.103.

19. **"Embedded Software"** means any third party software product that is embedded in the Licensed Programs other than open source software. As of the Effective Date hereof, such Embedded Software consists of Sencha GXT by Sencha Inc. Vendor reserves the right to embed additional Embedded Software into the Licensed Programs and shall notify ETF thereof within a reasonable time period thereafter.

20. **"End User"** means ETF plan participants, members and beneficiaries (for example, current and former employees of Wisconsin state and local governments and their dependents).

21. **"Enhancement"** means any modification or addition that, when made or added to the Licensed Programs, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely a Defect Correction and that goes beyond what is required under the System Specifications.

22. **"Equipment"** means all ETF Equipment and Third Party Equipment.

23. **"ETF Confidential Information"** shall mean confidential information of ETF provided to Vendor or accessed by Vendor under the Agreement, including, but not limited to: (i) Personally Identifiable Information (PII), and (ii) information related to the ETF's operations, such as investment strategies, audit findings, business methodologies, personnel information, technical information; employer information, beneficiary information, survivor information, member information, or any other information deemed by federal or state law, rule or regulation as proprietary or confidential.

24. **"ETF Equipment"** means the LAN central processing units (CPUs), including all terminals, personal computers ("PCs"), servers, SAN and other components thereof, situated at the ETF Premises as of the Project Start Date and more fully described in the ETF RFP.

25. **"ETF Facilities"** means the space, environment, and other facilities located at the ETF Premises and to be provided by ETF under this Agreement in connection with the installation, operation, and maintenance of the System, if any.

26. **"ETF Personnel"** means all persons engaged from time to time as officers, employees, agents, consultants, or independent contractors of ETF.

27. **"ETF Premises"** means those premises occupied by ETF, including but not limited to those at 801 West Badger Road, Madison, WI 53713-2526, together with any other premises owned or leased by ETF.

28. **"ETF RFP"** means the Wisconsin Department of Employee Trust Funds' Request for Proposal entitled "Benefits Administration System for the Department of Employee Trust Funds Wisconsin Retirement System" dated June 13, 2013, and as amended by all subsequent documents identified specifically in Attachment A.

29. **"ETF Workplace Policies"** shall be the policies identified in Section A.3.11 of the ETF RFP.

30. **"Index"** means the percentage change in the US Department of Labor (Bureau of Labor Statistics) Producer Price Index for Information Technology (IT) Technical Support and Consulting Services (Commodity Code 456, December 2008 = 100). If such rate is not available the parties will agree in good faith to use a similar index relevant to the United States information technology consulting industry.

31. **"Individual Personal Information"** has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

32. **"Interfaces"** means those interfaces identified in the ETF RFP, including, but not limited to those set forth in Section B.1.4 of the ETF RFP.

33. **"Key Personnel"** shall mean those Vendor Personnel identified as Key Personnel in Attachment F.

34. **"LAN"** means ETF's limited-distance distributed processing network (local area network) that comprises the ETF Equipment and supporting communication facilities interconnected by a transmission medium in order to facilitate the inter-exchange of data through the Internet, as further described in the ETF RFP.

35. **"Licensed Programs"** means the Base Programs in object code (i.e., machine-readable) form including the Customizations thereto, and the Enhancements, Defect Corrections, modifications, and changes to the Base Programs as well as all derivative works prepared therefrom pursuant to this Agreement or delivered to ETF hereunder, all Documentation related thereto, and any other Deliverable provided by Vendor hereunder that is not considered any of the foregoing. Licensed Programs shall not include Work Product, Third Party Software or Third Party Equipment.

36. **"Live Date"** means the date that the applicable software of a Phase or the entire System is first used by ETF in an operational, non-test environment, utilizing actual production data.

37. **"Medical Record"** has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

38. **"Personally Identifiable Information"** means any information about an individual person that uniquely identifies a person, including but not limited to (a) any information that can be used to distinguish or trace an individual's identity, such as name, address, social security number, telephone number, IP address, financial account number, credit card number, debit card number, driver's license number, date and place of birth, mother's

maiden name, or biometric records; and (b) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Personally Identifiable Information includes, but is not limited to, Individual Personal Information, Medical Records, Protected Health Information, and Electronic Protected Health Information.

