MASSACHUSETTS OFFICE OF INFORMATION TECHNOLOGY

MASTER SERVICES AGREEMENT

By and Between

Massachusetts

Office of Information Technology

and

OptumInsight, Inc.

September 30, 2014

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MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (this "MSA") is entered into as of September 30, , 2014 (the "Effective Date") by and between (a) the Massachusetts Office of Information Technology, formerly known as the Commonwealth of Massachusetts' Information Technology Division, with a principal business address of One Ashburton Place, Boston, MA 02108 ("Client"), and (b) OptumInsight, Inc., with a principal business address of 13625 Technology Drive, Eden Prairie, MN 55344 ("Contractor").

WHEREAS, Client wishes to engage Contractor to perform several separate but interrelated work streams ("Work Streams"), all in accordance with the terms of this Agreement, including, but not limited to, Work Streams: (1) to configure and implement a health insurance exchange System for the Commonwealth to provide eligibility and program determination, shopping, plan selection and enrollment services for QHP, including State Wrap, QDP and Medicaid (Medicaid program determination based on modified adjusted gross income ("MAGI") and for a limited set of twenty four program aid categories) (as further described in Task Order 1, "New HIX/IES"); (2) for operation, maintenance and hosting of New HIX/IES; (3) to modify the system developed by Client's former contractor, CGI Technologies and Solutions, Inc. ("CGI"), develop other Software, integrate such modified system and Software with the hCentive Software and other Client legacy systems to implement the new Mass Health Eligibility Platform ("MEP"); (4) in parallel with the foregoing effort, to perform certain services to prepare Client to use the health insurance marketplace maintained by the United States federal government (the "Federal Facilitated Marketplace" or "FFM") in the event that Client was not approved by CMS to move forward with New HIX/IES; and (5) to perform certain other services related to these four Work Streams including business operations, knowledge transfer relating to the legacy HIX IES solution (as defined in Task Order 1), and operation and maintenance of the legacy HIX IES solution;

WHEREAS, Client and Contractor may mutually agree to add additional Work Streams, services or implement additional systems under this Agreement or other master services agreements, through a mutually agreed upon Task Order;

WHEREAS, Client wishes to engage Contractor to provide, and Contractor desires to perform, the services, all as described and defined in this Agreement as the Project; and

WHEREAS, Contractor holds itself out as qualified to provide such services.

IN CONSIDERATION OF the premises and mutual agreements contained herein, the sufficiency of which Client and Contractor hereby acknowledge, Client and Contractor, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**. The following terms, when used with an initial capital, shall have the respective meanings assigned herein:

1.1 "AAC" has the meaning set forth in Section 14.2(e).

1.2 "Accelerated Code" means hCentive Software functionality, the development of which was accelerated at Client's request, specifically including: (i) Remote ID Proofing; (ii) Ability to

bypass remote ID proofing for paper application; (iii) Linking Paper Application with User; (iv) Capture special circumstances information (Disability, Long term care, HIV, BCC, AI/AN); (v) Multiple Program Determination (allow shopping for some Medicaid Eligible population); (vi) Outbound AT XML Generation as per FFM; (vii) Ability to Change Plans during Open Enrollment; (viii) Capability to mark an Consumer "Manually ID Proofed"; (ix) Capability to make updates and changes on behalf of Consumer; (x) Load list of navigators; (xi) Load list of certified application counsellors; (xii) Select certified application counsellor; and (xiii) Capability to associate Navigators/Certified Application Counsellors to Consumers.

1.3 "Acceptance", "Accepted" or "Accept" means, with respect to any Deliverable, Client's written notice of its confirmation that such Deliverable conforms, in all material respects, with the relevant Acceptance Criteria applicable to such Deliverable, as more fully described in Section 8.3. For purposes of clarity, Services performed and Project Works delivered under T&M Task Orders issued under this Agreement shall not be subject to Acceptance based upon Acceptance Criteria.

1.4 "Acceptance Criteria" means the objective criteria mutually agreed to by the parties and set forth in applicable Task Orders, pursuant to which Deliverables shall be Evaluated by Client during the Acceptance Process as more fully described in Section 8.3. In each case, such Acceptance Criteria shall be based upon the applicable Requirements and the applicable quality assurance and quality control standards, including test criteria, set forth in the applicable Task Orders.

1.5 "Acceptance Process" means the process for Evaluation and Acceptance, as more fully described in each Task Order with regard to the Deliverables under the Task Order, or if no such process is defined in the Task Order, the process set forth in Section 8.4.

1.6 "Accessibility Testing Vendor" has the meaning set forth in Section 14.2(d).

1.7 "Advisers" means one or more independent consultants employed by Client or the Commonwealth to assist Client in performing its responsibilities pursuant to this Agreement, in reviewing the management and planning of the Project and in evaluating and testing (as applicable) the Services and/or each System and all Deliverables, as more fully described in Section 8.4.

1.8 "Affiliate" means, with respect to any person or entity, any other person or entity controlling, controlled by or under common control with the first person or entity, where "control" means the power to direct or cause the direction of the management of such other entity by ownership of voting securities, contract or otherwise. For purposes of clarity, hCentive is not as of the Effective Date an Affiliate of Contractor.

1.9 "Agreement" means this MSA and all of its Task Orders and Exhibits, any attachments and/or schedules incorporated by reference from time to time in any of the foregoing, collectively.

1.10 "Assumptions" means those facts, assumptions, projections and other plans and criteria upon which the performance of the Services under each Task Order, and in the case of a FP Task

Order, the FP is based, and, in each case, such Assumptions shall be specifically described in each Task Order.

1.11   "AT/IT List" has the meaning set forth in Section 14.1(a).

1.12   "Audit Records" has the meaning set forth in Section 24.4.

1.13   "Baseline Internal Controls Audit" has the meaning set forth in Section 24.2(b).

1.14   "Baseline Internal Controls Audit Report" has the meaning set forth in Section 24.2(b).

1.15   "Bug List" means, as to each System, (a) a complete listing of all known Nonconformities in any Software included in such System, in each case as reported by Contractor Personnel, Client or any Subcontractor and (b) for each such Nonconformity, (i) a description of the Nonconformity, (ii) an indication of the priority assigned to the Nonconformity by Contractor, (iii) the current status of the Nonconformity, (iv) an approach to fixing the Nonconformity if the Nonconformity has been identified for Resolution and such approach has been determined and (v) a timeline within which the Nonconformity is expected to be Resolved.

1.16   "Business Continuity Plan" means Contractor's Business Continuity Plan attached hereto as Exhibit I.

1.17   "Business Day" means any day other than a Saturday, Sunday, statutory holiday or other holiday observed by either Contractor or Client, or any day on which Client's Chelsea or Boston, Massachusetts locations are closed for business.

1.18   "CGI" means CGI Technologies and Solutions Inc.

1.19   "Change of Control" means (a) any merger or consolidation of the specified entity with or into another person or entity, (b) the sale or transfer of all or substantially all of the assets of the specified entity or (c) the direct or indirect acquisition by any person or Group of Beneficial Ownership of previously outstanding shares of capital stock of the specified entity; but in the case of (a) and (c) only, if (i) immediately after such acquisition, such person or Group, together with their respective Affiliates, shall own or hold shares of capital stock of the specified entity possessing more than fifty percent (50%) of the total voting power of the outstanding capital stock of the specified entity and (ii) immediately prior to such acquisition, such person or Group, together with their respective Affiliates, did not own or hold shares of capital stock of the specified entity possessing more than fifty percent (50%) of the total voting power of the outstanding capital stock of the specified entity; in each of cases (a) through (c), either in a single transaction or a series of related transactions. For purposes of this definition, "Beneficial Ownership" has the meaning ascribed to such term in Rule 13d-3, or any successor rule thereto, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended; and "Group" has the meaning ascribed to such term in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, or any successor section thereto.

1.20   "Change Order" means a writing signed by the respective authorized signatories of the parties for the purposes of amending this Agreement pursuant to an approved Change Request.

1.21 "Change Request" means a request from either party proposing changes to this Agreement or a Task Order, including, but not limited to, any proposed changes to any of the Services, Deliverables, Critical Milestones and Critical Milestone Schedule, Requirements and/or Fees described therein.

1.22 "Change Request Form" means a form substantially similar to the form attached hereto as Exhibit C.

1.23 "Client" has the meaning set forth in the Preamble.

1.24 "Client Assets" means Client Data, Client-provided Technology Resources, Client Confidential Information and all other Software, technology, property, equipment and other hardware and all other materials provided by Client to Contractor in connection with this Agreement.

1.25 "Client Data" means all data (including without limitation, all personal data as defined in M.G.L. c. 66A and data referred to in Section 6 of the Commonwealth Terms), Protected Data as defined in the Data Management and Confidentiality Agreement attached hereto as Exhibit O, and information, in each case, that is (a) Commonwealth data provided to, received, maintained or accessed by Contractor in connection with this Agreement, (b) derived or generated by Contractor in the performance of configuring, testing or data loading, cleansing or conversion activities for Client under this Agreement and/or (c) created by Client and/or end users in the use of the Services or a System.

1.26 "Client Delay" means a failure or delay on Client's part to fulfill a Client Responsibility as set forth in the applicable Task Order or this Agreement.

1.27 "Client Indemnitees" means the Commonwealth and its employees, officers, agents, successors and assigns.

1.28 "Client Owned Deliverables" has the meaning set forth in Section 13.4(a).

1.29 "Client Owned Software" has the meaning set forth in Section 9.1(a)(i).

1.30 "Client Provided Third Party Equipment" means any Third Party Equipment procured by Client pursuant to a written agreement directly with a Third Party Vendor that is identified as Client Provided Third Party Equipment in an exhibit to each Task Order.

1.31 "Client Provided Third Party Services" means any Third Party Services procured by Client pursuant to a written agreement with a Third Party Vendor that is identified as Client Provided Third Party Services in an exhibit to each Task Order.

1.32 "Client Provided Third Party Software" means any Third Party Software procured by Client pursuant to a written agreement with a Third Party Vendor that is identified as Client Provided Third Party Software in an exhibit to each Task Order.

1.33 "Client Responsibilities" means all responsibilities relating to the Project (a) that are expressly specified and allocated to Client in this Agreement or any Task Order (including,

without limitation, obligations set forth in Section 11.1) and (b) the following: (i) providing suitably skilled Personnel to perform their assignments; (ii) reporting concerns as appropriate to Contractor regarding the Services; and (iii) complying with all Third Party Vendor agreements where Client is the counterparty thereunder.

1.34 "CMS" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

1.35 "CMS Guide" means the Guide to Enterprise Life Cycle Processes, Artifacts, and Reviews, Version 1.1, June 10, 2012.

1.36 "CMS Requirements" means those requirements of CMS relating to the Project, as are set forth in Exhibit P.

1.37 "Commingled Client Owned Deliverables" has the meaning set forth in Section 13.4(i).

1.38 "CommonWay" has the meaning set forth in Section 29.1.

1.39 "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents as so required), agencies, departments (including Client), commissions, boards, divisions, bureaus, public authorities or constitutional offices.

1.40 "Commonwealth Terms" means the Commonwealth Terms and Conditions attached hereto as Exhibit F.

1.41 "Confidential Information" means: (a) with respect to each party, (i) any Third Party Software; (ii) proprietary information identified in Task Orders; (iii) all personally identifiable information regarding its Personnel; and (iv) any other proprietary information that is provided by one party to the other party in connection with this Agreement and is (1) if provided in written form, marked as confidential (provided that neither party shall be required to mark information described in subsections (a)(i), (a)(ii) and (a)(iii) above as confidential), or (2) if provided in oral form or visually, confirmed as confidential in writing within thirty (30) days after its initial disclosure; (b) with respect to Contractor, all confidential information relating to its business activities, which shall be marked and/or confirmed to be confidential in accordance with subsection (a)(iv) above; and (c) with respect to Client, Client Data. Confidential Information does not include the information described in Section 15.3.

1.42 "Connector" has the meaning set forth in Section 2.1(a).

1.43 "Contractor" has the meaning set forth in the Preamble.

1.44 "Contractor Delay" means a failure by Contractor under a FP Task Order to meet an obligation under such Task Order within the time specified in such Task Order, including, without limitation, failure to timely deliver Deliverables in accordance with the applicable Task Order schedule and failure to meet a Critical Milestone Date, to the extent such failure is not an Excused Delay.

1.45 "Contractor Personnel" or "Contractor's Personnel" means all Personnel of the Optum Organization and Personnel of third parties (other than UHC) engaged by Contractor on a staff augmentation basis. For the avoidance of doubt, Contractor Personnel excludes UHC Personnel, and UHC Personnel may not perform any Services under this Agreement.

1.46 "Contractor Property" has the meaning set forth in Section 13.3(a).

1.47 "Core Project Team" means all Personnel identified in any Task Order under the heading Core Project Team.

1.48 "COTS" means commercially available off-the-shelf Software as defined in 48 C.F.R. Part 2.101 included or embedded into any Software or a System delivered hereunder.

1.49 "Critical Milestone" means a performance objective under the Project that is identified in a Task Order as a "Critical Milestone." By way of non-limiting example, Final Acceptance of a System may be a Critical Milestone under a FP Task Order.

1.50 "Critical Milestone Date" means the date upon which a Critical Milestone will be completed, in accordance with a Critical Milestone Schedule.

1.51 "Critical Milestone Payment" has the meaning set forth in Section 12.1(a).

1.52 "Critical Milestone Schedule" means the schedule set forth in each Task Order setting forth the dates for achievement of Critical Milestones.

1.53 "Current Release" means any release, excluding any beta or pilot version, of the Deliverables for which, as of a date (a) one (1) month prior to the delivery of such Deliverable for testing pursuant to Section 8.4, an Update or Minor Release does not exist or (b) twelve (12) months prior to the delivery of such Deliverable for testing pursuant to Section 8.4, a Major Release did not exist.

1.54 "Deliverable" means all information, materials, Software, work product and other submissions and deliverables delivered or required to be delivered by Contractor to Client as specified in a particular Task Order and identified as Deliverables therein. For the avoidance of doubt, Deliverables include, without limitation, Client Owned Deliverables, Third Party Software (excluding Client Provided Third Party Software), Equipment (excluding Client Provided Third Party Equipment), Source Materials, Documentation, Software Deliverables, Updates and a System as a whole. Deliverables are delivered under FP Task Orders and may be delivered under a FP portion of a T&M Task Order if expressly identified as Deliverables subject to Acceptance under such a FP arrangement.

1.55 "Deliverable Payment" has the meaning set forth in Section 12.1(a).

1.56 "Dependent Software" means the Third Party Software that is required to operate the System that is identified as "Dependent Software" in an exhibit or schedule to a Task Order.

1.57 "Disabling Device" means any virus, worm, Trojan horse, built-in or use-driven mechanism, injurious or damaging algorithm, self-destruct mechanism, time bomb or other

Software or hardware or any other inhibitor which is not required by Client to be included or embedded as part of an applicable Requirement and that has the capability to degrade, impair performance, result in inaccurate data, deny accessibility, disable or adversely affect the use of a Software Deliverable, Software Project Work or Equipment, or harms or permits unauthorized access to any Client Data and/or Client systems (including any Software, hardware or network owned, controlled or used by Client).

1.58 "Documentation" means Deliverables and Project Works in document form that may include technical documentation, user documentation, training materials, reports and other documentation.

1.59 "Effective Date" has the meaning set forth in the Preamble.

1.60 "Emergency Meeting" has the meaning set forth in Section 5.3(e).

1.61 "End User Software" means every Software Deliverable or Software Project Work with a user interface for external and/or internal end users to allow such users to interface with such Software or a System in which such Software is embedded. For the avoidance of doubt, End User Software includes COTS or SaaS provided by a Subcontractor of Contractor hereunder that includes such an end user interface.

1.62 "Enterprise Accessibility Standards" has the meaning set forth in Section 14.1(a).

1.63 "Equipment" means the hardware for use in connection with a System in accordance with the Requirements, as set forth in the applicable Task Order(s).

1.64 "Escrow Account" means an account which will hold the Source Materials prior to a Release Event.

1.65 "Escrow Agent" means a reputable escrow agent chosen by Client to maintain the Escrow Account.

1.66 "Escrowed Software" means (a) hCentive Software, and (b) any other Software identified in a Task Order as being subject to a source code escrow account.

1.67 "Evaluate", "Evaluated" or "Evaluation" means, with respect to a Deliverable or Services, to inspect, test or otherwise evaluate the Deliverable against the relevant Acceptance Criteria as more fully described in the relevant Task Order, or if no Acceptance process is identified in the relevant Task Order, in Section 8.4.

1.68 "Evaluation Period" means with respect to a Deliverable, the period for Evaluation identified in any Task Order, as applicable, as more fully described in Section 8.4.

1.69 "Excess Hours" means hours worked by a single resource over forty (40) hours in a single calendar week.

1.70 "Excused Delay" means a failure by Contractor under a FP Task Order to meet an obligation under such Task Order within the time specified in such Task Order, including,

without limitation, a failure to timely deliver Deliverables in accordance with the applicable Task Order schedule or a failure to meet a Critical Milestone Date that is caused by (i) a Force Majeure Event, (ii) a delay or failure to perform by a Third Party Vendor of Client, (iii) a defect or technical issue with Third Party Software other than Third Party Software that is recommended by Contractor, (iv) a change in Commonwealth funding, (v) a CMS policy change or (vi) an adjustment of priorities or change in the Project requested by CMS.

1.71   "Exhibits" has the meaning set forth in Section 30.

1.72   "Facility Resources" means all customarily provided office space, office furniture, office supplies, heating, air-conditioning, electricity, water, workstations, phones, direct internet connection and network access, computers and peripheral devices, printers, copy and fax machines and related security and maintenance services provided by Client to Contractor as necessary for Contractor to perform the Services under this Agreement and as identified in any Task Order.

1.73   "Federal Awarding Agency" means the U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight and any other agency of the United States government that provides the federal grant funding to certain Commonwealth entities that is used to fund the provision of Services under this Agreement.

1.74   "Federal Facilitated Marketplace" or "FFM" has the meaning set forth in the recitals.

1.75   "Fees" means all amounts payable by Client for the Deliverables, Project Works and Services, as set forth in this Agreement, including under FP Task Orders and T&M Task Orders and applicable Change Orders, including Post-Warranty Support Fees, if applicable. For the avoidance of doubt, Fees will not include any amounts that the parties agree in a Task Order will be paid directly by Client to a Third Party Vendor for Third Party Equipment, Third Party Services or Third Party Software under a separate agreement between Client and such Third Party Vendor.

1.76   "Final Acceptance" means Client's final written Acceptance of a completed System under a FP Task Order when Evaluated in accordance with the relevant Acceptance Criteria and Acceptance Process, as described in the relevant Task Order, or if no Acceptance Process and Acceptance Criteria are identified in the relevant Task Order, in Section 8.3. For Final Acceptance of New HIX/IES, Client's Final Acceptance shall be communicated in a letter signed by the Chief Information Officer of the Commonwealth.

1.77   "Flowdown Terms" means the following terms of this Agreement: (a) Section 6 (Third Party Vendors) to the extent Contractor permits its Subcontractors to enter into further subcontracts, Section 7 (Quality Control), Section 9 (Source Materials and Documentation), Section 12.7 (Non-appropriation), Section 13 (Title and Intellectual Property Rights), Section 14 (Accessibility), Section 15 (Confidential Information), Section 16.1 (Contractor Representations and Warranties), Section 18 (Improvements and New Technology), Section 19 (Indemnification; Infringement), Section 20.3 (Insurance), Section 21.3 (Transition Services), Section 22.4 (Client's Workplace Policies), Section 23 (Security Requirements), Section 24 (Audit), Section 25 (Business Continuity), Section 28.4 (Assignment) and Section 28.9 (Publicity) of the MSA;

and (b) the following Exhibits: Exhibit G-1 (Contractor Inventions Assignment Provisions), Exhibit G-2 (Confidentiality Agreement for Contractor PersonnelExhibit F (Commonwealth Terms and Conditions; Standard Contract Form; Standard Forms) and Exhibit O (Data Management and Confidentiality Agreement).

1.78 "Force Majeure Event" means any event outside the reasonable control of a party, including, but not limited to: (a) civil commotion, riot, terrorism, invasion, war or preparation for war; (b) fire, explosion, storm, flood, earthquake, subsidence, epidemic, or other natural physical disaster; (c) unavailability of the use of railways, shipping, aircraft, motor transport, or any other means of public or private transport; (d) public unavailability of internet connectivity to end users; or (e) unavailability of FFM functionality utilities.

1.79 "FP" means fixed price.

1.80 "FP Task Order" means a Task Order performed primarily on a FP basis and designated as a FP Task Order. Notwithstanding the foregoing, Services provided under a T&M Task Order that are expressly identified as being provided on a FP basis will be treated for purposes of this Agreement as if being provided under a FP Task Order.

1.81 "Go Live" means the date upon which a System is placed into production after Acceptance.

1.82 "Governmental Authority" means any national or federal government, any state or other political subdivision thereof (including Client and the Commonwealth), and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.83 "hCentive" means hCentive, Inc., a Delaware company with headquarters located at 12355 Sunrise Valley Drive, Suite 310, Reston, Virginia 20191.

1.84 "hCentive Agreement" has the meaning set forth in Section 6.1(c).

1.85 "hCentive Credit" has the meaning set forth in Section 12.3.

1.86 "hCentive Software" means the hCentive product identified in the Task Order for New HIX/IES.

1.87 "Holdback Amount" means the amount identified in a FP Task Order as "Holdback" or "Holdback Amount".

1.88 "Hourly Rates" means the Hourly Rates set forth in Exhibit D.