39. **"Phase"** means a particular portion of the implementation, as set forth in Section A.3.7 of ETF RFP and in the Project Work Plan, or as may be modified in accordance with this Agreement.

40. **"PIR"** means a problem incident report documenting a Defect.

41. **"Project"** shall mean the planned undertaking to provide the products and services pursuant to the ETF RFP and the terms of this Agreement.

42. **"Project Start Date"** shall mean the mutually agreed upon date on which the Project will begin; provided, however, that the Project Start Date shall be no later than thirty (30) days after the date this Agreement is signed by the parties and a fully executed counterpart is delivered to Vendor. After the Project Start Date has been agreed to, it shall be identified in the Project Work Plan and attached hereto as an addendum signed by both parties.

43. **"Project Work Plan"** shall have the meaning set forth in Section 9.2.

44. **"Protected Health Information ("PHI")"** shall have the same meaning as the term "protected health information" at 45 CFR § 160.103.

45. **"Regression Testing"** means testing to ensure that there is no regression of product quality subsequent to the implementation of Defect Corrections or product enhancements.

46. **"Related Entity"** means those business entities that Vendor has control of, is controlled by, or under common control with.

47. **"Releases"** means new versions and releases of the Licensed Programs, which may include both Defect Corrections and Enhancements and which Vendor generally makes available to customers of the Base Program at no additional charge who have paid their Upgrade Subscription and Maintenance and Support fee.

48. **"Requirements Traceability Matrix"** means the requirements traceability matrix described in the ETF RFP.

49. **"SAN"** means the ETF storage area network.

50. **"Source Code"** computer software in the form of source statements for the Licensed Programs including, without limitation, all software in the form of electronic and printed human-readable, mnemonic or English-like program listings written primarily in Java utilizing the Oracle database.

51. **"Source Code Materials"** means then current versions of Source Code of the Licensed Programs, all proprietary tools required for use of the Licensed Programs under this Agreement, all Source Code-related documentation to the extent the same exists at the time, a list of all open source code utilized with the Licensed Programs, and all operation documents, including but not limited to documents describing the third party tools and the methods and procedures utilized for the installation, configuration and operation of the Licensed Programs to the extent the same exist at the time.

52. **"System"** means the Vendor system being provided hereunder, including the Licensed Programs, Third Party Equipment, Documentation, Third Party Software, Work Product, Deliverables, and modifications and updates to the LAN furnished by Vendor pursuant to the terms hereof, all set forth in Vendor Proposal and ETF RFP. The WAN, if any, used by Vendor is also a part of the System.

53. **"System Specifications"** means those technical and functional requirements relating to the design and performance of the System or a particular Phase of the System, as set forth in the Agreement and as accepted by ETF during the Project through signed design documents. The System Specifications may from time to time be amended by Change Orders or other written agreement of the parties.

54. **"Test Specifications"** means those specifications set forth in Section C.7.4 of the ETF RFP.

55. **"Terms and Conditions"** means Articles 1-23 of this System License, Implementation, and Support Agreement together with this Appendix A and Attachments B-G.

56. **"Third Party Equipment"** means the third party equipment that is required for the System to comply with the System Specifications.

57. **"Third Party Software"** means any software not licensable by Vendor that is required for the System to comply with the System Specifications, excluding Embedded Software.

58. **"Upgrade Subscription and Support and Maintenance Services"** means the post-implementation maintenance and support services described in Section C-9.3 of the Vendor Proposal.

59. **"User Acceptance Testing"** means the tests to be conducted by ETF, to demonstrate that the Phase, Deliverable, or the System, as installed on the Equipment at the ETF Premises, conform to the applicable System Specifications in all material respects, as further described in Section C.7.4 of the ETF RFP.

60. **"Vendor Confidential Information"** means any portion of the Licensed Programs and any improvements, modifications, enhancements thereto or derivative works thereof, including but not limited to Customizations and Enhancements thereto, and the Documentation, that is not Work Product, as well any other information of Vendor that is within the scope of Wis. Stat. § 19.36.

61. **"Vendor Personnel"** means all of Vendor's employees, Vendor individual contractors hired for staff augmentation purposes and subcontractors performing services under the Agreement, whether considered a Key Personnel or not.

62. **"Vendor Proposal"** means Vendor's Technical Proposal made in response to the ETF RFP, as amended by all subsequent documents identified in Attachment A.

63. **"Vendor Technology"** means the Licensed Programs and any improvements, modifications, enhancements thereto or derivative works thereof, including but not limited to Customizations and Enhancements thereto, and Documentation and any other works of authorship, materials, information and other intellectual property created by Vendor or its subcontractors including improvements, modifications, enhancements thereto or derivative works thereof, or created by Vendor or its subcontractors as a general consulting tool for their use in performing the services hereunder, plus any modifications or enhancements thereto and derivative works based thereon.

64. **"Vendor Testing"** means the test of the Licensed Programs, Third Party Software, and Deliverables to be conducted by Vendor, to demonstrate that the applicable Phase of the System and the System as installed on the Equipment at the ETF Premises, conform to the application System Specifications in all material respects, as set further described in Section C.7.4 of the ETF RFP.

65. **"WAN"** means the wide area network that is connected to the Internet to permit access by ETF to the Licensed Programs from the LAN, and for file transfer over the Internet to and from the LAN. The WAN does not include the Internet, but does include connections from the ETF Equipment to the Internet, whether direct or indirect.

66. **"Warranty Period"** means the period of time commencing with the Live Date of the first Phase used by ETF in an operational, non-test environment, utilizing actual production data and terminating twelve (12) months after the Live Date of the last Phase used by ETF in an operational, non-test environment, utilizing actual production data.

67. **"Work Product"** shall mean all Deliverables (excluding the Licensed Programs, Vendor Technology, Third Party Software, and Third Party Equipment) that (i) do not alter the product level code of the Licensed Programs, (ii) contain ETF specific information and processes, and (iii) are created or first reduced to practice by Vendor and subcontractors, alone or with others, in performance of Vendor's obligation hereunder.

ATTACHMENT A

SUPPORTING DOCUMENTS INCORPORATED INTO THIS AGREEMENT

#	Document	Date
1.	Vendor Questions and ETF Answers: Questions 123-158 Questions 115-122 Questions 1-114	August 1, 2013 July 23, 2013 July 10, 2013
2.	Amendment Number 1 to RFP ETC0003	July 9, 2013
3.	RFP ETC0003	June 13, 2013
4.	The Composite ETF Questions and Vendor Answers (1-43)	December 16, 2013
5.	Vendor Proposal	August 26, 2013