1.89 "I-9 Process" means Contractor Personnel's employment eligibility and record-keeping requirements under the Immigration Reform and Control Act of 1986, the Immigration Reform Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as the same shall be amended from time to time.

1.90 "Initial Transition Period" has the meaning set forth in Section 21.3(b).

1.91 "Insufficient" means, as it relates to the Source Materials, a determination made in the judgment of the verifier that the Source Materials are not sufficient to build, compile, assemble, translate, bind and load source code for the applicable Software Deliverables or Software Project Works into executable Software, and to maintain and support such Software.

1.92 "IV&V" means independent validation and verification.

1.93 "IV&V Process" has the meaning set forth in Section 2.1(b).

1.94 "IV&V Vendor" has the meaning set forth in Section 2.1(b).

1.95 "Joint Project Committee" means the committee described in Section 5.3.

1.96 "Key Personnel" means Contractor Personnel and Subcontractor Personnel identified in any Task Order under the heading "Key Personnel."

1.97 "Key Subcontractors" means hCentive, and any Subcontractors identified in any Task Order under the heading "Key Subcontractors."

1.98 "Law" means all federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof, including the Securities and Exchange Commission and the Public Accounting Oversight Board.

1.99 "Logicworks" means Logicworks, Inc., a New Jersey corporation with headquarters located as of the Effective Date at 155 Avenue of the Americas, Fifth Floor, New York, NY 10013.

1.100 "Major Release" means a release, excluding any beta or pilot version, that introduces significant design changes, significant new features or capabilities or backwards-incompatible changes to the means by which such release is used by a dependent component.

1.101 "Mandatory Go Live Date" means November 15, 2014, the federally mandated date by which state health information exchange systems must be available for the 2014-2015 enrollment season.

1.102 "MEP" means the Mass Health Eligibility Platform as described in the recitals of this Agreement.

1.103 "Minor Release" means any release of any Deliverable that contains a Resolution to a previously identified Nonconformity.

1.104 "Mitigation Letter" means a letter executed by the Chief Information Officer for the Commonwealth that sets forth Contractor's commitments to improve accessibility of each System, attached hereto as <u>Exhibit J</u>.

1.105 "MSA" has the meaning set forth in the preamble.

1.106 "New HIX/IES" means a health insurance exchange for the Commonwealth to be developed pursuant to this Agreement, as described in the recitals of this Agreement.

1.107 "Nonconformity" means a defect, error or deficiency in a Deliverable (including in a System as a whole) as measured (a) for purposes of Acceptance, against the relevant Acceptance Criteria and (b) for purposes of Warranty Support Obligations and Post-Warranty Support Obligations, against the relevant Requirements.

1.108 "Optum Organization" means, Optum, Inc., a wholly owned subsidiary of UnitedHealth Group, Inc., and all entities directly or indirectly controlled (as defined in Section 1.8) by Optum, Inc..

1.109 "Personnel" means the full-time and part-time employees, contract employees, individual consultants, volunteers, members, directors, officers, partners, agents and/or independent contractors of the specified person or entity and such person's or entity's Affiliates. For clarity sake, "Personnel" does not include "Subcontractors" or their Personnel.

1.110 "Post-Warranty Support Fees" means the Fees payable during any Post-Warranty Support Term at the rates set forth in the applicable Task Order.

1.111 "Post-Warranty Support Obligations" means the maintenance and support Services for a System provided by Contractor during the Post-Warranty Support Term as set forth in the applicable Task Order.

1.112 "Post-Warranty Support Term" means any period during which Client subscribes for the Post-Warranty Support Obligations, as set forth in the Task Orders.

1.113 "Price Cap" means US$102,188,923, as such amount may be adjusted by way of Scope reductions, increases effected pursuant to Change Orders or ongoing Services, such as those provided on a per member, per month (PMPM) basis under a Task Order.

1.114 "Production Use" means live production operation of a System as Accepted under a FP Task Order.

1.115 "Project" means the combination of separate but interrelated Work Streams set forth in the first recital of this Agreement, and the Work Streams, services and systems added by mutual agreement of the parties, if any.

1.116 "Project Director" means the project directors appointed by each of Client and Contractor responsible for managing this Agreement and the Project on behalf of such party. The initial Project Directors are set forth in Section 5.2(b).

1.117 "Project Managers" means the project managers appointed by each of Client and Contractor responsible for administering this Agreement and managing day-to-day operations under this Agreement on behalf of such party. The initial Project Managers are set forth in the Task Orders.

1.118 "Project Plan" means the Project plan, as of the Effective Date that is attached hereto as Exhibit K, and that will be updated from time to time upon the agreement of the Project Managers.

1.119 "Project Works" means all Software, Documentation, reports, work product and other submissions delivered to Client in connection with this Agreement other than the Deliverables. For clarity, Project Works include (a) all work product delivered under T&M Task Orders except work product expressly identified as being delivered under the FP portion of a T&M Task Order as a Deliverable subject to Acceptance, and (b) deliverables under FP Task Orders that are not subject to Acceptance under Section 8.4.

1.120 "Property" has the meaning set forth in Section 13.1.

1.121 "Release Event" has the meaning set forth in Section 13.8(b).

1.122 "Repository" has the meaning set forth in Section 5.12.

1.123 "Repository Materials" has the meaning set forth in Section 5.12.

1.124 "Required Change" has the meaning set forth in Section 5.7(c).

1.125 "Requirements" means, for FP Task Orders, the business, functional and technical requirements and specifications for the Services and Deliverables as set forth in or incorporated by reference in this Agreement or an applicable Task Order. For T&M Task Orders, "Requirements" shall mean the business, functional and technical specifications that shall guide the Services to be performed and the maximum number of hours and Hourly Rates to be expended by Contractor in performance of such Services.

1.126 "Resolution" or "Resolve" means the correction or elimination of a Nonconformity.

1.127 "SaaS" means Software provided as a service on a hosted basis.

1.128 "Scope" means the scope of the Project and any Services set forth in this Agreement, including under the applicable Task Orders.

1.129 "Selected Work in Progress" has the meaning set forth in Section 21.4(c).

1.130 "Service Levels" means the performance levels applicable to Contractor's provision of the Deliverables and the Services hereunder as set forth in the applicable Task Orders.

1.131 "Services" means all services performed or required to be performed by Contractor pursuant to this Agreement and the Task Orders. For the avoidance of doubt, "Services" shall include (a) delivery of the Deliverables and Project Works and (b) performance of any services required to be performed by Contractor under the CMS Requirements.

1.132 "Severity Level 1 Nonconformity" means a Nonconformity that blocks any critical functionality of the System or corrupts or causes any material loss of data or otherwise affects critical data and for which no acceptable Workaround exists to achieve the required results.

Client shall have the right to declare a Severity Level 1 Nonconformity based upon its assessment of the critical current and/or potential impact to internal or external end users with no further severity level analysis required by Contractor.

1.133 "Severity Level 2 Nonconformity" means a Nonconformity that blocks important functionality of the System where there is a Workaround, affects important data elements or causes as high risk that the System will not perform important functions and for which an acceptable Workaround exists to achieve the required results. A Severity Level 2 Nonconformity may render non-critical functions of the System inoperable with a Workaround or corrupts elements of data for key functions of the System. Client shall have the right to escalate a Severity Level 2 Nonconformity to Severity Level 1 if, in Client's reasonable judgment, sufficient progress is not being made toward Resolution.

1.134 "Severity Level 3 Nonconformity" means a Nonconformity that affects a useful functionality of the System or non-critical data and for which an acceptable Workaround exists to achieve the required results. A Severity Level 3 Nonconformity may render minor or non-critical functions of the system inoperable for limited periods of time and does not corrupt any data in the System. A Severity Level 3 Nonconformity that is persistent or that affects a significant set of end users may be escalated by Client, in its reasonable judgment, to Severity Level 2.

1.135 "Severity Level 4 Nonconformity" means a Nonconformity that is not relevant to System functionality and for which a Workaround is not required for continued performance of the System. A Severity Level 4 Nonconformity does not render any function in the System inoperable and does not affect any data in the System. A Severity Level 4 Nonconformity that is persistent or "high volume" may be escalated by Client to Severity Level 3.

1.136 "Software" means instructions executed by a computer, including at minimum executable machine code.

1.137 "Software Deliverable" means a Deliverable that consists of Software, including Third Party Software provided by Contractor.

1.138 "Software Project Works" has the meaning set forth in Section 9.1(b).

1.139 "Source Materials" means Software source code (human readable form), object code (machine readable code), technical documentation and instructions, and all other Software and statements required to build, compile, assemble, translate, bind and load source code into executable Software, and to maintain and support such Software.

1.140 "Standard Contract Form" means the Commonwealth of Massachusetts Standard Contract Form attached hereto as Exhibit F.

1.141 "Subcontract" means a written agreement between Contractor and a Subcontractor.

1.142 "Subcontractor" means a Third Party Vendor who has entered into a written agreement with Contractor for performance of any obligation under this Agreement, excluding staff

augmentation contractors and contractor's Affiliates for which Contractor is responsible in accordance with Section 6.1(a).

1.143 "Successor" has the meaning set forth in Section 21.3(a).

1.144 "System(s)" means (a) as of the Effective Date, each of New HIX/IES and (b) any other System mutually agreed to by the parties to be implemented pursuant to a mutually agreed Task Order. As of the date of Final Acceptance of a System, the term System shall mean such System as completed and Accepted under this Agreement.

1.145 "System Policies and Practices" means those system administration, privacy and security Laws, policies and practices set forth in Exhibit V.

1.146 "Task Order" means each document describing in detail the obligations of each party, including the Deliverables, Project Works, Services or Hours to be provided by Contractor, the Fees to be paid, the basis upon which such Fees shall be paid (either FP or T&M), the Client Responsibilities, and other provisions as mutually agreed to by the parties pursuant to this Agreement that are: (a) signed by the respective authorized signatories of the parties, (b) setting out at a minimum the information required by Exhibit A and (c) attached hereto as a sequentially numbered Exhibit B (e.g., Exhibit B-1, Exhibit B-2). All Task Orders are incorporated into, and made a part of this Agreement upon execution, and, for the sake of clarity, references to a party's compliance with this "Agreement" shall include compliance with the Task Orders.

1.147 "Technology Resources" means all hardware, telecommunications and other technology resources necessary for Contractor to perform the Services under this Agreement and as identified in any Task Order.

1.148 "Term" has the meaning set forth in Section 21.1.

1.149 "Third Party Equipment" means the Equipment provided by Third Party Vendors, including Subcontractors.

1.150 "Third Party Services" means any services provided by a Third Party Vendor, including Subcontractors.

1.151 "Third Party Software" means any Software owned by a third party.

1.152 "Third Party Vendors" has the meaning set forth in Section 6.1(a).

1.153 "Transition Manager" has the meaning set forth in Section 21.3(c).

1.154 "Transition Services" has the meaning set forth in Section 21.3(a).

1.155 "Transition Start Date" has the meaning set forth in Section 21.3(a).

1.156 "T&M" means time-and-materials.

1.157 "T&M Task Order" means a Task Order performed primarily on a T&M basis and designated as a T&M Task Order. Notwithstanding the foregoing, Services provided under a FP Task Order that are expressly identified as being provided on a T&M basis will be treated for purposes of this Agreement as if being provided under a T&M Task Order.

1.158 "UHC" means UnitedHealthcare, Inc., a wholly owned subsidiary of UnitedHealth Group, Inc..

1.159 "UHC Organization" means UHC and all entities directly or indirectly controlled (as defined in Section 1.8) by UHC, and the UHC health plans providing insurance through the Massachusetts health insurance exchange.

1.160 "UHC Personnel" means all Personnel of the UHC Organization entities.

1.161 "UHG Organization" means UnitedHealth Group, Inc. and its Affiliates. For the avoidance of doubt, the UHG Organization includes both the Optum Organization and the UHC Organization.

1.162 "UMMS" means the University of Massachusetts, Worcester Campus, an agency of the Commonwealth.

1.163 "Update" means any and all updates, new releases, versions, upgrades, improvements, bug fixes, patches, enhancements or other modifications. For the avoidance of doubt, Updates include all stability updates, Minor Releases and/or Major Releases.

1.164 "VPAT" has the meaning set forth in Section 14.2(c).

1.165 "Warranty Period" means: (a) with respect to any Deliverables (other than Third Party Software and Third Party Equipment) Accepted by Client prior to Final Acceptance, the period commencing on the date of Acceptance of such Deliverables until the date of Final Acceptance; (b) with respect to a System where Final Acceptance has occurred, the period commencing on the date of Final Acceptance, and expiring six (6) months thereafter or such other period as set forth in the applicable Task Order.

1.166 "Warranty Support Obligations" means the maintenance and support Services for a System to be provided by Contractor during the Warranty Period for that System as set forth in Section 17.2 and the applicable Task Order.

1.167 "WCAG2 Standards" has the meaning set forth in Section 14.1(b).

1.168 "Workaround" means a temporary solution to a Nonconformity which results in the return of any Deliverable to functional or operational status and which permits Client to perform its critical business functions in accordance with the applicable Requirements. If and as expressly set forth in this Agreement, a Workaround may, in some cases, be a permanent Resolution.

1.169 "Work in Progress" means work in progress with regard to Deliverables and Project Works.

1.170 "Work Stream" has the meaning set forth in the recitals.

2.   PURPOSE; SCOPE.

2.1   <u>Overview</u>.

(a)   The purpose of this Agreement is to enable Client, on behalf of the MassHealth program and the Commonwealth Health Insurance Connector Authority (the "Connector"), to achieve the Work Streams as set forth in the recitals of this Agreement. The parties will use good faith efforts to conduct the Project in a manner consistent with the CMS Guide.

(b)   Each Task Order will be subject to an independent validation and verification process (the "IV&V Process") during system development and implementation. Client, through a separate procurement, will hire a Third Party Vendor to perform the IV&V Process (the "IV&V Vendor"). The IV&V Vendor shall enter into a confidentiality agreement with Client to protect the confidentiality of Contractor's Confidential Information as set forth in Section 15.1(b). Throughout the lifecycle of each Task Order, Contractor will be required to provide documentation and to meet with the Project management team and the IV&V Vendor to review the Project progress.

(c)   In Client's discretion, including without limitation as a result of an IV&V Process described in the foregoing paragraph, Client may at any time during the Term initiate a procurement process to seek bids from other vendors for services provided by Contractor hereunder and that Contractor will be required to provide documentation and other information relating to the Services to Client and such bidders in connection with the procurement process (in which Contractor may be a participant); provided, however, that Contractor shall not be required to disclose Confidential Information that is not a public record as defined under Mass. Gen. Laws c. 4 § 7 cl. 26. Any such bidder shall enter into a confidentiality agreement with Client containing substantially similar terms as the confidentiality provisions set forth in Section 15 of this Agreement.

2.2   <u>Project Plan</u>. The parties acknowledge and agree that this Agreement is intended to apply to certain Services performed prior to the Effective Date, in which case the applicable Services and applicable Deliverables will be specifically identified in the Task Orders. The Project Plan for the overall Project is attached hereto as Exhibit K. In the event of any conflict between a Task Order and the Project Plan, the Task Order shall take precedence.

2.3   <u>Compensation and Performance</u>. This Project includes both FP Work Streams and T&M Work Streams, which will be performed under and governed by separate Task Orders. The basis upon which compensation will be paid by Client to Contractor for the Services performed under a Task Order shall be set forth in each Task Order.

(a)   <u>FP Task Orders</u>. Contractor will perform the Services in accordance with this Agreement and the FP Task Order.

(b)   T&M Task Orders. Contractor will perform hourly Services up to the Not-To-Exceed Price and deliver Project Works in accordance with the T&M Task Order. Unless expressly set forth in the T&M Task Order, Contractor's performance under a T&M Task Order will not be subject to the following provisions of this Agreement: Section 2.4 (Scope Details, System Requirements and Project Phases), Section 8 (Delivery, Evaluation and Acceptance, Delays and Liquidated Damages), Section 12.6 (Holdback), Section 17.1 (Warranty Support Obligations), Section 18 (Improvements and New Technology), and other Sections of this Agreement that are expressly stated to apply only to FP Task Orders unless otherwise agreed by the parties.

(c)   Hybrid Task Orders. If any work under a FP Task Order is designated as being performed on a T&M basis or performed at the Hourly Rates, only those clauses in this Agreement applicable to T&M Task Orders shall apply to such work. Similarly, if any work under a T&M Task Order is designated as being performed on a FP basis, clauses of this Agreement applicable to FP Task Orders shall apply to such work.

2.4   Scope Details: System Requirements and Project Phases.

(a)   Unless otherwise expressly set forth in a Task Order, the provisions of this Section 2.4 shall apply only to FP Task Orders.

(b)   Contractor will perform the Services for each System in accordance with such Task Order, including delivering the Deliverables set forth in the Task Order.

(c)   If a System requires hosting by Contractor, such details shall be set forth in the Task Order.

(d)   Unless otherwise expressly set forth in a Task Order; (i) Contractor will use a phased/modular implementation approach to the development of each System to be delivered, with each implementation phase supporting a particular function and/or adding to functionality developed in a previous phase; and (ii) Contractor must identify "quick hit" functionality(ies) to show progress towards goals, and with regard to New HIX/IES, with an implemented solution available by the Mandatory Go Live Date for a System.

(e)   Detailed Requirements for a System will be set forth in the respective Task Order.

(f)   Contractor shall maintain and update a Bug List for each System throughout the Term of each respective Task Order and make the then-current Bug List for each System available to Client upon Client's request during the Term of each respective Task Order.

3.   APPOINTMENT; SCOPE OF SERVICES.

3.1   **Engagement & Services.** Client hereby engages Contractor, and Contractor hereby accepts, the engagement to perform the Services. All the Services are to be provided pursuant to this Agreement, subject to the precedence of terms set forth in Section 3.3.Task Orders.

3.2   **Task Orders.** The Services to be delivered for each Work Stream shall be set forth in separate Task Orders. The basic format for a FP and a T&M Task Order is set forth in <u>Exhibit A</u> attached hereto. The Parties may mutually agree at a later date to add additional Task Orders to include additional or different functionality, tasks, Deliverables or streams of work including, but not limited, to the development of an MEP and an IES. Task Orders will include, but are not limited to, (a) a schedule of Deliverables, tasks and/or Services that are within the Scope of the Task Order and, as appropriate, a statement of Deliverables, tasks and/or Services that are not within the Scope of the Task Order (performance of such Deliverables, tasks and/or Services will require a mutually agreed upon Change Order) and (b) (i) for FP Task Orders, an exhibit that sets forth the Assumptions for the FP to be paid for the Services and a payment schedule setting forth Deliverable Payments and Critical Milestone Payments and (ii) for T&M Task Orders, a summary of the business, functional and technical specifications that shall guide the Services to be performed, and the maximum number of hours and Hourly Rates to be expended by Contractor in performance of such Services.

3.3   **Precedence of Terms.** Except as otherwise expressly stated in this Agreement, in the event of a conflict between or among the provisions contained in this Agreement and its related documents, the following order of precedence shall control:

(a)   the Commonwealth Terms;

(b)   the Standard Contract Form;

(c)   this MSA;

(d)   Data Management and Confidentiality Agreement;

(e)   the Task Orders; and

(f)   the Exhibits (other than the Task Orders and the Data Management and Confidentiality Agreement).

Contractor has signed or will contemporaneously with this Agreement sign the Commonwealth Terms and the Standard Contract Form.

4.   **[INTENTIONALLY OMITTED].**

5.   **GOVERNANCE.**

5.1   **Governance Model.** Client and Contractor team members will follow the defined set of governance processes set forth in this Section 5. Client reserves the right to make necessary modifications to, or create additional specifications for, the governance model in order to successfully govern the Project upon reasonable prior written notice to Contractor, provided that any material changes proposed by Client to the model that impose a measureable burden on

Contractor, which may include a delay in performance of the Services, must be approved by Client and Contractor as a Change Order pursuant to Section 5.7.

5.2 **Project Managers and Project Directors.**

(a) Each party will designate a Project Manager who will be responsible for managing day-to-day operations under this Agreement on behalf of such party, and who will be the principal point of contact for the other party's Project Manager unless otherwise specified in this Agreement. Each party's Project Manager must have previous experience with information technology services projects similar in Scope, size, and complexity to the Project. Contractor's Project Manager must be an employee of Contractor with authority to make decisions on behalf of Contractor. Each party must notify the other party's Project Manager in a timely manner of any change in the name, address, telephone number, fax number or email address of its Project Manager. The Contractor Project Manager shall be named as Key Personnel.

(b) In addition, the parties have each designated a Project Director who will be responsible for managing this Agreement and overseeing the overall Project on behalf of such party. The initial Project Directors for each party are: ███████ ██████ for Contractor, and ██████████, for Client. Each party must notify the other party's Project Director in a timely manner of any change in the name, address, telephone number, fax number or email address of its Project Director.

(c) The Project Directors will attend weekly Project status meetings in person at Client's location in Boston, Massachusetts, unless the parties agree on a different location.

5.3 **Joint Project Committee**.

(a) The Joint Project Committee shall be comprised of two (2) representatives of each party, which shall include the Project Director for each party. The other Joint Project Committee member for Client shall initially be the Chief Information Officer of the Commonwealth (currently Bill Oates) and the other Joint Project Committee member for Contractor shall initially be Anita Bachmann. The Joint Project Committee shall meet at least once per month to review and coordinate progress of the overall development and implementation of each System. Meetings will be held in person at Client's Boston, Massachusetts location. The Commonwealth's Project Director will serve as chairperson of the Joint Project Committee. Either party may designate substitutes for its committee representatives to participate if one or more of such party's designated representatives is unable to be present at a meeting. A party may replace its representatives serving on the Joint Project Committee from time to time by written notice to the other party specifying the prior representative(s) to be replaced and the replacement(s) therefor; however, the Joint Project Committee members must have decision-making authority on behalf of such party.