ATTACHMENT B

PAYMENT SCHEDULE

Vendor Payment Schedule Fixed Price Implementation Services and License Fee									
MANDATORY PROJECT ELEMENTS - IMPLEMENTATION SERVICES									
No.	Deliverable	Estimated Date	%*	Cost	Retainage (15%)	Actual Payment	Cumulative Actual Payment	Cumulative Retainage	
1	V3 Software License Fee	March 1, 2014		\$2,500,000	\$0	\$2,500,000	\$2,500,000	\$0	
2	1st Month Operations	March 31, 2014		\$100,000	\$15,000	\$85,000	\$2,585,000	\$15,000	
3	2nd Month Operations	April 30, 2014		\$100,000	\$15,000	\$85,000	\$2,670,000	\$30,000	
4	3rd Month Operations	May 31, 2014		\$100,000	\$15,000	\$85,000	\$2,755,000	\$45,000	
5	4th Month Operations*	June 30, 2014		\$100,000	\$15,000	\$85,000	\$2,840,000	\$60,000	
6	Work Plan (Phase 1)**	July 5, 2014	5.0%	\$745,175	\$111,776	\$633,398	\$3,473,398	\$171,776	
FY2014 Totals				\$3,645,175	\$171,776	\$3,473,398			
7	5th Month Operations	July 31, 2014		\$100,000	\$15,000	\$85,000	\$3,558,398	\$186,776	
8	Top-Level Requirements Delivered (Phase 2)	August 5, 2014	5.0%	\$745,175	\$111,776	\$633,398	\$4,191,797	\$298,552	
9	6th Month Operations	August 31, 2014		\$100,000	\$15,000	\$85,000	\$4,276,797	\$313,552	
10	7th Month Operations	September 30, 2014		\$100,000	\$15,000	\$85,000	\$4,361,797	\$328,552	
11	8th Month Operations	October 31, 2014		\$100,000	\$15,000	\$85,000	\$4,446,797	\$343,552	
12	9th Month Operations	November 30, 2014		\$100,000	\$15,000	\$85,000	\$4,531,797	\$358,552	
13	10th Month Operations	December 31, 2014		\$100,000	\$15,000	\$85,000	\$4,616,797	\$373,552	
14	11th Month Operations	January 31, 2015		\$100,000	\$15,000	\$85,000	\$4,701,797	\$388,552	
15	Validation 1 Complete (Phase 4b)	February 1, 2015	5.0%	\$745,175	\$111,776	\$633,398	\$5,335,195	\$500,329	
16	12th Month Operations	February 29, 2015		\$100,000	\$15,000	\$85,000	\$5,420,195	\$515,329	
17	13th Month Operations	March 31, 2015		\$100,000	\$15,000	\$85,000	\$5,505,195	\$530,329	
18	14th Month Operations	April 30, 2015		\$100,000	\$15,000	\$85,000	\$5,590,195	\$545,329	
19	1st Functional Rollout into Production (Phase 4a)	May 7, 2015	5.0%	\$745,175	\$111,776	\$633,398	\$6,223,593	\$657,105	
20	15th Month Operations**	May 31, 2015		\$100,000	\$15,000	\$85,000	\$6,308,593	\$672,105	
21	16th Month Operations**	June 30, 2015		\$100,000	\$15,000	\$85,000	\$6,393,593	\$687,105	
FY 2015 Totals				\$3,435,524	\$515,329	\$2,920,195			
22	Validation 2 Complete - Rollout 2 (Phase 4b)	July 1, 2015	5.0%	\$745,175	\$111,776	\$633,398	\$7,026,992	\$798,881	
23	1st Functional Rollout - 60 Day Acceptance (Phase 4a)	July 6, 2015	5.0%	\$745,175	\$111,776	\$633,398	\$7,660,390	\$910,657	
24	17th Month Operations	July 31, 2015		\$100,000	\$15,000	\$85,000	\$7,745,390	\$925,657	
25	18th Month Operations	August 31, 2015		\$100,000	\$15,000	\$85,000	\$7,830,390	\$940,657	
26	19th Month Operations	September 30, 2015		\$100,000	\$15,000	\$85,000	\$7,915,390	\$955,657	
27	Validation 3 Complete (Phase 4b)	October 1, 2015	4.0%	\$596,140	\$89,421	\$506,719	\$8,422,109	\$1,045,078	
28	20th Month Operations	October 31, 2015		\$100,000	\$15,000	\$85,000	\$8,507,109	\$1,060,078	
29	21st Month Operations	November 30, 2015		\$100,000	\$15,000	\$85,000	\$8,592,109	\$1,075,078	
30	22nd Month Operations	December 31, 2015		\$100,000	\$15,000	\$85,000	\$8,677,109	\$1,090,078	
31	23rd Month Operations	January 31, 2016		\$100,000	\$15,000	\$85,000	\$8,762,109	\$1,105,078	
32	24th Month Operations	February 29, 2016		\$100,000	\$15,000	\$85,000	\$8,847,109	\$1,120,078	
33	25th Month Operations	March 31, 2016		\$100,000	\$15,000	\$85,000	\$8,932,109	\$1,135,078	
34	26th Month Operations	April 30, 2016		\$100,000	\$15,000	\$85,000	\$9,017,109	\$1,150,078	
35	Validation 4 Complete (Phase 4c)	May 1, 2016	4.0%	\$596,140	\$89,421	\$506,719	\$9,523,827	\$1,239,499	
36	27th Month Operations***	May 31, 2016		\$100,000	\$15,000	\$85,000	\$9,608,827	\$1,254,499	
37	28th Month Operations***	June 30, 2016		\$100,000	\$15,000	\$85,000	\$9,693,827	\$1,269,499	
FY 2016 Total				\$3,882,628	\$582,334	\$3,300,234			
38	29th Month Operations	July 31, 2016		\$100,000	\$15,000	\$85,000	\$9,778,827	\$1,284,499	
39	2nd Functional Rollout into Production (Phase 4b)	August 29, 2016	10.0%	\$1,490,349	\$223,552	\$1,266,797	\$11,045,624	\$1,508,051	
40	30th Month Operations	August 31, 2016		\$100,000	\$15,000	\$85,000	\$11,130,624	\$1,523,051	
41	31st Month Operations	September 30, 2016		\$100,000	\$15,000	\$85,000	\$11,215,624	\$1,538,051	
42	2nd Functional Rollout - 60 Day Acceptance (Phase 4b)	October 28, 2016	4.0%	\$596,140	\$89,421	\$506,719	\$11,722,343	\$1,627,472	
43	32nd Month Operations	October 31, 2016		\$100,000	\$15,000	\$85,000	\$11,807,343	\$1,642,472	
44	33rd Month Operations	November 30, 2016		\$100,000	\$15,000	\$85,000	\$11,892,343	\$1,657,472	
45	Validation 5 Complete (Phase 4c)	December 1, 2016	4.0%	\$596,140	\$89,421	\$506,719	\$12,399,061	\$1,746,893	
46	34th Month Operations	December 31, 2016		\$100,000	\$15,000	\$85,000	\$12,484,061	\$1,761,893	
47	35th Month Operations	January 31, 2017		\$100,000	\$15,000	\$85,000	\$12,569,061	\$1,776,893	
48	36th Month Operations	February 28, 2017		\$100,000	\$15,000	\$85,000	\$12,654,061	\$1,791,893	
49	37th Month Operations	March 31, 2017		\$100,000	\$15,000	\$85,000	\$12,739,061	\$1,806,893	
50	38th Month Operations	April 30, 2017		\$100,000	\$15,000	\$85,000	\$12,824,061	\$1,821,893	
51	39th Month Operations	May 31, 2017		\$100,000	\$15,000	\$85,000	\$12,909,061	\$1,836,893	
52	Validation 6 Complete (Phase 4c)	June 1, 2017	4.0%	\$596,140	\$89,421	\$506,719	\$13,415,780	\$1,926,314	
53	40th Month Operations****	June 30, 2017		\$100,000	\$15,000	\$85,000	\$13,500,780	\$1,941,314	
FY 2017 Total				\$4,478,768	\$671,815	\$3,806,953			
54	41st Month Operations	July 31, 2017		\$100,000	\$15,000	\$85,000	\$13,585,780	\$1,956,314	
55	42nd Month Operations	August 31, 2017		\$100,000	\$15,000	\$85,000	\$13,670,780	\$1,971,314	
56	43rd Month Operations	September 30, 2017		\$100,000	\$15,000	\$85,000	\$13,755,780	\$1,986,314	
57	44th Month Operations	October 31, 2017		\$100,000	\$15,000	\$85,000	\$13,840,780	\$2,001,314	
58	45th Month Operations	November 30, 2017		\$100,000	\$15,000	\$85,000	\$13,925,780	\$2,016,314	
59	46th Month Operations	December 31, 2017		\$100,000	\$15,000	\$85,000	\$14,010,780	\$2,031,314	
60	47th Month Operations	January 31, 2018		\$100,000	\$15,000	\$85,000	\$14,095,780	\$2,046,314	
61	48th Month Operations	February 28, 2018		\$100,000	\$15,000	\$85,000	\$14,180,780	\$2,061,314	
62	3rd Functional Rollout into Production (Phase 4c)	May 21, 2018	25.0%	\$3,725,873	\$558,881	\$3,166,992	\$17,347,772	\$2,620,195	
63	Release of 1st Functional Rollout Holdback	May 21, 2018		\$0	\$0	\$1,477,762	\$18,825,533		
FY 2018 Total				\$4,625,873	\$678,881	\$5,324,753			
64	3rd Functional Rollout - 60 Day Acceptance (Phase 4c)	July 20, 2018	10.0%	\$1,490,349	\$223,552	\$1,266,797	\$18,614,568	\$2,843,747	
FY 2019 Total				\$1,490,349	\$223,552	\$1,266,797			
65	Application Warranty	July 20, 2019	2.5%	\$372,587	\$55,888	\$316,699	\$18,931,267	\$2,899,635	
66	Application Warranty - PIRs completed	September 19, 2019	2.5%	\$372,587	\$55,888	\$316,699	\$19,247,967	\$2,955,524	
67	Release of 2nd Functional Rollout Holdback	September 19, 2019		\$0	\$0	\$1,477,762	\$20,725,728		
FY 2020 Total				\$745,175	\$111,776	\$633,398			
Sub Total				100.0%	\$ 22,203,490	\$ 2,955,524	\$ 22,203,490		
(checksum)					\$ (22,203,490)	\$ (2,955,524)	\$ (22,203,490)		
MANDATORY PROJECT ELEMENTS - OTHER FEES									
No.	Deliverable	Est Date	%	Cost	No Retainage	Payment			
68	Initial 3rd Party Software Licenses	Jun-15		TBD	\$0	TBD			
69	Initial 3rd Party Software Support	Jun-16		TBD	\$0	TBD			
70	3rd Party Hardware & Software - Year 2 Support	Jun-17		TBD	\$0	TBD			
71	3rd Party Hardware & Software - Year 3 Support	Jun-18		TBD	\$0	TBD			
72	3rd Party Hardware & Software - Year 4 Support	Jun-19		TBD	\$0	TBD			
73	3rd Party Hardware & Software - Year 5 Support	Jun-20		TBD	\$0	TBD			
Sub Total				\$ -	\$ -	\$ -			
Notes:									
* Invoiced 7/1/2014									
** Invoiced 7/1/2015									
*** Invoiced 7/1/2016									
**** Invoiced 7/1/2017									
† All items with an entry in this field require a Certificate of Acceptance prior to payment.									
Total Fixed Bid	\$	22,203,490			\$ 3,330,524	\$ 18,872,967	\$ 22,203,490		
License Fee	\$	2,500,000							
Total Services (total - License Fee)	\$	19,703,490			\$ 2,955,524	\$ 16,747,967	\$ 19,703,490		
Total Operations Fee (payable monthly over 48 months)	\$	4,800,000							
Remainder to be divided among milestones	\$	14,903,490			\$ 2,235,524	\$ 12,667,967	\$ 14,903,490		
Assumes a Project start date of 3/1/2014									
assumption payments moved means									
invoice in FY with the deliverable to be paid after invoice/payment received									