(b)   Client's Project Director, as chairperson, shall be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting. The parties will designate an attendee to prepare and issue minutes of each meeting within forty-eight (48) hours thereafter. Contractor's Project Manager will attend the meeting and provide an update of overall Project status and the IV&V Vendors' project managers will provide the IV&V status of each Task Order. Each of the Project Managers for Client and Contractor, and the project manager for IV&V Vendors, will have the opportunity to introduce items of concern at such meetings. The Joint Project Committee will establish (a) a service-oriented architecture (SOA) governance process and (b) a general design governance process, which governance processes shall be mutually agreed upon by the parties in writing promptly following the Effective Date.

(c)   Contractor acknowledges and agrees that Client's Advisers may attend meetings of the Joint Project Committee, provided that such Advisers have entered into a non-disclosure agreement with Contractor to protect the confidentiality of Contractor's Confidential Information as set forth in Section 15.1(b). Each party shall be responsible for all of its own expenses of participating in the Joint Project Committee in connection with participation on the Joint Project Committee.

(d)   In the event that a dispute is escalated to the Joint Project Committee under Section 27.1, the dispute shall be presented by each of the Project Managers, and the dispute will be resolved by mutual agreement of Client's and Contractor's members of the Joint Project Committee.

(e)   If the Project Managers are unable to agree upon any issue that requires the parties' mutual agreement under this Agreement after reasonable good faith efforts, and such inability causes the performance of the Project or any aspect thereof to be at risk of material delay, including, without limitation, not meeting the Mandatory Go Live Date for New HIX/IES, Client, or if the material delay is due to a Client Delay or other Excused Delay, Contractor, may convene an emergency meeting of the Joint Project Committee (without reference to the process set forth in Section 27.1) to resolve the issue (an "Emergency Meeting"). If the Parties are unable to resolve the issue for which the Emergency Meeting was called, the issue may be submitted to Dispute Resolution in accordance with Section 27.1. The Project Managers shall provide a summary report of the disputed issues to the Joint Project Committee. Emergency Meetings will take place as soon as reasonably possible, but in no event later than three (3) Business Days after receipt of written notice by one party from the party convening the meeting.

5.4   Critical Design Review Meetings. Contractor agrees to participate, at no additional cost to Client, and will cause its Subcontractors to participate, in periodic critical design review meetings to evaluate the progress of the performance of the Services in accordance with each applicable Task Order timeline. Such critical design review meetings shall include a review of technical progress, Project schedule and Project management effectiveness, quality issues relating to coding style, system performance or product integration, additional resource

requirements and any other issues as determined by Client's Project Manager with an impact upon the success of the Project.

5.5   Other Meetings. Risk management meetings will be held on a regular basis during the Term at such times and places as may be determined by Client and Contractor. Contractor shall attend and shall cause its Subcontractors to attend such other meetings as Client may reasonably request in connection with the activities contemplated under this Agreement.   Contractor's quality assurance representative shall meet, at least quarterly, with Client and Contractor to review Contractor's performance.

5.6   Work Schedules.   Contractor's Project Manager will determine the weekly work schedule. Contractor should be available at all reasonable times as needed for performance of the Project.   All meetings will be on Eastern Time.   The Project Managers may support teleconferencing for certain meetings. Client and Contractor will keep a unified vacation/out-of-office calendar for the Project and Contractor Personnel. Contractor shall verify that the Core Project Team and other Contractor Personnel as Contractor determines in its reasonable judgment are trained in any Software or tools required for the Project.

5.7   Changes.

(a)   Either party may elect to submit Change Requests to the other party to propose changes, including, but not limited to, changes to the Requirements, Services, Task Orders, Deliverables, Critical Milestone Schedule or in response to a Client Delay, or Required Change. Change Requests shall be submitted in writing to the other party using a Change Request Form and shall contain a sufficient level of detail to permit the other party to properly evaluate the Change Request. Change Requests may only be submitted by a party's Project Manager.   The party receiving the Change Request shall promptly thereafter evaluate the ramifications of the Change Request to determine whether the Change Request is, in its reasonable judgment, technically and commercially feasible, and if so, what impact approving the Change Request will have on the Services. As promptly as possible, but in no event later than ten (10) Business Days after receipt of the Change Request, the receiving party shall respond to the requesting party in writing with either: (i) an acceptance of the Change Request; (ii) a proposal of modifications to the Change Request; or (iii) the reasons why such a Change Request cannot be accepted. The parties shall, as promptly as possible, but in no event later than five (5) Business Days after receipt of such response, meet to evaluate such modifications and negotiate an appropriate Change Order to reflect the parties' agreement upon the Scope, schedule and pricing for such Change Request. Change Orders may be issued either on a FP or T&M basis depending upon the pricing of the relevant Task Order. In the event that the Scope, schedule and pricing of the Change Request as evaluated and/or modified by the parties is acceptable to both parties, the parties shall enter into a Change Order, and this Agreement shall continue as amended by such Change Order once it is executed by both parties.   Neither party will be entitled to or obligated by a Change Request until it has been presented and approved by both parties in accordance with the above-mentioned procedures, except in the case of a Change Order in

response to a Client Delay, or a Required Change (which shall be governed by the procedures set forth in Section 5.7(c) for a Required Change and Section 5.7(d) for a Change Order for a Client Delay). The timeframe obligations of Contractor in this Section 5.7(a) to evaluate and respond to Change Requests submitted by Client shall apply for up to fifteen (15) Change Requests per calendar week. Thereafter, Contractor shall use commercially reasonable efforts to evaluate and respond as promptly as possible.

(b)   Where Client has submitted a Change Request and mutual agreement cannot be reached between the parties with respect to the change within ten (10) Business Days after Contractor's receipt of the Change Request Form, Client may, at its sole option, convene an Emergency Meeting for the parties to determine and mutually agree upon the Scope, schedule and pricing of a Change Order for such Change Request.

(c)   Required Changes. If a Change Request from Client arises as a result of (i) a change in applicable Law, (ii) a CMS policy change, (iii) a change in Commonwealth funding in accordance with an appropriation pursuant to Mass. Gen. Laws. c. 29, § 26, or the availability of sufficient non-appropriated funds for purposes of this Agreement, or (iv) an adjustment of priorities or change in the Project requested or required by CMS (each of (i) – (iv)) a "Required Change"), Client's Project Manager or Project Director will provide Contractor with written notice that the Change Request represents a Required Change and Contractor shall be obligated to accept the Change Request, in which case Contractor shall promptly commence work in accordance with such Change Request, as follows:

(i)   *FP Task Orders*. Under FP Task Orders, based upon Contractor's reasonable business judgment, Contractor will perform those tasks necessary to efficiently and effectively perform the Required Change. If mutually agreed, the Project Plan, schedule and FP for the Task Order shall be extended and amended to provide an equitable adjustment. If the parties fail to mutually agree as to Scope or equitable adjustment in schedule or FP for the Change Order, the parties shall submit the failure to agree to dispute resolution pursuant to Section 27, and upon resolution of such proceedings, Services performed after the date of the Required Change shall be tailored in accordance with the resulting decision and a Change Order shall be executed by the parties reflecting any equitable adjustment in Scope, schedule and FP for the Task Order. Either party may call an Emergency Meeting during the pendency of the dispute resolution proceeding to discuss the Change Order, the performance of the Services and the adjusted Project Plan, schedule and FP of the Task Order during which Emergency Meeting the parties will continue to work to reach mutual agreement. It is recognized that not all Required Changes will result in an increase in the FP of a Task Order, but both parties acknowledge and agree that if a Required Change causes an increase in the cost of performance of a Task Order and/or requires additional or different

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time for delivery of Services, the FP of a Task Order will be equitably adjusted and/or the schedule will be equitably extended (as applicable).

(ii) *T&M Task Orders*. Under T&M Task Orders, Contractor shall perform additional Services in response to a Required Change, as determined by Client, in its reasonable business judgment, in which case (A) Contractor shall promptly commence work on the additional Services set forth in the Change Request, as directed by Client's Project Manager or Project Director in writing, (B) the parties will convene an Emergency Meeting to estimate the number of additional hours and the applicable Hourly Rate to perform such additional Services and (C) the parties will enter into a Change Order setting forth such additional hours, applicable Hourly Rate(s) and description of Services.

(d) <u>Change Orders for Client Delay</u>. If Contractor reasonably believes that a Change Order is necessary due to a Client Delay that adversely impacts Contractor's ability to perform its obligations hereunder, Contractor shall continue performing Services under the original Task Order, using commercially reasonable efforts to perform. However, in such event, Contractor shall promptly notify Client's Project Director in writing of such Client Delay and the manner in which it is impacting Contractor's ability to perform, and the parties will convene an Emergency Meeting to determine the scope and pricing of an appropriate Change Order. If the Joint Project Committee is unable to agree upon the Scope, schedule or pricing for such Change Order using reasonable, good faith efforts, then the Scope, schedule and pricing for such Change Order shall be determined as follows:

(i) *FP Task Orders*. Under FP Task Orders, the parties shall promptly submit the matter to dispute resolution in accordance with Section 27. During the pendency of such dispute resolution, Contractor will continue performance of the Services as determined by Contractor in its reasonable business judgment, performing those tasks necessary in Contractor's judgment to mitigate further delay to the Project Plan. The Project Plan and schedule may be adjusted as necessary based upon Contractor's reasonable business judgment during the pendency of the dispute resolution. Either party may call an Emergency Meeting during the pendency of the dispute resolution proceeding to discuss the Change Order, the performance of the Services, and/or any adjusted Project Plan, FP and schedule during which Emergency Meeting the parties will continue to work to reach mutual agreement. Upon completion of the dispute resolution proceedings, the parties shall enter into a Change Order in accordance with the dispute resolution determination that equitably compensates Contractor for the Services performed as a result of the Client Delay and equitably adjusts the Project schedule. All Services resulting from the Client Delay shall be tailored in accordance with the decision resulting from resolution of the dispute. For clarity's sake, the amount of Fees paid to Contractor during the pendency of the dispute resolution shall reduce the amount of Fees that

Contractor may collect with regard to the Client Delay. It is recognized that not all Client Delays will result in an increase in the FP of a Task Order, but both parties acknowledge and agree that if a Client Delay causes an increase in the cost of performance of a Task Order or requires additional or different time for delivery of Services, the FP of the Task Order will be equitably adjusted and/or the schedule will be equitably extended (as applicable).

(ii) *T&M Task Orders*. Under T&M Task Orders, Contractor shall perform additional Services, following a Client Delay, as determined by the Client, in its reasonable business judgment, in which case (A) the parties will convene an Emergency Meeting to estimate the number of additional hours and the applicable Hourly Rate to perform such additional Services, (B) the parties will enter into a Change Order setting forth such additional hours, applicable Hourly Rate(s) and description of Services and (C) Contractor may promptly commence work on the additional Services necessary as a result of the Client Delay, as set forth in the Change Order. The Project Plan, including the Project schedule for delivery of the T&M Services, may be extended by mutual agreement of the parties in order to take into account the delivery of the additional Services.

(e) Except as set forth in Section 5.7(c) or (d) above, where Contractor has submitted a Change Request and mutual agreement cannot be reached with respect to the change between the parties within thirty (30) calendar days after Client's receipt of the Change Request, Contractor must continue to provide the Services in accordance with the Task Order unmodified by the Change Request, even if Contractor or Client has submitted such matter for dispute resolution in accordance with Section 27.

(f) Notwithstanding the foregoing, Client may submit a Change Request to reduce the Scope by notifying Contractor that Client will not require delivery of specified Services, provided, that a reduction in Scope shall be deemed a termination for convenience by Client, in part, of this Agreement. Client shall compensate Contractor for all Fees payable upon a termination for convenience for the applicable portion of the Services in accordance with Section 21.4. The parties shall mutually agree to a Change Order containing the reduced Scope of Services and the agreed upon adjustment in the Price Cap.

5.8 **Substitutions.** During the Term, Contractor is not authorized to substitute any item for any Deliverable, Project Works or Services identified in this Agreement without the prior written consent of Client's Project Manager (in each case, such approval shall not be unreasonably withheld, conditioned or delayed so long as substitution is with items of comparable cost, functionality and/or capacity). If approved by Client, any substitutions of Deliverables, Project Works or Services, as well as reallocations of funds between Task Orders, shall be made only pursuant to a Change Order in accordance with Section 5.7.

5.9   **Oversight.** Contractor acknowledges and agrees that Client and/or the Commonwealth intends to obtain the services of Advisers including, but not limited to, IV&V Vendors and accessibility testers to assist Client in performing its responsibilities and overseeing Contractor's performance under this Agreement. IV&V Vendors will independently review the Project performance against the Project's objectives and timelines, help identify risks proactively, and provide periodic reports summarizing their independent view of the Project progress and risks including, but not limited to: Project organization and management, procurement and contract management, Requirements management, costs and schedule management, System architecture and design, human resources (Contractor and Client Personnel) management, risk management, quality management, communications management and technology architecture definition. All such Advisers will enter into a non-disclosure agreement with Contractor to protect the confidentiality of Contractor's Confidential Information as set forth in Section 15.1(b).

5.10   **Communications.** Each party's Project Manager must make himself/herself available for communication with the other party's Project Manager as more fully described in each Task Order, which may include:

(a)   communicating in person and via telephone, email, conference calls and teleconferencing/webinars;

(b)   developing a plan for communication as to the mode, frequency and content of Project communication;

(c)   issuing invitations to key meetings specifying the date, time and location, as well as including an agenda listing the topics, purpose and desired outcomes, such notice to be provided with as much advance notice as possible; and

(d)   attending key meetings.

5.11   **Refinement of Requirements**. During the course of the Project, Contractor's Project Manager and Client's Project Manager shall collaborate on any necessary refinement of the Requirements under each Task Order, including but not limited to:

(a)   specifying all tasks required to implement each feature of each System and each Deliverable;

(b)   performing a stakeholder analysis to facilitate participation of all key stakeholders;

(c)   developing a detailed Task Order schedule for each Task Order; and

(d)   updating the Project schedule and each Task Order schedule to account for new levels of detail developed during the course of the Project and each Task Order.

For the avoidance of doubt, any such refinements may be made only by a mutually agreed Change Order.

5.12   Project Repository. During the Term, Contractor shall use a document and/or code repository controlled by Client as designated by Client (the "Repository") to store the following: (a) the Project Schedule, Task Order schedules, the Project Plan, status reports, Change Orders, organization charts, meeting agendas and minutes and all other Project management and governance documents; (b) all Documentation Deliverables and Documentation Project Works (including all current drafts); (c) object code and Source Materials for all Software Deliverables and Software Project Works (other than Third Party Software and Commingled Client Owned Deliverables), including works in progress (which may be uploaded on a periodic basis not less than once per month); and (d) other materials that the parties mutually agree to be included in the Repository (collectively, "Repository Materials"). Contractor will ensure the Repository Materials are current. Contractor shall identify to Client any Personnel who require access to the Repository. Client shall promptly provide notice to Contractor if Client believes Contractor is not meeting its obligations under this Section. If Contractor fails to address Client's concerns after receipt of such notice, Client may exercise its rights in accordance with the provisions of Section 21.2(b).

6.   THIRD PARTY VENDORS.

6.1   Subcontractors.

(a)   Client and Contractor acknowledge and agree that third-party Advisers or other third-party providers (collectively, "Third Party Vendors") may, from time to time, provide Third Party Software, Third Party Equipment or Third Party Services in support of the Project; provided, however, that any Services provided by Contractor's Affiliates or by staff augmentation contractors shall not constitute Third Party Services, and Contractor's Affiliates and staff augmentation contractors shall not constitute Third Party Vendors provided that Contractor shall remain responsible for all acts and omissions of Contractor's Affiliates and staff augmentation contractors. Any Third Party Services provided by a Subcontractor must be provided under a Subcontract complying with this Section 6.1. Client and Contractor agree that Contractor will serve as the prime contractor for each Subcontract, and will remain responsible for the performance of any Services provided by any such Subcontractor. For the avoidance of doubt, to the extent Third Party Vendors are providing Client Provided Third Party Software, Client Provided Third Party Services and/or Client Provided Third Party Equipment, such Third Party Vendors are not Subcontractors. Client may enter into agreements directly with Third Party Vendors for the Services specified in the Task Orders, and no such agreement shall be construed to discharge Contractor from its obligations or liabilities to Client under this Agreement and with respect to the performance of all Services, except as expressly stated herein.

(b)   Contractor shall:

(i)   submit each proposed Subcontractor to Client for written approval, and obtain Client's written approval (in each case, such approval or disapproval shall not be unreasonably delayed), prior to engaging any such Subcontractor to provide Third Party Services, Third Party Software or

Third Party Equipment under this Agreement. Client's failure to approve or disapprove a proposed Subcontractor on a timely basis shall be considered a Client Delay for the applicable Services to be provided by the proposed Subcontractor if Client's failure adversely impacts Contractor's ability to meet a Task Order delivery date related to the work proposed to be completed by the proposed Subcontractor;

(ii)   with regard to Subcontracts with Third Party Vendors that will provide Third Party Services, execute a Subcontract that:

    (A)   is consistent with the provisions of this Agreement;

    (B)   unless otherwise agreed by Client in writing, requires the Subcontractor to be bound by the Flowdown Terms;

    (C)   unless otherwise agreed by Client in writing, provides that the Subcontract may be assigned to Client at Client's request (however, Client shall not require such right to assign if Contractor can demonstrate it has used commercially reasonable efforts to obtain such ability to assign, and the proposed Subcontractor (I) has refused to provide the right to assign, (II) is the only source for the Third Party Service and (III) has not accepted the Commonwealth Terms in a current engagement); and

    (D)   permits Client, at Client's sole discretion, to, upon written notice to Contractor, pay directly to the Subcontractor any amounts owed by Contractor to such Subcontractor under the Subcontract, in the event that (I) Contractor has not paid such Subcontractor and the continued nonpayment of such Subcontractor materially compromises the Project or any System or (II) Contractor commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within thirty (30) days;

(iii)   with regard to Subcontracts with Third Party Vendors that will provide Third Party Software or Third Party Equipment, utilize commercially reasonable efforts to execute a Subcontract that (A) is consistent with the provisions of this Agreement, (B) incorporates the Commonwealth Terms and Commonwealth Standard Form Contract (C) may be assigned upon Client's request and (D) provides that the Third Party Vendor must indemnify Client for intellectual property infringement claims arising from the Third Party Software or Third Party Equipment;

(iv)   obtain Client's prior written consent to the terms of any Subcontract with a Key Subcontractor (in each case, such consent shall not be unreasonably withheld, conditioned or delayed). For avoidance of doubt, Client's consent to the terms of any such Subcontract shall in no event be

construed to waive, modify, amend or in any way alter the terms and conditions of this Agreement;

(v)   be responsible for managing each such Subcontractor's performance under this Agreement;

(vi)   continue to be responsible for the performance of the Services required by this Agreement, notwithstanding such Subcontractor's performance (irrespective of any terms or limitations or exclusions of the Subcontract);

(vii)   if such right exists, Contractor shall assign a Subcontract to Client upon Client's request;

(viii)   provide Client with copies of all draft Subcontracts with Key Subcontractors with an opportunity to review and comment prior to signing and final executed Subcontracts; and

(ix)   defend, indemnify and hold Client harmless from and against any and all third party claims, actions, suits, proceedings, losses, liabilities, damages, costs and expenses (including attorneys' fees) arising out of or relating to Contractor's failure to pay any Subcontractor, including any claim made by any Subcontractor against Client alleging nonpayment by Contractor.

Unless and until a Subcontract is assigned to Client as described herein, Client shall not be required to seek a remedy against any Subcontractor (other than with respect to intellectual property infringement, as described below). However, notwithstanding any other provision of this Agreement or a Task Order but without limiting Contractor's obligations under subsection (b) above, (A) except for Key Subcontracts, to the extent permitted by the Subcontract, Client agrees to first seek available remedies for intellectual property infringement claims arising from Client's use of the Third Party Software or Third Party Equipment directly from the Third Party Vendor and (B) following the assignment of a Subcontract to Client, if such assignment occurs, Client shall seek remedy related to and regarding such Subcontract against the Third Party Vendor and not against Contractor for claims arising under such Subcontract after the effective date of the assignment. Except in the event of the assignment by Contractor to Client of a Subcontract pursuant to the terms of this Agreement and except with regard to applicable use restrictions, including but not limited to license use restrictions and confidentiality, set forth in COTS maintenance, Software, license and hardware agreements between Contractor and Third Party Vendors for Third Party Software and/or Third Party Equipment provided by Contractor, in each case as reviewed and approved by Client in advance in writing, Client shall not be bound by any provisions contained in a Subcontract to which it is not a party.

As of the Effective Date, hCentive is the only Key Subcontractor. For the avoidance of doubt, the agreement between hCentive and Contractor, a copy of which is attached hereto (for ease of reference purposes only) as <u>Exhibit U</u> (the

"hCentive Agreement") is a Subcontract hereunder and shall be subject to all the requirements of Section 6.1(b). Within five (5) days after initial deployment to Client of the hCentive Software, and within five (5) days after deployment to Client of each Release (as defined in Exhibit B-3 (Task Order 3)), Contractor will deliver or caused to be delivered to Client the archive copy of the object code for hCentive Software and such copy will be maintained in Client's own storage system.

(c)   Except for Key Subcontractors, Client and Contractor acknowledge that certain Subcontracts for Third Party Software and Third Party Equipment may not be executed prior to and/or simultaneously with the execution of this Agreement. Client and Contractor also acknowledge that during the Term of this Agreement, Contractor may propose additional Subcontractors.

6.2   Termination of Subcontract. In the event Contractor receives a notice of termination from any Key Subcontractor under any Subcontract, Contractor shall promptly notify Client of such notice of termination. If the parties agree (which may be determined by Emergency Meeting) that the Project would be best served by such Key Subcontractor continuing to perform under such Subcontract, Contractor shall use commercially reasonable efforts to prevent such termination, and Contractor shall promptly mitigate any damages that may be incurred by Client as a result of the termination of the Subcontract. The termination of any Subcontract shall not eliminate or reduce Contractor's obligations. In the event any Subcontract with a Key Subcontractor is terminated during the Term, Contractor shall promptly notify Client of such termination and (a) promptly locate a suitable replacement for such Key Subcontractor (which replacement, for clarity, will be subject to Client's written approval in accordance with Section 6.1(b)(iv) above), if necessary, in order to meet Contractor's obligation under this Agreement or (b) obtain the rights to any technology, know-how, expertise, labor, Personnel or any other rights that may be necessary to fulfill the obligations of Contractor under this Agreement, including any obligations that were delegated to such Key Subcontractor. Any such replacement Key Subcontractor must fulfill all of the applicable requirements set forth in this Agreement hereunder.

6.3   Assignment of Subcontracts. With respect to Subcontracts that are assignable to Client upon Client's request as required under Section 6.1(b) above, within thirty (30) days of Client's request that Contractor assign to Client such a Subcontract hereunder, or such other time period as mutually agreed by the parties, Contractor shall transfer, assign and convey to Client, by means of a written assignment agreement in such form reasonably satisfactory to Client, all the rights, title and interest of Assignor in, to and under such Subcontract, and delegate to Client all of Contractor's future obligations and liabilities under the Subcontract. Following an assignment of a Subcontract by Contractor to Client pursuant to the terms of this Agreement, such Third Party Vendor shall no longer be a Subcontractor under this Agreement and Contractor shall not be responsible for the future performance of such Third Party Vendor. For avoidance of doubt, Contractor shall continue to be responsible for all claims of any kind or nature of Subcontractor or arising from such Subcontract that accrued prior to the effective date of the assignment of the Subcontract to Client.

6.4   Client Agreements With Third Party Vendors.   Client may enter into written agreements directly with Third Party Vendors for Client Provided Third Party Services such as hosting services, Client Provided Third Party Software and Client Provided Third Party Equipment, as specified in a Task Order (or as otherwise agreed upon by the parties). While Contractor shall assist in the management, coordination and communication with such Third Party Vendors, if and to the extent such agreement between Client and the Third Party Vendor allows Contractor to provide such support, Contractor shall not be responsible for the performance of such Third Party Vendors engaged directly by Client, or the Acceptance or performance of any such Client Provided Third Party Software, Client Provided Third Equipment or Client Provided Third Party Services unless such Third Party Vendors have been recommended by Contractor.

7.   QUALITY CONTROL.   Unless otherwise expressly set forth in a Task Order, Contractor shall establish and maintain throughout the Term of this Agreement quality control standards for Software development, configuration and integration (including methods and techniques) that are consistent with the generally accepted industry practices employed in the systems integration industry for projects of similar scope and size. Client may conduct a quality control review at reasonable times throughout the development and implementation phases of each Task Order to review and coordinate progress of the overall development and implementation of each System in accordance with the agreed-upon standards and in order for Client to determine whether the Project quality standards have been met. Such review may include, but is not limited to, design review, code review, architectural review, system performance review or a general review of any Deliverables and Project Works.

8.   DELIVERY; EVALUATION AND ACCEPTANCE; DELAYS; LIQUIDATED DAMAGES.

8.1   Applicability.   Unless otherwise expressly set forth in a Task Order, the provisions of this Section 8 shall apply only to FP Task Orders.

8.2   Critical Milestone Schedule.   Contractor shall perform the Services and deliver each of the Deliverables on or before the delivery date set forth in each applicable Task Order schedule. Deliverables will be delivered to Client's electronic repository in accordance with Section 5.12. The delivery dates and Critical Milestone Schedule shall be revised only pursuant to a mutually agreed Change Order.

8.3   Acceptance Criteria.   As part of the development of each Task Order, Contractor and Client shall develop objective Acceptance Criteria that are based upon and include the Task Order Requirements and refine and clarify the quality assurance principles and quality control standards set forth in the Task Order. Such Acceptance Criteria shall be reasonably designed to verify that the Services and Deliverables under such Task Order meet the applicable Requirements. These objective Acceptance Criteria shall be incorporated into the applicable Task Order. Client and Contractor agree that additional quality review processes and additional quality Acceptance Criteria to be applied to specific Deliverables may be mutually agreed to by the parties and set forth in the applicable Task Order.

8.4   Acceptance Process.

(a)   Project Works. The parties acknowledge and agree that Project Works are not subject to the formal Acceptance processes described below; however, Contractor agrees that Project Works will be provided in a professional and workmanlike manner in accordance with industry-standard practices. Contractor will work with Client regarding Client's concerns that a particular Project Work has not been prepared in a professional and workmanlike manner in accordance with industry standards.

(b)   Documentation. Contractor shall deliver to Client the applicable Documentation in accordance with each Task Order schedule. Client shall Evaluate such Documentation in accordance with the Evaluation Period prescribed in the applicable Task Order schedule or otherwise agreed in writing by the parties and indicate in writing to Contractor either: (i) its Acceptance of such Documentation; or (ii) its rejection of such Documentation, setting out in reasonable detail the Nonconformities that constitute the basis for rejection. In the case of any Documentation for which no Evaluation Period is prescribed in the Task Order schedule, the timing of Evaluation shall be as set forth below in this Section 8.4, but in all cases Client will use commercially reasonable efforts to Evaluate all Documentation as promptly as possible following delivery or redelivery. When all Nonconformities that constituted the basis for rejection have been Resolved by Contractor, or Client agrees in writing that any of such Nonconformities will not delay Acceptance, Client shall provide Contractor with written notice of its Acceptance of such Documentation. For clarity, not all Documentation will be subject to formal Acceptance in accordance with this Section 8.4, in which case the process described in Section 8.4(a) will apply. Each Task Order shall identify the Documentation, if any, that shall be subject to Acceptance in accordance with this Section 8.4(b). If not otherwise specified in the applicable Task Order, the Acceptance Criteria for Documentation that is subject to Acceptance shall be that the Documentation shall conform in all material respects with the applicable Requirements.

(c)   Software Deliverables Other Than Third Party Software. Each Task Order will set forth Acceptance Criteria for Software Deliverables. In the event that a specific Evaluation and Acceptance process is not set forth with respect to any particular Software Deliverable (other than Third Party Software), such Software Deliverable shall be Evaluated and Accepted in accordance with this Section 8.4(c).

(i)   *Test and Refine*. Contractor shall test and refine each Software Deliverable in accordance with objective criteria mutually agreed to and set forth in the applicable Task Order. Prior to submission of a Software Deliverable to Client for Acceptance, the parties will schedule and undertake a pre-production (but post-build/implementation) testing period in accordance with pre-production testing criteria mutually agreed to by the parties. Following completion of such pre-production testing, each Software Deliverable shall be Evaluated in accordance with the Acceptance procedures set forth in Section 8.4(c)(ii) below. In the event

that the parties fail to agree upon pre-production testing criteria prior to the date for pre-production testing, the parties will convene an Emergency Meeting to determine the appropriate course of action, and the Joint Project Committee may authorize submission of such Software Deliverable to Client for Evaluation in accordance with the Acceptance procedures set forth in Section 8.4(c)(ii) below.

(ii) *Acceptance Testing*. With respect to any Software Deliverable, (1) Contractor shall deliver (or, as applicable, provide access to) the Deliverable to Client for Evaluation and (2) Client shall Evaluate the Deliverable in accordance with the applicable Acceptance Criteria set forth in the applicable Task Order, and indicate in writing to Contractor either (A) its Acceptance of the Software Deliverable or (B) its rejection of the Software Deliverable, in which case Client will also identify the Nonconformities of the Software Deliverable in reasonable detail that are the basis for rejection. Unless otherwise agreed to by the parties in the applicable Task Order or otherwise in writing, if the Software Deliverable is rejected, Contractor shall Resolve all Severity Level 1 Nonconformities, Severity Level 2 Nonconformities and Severity Level 3 Nonconformities and all agreed upon Severity Level 4 Nonconformities as are identified in the Task Orders for Resolution prior to Acceptance, and redeliver the Deliverable to Client for Evaluation. . Any failure of the parties to agree to classification of a Nonconformity as either a Severity Level 1, Severity Level 2 or Severity Level 3, shall permit either party to call for an Emergency Meeting in accordance with Section 5.3(e). Contractor may implement a Workaround to Resolve such Nonconformities for Acceptance in accordance with the Acceptance Criteria; provided, however, that unless Client has agreed in writing that the Workaround may constitute a permanent Resolution of a Nonconformity, the Nonconformity must be Resolved prior to the end of the Warranty Period for the applicable System. Upon such redelivery, Client shall Evaluate the Deliverable anew in accordance with this Section 8.4. Acceptance of any Software Deliverable is subject to Contractor's Resolution of such Nonconformities in accordance with this Section 8. If any Nonconformity arises in previously accepted Software Deliverables that is caused by a subsequent Software Deliverable or becomes apparent because of the subsequent Software Deliverable, and prevents any such Software Deliverables (including a System as a whole) from conforming to the relevant Acceptance Criteria, the subsequent Software Deliverable will not be Accepted by Client until the Nonconformities in such Software Deliverable and in the previously Accepted Software Deliverables are Resolved as set forth above in this Section 8.4(c)(ii). Notwithstanding the foregoing, the conclusion of any Evaluation Period, Acceptance or Final Acceptance will not relieve Contractor of its obligation to Resolve identified Nonconformities in accordance with this Agreement or as otherwise agreed to by the parties in the applicable Task Order.

(d)   Acceptance of Third Party Software and Equipment Provided by Contractor. Unless otherwise expressly set forth in a Task Order, Third Party Software that is COTS and Third Party Equipment, in each case, included in Deliverables provided by Contractor, shall be Accepted in accordance with their applicable commercial terms and conditions. For avoidance of doubt, the hCentive Software will be tested and Accepted in accordance with Task Order No. 1.

(e)   Timing. The Acceptance Process with respect to each Deliverable shall be performed within the Evaluation Period prescribed in the applicable Task Order; provided that in the case of any Deliverable for which no Evaluation Period is prescribed in the applicable Task Order, (i) Evaluation of any Deliverable shall be ten (10) Business Days from the date of delivery, provided, however, that the parties may agree to extend the Evaluation Period for up to twenty (20) Business Days from the date of delivery for significant or complex Deliverables, and provided further that, unless otherwise expressly set forth in the applicable Task Order, the Evaluation Period for Final Acceptance shall be no less than one hundred and twenty (120) days including no less than ninety (90) days of Production Use of each of the Systems; and (ii) the fix/redelivery/re-performance period shall be ten (10) Business Days from the date of receipt of notice of rejection unless Client agrees in writing to a longer period. If at the end of any Evaluation Period or re-Evaluation Period, Client shall not have issued either an Acceptance or a notice of Nonconformities, the Deliverable will be deemed not Accepted. For the avoidance of doubt, Client's obligation to Accept and reject Deliverables in accordance with this Section 8.4 and the Task Orders shall be deemed a Client Responsibility and Client's failure to provide Acceptance or rejection in accordance with the stated Evaluation Periods or re-Evaluation Periods set forth above or as set forth in a Task Order shall be a Client Delay, shall result in an Excused Delay under Section 8.6(c) and shall form the basis for a request for a Change Order for Client Delays under Section 5.7(d).

(f)   Effect of Production Use. The parties understand and agree that production use of any component of a Deliverable does not constitute Acceptance or Final Acceptance by Client.

8.5   Final Acceptance. After Contractor has delivered a completed System to Client for Evaluation, Client will follow the Acceptance Process described in Section 8.4 or each applicable Task Order to Evaluate a System as a whole when operating that System under full production conditions in accordance with the Acceptance Criteria also set forth in the relevant Task Order for that individual System. A System shall be Evaluated separately to determine compliance with applicable Acceptance Criteria for purposes of Final Acceptance.

8.6   Responsibilities of the Parties; Delays.

(a)   Client Responsibilities. Client agrees that Contractor's performance under this Agreement is dependent on Client's timely and effective satisfaction of Client Responsibilities. Client further agrees to reasonably cooperate with Contractor in Contractor's performance of the Services. Accordingly, if Contractor believes

that a delay by Client is materially impeding the performance of Contractor's obligations, Contractor shall timely inform Client, in writing, describing the nature and circumstances of such delay, including the date on which Contractor believes such delay by Client began. If Client determines, in its reasonable business judgment, that the applicable schedule under which a Client Responsibility is required is not reasonably feasible as a result of a failure by Contractor to meet the applicable Critical Milestone Date(s) or other delivery date(s) or timeline(s), then Contractor and Client shall use reasonable efforts to reschedule such Client Responsibility and Contractor shall reallocate, in good faith, its resources to minimize the impact of such Client Responsibility. Any dispute under this Section 8.6(a) shall be addressed in accordance with the dispute resolution procedures set forth in Section 27. Notwithstanding that Client has agreed to perform the Client Responsibilities, Client's performance of such Client Responsibilities and Client's participation generally in the activities contemplated under this Agreement, shall not in any way relieve or diminish Contractor's responsibilities as the prime contractor, including its responsibilities for the performance of its Subcontractors, under this Agreement except to the extent such failure constitutes an Excused Delay.

(b)   Contractor Delays. Contractor agrees to timely meet each Critical Milestone Date set forth in each Task Order. Contractor will meet all other dates set forth in each FP Task Order schedule, and will inform Client as promptly as reasonably possible regarding any anticipated delays.

(c)   Contractor Excused Delays. In the event of an Excused Delay, Contractor shall continue performance as expeditiously as possible under the circumstances. Should the circumstance causing the Excused Delay cause an increase in the cost of performance, Contractor may submit a request for a Change Order pursuant to Section 5.7, including where applicable for Client Delays or Required Changes. Contractor shall not be responsible for failure to timely meet a Critical Milestone Date or other delivery date or timeline set forth in a Task Order (or breach to the extent resulting therefrom) due to an Excused Delay to the extent and for so long as such Excused Delay is the cause of such failure to meet the applicable date or timeline, provided that Contractor has notified Client's Project Director of the circumstances and the manner in which the cause of the Excused Delay is impacting Contractor's ability to perform as soon as reasonably possible after Contractor becomes aware of the cause of the Excused Delay. In addition, Contractor will also make a good faith effort to timely bring to Client's Project Director's attention any other circumstances of which it becomes aware that may cause an Excused Delay.

8.7   Liquidated Damages. With respect to Task Orders, should a Contractor Delay occur, such Contractor Delay may result in costs that cannot accurately be estimated, and the parties agree that liquidated damages provisions may apply.

9.   SOURCE MATERIALS AND DOCUMENTATION.

9.1   Source Materials.

    (a)   <u>Under FP Task Orders</u>. The following shall apply to FP Task Orders, unless otherwise expressly set forth in a Task Order:

        (i)   Upon delivery of any Client Owned Deliverables that are Software ("Client Owned Software"), other than Commingled Client Owned Deliverables, Contractor shall deliver to Client a complete copy of all Source Materials for such Client Owned Software, which Client may use for purposes of Evaluating the Deliverables under Section 8.4.

        (ii)   Upon Acceptance of any Client Owned Software under Section 8.4(b), Contractor shall deliver to Client an updated copy of all Source Materials for such Client Owned Software, if applicable. In addition, Contractor will deliver Source Materials for any related, previously Accepted, Client Owned Software, if such Source Materials have been modified since they were last delivered to Client.

        (iii)   Client shall own all rights, title and interest in and to all Source Materials for Client Owned Software.

        (iv)   Source Materials for Client Owned Software shall be deemed a Deliverable hereunder, and Client will be entitled to Evaluate and Accept such Source Materials in accordance with process set forth in Section 8.4(b); provided that any such Evaluation shall be based on completeness and performance parameters.

    (b)   <u>Under T&M Task Orders</u>. If required by a T&M Task Order, upon delivery of any Project Works that are Software ("Software Project Works"), Contractor shall deliver to Client a complete copy of all Source Materials for such Software Project Works. Client shall own all rights, title and interest in and to all Source Materials for Software Project Works.

9.2   Documentation.

    (a)   Contractor shall supply appropriate Documentation identified in each applicable Task Order to enable Client's appropriately skilled personnel to use the Deliverables (or, as expressly specified in a Task Order, certain Project Works) effectively, and shall provide updated Documentation as necessary in connection with any changes and customizations.

    (b)   Contractor shall provide Documentation identified in each applicable Task Order at the time of delivery, and such Documentation shall include the user documentation specified in the applicable Task Order.

(c)   All Source Materials and Documentation shall be delivered to Client electronically, in such media and in such format as reasonably requested by Client.

(d)   For FP Task Orders and as required under a FP portion of a T&M Task Order, Contractor shall: (i) maintain all such Documentation; (ii) update all such Documentation including updates to Documentation necessary to reflect Updates made to the Systems during any Warranty Period and Post-Warranty Support Term; and (iii) make such Documentation available to Client upon Client's request and reasonably promptly at the expiration or termination of this Agreement.

(e)   For clarity's sake, with respect to COTS that is, or is embedded into, End User Software, Contractor shall provide Client with any available user manuals and training materials.

10.   APPLICATION DEVELOPMENT.   Contractor shall perform the Services in accordance with the application development processes included in Exhibit L, unless otherwise expressly set forth in a Task Order.

11.   RESOURCES.

11.1   Technology and Facility Resources.   The applicable Task Order will identify the Technology Resources and Facility Resources required to be provided by Client for Contractor to perform the Services. Client agrees to make reasonable Facility Resources available to Contractor in order to allow Contractor to provide the Services hereunder. Contractor shall comply with applicable Commonwealth (including, without limitation, Client, the Connector, the Executive Office of Health of Human Services and the Commonwealth Care Alliance) System Policies and Practices with regard to its use of all Facility Resources provided by Client. All other Facility Resources and Technology Resources necessary for Contractor to perform the Services will be provided by Contractor. Provided in Exhibit R is a listing of the Contractor facilities where Services may routinely be performed during the Term of each of the respective Task Orders. Certain Services may also be performed at the facilities of Client. This listing of Contractor facilities may be modified during the performance of the Task Orders by the mutual agreement of the parties. Client shall provide to Contractor the Client Provided Third Party Software and Client Provided Third Party Equipment identified in each applicable Task Order.

11.2   Client Assets.   As between the parties, title in and to Client Assets shall remain with Client but may be used exclusively by Contractor and Subcontractors for the sole purpose of performing the Services. Client reserves the right to recall Client Assets at any time; provided, however, that if any such recall prevents Contractor from being able to provide the Services, then Contractor will continue to provide the Services to the extent reasonably possible, and the parties will agree to a Change Order. Any delay caused by such recall may be an Excused Delay unless such recall was a result of Contractor's failure to comply with Client's System Policies and Practices. Contractor shall not make any changes to any Client Assets without receiving express written permission from Client (such approval not to be unreasonably withheld, conditioned or delayed); provided, however, the foregoing shall not limit Contractor's right to make changes to

Client Owned Deliverables and Software and other materials that are Client Assets as reasonably required in order to perform the Services. Contractor hereby assumes risk and liability for loss of any tangible Client Assets while in the possession of Contractor, unless such loss is caused by Client, Client Personnel or a Force Majeure Event, as well as for any changes made to Client Assets (other than by Client) other than in accordance with this Section 11.2. It is the responsibility of Contractor to inform Client when wear of tangible Client Assets has progressed beyond normal wear and tear. Upon termination of this Agreement for any reason or at any time upon prior written notice from Client, and regardless of whether Contractor has any claim against Client under this Agreement, all Client Assets in Contractor's possession or control shall be returned to Client except as provided in Section 15.2 with regard to copies of Client's Confidential Information. Except for property to which title is transferred to Contractor as evidenced by a bill of sale or comparable written instrument, no interest or obligation is conferred upon Contractor regarding Client Assets beyond the limited right to use such Client Assets in accordance with the terms of this Agreement.

12.   PAYMENT; EXPENSES; HOLDBACK.

12.1   Payments.

(a)   Subject to the provisions contained in Section 8.7 applicable to FP Task Orders, Client shall pay Contractor the Fees not to exceed the Price Cap, which shall be payable as set forth in this Section 12. The Price Cap shall be increased by the amount of all additional Fees included in approved Change Orders. All payments shall be made by Client in accordance with Section 3 of the Commonwealth Terms; provided that Client may pay Contractor through electronic fund transfer. Notwithstanding anything in the Agreement to the contrary, Client will have no obligation to pay Contractor for the development of any Accelerated Code.

(i)   *FP Payments*. With respect to payments under FP Task Orders, Contractor shall be paid in accordance with a payment schedule set forth in each Task Order that includes payments based upon: (i) the Acceptance of Deliverables ("Deliverable Payments") and/or (ii) the achievement of Critical Milestones ("Critical Milestone Payments"). The total of all Deliverable Payments and Critical Milestone Payments paid and payable to Contractor at any time under a given FP Task Order shall not exceed the total FP for that FP Task Order. The FP for each FP Task Order shall be increased by all additional Fees included in approved Change Orders for that FP Task Order.