ATTACHMENT C

THIRD PARTY SOFTWARE AND EQUIPMENT

The Third Party Equipment and Third Party Software required for the Project shall be as specified in the Vendor Proposal (or Vendor-approved equivalents). ETF will purchase the Third Party Equipment and Third Party Software specified in the Vendor Proposal (or Vendor-approved equivalent) through the Wisconsin Department of Administration Division of Enterprise Technology or using the state-approved list. Should it be necessary, ETF may develop a separate purchase order for the required Third Party Equipment and Third Party Software. All such purchases are to be conducted as described in Article 8.

ATTACHMENT D

VENDOR EXCEPTIONS TO THE ETF RFP REQUIREMENTS

RFP Section	Exception Taken and Proposed Solution	Agreement
C.9.2	<p>Regarding the paragraph commencing with “ETF may, at its own choosing, elect to move the application...”. We do not believe that we could commit to supporting an ETF initiated migration to a different hosting solution as described in the paragraph. We believe we would require 120 days notice to complete the migration and that any migration would need to be contingent upon a) the new hosting vendor (or ETF if ETF is bringing the solution in-house) having properly licensed and installed all third party hardware and software necessary to support ETF’s hosted systems, b) the hosting vendor assuming primary responsibility for completing the migration as we would only be able to provide software, data, configuration extracts or other items at requested, and c) all services provided will be billed and paid on a time & materials basis or under a fixed price statement of work if mutually agreed to by the parties.</p>	<p>Should this situation occur, Vitech will work with ETF to migrate the application from location to location via Change Order.</p>

ATTACHMENT E

VENDOR ASSUMPTIONS FOR THE PROJECT

In support of the goals and objectives for the System, Vendor has predicated its proposal upon the following assumptions to assist the Vendor Project team to formulate an infrastructure and framework for Project success. The assumptions are based on the collective experience of the Vendor in successfully completing large-scale systems integration projects.

RFP Section	Assumption	ETF's and Vitech's Joint Understanding
A.3.7	We assume that payment #18, License Fee, will be paid when the Acceptance Criteria has been met and that payments 1 through 17 do not have to be completed for receipt of payment 18.	Agreed. The full negotiated payment schedule appears as Attachment B to this Agreement
C-3.2	Our proposal and other terms including cost assume our payment plan as presented in section C-3.2.	The full negotiated payment schedule appears as Attachment B to this Agreement
C-5.5	We assume that ETF's existing Core Cisco Network Switching equipment will support connectivity from BAS proposed network devices.	ETF affirms.
C-5.5	Vitech assumes, for ECM purposes, ETF's existing scanner hardware can be reused for V3 ECM.	ETF affirms.
C-5.5	We assume that ETF's existing Firewall's will be used to support external access to BAS.	ETF affirms.
C-5.5	We assume that ETF's existing F5 BIG IPs devices will be used to provide load balancing services for BAS.	ETF affirms.
C-5.5	We assume that ETF's Avamar Appliances will be used as the means to store and retain Backups for BAS.	Agreed.
C-5.6	We assumed the following related to the ETF users of our recommended Test Case Management tool called Zephyr. Vitech will provide licenses for years 1-5 and ETF will procure licenses for years after year 5. We have assumed the following number of users per year, additional users would have additional costs: ETF will allocate 5 testers for year 1; ETF will allocate 10 testers for year 2; ETF will allocate 20 testers for year 3; ETF will allocate 20 testers for year 4; ETF will allocate 5 testers for year 5; ETF will allocate 5 testers annually after year 5.	Agreed.
C-5.8.2	We assume that ETF is referring to the BAS application, i.e V3, when referring to projected	ETF affirms that the hardware will be replaced in a timely manner with the then-currently required

RFP Section	Assumption	ETF's and Vitech's Joint Understanding
	growth in processing volume of at least five percent per year for a period of 10 years following the end of the warranty period with no additional cost to ETF. We assume that ETF would replace hardware prior to the hardware being 6 years old.	hardware based upon the third party software environment (6 years or less). However, Vitech's original estimate of hardware (e.g., number of web servers) and software (e.g., user licenses) must accommodate the RFP-projected need for growth
C-6.0	ETF will accept or reject paper deliverables within 5 business days. Rejections will include sufficient detail for Vitech to remediate the problem.	Agreed.
C-6.4	Vitech assumes ETF will assign at least 2 developers (1 Java and 1 Oracle) for Phase 4b, and another 2 developers for Phase 4c. These developers will be trained by Vitech and work with the Vitech team on Vitech deliverables through the rollout and transition phase they are assigned. At ETF's discretion up to a total of 10 developers may be assigned to a Phase, however all developers must be assigned at the start of the phase for the purpose of training.	Agreed based on Vitech's response to question #6 and #17 in ETF's Q&A document.
C-7.1	ETF is responsible for data cleansing and any extracts or updates required to the legacy systems for purposes of data conversion or bridging.	The parties agreed that the majority of data cleansing will be done in the source system by ETF but ETF would like to reserve the ability to do some data cleansing as part of the migration to the target system.
C-7.3	Vitech has proposed a comprehensive training plan including 157 training days as detailed in our response to section C-7.3. A training day is an ETF scheduled day for training with one or more courses conducted serially not totaling more than 6 hours in total.	A training day is further defined as six (6) hours of instructor led class time
C-7.4	<p>Vitech has assumed ETF's participation in implementation phase testing activities during Verification and Validation testing phases. As per our response to section C-7.4, this does not replace any Vitech testing requirements or ETF's UAT requirements. This is proposed as part of our methodology to include ETF early in the design and configuration of the solution. We have assumed ETF will assign the following Testers:</p> <ul style="list-style-type: none"> - Phase 4a -2 part time testers - Phase 4b –2 full time testers throughout and 2 testers for Validation Testing Phases - Phase 4c –2 full time testers throughout and 2 for Validation Testing Phases 	Agreed, based on Vitech's response to question #7 in ETF's Q&A document.
C-8.2	We have assumed in our proposal that EFT will be responsible for Operations Support, Application Server Support, and Application Support, including	Agreed, based on Vitech's response to question #8 in ETF's Q&A document