(ii)   *T&M Payments*. With respect to payments under T&M Task Orders, Contractor shall be paid upon Client's review and approval of an invoice from Contractor that (i) includes only Services that are consistent with the T&M Task Order, (ii) accurately sets forth the number of hours of Services performed by appropriately qualified personnel and (iii) represents a reasonable amount of hours for such Scope and timing for such work. The total of all payments paid and payable to Contractor at any time under a given T&M Task Order shall not exceed the total T&M

price for that T&M Task Order. The T&M price for each T&M Task Order shall be increased by all additional Fees included in approved Change Orders for that T&M Task Order.

12.2   Post-Warranty Support Fees. If Contractor and Client mutually agree that Contractor shall provide Post-Warranty Support during the Post-Warranty Support Term for any Deliverables or Systems delivered under this Agreement, pursuant to an applicable Task Order, then Client shall pay to Contractor Post-Warranty Support Fees, as such Fees are mutually agreed to by the parties and set forth in the applicable Task Order. In such case the Price Cap shall be increased accordingly and "Fees" shall include such Post-Warranty Support Fees.

12.3   hCentive Credit. In consideration of the license granted to Contractor to use the Commingled Client Owned Deliverables as further provided in Section 13.4(i) below, Client shall be entitled to, and Contractor shall provide to Client, a credit in the total amount of Four Million Five Hundred Thousand Dollars ($4,500,000) to be applied towards the payment of fees under Task Order 3 in equal monthly amounts over the course of the sixty (60) month period commencing on January 1, 2015 (the "hCentive Credit Period"). In the event, that the Term of Task Order 3 terminates prior to the expiration of the hCentive Credit Period, upon the date of such termination, the full amount remaining of the hCentive Credit, if any, will immediately be credited to Client and applied towards payment of any fees then owed to Contractor under this Agreement as directed by Client. If no fees are owed, then Contractor shall pay the balance to Client within thirty (30) days of Client's request therefor.

12.4   Change Orders. Client shall compensate Contractor to perform any new work represented by any approved Change Order that requires an additional charge at the amount specified in the Change Order, and the Price Cap shall be increased accordingly. If the approved Change Order is made pursuant to a T&M Task Order, the price quote shall be based upon the Hourly Rates. Any such amounts shall be paid in accordance with the applicable Task Order, as modified by such approved Change Order.

12.5   Expenses. Expenses for travel, living or any other out-of-pocket expenses incurred by Contractor or Contractor Personnel in connection with the performance of the Services or otherwise in connection with this Agreement (a) for FP Task Orders will not be separately invoiced to Client however, the expenses may be built into the FP and (b) for T&M Task Orders will be invoiced separately as materials unless otherwise expressly set forth in the Task Order. All expenses (whether included as part of the FP or invoiced as materials) must be reasonable and appropriate to the performance of work hereunder.

12.6   No Transfer Fees. For the avoidance of doubt, no additional license fees or transfer fees or the like shall be due in respect of this Agreement without regard to: (a) which agency of the Commonwealth uses any Deliverables or Project Works; (b) whether Client engages a third party to use, manage, operate, maintain, and/or support the Deliverables or Project Works on behalf of Client; and (c) which computers are used to operate the Deliverables or Project Works.

12.7   Holdback. If applicable, Client may withhold the Holdback Amount as set forth in the Task Order. Where applicable, the Holdback Amount shall be withheld by Client whether or not Contractor's performance under the applicable Task Order is timely, and whether or not a

Deliverable or Critical Milestone on which the Deliverable Payment or Critical Milestone Payment is based has met the Requirements or been Accepted. The Task Order will set forth a schedule for release of the Holdback Amount to Contractor upon the occurrence of certain events. If the events are not met in order for the Holdback Amount to be released on the dates set forth in the Task Order, then Client may permanently retain such portion of the Holdback Amount.

12.8 **Non-appropriation.** Contractor acknowledges that Client is funding the Project with Client capital bond funds, federal financial participation and federal grant funds, and that Client shall be bound to its obligations under this Agreement only in the event and to the extent of any such funds available for expenditure towards the Project. Client shall use commercially reasonable efforts to notify Contractor as far in advance as possible in the event of insufficient funding to continue this Agreement. In the event of such insufficiency, Client or Contractor may terminate this Agreement in accordance with Section 21.2(e) and the effect of such termination shall be in accordance with Section 21.4.

12.9 **Labor Rate Table.**

    (a)   Contractor has provided the Hourly Rates applicable to T&M Services. Contractor shall invoice and Client shall pay for Excess Hours worked by Contractor Personnel performing Services under T&M Task Orders as follows: (a) for Personnel that are exempt from the overtime pay provisions of the Fair Labor Standards Act (29 U.S.C. § 201 *et. seq.*) (each an "Exempt Employee"), Client shall pay Excess Hours at the Hourly Rates; and (b) for Personnel that are subject to the overtime pay provisions of the Fair Labor Standards Act (each a "Non-Exempt Employee"), Client shall pay Excess Hours at one hundred fifty percent (150%) of the Hourly Rates. The Hourly Rates set forth in the MSA identifies the labor categories that are staffed by Non-Exempt Employees.

    (b)   The Hourly Rates shall be valid and shall not be increased throughout the first three (3) years of the Term; provided, however, that in each subsequent year, such rates may be increased based on Contractor's good-faith judgment sufficient to equitably compensate Contractor, but shall increase no more than three percent (3%) annually.

12.10 **Taxes.** Client represents that it is not subject to taxation. The parties agree to cooperate with each other to ensure that all available tax exemptions applicable to the Systems and/or Services are claimed by the parties.

13. **TITLE AND INTELLECTUAL PROPERTY RIGHTS.**

13.1 **Definition of Property.** The term "Property" as used in this Agreement means the following forms of property: (a) confidential, proprietary and trade secret information; (b) trademarks, trade names, discoveries, inventions processes, methods, technology and improvements, whether or not patentable or subject to copyright protection and whether or not reduced to tangible form or reduced to practice; and (c) works of authorship, wherein such forms of property are required by Contractor to perform the Project that may consist of computer

programs (in object and source code form), scripts, data, documentation, the audio, visual and audiovisual content related to layout and graphic presentation, text, photographs, video, pictures, animation, sound recordings, training materials, images, techniques, methods, algorithms, program images, text visible on the Internet, HTML code and images, illustrations, graphics, pages, storyboards, writings, drawings, sketches, models, samples, data, other technical or business information, reports and other works of authorship fixed in any tangible medium.

13.2   Source of Property.   The Project may involve intellectual property derived from four different sources: (a) that which was developed by a third party, such as Third Party Software; (b) that which was developed by Contractor for the open market without modification (e.g., Contractor's COTS); (c) that which was developed by Contractor for other individual clients, or for internal purposes prior to or after the Effective Date of this Agreement; and (d) that which is developed by Contractor specifically for the purposes of fulfilling its obligations to Client under the terms of this Agreement.   Ownership of the first and second categories of intellectual property may be addressed in separate agreements between Client and the contractors and resellers of work product. Sections 13.3 and 13.4 below exclusively address ownership rights in the third and fourth categories of intellectual property.

13.3   Contractor Property and License.

(a)   Contractor will retain all right, title and interest in and to all Property that is (i) owned by Contractor prior to commencement of the Project; (ii) developed by Contractor after the commencement of the Project, but only to the extent such Property has been developed without Client funds, or (iii) developed by Contractor separate and apart from this Agreement and without use of or reference to any Client Assets (the foregoing (i), (ii) and (iii) collectively, "Contractor Property"). Client acknowledges that its possession, installation or use of Contractor Property, as may be permitted under this Agreement, will not transfer to it any title to such property.

(b)   Contractor Property is being disclosed to Client to be used only as expressly permitted under the terms herein. Client will take no affirmative steps to disclose such information to third parties, and, if required to do so under the Commonwealth's Public Records Law, M.G.L. c. 66 § 10, or by legal process, will promptly notify Contractor of the imminent disclosure so that Contractor can take steps to defend itself against such disclosure.

(c)   Contractor hereby grants to Client, a royalty-free, nontransferable, nonexclusive, worldwide, irrevocable (subject to Section 21), perpetual, assignable, sublicensable (solely as set forth below) license to use, reproduce, distribute, modify, publicly display, publicly perform, digitally perform, transmit and copy the Contractor Property, in any media now known or hereafter known, to the extent such Contractor Property are embedded or embodied in Deliverables or Project Works, but only to the extent necessary to exploit the Deliverables or Project Works, solely in connection with Client's use and exploitation of the Services, Deliverables and Project Works, including operation of the Systems. The foregoing license will be sublicensable to third parties, provided that Client

may not sublicense the foregoing license in a manner that would permit third parties to use Contractor Property other than on behalf of Client and System users. Notwithstanding anything contained herein to the contrary, and notwithstanding Client's use of Contractor Property under the license created herein, Contractor shall have all the rights and incidents of ownership with respect to Contractor Property, including the right to use such property for any purpose whatsoever and to grant licenses in the same to third parties. Contractor shall not encumber or otherwise transfer any rights that would preclude the license grant set forth in this Section 13.3(c).

(d)   Client shall not, directly or indirectly, misappropriate, reverse engineer, disassemble or decompile the Contractor Property.

13.4   **Client Owned Deliverables and Project Works.**

(a)   In conformance with the Commonwealth Terms, all Deliverables and Project Works that are not Contractor Property, Third Party Software or Third Party Equipment ("Client Owned Deliverables") are the property of Client. Contractor hereby irrevocably and unconditionally sells, transfers and assigns to Client or its designee(s) Contractor's entire right, title and interest in and to all Client Owned Deliverables, including, without limitation, intellectual property rights that it may now or hereafter possess in such Client Owned Deliverables. Except as expressly set forth in a future Task Order (i.e., other than Task Orders 1-7), this sale, transfer and assignment shall be effective upon creation of each Client Owned Deliverable, and shall include all copyright, patent, trade secret, trademark and other intellectual property rights created by Contractor or a Subcontractor in connection with such work.

(b)   All copyrightable materials included in the Client Owned Deliverables are works made for hire. If a work described in the foregoing sentence is determined to not be made for hire or that designation is not sufficient to secure rights, to the fullest extent allowable and for the full term of protection otherwise accorded to Contractor under such Law, Contractor shall and hereby irrevocably does, assign and transfer to Client free from all liens and other encumbrances or restrictions, all right, title and interest Contractor may have or come to have in and to such Client Owned Deliverable. CONTRACTOR HEREBY WAIVES IN FAVOR OF CLIENT ANY AND ALL ARTIST'S OR MORAL RIGHTS (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF INTEGRITY AND ATTRIBUTION) IT MAY HAVE PURSUANT TO ANY STATE OR FEDERAL LAWS OF THE UNITED STATES IN RESPECT TO ANY CLIENT OWNED DELIVERABLE AND ALL SIMILAR RIGHTS UNDER THE LAWS OF ALL OTHER APPLICABLE JURISDICTIONS.

(c)   Contractor shall ensure that each of the Contractor Personnel providing Services under this Agreement, regardless of whether the individual is an employee, contractor or consultant of Contractor, has executed a written agreement granting to Contractor sufficient rights to permit Contractor's ownership of the Client

Owned Deliverables containing terms at least as protective as those set forth in Exhibit G.

(d)   Contractor agrees to execute all documents and take all actions that may be reasonably requested by Client to evidence the transfer of ownership of or license to intellectual property rights described in this Section 13. Contractor acknowledges that there are currently and that there may be future rights that the Commonwealth may otherwise become entitled to with respect to Client Owned Deliverables that do not yet exist, as well as new uses, media, means and forms of exploitation, current or future technology yet to be developed, and that Contractor specifically intends the foregoing ownership or rights by the Commonwealth to include all such now known or unknown uses, media and forms of exploitation.

(e)   The Commonwealth retains all right, title and interest in and to all derivative works of Client Owned Deliverables and all Client Assets.

(f)   Client hereby grants to Contractor a nonexclusive, nontransferable, fully paid-up, royalty-free, sublicensable (solely to Subcontractors for performance of this Agreement), worldwide, revocable license to use, copy, modify and prepare derivative works of Client Owned Deliverables and other Client Assets only during the Term and only for use in connection with performing the Services and developing Deliverables and Project Works for Client under this Agreement.

(g)   With respect to any web site development as part of any Deliverable or Project Work, Client will bear sole responsibility for registering the Software or system domain name or URL, applying for any trademark registration relating to the Software or system domain name or URL and applying for any copyright registration related to its copyright ownership with respect to any Client Owned Deliverables.

(h)   Without limiting any rights of Client in this Agreement, Contractor acknowledges that this Agreement is in support of Client's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to the certain property rights provisions of the Code of Federal Regulations and grants from CMS. This Agreement is subject to, and incorporates by reference, certain federal regulations including but not limited to 45 C.F.R. Part 74.36 and 45 C.F.R. Part 92.34 governing rights to intangible property. The Federal Awarding Agency will obtain a royalty-free, nonexclusive, irrevocable license to reproduce, publish or otherwise use and authorize others to use, for federal government purposes, the copyright in any Deliverables and Project Works developed in connection with the Services under this Agreement that were funded through federal grants awarded to certain Commonwealth entities, or a subgrant or subcontract thereof, and in any rights to a copyright purchased under this Agreement with funds received by the certain Commonwealth entities through federal grant awards. Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 C.F.R. Part 401. The Federal Awarding Agency shall have no rights in material or

intellectual property developed, purchased or licensed by Contractor using private funds.

(i)   Contractor and Client acknowledge and agree that certain Client Owned Deliverables are embedded in and commingled with the hCentive Software (the "Commingled Client Owned Deliverables"). In consideration of the hCentive Credit, and subject to the terms and conditions of this Agreement, Client hereby grants to Contractor a nonexclusive, nontransferable, sublicensable (solely to hCentive and for hCentive to sublicense to its customers and such customers' subcontractors consistent with this paragraph), worldwide, perpetual, license to use, copy, modify and prepare derivative works of the Commingled Client Owned Deliverables, and to distribute such Commingled Client Owned Deliverables, as so embedded in and commingled with the hCentive Software.

13.5   Third Party Intellectual Property.

(a)   All Third Party Software that constitutes a part of the System (including, without limitation, the hCentive Software) will be identified in the applicable Task Orders, with provisions indicating in the applicable Task Order whether such Third Party Software will be provided by Contractor or Client. In addition, upon Client's request, Contractor will provide Client with a list of all Dependent Software.

(b)   Client shall have, in addition to its rights and remedies under this Agreement, such license rights and remedies in the Third Party Software as are set forth in the applicable license agreements. Contractor shall conduct its negotiations with the third party licensors in accordance with Client's requirements. Nothing in this Section 13 shall relieve Contractor of its obligations under this Agreement with respect to the Services, including but not limited to, its warranty, support with respect to the Systems and its indemnification obligations.

13.6   Equipment.

(a)   In connection with any obligation of Contractor to procure any Third Party Equipment under a Task Order, Contractor and Client agree that Client, in its sole discretion, shall determine whether a specific item of Third Party Equipment shall be leased or purchased. Notwithstanding the foregoing, Client, after consulting with Contractor, may also elect to purchase functionally equivalent Equipment on its own behalf from any other Third Party Vendor without such change resulting in any increase in the Price Cap or change in Contractor's obligations hereunder. Furthermore, where Client determines that a particular item of Equipment shall be leased under this Agreement, Client, in its sole discretion, may enter into the lease as the lessee, in which case Client shall be responsible for making lease payments to the lessor during the Term. With respect to any leases for Third Party Equipment between Contractor and a Third Party Vendor, upon termination of this Agreement, Contractor shall, if Contractor has been successful in obtaining

such rights from the Third Party Vendor, transfer or assign such leases to Client or its designee, on terms and conditions acceptable to both parties.

(b)   During the Term, Contractor shall give Client prompt notice of anticipated or actual substitution, obsolescence or discontinuance of, or modification or update to all Equipment, to the extent known by Contractor, unless otherwise expressly set forth in a Task Order.

13.7   Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by Contractor to Client are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses to rights to "intellectual property" as defined in the United States Bankruptcy Code. The parties agree that Client, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the United States Bankruptcy Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor under the United States Bankruptcy Code, Client shall be entitled to retain all of its rights under this Agreement.

13.8   Source Materials; Escrow.

(a)   Contractor shall at its own expense establish and maintain an Escrow Account naming Client as a beneficiary for all Escrowed Software. The parties shall enter into an escrow agreement using the Escrow Agent's standard form (with commercially reasonable modifications as agreed to by Contractor, the Third Party Vendor, Client and the Escrow Agent in good faith); however, Contractor will use commercially reasonable efforts to obtain the Third Party Vendor's agreement to the terms set forth in Section 13.8(b). Contractor shall provide a copy of each escrow agreement to Client for review. Notwithstanding the preceding, if a Third Party Vendor utilizes its own form of escrow agreement and will agree to provide Source Materials solely pursuant to such form of escrow agreement including a standard set of Release Events or otherwise does not agree to the terms set forth in Section 13.8(b), Contractor shall inform Client as soon as reasonably possible. In such event, Client and Contractor will work together to determine whether to proceed with such Third Party Vendor and the Third Party Software offered by such vendor, taking into consideration the importance of the Third Party Software to a System and/or Task Order and whether alternative commercial functionality is available.

(b)   In accordance with Section 13.8(a) above, Contractor shall use commercially reasonable efforts to obtain agreement from Third Party Vendors offering Escrowed Software on substantially the following terms:

(i)   Then-current Source Materials will be deposited upon each Minor Release and Major Release of the applicable Software and, with respect to Updates deployed other than through a Minor Release or a Major Release, at least once per calendar quarter.

(ii)   The Source Materials will be released upon demand by Client (subject to the procedure set forth in the applicable escrow agreement) in the event of the following ("Release Event"):

(A)   Such Third Party Vendor fails in any material respect to comply with its obligations to provide support and maintenance for the Software in accordance with the applicable Third Party Vendor software support terms, and any such failure is not remedied in accordance with the applicable terms between such Third Party Vendor and Contractor; or

(B)   Such Third Party Vendor fails to function as a going concern or to operate in the ordinary course, or a receiver or trustee in bankruptcy is appointed for such Third Party Vendor or its property, or such Third Party Vendor makes a general assignment for the benefit of its creditors, or such party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, in each case which proceedings are not dismissed within thirty (30) days.

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(iii)   The applicable Third Party Vendor will grant Client a currently effective, non-exclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use, reproduce, modify and create derivative works of the Source Materials for purposes consistent in scope and duration to the object code license under which Client was operating, which license may be exercised only upon the occurrence of a Release Event.

(iv)   Client shall be entitled to require at its own expense, technical third party verification that the Source Materials in the possession of the escrow agent are sufficient to build, compile, assemble, translate, bind and load source code for the applicable Deliverables and/or Project Works into executable Software, and maintain and support such Deliverables and/or Project Works.

(v)   If such technical verification demonstrates that the Source Materials are Insufficient:

(A)   Contractor shall, after receiving Source Materials from the Third Party Vendor, promptly redeposit sufficient Source Materials;

(B)   Contractor shall pay for both the initial and subsequent verification; and

(C)   the foregoing remedy shall apply to each instance of an Insufficient deposit.

(c)   In addition to and without limiting the terms set forth in 13.8(b) above, Contractor will obtain agreement from hCentive to the following terms:

(i)   The Source Materials for the hCentive Software will be released upon written notice from Client to Contractor, which notice sets forth a reasonable and specifically articulated business need of Client for such Source Materials, including but not limited to the following circumstances: (A) satisfaction of a Federal or state audit requirement; (B) investigation of a security breach; (C) development of new interfaces; or (D) periodic reviews to test the viability of and ensure currency of the escrowed Source Materials for the hCentive Software. Any such notice from Client to Contractor shall be deemed a "Release Event."

(ii)   If at any time the Commingled Client Owned Deliverables are segregated successfully from the hCentive Software and Contractor has delivered to Client the Source Materials for such Client Owned Deliverables, Client's rights under the foregoing Section 13.8(c)(i) will expire (but, for clarity, Client's rights to the Source Materials for the hCentive Software under Section 13.8(b) will remain in effect).

(iii)   In the event of a release of Source Materials for the hCentive Software under Section 13.8(c)(i), Contractor hereby grants to Client, a royalty-free, nonexclusive, worldwide, irrevocable, assignable, sublicensable (solely as set forth below) license to use, reproduce, distribute, modify, publicly display, publicly perform, digitally perform, transmit, copy and create derivative works of hCentive Software in any media now known or hereafter known, but only to the extent necessary to exploit the Client-Owned Deliverables for the purposes set forth in the Client notice . The foregoing license will be sublicensable to third parties, provided that Client may not sublicense the foregoing license in a manner that would permit third parties to use the Source Materials for hCentive Software other than on behalf of Client and System users. In no event, shall Client use the Source Materials for the Commingled Client Owned Deliverables to compete with Contractor or hCentive in the commercial sale or delivery to third parties of products or services equivalent to the hCentive Software, or otherwise commercialize the Commingled Client Owned Deliverables outside of the Commonwealth of Massachusetts.

(iv)   For avoidance of doubt, nothing in this Section 13.8(c) will limit the rights of the Federal Awarding Agency under Section 13.4(h).

14.   ACCESSIBILITY.

14.1   <u>Compliance With Commonwealth Standards</u>.

(a) All End User Software delivered by Contractor must comply with the Enterprise Information Technology Accessibility Standards and the Enterprise Web Accessibility Standards 2.0 (collectively the "Enterprise Accessibility Standards") and interoperate with the environments on the Assistive Technology/Information Technology List (the "AT/IT List"), as each exists on the Effective Date. As of the Effective Date, the Enterprise Accessibility Standards and the AT/IT List are available at http://www.mass.gov/accessibility/. This obligation may be modified by the Mitigation Letter, if any.