RFP Section	Assumption	ETF's and Vitech's Joint Understanding
	operating the Help Desk, from Rollout acceptance onward. Vitech proposes to provide 60 days support services with each Rollout to ensure a smooth transition.	
C-9.2	<p>Vitech assumes that for the following sentence the requirement is for Vitech to ensure that the system is available for such processing, not to provide services to operate such processing.</p> <p>“In addition, the vendor must be able to support nightly, week-end, month-end, and year-end unattended processing and to work within ETF's holiday schedule, NOT necessarily the vendor's holiday schedule.”</p>	<p>ETF interprets this assumption as saying Vitech would have the system up but not necessarily manned on State of WI holidays. This would not be acceptable to ETF so we need to discuss.</p> <p>ETF and Vitech agreed that the latter would have resources available at any time to ensure the system is up.</p>
General	Vitech assumes a maximum of 35 workflow processes configured within the fixed price.	ETF and Vitech have agreed to a maximum of 75 workflow processes (not to include any “throwaway” workflows developed for Phase 4a).
General	ETF will allow remote access connections from Vitech's office(s) in the United States to the ETF infrastructure for development, testing and support.	ETF and Vitech agree to work together to meet WI security standards.
General	ETF will allow remote access connections from ETF infrastructure to Vitech's Data Center(s) for use by Vitech on-site personnel.	Vitech confirmed to ETF that all of these locations would be in the United States

ATTACHMENT F

VENDOR KEY PERSONNEL

The following are the names of the Key Personnel assigned to this Project:

Chris Lodge	Account Executive
Brian McKinney	Project Manager
Tom Cheng	Technical Lead
Chaitanya Paliwal	V3 Solution Architect
Alice Rischert	Data Lead
Paul Kelly	Infrastructure Lead
TBD	Testing Lead
Neil Sullivan	R1 Rollout Lead
Zaman Sherjeel	Track Lead
Shawn Krug	R1 SME
Edwin Eun	R2 Rollout Lead
Varia Lvova	Track Lead
Christine Koch	Track Lead
Mike DaCosta	R3 Rollout Lead
Matt Lehan	Track Lead
Irene Gordon	Communications Lead
James Klasen	Training Lead

ATTACHMENT G

FEES FOR UPGRADE SUBSCRIPTION AND SUPPORT AND MAINTENANCE; HOURLY RATES

		1	2	3	4	5	6	7	8	9	10	11	12	13
Period Ending June 30 of:		2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Upgrade Subscription						\$ 445,000	\$ 445,000	\$ 445,000	\$ 467,250	\$ 467,250	\$ 490,613	\$ 515,143	\$ 540,900	\$ 567,945
Hourly Rates		\$ 200	\$ 200	\$ 205	\$ 205	\$ 210	\$ 210	\$ 215						
Block Purchase**	Hrs Purchased													
Hourly Rates	1,000	\$ 195	\$ 195	\$ 195	\$ 195	\$ 195	\$ 199	\$ 203						
	2,000	\$ 190	\$ 190	\$ 190	\$ 190	\$ 190	\$ 194	\$ 198						
	5,000	\$ 185	\$ 185	\$ 185	\$ 185	\$ 185	\$ 189	\$ 193						
	10,000	\$ 175	\$ 175	\$ 175	\$ 175	\$ 175	\$ 179	\$ 182						
<p>** ETF shall have the right to pre-purchase blocks of hours at these discounted hourly rates. Any such pre-purchase shall be invoiced by Vendor at the time of ETF's order, and payment shall be made by ETF prior to consumption of the pre-purchased hours. The listed hourly rates shall apply to any block purchase made during the period the rates are in effect, without regard to whether the work is performed by Vendor during that same period. Hours pre-purchased by ETF at these discounted rates shall be consumed within eighteen (18) months after purchase.</p>														