(b) When measuring accessibility compliance, Contractor may substitute the World Wide Web Consortium's Web Content Authoring Guidelines, version 2, level AA (the "WCAG2 Standards", available at http://www.w3.org/WAI/intro/wcag.php) for the following sections of the Enterprise Accessibility Standards: (1) Section 2, Technical Standards – Applications of the Enterprise Information Technology Accessibility Standards and (2) Sections 1 through 5 and Section 8 of the Enterprise Web Accessibility Standards 2.0.

(c) For the avoidance of doubt, Contractor shall be paid in accordance with the Hourly Rates for Services to meet the Accessibility requirements set forth in this Section 14 for End User Software delivered under a T&M Task Order, including effort to cure accessibility defects in all End User Software.

(d) Prior to commencing any design work, whether under a T&M Task Order or a FP Task Order, for End User Software, Contractor's Project Manager and design professionals shall meet with Client's Project Manager and appropriate resources to review the Enterprise Accessibility Standards, the AT/IT List and any accessibility guidance provided by COTS, SaaS or other Third Party Vendors of Software, in order to discuss their impact on the design process.

14.2 Accessibility Requirements.

(a) Training and Documentation.

(i) Contractor shall coordinate with Client and the AAC in the identification of all prospective attendees at any Contractor training who require disability accommodation, and shall cooperate with Client in its provision of such accommodation. Contractor shall work with Client's existing training team to develop the training strategy, approach and materials with which the Commonwealth will execute the end user training.

(ii) All end user Documentation and any additional training material delivered by Contractor under a Task Order that specify mouse commands shall also include alternative keyboard commands wherever a mouse command is specified. Any Documentation that is a Client Owned Deliverable shall be in an agreed-upon editable format. All online training shall be accessible.

(b) Testing.

(i)   Accessibility testing must be incorporated as part of Contractor's overall quality assurance process. Prior to delivering any End User Software to Client, Contractor shall test for accessibility routinely and regularly, including during any or all of unit testing, integration testing, final Evaluation and Acceptance testing and System testing.

(ii)   Contractor must test all End User Software against the Enterprise Accessibility Standards and for interoperability with the AT/IT List.

(iii)   At the time any End User Software is delivered to Client, Contractor shall deliver to Client the results of the testing described in this Section 14.2.

(iv)   Contractor need not conduct accessibility testing as described in this Section 14.2 for End User Software for which accessibility testing has already been conducted and test results have already been provided to Client in the form of a VPAT accepted by Client.

(c)   Accessibility Test Results and Waivers. Except as otherwise permitted in the Mitigation Letter, Contractor represents that it has submitted to Client prior to the Effective Date the voluntary product accessibility template ("VPAT") for all End User Software, including COTS, containing or comprising End User Software, or, with respect to such Software for which Contractor does not have access to sufficiently detailed VPATs, any alternative accessibility testing information or test results to which Contractor has access. In the event that Client determines that such Software presents accessibility issues that need to be remedied, Contractor shall cooperate with Client on a mitigation plan acceptable to Client, to be included in the Mitigation Letter.

(d)   Accessibility Testing Vendor. A third-party accessibility testing contractor engaged by Client (an "Accessibility Testing Vendor") may test the End User Software against the Enterprise Accessibility Standards, and for interoperability with the environments set forth in the AT/IT List. Contractor shall cooperate with the Accessibility Testing Vendor, permit the Accessibility Testing Vendor full access to each System, and make all End User Software available to the Accessibility Testing Vendor for this purpose.

(e)   Accessibility Advisory Committee. Client and Contractor will collaborate and communicate throughout the provision of the Services with and among any Third Party Vendors, including, without limitation, COTS vendors and Accessibility Testing Vendors, as well as with the Accessibility Advisory Committee ("AAC"). The AAC, which shall be comprised of at least one representative from each of Contractor, Client and certain agencies of the Commonwealth designated by Client, which may include, without limitation, the Massachusetts Office on Disability, Executive Department disability coordinators, Massachusetts Rehabilitation Commission, Massachusetts Commission for the Blind and Massachusetts Commission on the Deaf and Hard of Hearing, shall convene for its first meeting as soon as reasonably possible, but no later than ten (10) Business

Days after the Effective Date. Following such initial meeting, the AAC shall meet as mutually agreed to by Client and Contractor in consultation with the AAC, but, at a minimum, once a quarter during the Term. The purpose of such meetings shall be to discuss any questions relating to accessibility testing or any other requirements set forth in this Section 14.2 and to ensure that any concerns raised by a member of the AAC or a third-party regarding accessibility of each System are discussed, identified and addressed as required in this Section 14.2.

(f)   Prioritization and Remediation of Accessibility Defects.

(i)   Contractor and Client shall, based on their separate testing, create a list of accessibility defects. Working with the AAC and Third Party Accessibility Testing Vendor, Contractor and Client shall prioritize such defects.

(ii)   If Contractor is the author or publisher of any COTS comprising any End User Software, or provides such COTS to Client as part of a solution to be provided pursuant to any Task Order (including, without limitation, the hCentive Software), Contractor must cure all failures identified by such testing prior to the delivery of such End User Software to Client except as otherwise set forth in the Mitigation Letter.

(iii)   If Contractor is neither the publisher of COTS comprising End User Software, and did not propose such Software to Client, Contractor is not responsible for the inherent accessibility defects of such Software. However, Contractor must, in addition to conducting the testing described in this Section 14.2, (1) adhere to the Software publisher's accessibility guidelines for configuration and (2) cooperate with the efforts of Client, the Accessibility Testing Vendor, and the Software publisher to create a solution or Workarounds for accessibility defects inherent in such Software but in no event shall Contractor be required to incur material additional costs in such efforts to cooperate.

(iv)   In accordance with the guidance set forth in the Mitigation Letter and working with the AAC, Contractor shall be responsible for curing all accessibility defects in End User Software as described in Section 14.2(f)(ii) and in End User Software that is developed under this Agreement. Contractor will address the most severe defects first as such defects have been prioritized working with the AAC and the Accessibility Testing Vendor. Curing of such defects may require, among other things, writing new source code, shutting off inaccessible features, providing users with third-party Software in addition to their assistive technology or providing disabled users with an alternative pathway to the inaccessible feature or the business process it automates.

(v)   Contractor shall collaborate with Client, the AAC, the Accessibility Testing Vendor and, where relevant, the Third Party Vendor of COTS, to

resolve those accessibility defects in End User Software agreed to in the Mitigation Letter related to interoperability with the environments listed on the AT/IT List. The Mitigation Letter or other writing shall identify those defects that the AAC determines are so minor and superficial that they need not be addressed.

(vi)   Contractor shall not be responsible for curing accessibility defects in COTS that comprise End User Software that are Client Provided Third Party Software unless such COTS was proposed as part of the solution under a FP Task Order.

15.   CONFIDENTIAL INFORMATION.

15.1   Limits on Use.

(a)   Confidential Information will remain the property of the disclosing party, and the receiving party will not be deemed by virtue of this Agreement or access to the disclosing party's Confidential Information to have acquired any right, title or interest in the Confidential Information. Confidential Information of the other party may be used by the receiving party and its Personnel and Subcontractors only in connection with performing its obligations and exercising its rights under this Agreement and may not be disclosed to any third party; in the case of Client Data, Contractor's access to, use of, or disclosure of Client Data shall, in all cases (including any use described in this Section 15), conform to the provisions of the Data Management and Confidentiality Agreement. Contractor will ensure that appropriate structural and organizational separation exists within the UHG Organization such that the UHC Organization and UHC Personnel will not have access to any Client Confidential Information.

(b)   Each party will protect the confidentiality of Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event less than reasonable care, which efforts shall include, without limitation, entering into appropriate confidentiality agreements with Personnel and Subcontractors prior to disclosure of any Confidential Information that provide that such Personnel and Subcontractors maintain the confidentiality of the Confidential Information. Contractor will ensure that the Confidentiality Agreement for Contractor Personnel attached hereto as Exhibit G-2 is executed by all Personnel who (i) are performing Services at the Client's facilities, (ii) have access to Client's network or Client Confidential Information or (iii) are Core Project Team members. Access to Confidential Information will be restricted to those of Contractor's and Client's Personnel and Subcontractors engaged in a use permitted under this Agreement who have a need to know such information in connection with this Agreement (including without limitation, with respect to independent contractors working on a party's behalf in connection with this Agreement under written obligations of

confidentiality at least as stringent as those set forth herein); however, Client may provide Advisers and IV&V Vendors with Contractor's Confidential Information provided that the Advisers have entered into a non-disclosure agreement with Contractor to protect the confidentiality of Contractor's Confidential Information on terms substantially similar to those set forth in this Section 15. In addition, if Contractor believes that any Adviser or IV&V Vendor is a competitor of Contractor, Contractor may require that the Adviser or IV&V Vendor enter into a non-disclosure agreement with Contractor to protect the confidentiality of Contractor's Confidential Information in the form set forth in Exhibit Q, however, if an Advisor or IV&V Vendor reasonably requests changes to such form, Contractor will not unreasonably withhold, condition or delay consent. Without limiting the foregoing, in no event will any UHC Personnel have access to any Client Confidential Information.

(c)   Confidential Information may not be copied or reproduced without the disclosing party's prior written consent, except as necessary for use in connection with this Agreement. Contractor shall not physically remove any hardcopy data of Client from the premises of Client without the prior approval of Client (in each case, such approval shall not be unreasonably withheld, conditioned or delayed); provided, however, that Contractor may transmit electronic copies of Client Data to its servers, hard drives, and other storage locations as necessary to perform the Services. Notwithstanding anything to the contrary in the foregoing but subject to the terms of this Section 15, the receiving party, subject to its confidentiality obligations under this Agreement, may (i) retain copies of Confidential Information that it is required to retain by Law, (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in archival format (e.g., backup tapes), which may not be returned or destroyed upon request of Client.

(d)   Notwithstanding the foregoing, Client's obligation to maintain Contractor's Confidential Information is subject and subordinate to Mass. Gen. Laws c. 4 § 7 cl. 26 and c. 66 § 10. The receiving party agrees to promptly notify the disclosing party of any unauthorized access, use or disclosure of the disclosing party's Confidential Information and to cooperate with and assist the disclosing party in every reasonable way to stop or minimize such unauthorized use, access or disclosure. Further, Contractor agrees to promptly notify Client if it learns of a breach of Contractor's security under M.G.L. c. 93H, which is the unauthorized acquisition or use of unencrypted Client Data that includes personal information that creates a substantial risk of identity theft or fraud. In addition to any rights Client may have under the indemnification provisions of this Agreement, Contractor shall indemnify Client for all costs incurred in providing any notices required by M.G.L. c. 93H in connection with such breach of security and other remediation measures provided to affected individuals.

15.2   Return of Confidential Information. Except as otherwise specified in this Agreement, all Confidential Information made available under this Agreement, including copies thereof, will be returned or destroyed upon the first to occur of: (a) the termination or expiration of this Agreement; or (b) a request by the disclosing party; provided that subject to the terms of this Section 15, each party may retain copies of the other party's Confidential Information required for compliance with its recordkeeping or internal quality assurance requirements.

15.3   Other Information. Nothing in this Agreement will prohibit or limit either party's use of information that is, as evidenced by written documentation of that party: (a) previously known to it without obligation of confidence; (b) independently developed by it or for it without reference to or reliance on the Confidential Information of the other party hereto; (c) acquired by it from a third party that is not under an obligation of confidence to the other party hereto with respect to such information; or (d) publicly known through no breach of this Agreement.

15.4   Disclosure of the Other Party's Confidential Information. In the event either party receives a subpoena, validly issued administrative or judicial process or public records request requesting that Confidential Information of the other party be disclosed, it will promptly notify the other party of such receipt. The party receiving such request will thereafter be entitled to comply with such subpoena or other process or request, only to the extent required by Law; provided that the Confidential Information so disclosed shall continue to be Confidential Information as between the parties hereto. The receiving party shall immediately notify the disclosing party's Project Director both orally and in writing if any information in the receiving party's possession is improperly used, copied or removed by anyone except an authorized representative of the disclosing party, or is requested by any federal or state agency or instrumentality other than Client.

15.5   Equitable Relief.   The parties agree that disclosure of Client's or Contractor's Confidential Information by the other party, other than as permitted by this Section 15, will cause irreparable damage to Contractor or Client and therefore, in addition to all other remedies available at law or in equity, each party shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. Each party shall be liable under this Agreement to the other party for any use or disclosure in violation of this Section 15 by such party, its Affiliates, Subcontractors or its or their respective Personnel, attorneys, accountants or other advisors.

15.6   Treatment of Personal Information. Contractor's performance of the Services requires the disclosure of protected health information. Contractor will enter into and comply with the Data Management and Confidentiality Agreement attached as Exhibit O.

16.   REPRESENTATIONS AND WARRANTIES.

16.1   Contractor.

   (a)   Contractor represents and warrants to Client that: (i) Contractor has the right, power and authority to enter into and perform its obligations under this Agreement; (ii) the individual executing this Agreement is authorized to do so and

is empowered to enter into this Agreement by Contractor's Board of Directors; and (iii) nothing contained in this Agreement or the performance of this Agreement will cause Contractor to breach any other contract or obligation to which it is a party or by which it is bound and will not violate any Law, or other legal requirement by which Contractor or any of its assets is bound.

(b)   Contractor represents and warrants that: (i) it will not knowingly de-install or disable any Deliverable or Project Works by means of any Disabling Device or self-help (electronic); (ii) no System as a whole, nor any Deliverables or Project Works, will knowingly include any Disabling Device; and (iii) Contractor uses industry standard measures to prevent Disabling Devices from being introduced into Software and systems.

(c)   Contractor represents and warrants that during the Warranty Period and the Post-Warranty Support Term, if any, all Deliverables and Project Works delivered to Client by Contractor will be interoperable with all other Deliverables and Project Works according to the Requirements so that a System operates in accordance with the applicable Requirements.

(d)   Contractor represents and warrants that Documentation relating to Software Deliverables and Project Works (as required) shall be of sufficient detail so as to allow suitably skilled, trained and educated Client Personnel to understand the operation of the Deliverables and Project Works (as required), or the applicable System, and to understand, use, operate, access, take advantage of, support, maintain and modify each System.

(e)   Contractor represents and warrants that it has entered into written contracts with all employees of Contractor involved in the performance of the Services, and/or the development of Deliverables or Project Works hereunder, that contain invention and copyright assignment provisions at least as protective as those summarized in Exhibit G.

(f)   Contractor represents and warrants that it has obtained all necessary Governmental Authority or other third party permissions, clearances, licenses and consents for Contractor to perform its obligations under this Agreement, copies of which shall be provided to Client upon execution of this Agreement and otherwise upon Client's request.

(g)   Contractor represents and warrants that (i) the Services will be performed: (1) by appropriately qualified and trained Personnel in a professional and workmanlike manner and (2) with due care and diligence and to an appropriate standard of quality as is customary in the information technology industry with respect to complex information technology systems; and (ii) Contractor and its Subcontractors are sufficiently qualified, staffed and equipped to fulfill Contractor's obligations under this Agreement.

(h)   Contractor represents and warrants that the Services will be, throughout the Term, performed in compliance with all applicable federal, state and local Laws that may be applicable to Contractor's duties under this Agreement, and Contractor is and will remain in compliance with any Laws of the Commonwealth and other Governmental Authorities applicable or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in this Agreement. Contractor represents and warrants that Contractor is, and will remain during the Term, in compliance with all Laws of the Commonwealth relating to taxes, wage reporting and the withholding and remitting of child support.

(i)   Contractor represents and warrants that it has obtained or will obtain prior to delivery to Client sufficient rights in the Deliverables and Project Works to grant to Client the rights, licenses and assignments granted under this Agreement, without infringement, violation or misappropriation of third-party intellectual property or other proprietary rights, and that Contractor is not aware of any asserted or unasserted third-party claims challenging or affecting any right granted hereunder.

(j)   Contractor represents and warrants that it is in compliance with open source Software licenses embedded or incorporated in any Deliverables and Project Works. Contractor represents and warrants that the Services, the Deliverables and/or the Project Works provided under this Agreement do not and shall not infringe or misappropriate any intellectual property right of any third party.

(k)   Contractor represents and warrants that neither it, nor any of its Affiliates or Subcontractors, nor any of their officers or directors has been debarred, suspended, excluded, or otherwise made ineligible to receive awards or contract with any federal or state agency. Contractor shall promptly notify Client in writing if it, or any of its Affiliates or Subcontractors (with regard to Subcontractors when notice is received from such Subcontractors), or any of their officers, directors or employees is debarred (or suspended, excluded, or is otherwise made ineligible) to receive awards as set forth in this Section 16.1(k).

(l)   Contractor represents and warrants that, as required by 45 C.F.R. Part 93.100, no funds received under this Agreement have been or will be used to pay any person or influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant loan or cooperative agreement. Pursuant to 45 C.F.R. Parts 93.110(d)(2), Contractor agrees to file a certification and disclosure form, if required, as provided in Appendix B to 45 C.F.R. Part 93 – Disclosure Form to Report Lobbying.

(m)   Contractor represents and warrants it shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation. Contractor agrees to comply with all applicable state and federal statutes, rules and regulations prohibiting discrimination in employment, including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c. 151B.

(n)   Contractor shall comply with the Administration and Finance Policy on the Use of Information Technology Resources set forth in Exhibit M hereto.

16.2   Remedies. Under FP Task Orders, any failure of Contractor or the Deliverables or a System to perform in a manner consistent with any individual warranty in this Section 16 during the Warranty Period or Post-Warranty Support Term ordered under such FP Task Order, if any, shall be promptly reported to Contractor. If Contractor fails to address Client's concerns after receipt of such notice, Client may exercise its rights in accordance with Section 21.

16.3   Client. Client represents and warrants to Contractor that: (a) Client has the right, power and authority to enter into and perform its obligations under this Agreement; (b) the individual executing this Agreement on behalf of Client is authorized to do so; (c) nothing contained in this Agreement or the performance of this Agreement will cause Client to breach any other contract or obligation to which it is a party or by which it is bound and will not violate any Law by which Client or any of its assets is bound; and (d) Client has obtained all rights necessary to allow Contractor to use (as contemplated in connection with performance of the Services) any Client Assets, Client Provided Third Party Software, Client Provided Third Party Equipment, Client Provided Third Party Services and other systems and materials provided by Client to Contractor in connection with the Project.

16.4   No Other Warranties. EXCEPT AS OTHERWISE STATED IN THIS SECTION 16, CONTRACTOR AND CLIENT HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.   SUPPORT AND TRAINING.

17.1   Warranty Support Obligations. Contractor shall perform the Warranty Support Obligations as set forth in each applicable Task Order. Contractor will provide the Warranty Support Obligations at no additional charge to Client. During the Warranty Period, Contractor shall provide Client with a copy of all Source Materials for any fixes and modifications made to a Client Owned Deliverable to Resolve a Nonconformity.

17.2   Training. Contractor shall provide to Client, in accordance with the applicable Task Order and at Client locations in the Commonwealth as identified by Client, the knowledge transfer, training and on-site support related to the Deliverables and the completed Systems as set forth in the applicable Task Orders.

17.3   **Knowledge Transfer.**   It is expressly understood by Client and Contractor that Client plans to support and maintain each System and other Deliverables and Project Works without Contractor's assistance after termination of this Agreement, and therefore wants to obtain extensive knowledge concerning the development, operation, and support and maintenance of each System from Contractor so that Client is able to perform these activities without the assistance of Contractor.   Contractor shall provide knowledgeable and skilled Personnel to provide knowledge transfer Services during the Term, as set forth in the applicable Task Order(s).   Contractor shall provide training classes as specified in the Task Order(s) to Client employees who will be responsible for supporting and maintaining the Systems.   As included in any Task Order(s), before this training begins, Contractor shall provide a syllabus to Client identifying the subject matter and objectives to be covered by the training.   In addition, Contractor will provide Documentation that will assist Client in supporting and maintaining the Systems, in accordance with the Requirements of the applicable Task Order.

18.   IMPROVEMENTS AND NEW TECHNOLOGY.

18.1   **Applicability.**   Unless otherwise expressly set forth in a Task Order, the provisions of this Section 18 shall apply only to FP Task Orders.

18.2   **Versions and Major Releases.**   The parties understand that Client desires Contractor to implement each System using Current Releases of all Deliverables.   Prior to commencement of testing and refinement of each Deliverable in accordance with the applicable Task Order, Contractor shall evaluate for inclusion in the applicable System and make a recommendation to Client as to whether it is feasible to implement the Current Release or any Major Release of such Deliverable, if different from the version currently included in the pre-testing version of that System.   Such recommendation shall specify what additional Software charges will apply, if any. If the Current Release or any Major Release: (a) is available in an actual production version (rather than as a beta or pilot version); (b) has proven to be stable and generally error-free in production; (c) provides new functionality within the Scope; and (d) will not impair the overall robustness of the applicable System or otherwise interfere with the Requirements, then Contractor shall recommend to Client that such Current Release or any Major Release be implemented prior to the commencement of testing, subject to any mutually agreed upon terms regarding the timing and cost of such implementation if the originally agreed upon timing and cost are affected in any way.   Client, in its discretion, shall make the final determination regarding whether or not to implement any such Current Release or any Major Release recommended by Contractor and Contractor shall abide by such determination.

18.3   **End of Life.**   Contractor shall monitor all Deliverables and the components thereof for end of life, and shall promptly notify Client if any Deliverable or component thereof that includes third-party hardware or Software has been discontinued or, to Contractor's knowledge, will reach end of life within the next calendar year.   Prior to the end of a Warranty Period specified in a Task Order, Contractor shall replace any such Deliverable or component thereof at no additional charge to Client if Contractor knew or should have known based on the information available from the Software publisher or hardware OEM that the Deliverables or components thereof would become end of life within the term of the applicable Task Order. Otherwise, Contractor shall perform such replacement under a for-cost Change Order to be mutually agreed by the parties.   Contractor's obligations under this Section 18.3 shall not apply

to Third Party Software that is provided under Subcontracts that have been assigned to Client pursuant to Section 6.3.

19.   INDEMNIFICATION; INFRINGEMENT.

19.1   Defense and Indemnification.   In addition to and without limiting Contractor's obligations under Section 11 of the Commonwealth Terms, Contractor shall (at Contractor's expense) fully defend, indemnify and hold the Client Indemnitees harmless from all losses, liabilities, damages, judgments, settlement amounts, costs and expenses (including attorneys' fees), in each case resulting from, arising out of or relating to any claim by a third party: (a) that the Services, Project Works or any Deliverables (including, without limitation, the Client Owned Deliverables or a System as a whole, Contractor Property and Third Party Software, and any component of any of the foregoing), infringes, violates or misappropriates any intellectual property of a third party, or (b) based upon: (i) a material breach by Contractor of this Agreement or (ii) any theft or other misappropriation of Client Assets, Client Owned Deliverables or funds by Contractor or the Subcontractors (and/or their respective Personnel) in the performance of this Agreement. Notwithstanding the foregoing, Contractor's obligations under clause 19.1(a) will not apply to the extent the alleged infringement, misappropriation or other violation of any such third party rights are as a result of (A) modifications made by or on behalf of Client (except those directed by Contractor or its Subcontractor), (B) the combination, operation or use of the item with other items Contractor did not recommend, supply or agree to in writing; (C) the failure of Client to use any new or corrected versions of the applicable Services, Project Works or any Deliverables made available by Contractor to Client and implemented by Contractor, at no cost to Client and without material disruption to Client's operations or loss of functionality; or (D) Contractor's adherence to specifications or instructions provided by Client in writing; provided that such infringement, misappropriation or violation would not have occurred absent (A), (B), (C) and/or (D). Contractor's obligation to indemnify Client under clause 19.1(a) does not extend to any Third Party Software that Contractor (or a Subcontractor) did not provide as part of the Services, Project Works or Deliverables.

19.2   Infringement Remedies.   In addition to and without limiting Contractor's obligations under Section 11 of the Commonwealth Terms, if any Services or any Deliverables or Project Works are held to constitute an infringement, violation or misappropriation, or, if in Client's opinion, such Services, Project Works or Deliverables are, or are likely to be the subject of any such claim of infringement, violation or misappropriation, Contractor will at its expense and option: (a) procure the right for Client to continue using such Services, Project Works or Deliverables; (b) replace such Services, Project Works or Deliverables with a noninfringing and nonmisappropriating equivalent that maintains the required functionality and meets all relevant Requirements; or (c) modify such Services, Project Works or Deliverables to make them noninfringing and nonmisappropriating while maintaining the required functionality and meeting all relevant Requirements. If Contractor cannot remedy the situation within a reasonable period of time, then at Client's election and request, Contractor shall reimburse Client for the residual value of the Fees paid for the infringing Services, Project Works or Deliverables (or, if in Client's reasonable judgment, the infringing Project Works or Deliverables are integral to the operation of a System, such reimbursement will be for the residual value of Fees paid for the entire System to which an infringing Deliverable or Project Works is part), depreciated using a straight line method of depreciation over a seven (7) year period from the date such Services,

Project Works or Deliverables were performed or delivered under this Agreement. Notwithstanding any such reimbursement, replacement or modification, Contractor's obligations to defend and indemnify Client shall not be diminished or eliminated. Notwithstanding any other provision set forth in this Agreement including any Task Order issued hereunder, as a condition to each indemnity obligation owed by Contractor under this Agreement, Client shall cooperate in all reasonable respects with Contractor in connection with any such claim. Subject to the written approval of the Attorney General of the Commonwealth, Contractor shall be entitled to control the handling of any such claim and to defend any such claim with counsel of its own choosing. Client may reasonably participate at its own expense, through its attorneys, in such defense, provided that such participation does not interfere with Contractor's defense thereof. Nothing in this Section 19.2 shall prevent the Attorney General of the Commonwealth from taking any action to which he or she is entitled.

20. LIABILITY; EXCLUDED DAMAGES; INSURANCE.

20.1 Liability.

(a) Background. This Agreement is entered into pursuant to an emergency procurement as more particularly described in an attachment to the Standard Contract Form. This Agreement has brought together three significantly disparate work activities that would not have been procured together had Client pursued a competitive procurement. The parties' intent is that these work activities be regarded as independent and separate engagements but are grouped together only to accommodate the emergency procurement process. The limitations of liability in Section 20.1(b) below are segregated by work activities on the following basis: (i) Task Orders 1 and 2 consist of development, configuration and customization services, a large of portion which is under a Fixed Price arrangement; (ii) Task Order 3 consists of ongoing hosting and managed services on a per-member per month (PMPM) fee arrangement; and (iii) Task Orders 4, 5, 6 and 7 consist of T&M services that have been mostly already performed and were undertaken by Contractor at risk prior to the execution of this Agreement. The parties agree that there is nothing precedential about the limitation of liability set forth in Section 20.1(b).

(b) CONTRACTOR'S LIABILITY IS GOVERNED BY SECTION 11 OF THE COMMONWEALTH TERMS, AND BY THE FOLLOWING LIMITATION ON LIABILITY: Pursuant to Section 11 (Indemnification) of the Commonwealth Terms, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims; provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 of the Commonwealth Terms nor the Commonwealth's ability to join Contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall Contractor be liable for, damages for the Commonwealth's use of Contractor-

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provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of (a) with respect to any claim arising under either of Task Order 1 or 2, two times the aggregate Fees under Task Orders 1 and 2; (b) with respect to any claim arising under Task Order 3, two times the aggregate Fees under Task Order 3; or (c) with respect to any claim arising under any of Task Orders 4, 5, 6 or 7, two times the aggregate Fees under all of such Task Orders 4, 5, 6 or 7.. This Section 20 and Section 11 of the Commonwealth Terms, together with the Standard Contract Form, set forth the Contractor's entire liability under this Agreement.

20.2 **Excluded Damages.** IF CONTRACTOR SHOULD BECOME ENTITLED TO CLAIM DAMAGES FROM CLIENT FOR ANY REASON (INCLUDING WITHOUT LIMITATION, FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT CLAIM), CLIENT WILL BE LIABLE ONLY FOR ACTUAL DIRECT DAMAGES.

20.3 **Insurance.**

(a) Contractor shall, during the Term, purchase and maintain, at its own expense, commercial general liability, professional liability and statutorily required workers' compensation insurance with limits as set forth below. Upon written request by Client, Client shall be named as an additional insured on the commercial general liability policy for claims, loss or damage, whether in insured contracts as defined by the policy or tort, including claims involving bodily injury to or death of persons, or damage to property for which Contractor owes an indemnity under this Agreement. Contractor's indemnification obligations hereunder will not apply to losses that arise out of the negligent acts or omissions of Client or its employees, agents, Personnel or Client Indemnitees:

(i) $1,000,000 per occurrence/general aggregate commercial general liability;

(ii) $5,000,000 per occurrence errors and omissions (professional liability); and

(iii) statutory limits for workers' compensation.

(b) If requested by Client, Contractor shall furnish certificates of insurance, and insurance shall be with carriers that may lawfully issue such insurance policies, have an AM Best rating of at least A-VII or a Standard and Poor's rating of at least AA unless a prior written approval is obtained from Client (in each case, such approval shall not be unreasonably withheld, conditioned or delayed). If requested by Client, Certificates of insurance must contain a stipulation that Contractor shall furnish to Client fifteen (15) days prior written notice of any cancellation of insurance coverage and name Client as an additional insured but only to the extent of the liabilities as assumed by Contractor as set forth in this Agreement. The parties understand and agree that the coverage amounts set forth

above may not be reduced by Contractor and shall remain in effect during the Term, and for a period of ninety (90) days thereafter.

21. TERM AND TERMINATION; TRANSITION SERVICES.

21.1   Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until June 30, 2017, unless terminated sooner in accordance with this Agreement (collectively, the "Term").   This Agreement may be extended by mutual agreement of the Parties as the needs of the Project require.

21.2   Termination.

(a)   Termination for Convenience   Client shall have the right to terminate this Agreement, in whole or in part, for convenience and without cause by providing Contractor with no less than forty-five (45) calendar days' prior written notice, or such shorter period as may be specified in a Task Order, provided that Client shall pay Contractor outstanding Fees and other costs in accordance with Section 21.4.

(b)   Other Termination by Client.

(i)   If Contractor materially breaches this Agreement or a Task Order hereunder and fails to cure, Client may terminate this Agreement or the Task Order, in whole or in part, so long as Client has provided Contractor a written notice not less than thirty (30) calendar days before the effective date of termination stated in the notice setting forth in detail the basis for the allegation of material breach and providing Contractor with the opportunity to cure.

(ii)   Notwithstanding Section 21.2(b)(i), if Contractor materially breaches Section 15 or 23, or materially breaches Exhibit O (Data Management and Confidentiality Agreement), Client may immediately terminate this Agreement upon notice to Contractor without any opportunity to cure.

(iii)   If Contractor materially breaches Task Order 1 or 3 and fails to cure such breach within thirty (30) calendar days after notice from Client of such breach, Client may immediately terminate this Agreement in its entirety.

(iv)   Any notice of termination provided pursuant to this Section 21.2(b) shall state the circumstances of the alleged breach and shall (if applicable) state the date by which the alleged breach must be cured in accordance with this provision. In the event of a material breach by Contractor, Contractor may be subject to any and all applicable contract rights and remedies available to Client or otherwise available under law or equity. Applicable statutory or regulatory penalties may also be imposed by applicable state or government entities.

(c)   Termination by Contractor for Breach. If Client fails to pay Contractor an undisputed amount of Nine Million Dollars ($9,000,000) under this Agreement, in

the aggregate (including all Task Orders), then Contractor may give written notice to Client of such breach. If Client has not cured such breach within the thirty (30) calendar day period, and provided that Contractor has made a good faith effort to participate in the escalation procedures set forth in Section 27.1 with respect to such breach, then Contractor may, in its sole discretion, terminate this Agreement immediately upon written notice to Client, and Client shall pay Contractor the outstanding Fees and other costs in accordance with Section 21.4.

(d)   Other Termination by Contractor. If Client intentionally, either directly or indirectly through a third party directed by Client, misappropriates, reverse engineers, disassembles or decompiles the Contractor Property, as discussed in Section 13.3(d), then Contractor may terminate this Agreement immediately and without penalty upon written notice to Client.

(e)   Termination for Non-Appropriation; Public Emergency. Contractor acknowledges that Client is funding the Project with funds made available or appropriated under the applicable Laws of the Commonwealth and/or the United States. If an appropriation is lost or there is insufficient available funding, such that Client does not have sufficient funds to continue this Agreement, or in the event of an unforeseen public emergency, beyond Client's control, that requires Client's immediate attention, then Client shall notify Contractor as soon as practicable after the occurrence of such event, and both Client and Contractor may terminate this Agreement immediately and such termination shall be considered to be a termination for convenience in accordance with Section 21.2(a).

21.3   Transition Services.

(a)   Commencing six (6) months prior to the expiration of this Agreement or any Task Order, or commencing immediately upon notice of termination of this Agreement, any Task Order or any major services (e.g., hosting) provided by Contractor under a Task Order, whichever is sooner ("Transition Start Date"), Contractor will provide Client or its designee (collectively, "Successor") such termination assistance services as Client deems are required to allow the Services to continue without interruption or adverse effect and to facilitate orderly migration and transfer of responsibilities to the Successor ("Transition Services"). All Transition Services reasonably requested by Client in writing shall be performed by Contractor. Contractor shall be compensated for Transition Services in accordance with the Hourly Rates.

(b)   Without limiting the generality of the foregoing, as quickly as practicable after the Transition Start Date, or at any time during the Term as reasonably requested by Client, Contractor and Client will meet to discuss and prepare, in good faith, a transition plan. Such transition plan will include at least the following: (i) a twelve (12) calendar week period ("Initial Transition Period") during which Contractor will wrap up Work in Progress, including, but not limited to, documenting the status of the Project and organizing materials for orderly transfer

to Client, including completion or partial completion of Work in Progress, documentation of Work in Progress and other reasonable measures to facilitate an orderly transition to the Successor, and including access and use of Contractor's Confidential Information by Client and the Successor as reasonably necessary to further the purposes of this Section 21.3 (consistent with Client's use of such Confidential Information during the term and under this Agreement, and only so long as the Successor enters into a confidentiality agreement with Contractor containing provisions no less protective that those contained in this Agreement); (ii) a plan for the transfer of all code, Software licenses and agreements to be assigned in an orderly fashion and as quickly as is practicable; (iii) a summary of Contractor's other obligations during its performance of the Transition Services; and (iv) the amount of compensation to be paid to Contractor for provision of the Transition Services, which compensation shall be calculated in accordance with the Hourly Rates.

(c)   As quickly as is practicable after the Transition Start Date, and for the duration of the Initial Transition Period, Contractor will provide, in addition to Contractor Personnel required to perform Transition Services, a full-time, dedicated person to assist with the transition (the "Transition Manager"). Contractor will be compensated for the services of the Transition Manager in accordance with the Hourly Rates.

(d)   Such Transition Manager shall be responsible for: (i) coordinating the transition of the Services that Contractor or any Subcontractors were performing at the time of termination to the Successor, without any interruption of, or adverse impact on, the Services; (ii) cooperating with the Successor to provide all information regarding the Services or as otherwise needed for transition, including extension of Software licenses, data conversation, interface specifications and related professional services; and (iii) coordinating the prompt or orderly conclusion of all work, as Client may direct, including completion or partial completion of Work in Progress, documentation of Work in Progress and other reasonable measures to facilitate an orderly transition to the Successor. The Transition Manager will additionally be available to assist Client in transfer of responsibility from Contractor to the Successor for two (2) day(s) per week for the three (3) -week period following the expiration of the Initial Transition Period, during which time Contractor will be compensated for the services of the Transition Manager in accordance with the Hourly Rates.

21.4   **Effect of Termination; Survival.**

(a)   Upon termination of this Agreement or any Task Order for any reason:

(i)   with respect to any contracts between Contractor and a Third Party Vendor applicable to Services being provided to Client, upon Client's request, Contractor shall transfer or assign such agreements to Client or its designee, if the terms of such agreements permit such transfer or assignment, on terms and conditions acceptable to both parties;

(ii)   Contractor shall retain all Fees paid and attributable to Deliverables Accepted by Client, Critical Milestones achieved and T&M Services performed prior to the effective date of termination;

(iii)   Client shall pay all Fees and other costs due in accordance with the terms of this Agreement for the following (as applicable):

      (A)   T&M Services performed prior to the effective date of termination;

      (B)   All Deliverables Accepted by Client prior to the effective date of termination;

      (C)   All Deliverables Accepted after the effective date of termination in accordance with Section 21.4(b);

      (D)   All Critical Milestones achieved by Contractor prior to the effective date of termination;

      (E)   All Work in Progress in accordance with Section 21.4(c);

      (F)   Transition Services, if any; and

      (G)   Other Services (if any) performed and costs incurred prior to the effective date of termination as a result of Required Changes or Excused Delays that were the subject of a pending Change Request;

(iv)   Client shall pay to Contractor the Holdback Amount, less any reductions properly taken in accordance with the provisions of this Agreement (including under a Task Order), for all Deliverables previously Accepted (or Accepted pursuant to Section 21.4(b)) and Critical Milestones previously achieved;

(v)   Client shall retain all Deliverables, Project Works and Works in Progress paid for in accordance with Section 21.4(a)(iii);

(vi)   Client shall pay Contractor all non-cancelable expenses paid by Contractor if not previously reimbursed;

(vii)   If this Agreement or Task Order is terminated for any reason other than pursuant to Section 21.2(b), Client will pay all amounts payable attributable to all Deliverables delivered to Client prior to the effective date of termination in a timely manner provided that such Deliverables meet the applicable Acceptance Criteria, and such Deliverables will be deemed Accepted. Any Deliverables not Accepted pursuant to this Section 21.4(b) will be treated as Work in Progress and shall be subject to the provisions of Section 21.4(c) below; and

(viii) Client shall not be required to pay Investment Compensation Fees under Task Order 3 if this Agreement and/or Task Order 3 is terminated for any other reason than pursuant to Section 21.2(a),.

(b) <u>Works in Progress</u>.

(i) Contractor shall deliver Work in Progress (if not previously delivered to Client) in the form and in the time frame reasonably requested by Client.

(ii) If this Agreement or Task Order is terminated for any reason other than pursuant to Section 21.2(b), then Contractor shall deliver to Client all Work in Progress under the terminated Task Order(s), and Client shall pay for all such Work in Progress, as well as Work in Progress that was previously delivered to Client.

(iii) If this Agreement or a Task Order is terminated pursuant to Section 21.2(b), then Client shall pay only for Work in Progress that Client elects to retain or elects to be delivered ("Selected Work in Progress"). Contractor shall deliver such Selected Work in Progress (if not previously delivered) in the form and in the time frame reasonably requested by Client. For all Work in Progress that Client elects not to retain or be delivered pursuant to this section, Client hereby assigns back to Contractor ownership of all rights, title and interest in and to such Work in Progress, and Client agrees to return to Contractor any such Work in Progress (that was previously delivered to Client) in the form and in the time frame reasonably requested by Contractor.

(iv) Amounts payable by Client for all Work in Progress in accordance with Section 21.4(c)(ii) shall be calculated based on the reasonable value of the Work in Progress (taking into account the amount of hours worked and the percentage complete); provided, however, that such amount shall not exceed the amount allocated in the applicable Task Order for the Deliverable comprised of such Work in Progress.

(v) Amounts payable by Client for all Work in Progress in accordance with Section 21.4(c)(iii) shall be calculated based on the reasonable value of the Work in Progress (taking into account the amount of hours worked and the percentage complete); provided, however, that such amount shall not exceed the amount allocated in the applicable Task Order for the Deliverable comprised of such Work in Progress.

(vi) For purposes of this Section 21.4(b), Works in Progress does not include Project Works delivered under T&M Task Orders.

(c) In the event of termination of this Agreement or any Task Order by either party, Client and Contractor shall each retain all rights and remedies available to them under this Agreement and at law and equity.

(d) Sections 6.1(b)(ix) (Indemnification for Subcontractor Acts), 8.4 (Acceptance Process), 8.5 (Final Acceptance), 8.7 (Liquidated Damages), 11.2 (Client Assets), 12.1 (Payments), 12.3 (hCentive Credit), 12.5 (Expenses), 12.6 (No Transfer Fees), 12.7 (Holdback), 12.9 (Labor Rate Table), 12.10 (Taxes), 13 (Title and IP Rights) (but not Section 13.4(f)), 15 (Confidentiality), 19 (Indemnification; Infringement), 20.1 (Liability), 20.2 (Excluded Damages), 21.3 (Transition Services), 21.4 (Effect of Termination; Survival), 24.4 (Records Retention), 27 (Dispute Resolution), 28.1 (Severability), 28.2 (Notices), 28.3 (Entire Agreement; Modifications), 28.7 (Headings), 28.13 (Third Party Beneficiaries) and 28.14 (Amendment; Waiver) shall survive the expiration or termination of this Agreement.

22. HUMAN RESOURCES; STAFFING.

22.1 Staffing.

(a) Contractor shall submit a staffing plan for each T&M Task Order that includes the number of full time equivalent Personnel ("FTEs") for each week for each labor category and Personnel role for the duration of the T&M Task Order. The Project Managers will review the Staffing Plan on a weekly basis during the term of the applicable Task Order and shall agree to any FTE increases or decreases as well as any Excess Hours expected for Non-Exempt Employees.

(b) To allow Contractor to be able to manage its performance of Services most effectively, Contractor reserves the right to determine which of its qualified Personnel will be assigned to perform Services and to replace or reassign Contractor Personnel during the Term; provided that Contractor shall not reassign any Key Personnel except upon their (a) voluntary departure from Contractor's employ or other departure outside of Contractor's reasonable control, including, without limitation, death, military service and long-term illness, provided that, where feasible, Contractor will provide Client with at least ten (10) calendar days prior written notice of such departure or (b) termination by Contractor for any reason, provided that, where feasible, Contractor will provide Client with at least ten (10) calendar days prior written notice of such termination. Client shall have a right to interview and approve in writing any replacements for such Key Personnel (in each case, such approval shall not be unreasonably withheld, conditioned or delayed).

(c) Client may require Contractor, to the extent permitted by law, to replace any Contractor Personnel who do not adhere to the requirements set forth or identified in this Agreement, who otherwise engage in unprofessional conduct in the performance of the Services or whom Client believes, in good faith, are not capable of performing to the standard required by this Agreement. Client shall make a request for replacement of Contractor Personnel in writing, stating the specific reasons for such request. Contractor shall have a reasonable period of time from the date of receipt of such request to investigate the basis for the request and attempt to resolve the situation to Client's reasonable satisfaction,

during which period, at Client's sole discretion, the Contractor Personnel whose performance or conduct is at issue shall not participate in the Project but only so long as such Contractor Personnel is not determined by mutual agreement between the parties to be essential to its performance. If the parties determine that Client's issues with such Contractor Personnel cannot be resolved to Client's reasonable satisfaction, Contractor shall remove such Contractor Personnel; provided, however, if the Contractor Personnel being replaced is essential to Contractor's performance under this Agreement, then Contractor shall remove and replace such Contractor Personnel as promptly as possible, but in no event later than twenty (20) Business Days from such determination.

(d)   If new Contractor Personnel are designated or existing Contractor Personnel are replaced pursuant to the terms of this Section 22.1, Contractor shall smoothly transition such new or replacement Contractor Personnel into the Project at no cost to Client, including, without limitation, providing such Contractor Personnel with the appropriate training to eliminate any delays in connection with the implementation of the Project. Notwithstanding the foregoing, Contractor acknowledges and agrees that maintaining the consistency of its Core Project Team and Key Personnel is essential to meeting the Go Live dates for the Systems and otherwise meeting the timelines set forth in the Task Order and that, Contractor will utilize all commercially reasonable efforts, except as otherwise expressly permitted by Client in writing, to limit its turnover rate of its Core Project Team and Key Personnel up to the Go Live Date (in combination, and without limiting the obligations with respect to Key Personnel in Section 22.1(a) above) to twenty percent (20%) during the Term.

(e)   Subject to this Section 22.1, Contractor shall provide a committed, skilled and stable staff. Contractor Personnel shall at all times while on Client premises wear badges or carry identification cards, as indicated by Client, that identify them as Personnel of Contractor. In addition to the foregoing, except with respect to any Services that Contractor is permitted to perform at a location other than Client's or Contractor's facilities, Contractor shall cause Contractor Personnel that have appropriate authority and are empowered to perform required Project tasks to provide coverage at all times as needed for the performance of the Project. Notwithstanding the foregoing, Contractor shall not be restricted from bringing in certain Contractor Personnel based on their expertise or special knowledge that are only required to assist with the Project or implementation of the completed System on a short-term basis or are otherwise needed to meet a Critical Milestone Date or Project timeline. Contractor shall be permitted to perform Services at a location other than Client's facilities upon receipt of written approval from Client (in each case, such approval shall not be unreasonably withheld, conditioned or delayed). Provided in Exhibit R is a listing of the Contractor facilities where Services will routinely be performed during the Term of each of the respective Task Orders. This listing may be modified during the performance of the Task Orders by the mutual agreement of the parties.

22.2 **Offshore Resources.** No offshore resources shall be used by Contractor without prior written permission of Client, other than for development and testing with de-identified data. All offshore resources that are not Contractor or Key Subcontractor employees shall be identified by name, title, role and location. Should Client choose to use any offshore Contractor resources, no such offshore resources shall download any Client Data onto any electronic data storage device external to a workstation or laptop, such as portable media (e.g., a CD), a PDA or an external storage device, whether on premises or in the cloud. All such offshore resources deployed by Contractor at any time in connection with the Services shall access Commonwealth systems only via virtual private network (VPN) supplied by the Commonwealth. All devices onto which Contractor offshore resources download data must be encrypted. Contractor shall train all offshore resources in Client's System Policies and Practices and monitor and enforce such procedures in connection with such resources. Notwithstanding anything to the contrary set forth in this Agreement, in no event may Contractor, any Contractor Personnel or any Subcontractor Personnel access any federal tax return or federal tax return information or Social Security Administration data remotely outside of the United States, territories, embassies or military installations, nor may any federal tax return or federal tax return information or Social Security Administration data be received, processed, stored, transmitted or disposed of by systems located outside of the United States, territories, embassies or military installations. Contractor shall immediately report to Client any breach of the Commonwealth's remote access or security standards, and any such breach or failure to immediately report the same shall constitute a material breach of this Agreement.

22.3 **Personnel Responsibilities.** In no event will any Contractor Personnel be considered employees of Client. For the avoidance of doubt, neither Contractor nor any of Contractor Personnel are entitled to any medical or dental coverage or life or disability insurance from Client, or entitled to participate in any Client pension or any other benefits afforded to any Client employees. All matters governing the employment of Contractor Personnel shall, as between Client and Contractor, be Contractor's full responsibility. Contractor assumes full responsibility for the actions of Contractor Personnel while performing Services. Each party shall be responsible for the supervision, direction and control of their Personnel while performing Services. Each party shall be responsible for the payment of compensation (including withholding of taxes and Social Security), contribution to workers' compensation and unemployment compensation, overtime, disability benefits and any other legally required benefits or compensation or discretionary benefits or compensation for its employees who are assigned to perform Services. Contractor represents and warrants that it has completed the I-9 Process for all Contractor employees hired for employment in the United States who are performing Services in the United States and that all such Contractor employees are authorized to work for Contractor in the United States. Contractor acknowledges and agrees that Client is under no obligation to assist Contractor in obtaining any work permits for such Contractor Personnel to work in the United States. In the event Contractor obtains Client's express prior written consent for the performance of Services by Contractor Personnel outside of the United States (in each case, such approval shall not be unreasonably withheld, conditioned or delayed), Contractor or its Subcontractors will be responsible for complying with all applicable United States and foreign laws, treaties, conventions, rules and regulations with respect to such Contractor Personnel and the performance of any Services outside of the United States including, but not limited to, the applicable laws of the jurisdiction(s) in which the Services are being performed. Notwithstanding anything to the contrary contained in Section 11 of the

Commonwealth Terms, Contractor agrees to fully defend, indemnify and hereby hold Client Indemnitees harmless from and against any amounts payable resulting from a third party claim, suit, demand, loss, damage, cost, expense or liability, including reasonable attorneys' fees, relating to (a) any violation of immigration law by Contractor or Contractor Personnel and (b) Contractor's obligations to its employees and other Contractor Personnel. Any immunity or exclusivity of any labor, workers' compensation, or similar statute applicable to Contractor will not in any way limit or preclude Contractor's obligation to provide indemnification hereunder. The foregoing indemnity will not be limited in any manner whatsoever by any required or other insurance coverage maintained by Contractor.

22.4 **Client's Workplace Policies.** In the performance of this Agreement at Client facilities, Contractor Personnel will comply with Client's workplace policies of which they have been informed, including, but not limited to, the policies set forth in Exhibit H. Contractor acknowledges that all Contractor Personnel may be subject to a tax and child support check by Client. When required, Contractor must conduct, at its own expense, checks of the criminal records of Contractor Personnel in accordance with Client's written policies and applicable Law. Without limiting the foregoing, Contractor will perform background checks on Contractor Personnel as set forth in Exhibit W. Client may prohibit any Contractor Personnel found to have a criminal record from performing Services hereunder. If Contractor fails to enforce this prohibition after Client provides notice to Contractor in accordance with Section 21.2(b), Client may terminate this Agreement on written notice to Contractor. Contractor shall comply with all federal and state laws, rules and regulations and all requirements of this Agreement promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities as specified in this Agreement. Notwithstanding this paragraph, Client hereby agrees to waive Contractor's obligation to perform checks of the criminal records and tax and child support checks of Contractor Personnel in accordance with this paragraph for former and current employees or subcontractors of CGI who have been subject to such background checks previously.

23. **SECURITY REQUIREMENTS.** Contractor must maintain adequate computer security including, but not limited to, passwords, firewalls and anti-virus Software and reasonably provide for the physical safety of records from theft, fire, water damage and the like.

24. **AUDIT.**

24.1 **Audit Rights.**

(a)   Security Audit. In addition to the obligations set forth in Section 7 of the Commonwealth Terms and to the rights of Client and the Commonwealth pursuant to the terms of the Standard Contract Form, Contractor will provide to

Client (or its authorized representatives), with reasonable prior notice, access to Contractor Personnel, books and records applicable to the performance of the Services, and to facilities where Client Data is maintained or the Services are performed, for the purpose of performing an audit of the security practices, procedures and safeguards utilized by Contractor in the performance of the Services as Client may reasonably request to (a) assure itself of the security of Client Data; (b) examine and verify Contractor's disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; (c) quality initiatives and quality assurance; and (d) compliance with the applicable Laws. These audits shall be conducted no more than once per calendar year (and more often, in the event that Client has a reasonable belief that Client Data is insecure or that Contractor is violation of applicable Law), at mutually convenient times to Contractor and Client during Contractor's normal business hours and in a manner so as not to disrupt the performance of the Services.

(b)   <u>Document Requests</u>. In accordance with Section 7 of the Commonwealth Terms, Client may request, upon reasonable prior written notice from Client, such notice being reasonably sufficient to permit Contractor to gather the requested records, Contractor to produce directly pertinent records to substantiate claims for payment under this Agreement. Such records for FP Task Orders under this Agreement, which include Critical Milestone Payments and Deliverable Payments, shall be records evidencing delivery of such Deliverables, achievement of Critical Milestones and performance of tasks required under the respective Task Order and this Agreement, and for the T&M Task Orders and Change Orders issued on a time-and-materials basis, such records shall be those records evidencing that the hours paid for were worked and evidencing the date, nature and cost of any expenses that were invoiced as materials. In addition to matters of payment, Client may request, upon reasonable prior written notice, such notice being sufficient to permit Contractor to gather the requested records, Contractor to produce directly pertinent records to verify compliance with: Section 11.2, Client Assets (Client's right to verify that all Client Assets have been returned at the conclusion of performance of this Agreement); Section 12.3 (to review the amount of increased Fees set forth in a Change Request, acknowledging that with respect to FP and T&M Change Requests such documents shall be projected workflow plans and projected hours multiplied by the Hourly Rates); Section 21, Termination (to obtain documents related to non-cancelable costs in the event of a termination); Section 15, Confidential Information; and Section 23, Security Requirements. Client and Contractor shall work together regarding the findings of any audit in accordance with the terms of this Agreement.

(c)   <u>Limitations</u>. Notwithstanding anything in this Section 24 to the contrary, audits conducted on Contractor premises shall be limited to systems and data solely related to Client and the Services; provided, that if any audit to be conducted by or on behalf of Client would be prevented or restricted because of systems and data that relate to both Client and to other Contractor customers, Contractor will reasonably cooperate to permit an audit that meets Client's needs while not

providing access to the confidential information of other Contractor customers or any systems, data or information belonging or relating to any customer other than Client. In performing audits, Client and any auditors shall endeavor to avoid unnecessary disruption of Contractor's operations and unnecessary interference with Contractor's ability to perform the Services in accordance with the Service Levels. In addition, Contractor will work with Client or its authorized representatives to provide the assurances requested by Client or its authorized representatives with regard to data security and related procedures, but if Contractor reasonably believes that information or access requested by Client or its authorized representatives will jeopardize Contractor's security practices, procedures or safeguards, Client and Contractor will work together to find alternative methods to provide the assurances required by Client or its authorized representatives.

24.2 **Contractor Audits and Certifications.**

(a) Certifications. Contractor shall obtain and maintain all certifications listed in each Task Order. Contractor shall promptly notify Client of any other certifications obtained by Contractor relating to the Services or the resources used by Contractor to provide the Services. Contractor shall promptly notify Client of any failure to obtain or maintain any required certification, or any other certification of which Client is notified under this Section 24.2(a), and shall provide Client with a written plan to obtain or reacquire each such failed certification.

(b) SSAE-16. Unless otherwise expressly stated in the applicable Task Order, each year, starting in Contractor's new fiscal year which follows the first Services to support Client's production activities, Contractor shall cause its external auditors to (i) perform a SSAE-16 SOC 1 audit, regarding Contractor's internal controls over financial reporting, based on Contractor's system of internal controls and Contractor's control objectives as of a specific point in time (the "Baseline Internal Controls Audit"), and (ii) produce an SSAE SOC 1 Type I audit report in connection therewith (the "Baseline Internal Controls Audit Report"). On or about April 1st of each year, Contractor shall provide to Client a copy of the most current Baseline Internal Controls Audit Report. The Baseline Internal Controls Audit shall be performed, and the Baseline Internal Controls Audit Report shall be produced, at no additional cost to Client. In the event that Client requests audit and reporting which are not covered by the Baseline Internal Controls Audit, such additional audit and reporting shall be (i) addressed through the applicable change control procedures and (ii) performed by the same auditors who have performed the Baseline Internal Controls Audit, at Client's cost and expense, unless Contractor is subject to another SSAE-16 audit for the same or similar operations that is acceptable to Client, in which case Client shall be provided with a copy of that other SSAE-16 audit.

(c) Government Audits. On an annual basis, unless otherwise reasonably requested in writing by Client, Contractor shall inform Client of any audit of Contractor's

data center(s) from which it provides Services or any other of its facilities or operations it uses to provide Services by any agency of the federal government or the Commonwealth, and shall, to the extent not prohibited by applicable law, provide Client with a copy of the report or results of each such audit. Contractor acknowledges that Client and the Commonwealth may be subject to audit and investigations of Governmental Authorities, including without limitation, of Federal Awarding Agencies, and agrees that Client may require Contractor to cooperate with such audits and investigations.

24.3 **Audit Follow-Up.** Contractor shall promptly respond to any deficiencies identified by any audit report relating to Contractor and work diligently with Client regarding such identified deficiencies.

24.4 **Records Retention.** In addition to the obligations set forth in Section 7 of the Commonwealth Terms and to the rights of Client and the Commonwealth pursuant to the terms of the Standard Contract Form, until the later of (i) seven (7) years after expiration or termination of this Agreement, (ii) such time as is required by applicable laws or (iii) the date that all pending matters relating to this Agreement (e.g., disputes) are closed or resolved by the parties, Contractor will maintain and provide access (and cause its Subcontractors to maintain and provide access) upon request to the records, data, documents and other information required to fully and completely enable and permit Client to take advantage of its audit rights under this Agreement ("Audit Records"). Each Task Order may include additional retention provisions.

24.5 **Financial Reports.** Client shall have the right to periodically review Contractor's financial statements.

25. **BUSINESS CONTINUITY.**

25.1 **Business Continuity Plan.** Contractor's enterprise-wide Business Continuity Plan is attached hereto as Exhibit I. At all times during the Term, Contractor must, and shall cause and be solely responsible for its Subcontractors to, maintain a Business Continuity Plan and invoke it when necessary. At all times during the Term, Contractor agrees to invoke its Business Continuity Plan when necessary.

25.2 **Updates and Changes.** Contractor may not update or change its Business Continuity Plan in a manner that materially degrades the protections provided for the Project without prior written notice to Client. Contractor shall provide to Client all updates to the Business Continuity Plan, if any, for incorporation in this Agreement by amendment, on, at least, a quarterly basis.

25.3 **General.** Contractor shall continue to provide the Services to Client in the event Client activates its own business continuity plan or moves to an interim site to conduct its business, including during tests of Client's contingency operations plans.

26. **CHANGE OF CONTROL.** Subject to and if permitted under applicable confidentiality obligations, Contractor shall give Client prior written notice regarding the consummation of any transaction that may result in a Change of Control of Contractor, which notice may, if permitted, summarize or describe the transaction and the results of such transaction on Contractor from an ownership and entity standpoint. If any such notice is prohibited from being provided to Client

prior to consumation of the transaction, such notice shall be provided within ten (10) Business Days after the consummation of the transaction.

27. DISPUTE RESOLUTION.

27.1   Escalation Procedures. Except as otherwise provided by this Section 27.1, in the event of any dispute arising out of or related to this Agreement, the parties agree to work together in good faith to resolve the dispute internally by escalating it to the Project Managers immediately after the dispute arises. In the event that the Project Managers are unable to resolve the dispute within five (5) Business Days after it is brought to their attention, the dispute should be escalated to the Joint Project Committee. In the event that the Joint Project Committee is unable to resolve the dispute within ten (10) Business Days after the dispute arises, and in an effort to otherwise resolve any conflict that arises during the course of this Agreement or following completion of this Agreement, Client and Contractor may, but shall not be required to, agree that such dispute (subject to the written approval of the Commonwealth's Office of the Attorney General) shall be submitted to nonbinding mediation through the Massachusetts Office of Dispute Resolution. The parties shall take such steps as reasonably necessary to mitigate any damages that each party may accrue during the escalation and mediation procedures.

27.2   Rights and Remedies.   Both parties have entered into this Agreement with the understanding that the Services are critical to Client's operations. Consequently, both parties shall seek to perform their duties in a timely and efficient manner in accordance with all of the terms of this Agreement to allow timely and successful performance of the Services in accordance with each applicable Project Plan for each System. Each party shall have the rights and remedies set forth in this Agreement including those rights set forth in Section 21.2 and at law, equity and statute to address performance and performance related issues including those related to the delivery of the Services, Deliverables, and warranty, maintenance or support services. Specific remedies set forth in this Agreement for specific failures shall be cumulative and shall not be exclusive of other rights or remedies available to the party alleging breach whether such other remedies are provided at law, equity or statute. For purposes of clarity, assessment of liquidated damages and Holdback retention in accordance with Section 8.7 and Section 12.6 shall be without prejudice to any rights or remedies that Client or Contractor may have under this Agreement, at law or in equity. In the event that Client elects to seek actual damages related to the same events for which liquidated damages were assessed and paid or credited under Section 8.7, Holdback Amounts were retained under Section 12.6 and/or Service Level (as defined in Exhibit B-3, Task Order 3) credits were assessed under any applicable Task Order, any damages award in connection therewith shall be reduced by the amount of such liquidated damages, Holdback Amounts and/or Service Level credits.

28. GENERAL PROVISIONS.

28.1   Severability. If any term, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms, conditions and provisions hereof or the whole of this Agreement, but such term, condition or provision will be deemed modified to the extent necessary in the court's opinion to render such term, condition or provision enforceable, and the rights and obligations of the parties

will be construed and enforced accordingly, preserving to the fullest permissible extent the parties' intent and agreements set forth herein.

28.2   **Notice.** Any notice or other communication required or permitted to be given pursuant to this Agreement shall be deemed delivered and received when submitted in writing in person or when received either: (a) via certified or registered mail, return receipt requested, postage prepaid; or (b) via express mail or nationally recognized courier service, by such party at the address set forth below:

To Contractor:

> OptumInsight, Inc.
> Chief Executive Officer
> 13625 Technology Drive
> Eden Prairie, MN 55344

With a copy to:

> Optum, Inc.
> Chief Legal Officer
> 13625 Technology Drive
> Eden Prairie, MN 55344

To Client:

> Massachusetts Office of Information Technology
> One Ashburton Place, Room 804,
> Boston, MA 02108
> Attn: Chief Information Officer

With a copy to:

> Massachusetts Office of Information Technology
> One Ashburton Place, Room 804,
> Boston, MA 02108
> Attn: General Counsel

In the case of any other notices given under this Agreement, any notice shall be deemed received when delivered by any other appropriate method evidencing actual receipt by Client or Contractor, including email and facsimile. A party may designate a different address by notice to the other party, given in accordance with this Section 28.2.

28.3   **Entire Agreement; Modification.** This Agreement sets forth the entire understanding between the parties with respect to the subject matter contained herein and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof; and no other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties with respect to the subject matter

hereof. This Agreement may not be modified except by a writing signed by authorized representatives of both parties.

28.4 **Assignment.** Subject to Section 8 of the Commonwealth's Terms and Conditions, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. Any permitted assignee must agree in writing to be bound by the terms and conditions of this Agreement to the same extent as if assignee were the original party to this Agreement and named in this Agreement. Any permitted assignment hereunder shall not relieve Contractor of its obligations hereunder.

28.5 **Relationship of the Parties.** In connection with this Agreement, each party is acting independently and, as such, will not have any authority to bind or commit the other party, except as explicitly set forth herein. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose. With respect to its own Personnel, each party is, accordingly, independently responsible for all obligations incumbent upon an employer.

28.6 **Cooperation.** Contractor and Client will reasonably cooperate with each other in taking actions, providing information and executing documents as appropriate to achieve the objectives of this Agreement. If so requested by Contractor in good faith within the thirty (30) day period after the Effective Date, Client agrees to cooperate in good faith with Contractor to effect an amendment to this Agreement to divide this Agreement into three separate master services agreements consistent with the Task Order groupings described in Section 20.1(b); provided that no objection is asserted to such amendment by the Commonwealth Office of the Comptroller.

28.7 **Headings.** Section headings contained in this Agreement are for convenient reference only and do not constitute part of this Agreement and shall not affect the interpretation hereof.

28.8 **Force Majeure Events.** Neither party will be liable for any delays or failures in performance due to any Force Majeure Event, and delays resulting from a Force Majeure Event shall be treated in accordance with the provisions set forth in this Section 28.8. Each party will give the other party notice as soon as possible upon the commencement and conclusion of a Force Majeure Event. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, a Force Majeure Event shall not excuse, delay or suspend Contractor's obligation to invoke and follow its Business Continuity Plan or any other business continuity or disaster recovery obligations set forth in this Agreement in a timely fashion.

28.9 **Publicity.**

(a) Except for announcements intended solely for internal distribution within the Commonwealth or to any Federal Awarding Agency or any disclosure required by legal, accounting or regulatory requirements, and subject to this Section 28.9(a), Contractor shall not use Client's name or refer to Client directly or indirectly in any marketing tool, media release, public announcement or public disclosure relating to this Agreement, including in any promotional or marketing materials, web sites, customer lists, referral lists or business presentations, without the prior written consent of Client. Contractor must notify Client promptly, to the extent

permitted by law, of any law enforcement or investigative agency about this Agreement. Under no circumstances shall Contractor make use of the Commonwealth's seal without permission of Client. Subject to Section 28.9(b), Contractor shall not release, make or issue any such public statement or announcement relating to or arising from the Services of this Agreement without the prior written consent of Client (in each case, such approval shall not be unreasonably withheld, conditioned or delayed).

(b) Notwithstanding the foregoing, should Client or the Commonwealth use Contractor's or Contractor's Affiliate's name or refer to Contractor directly or indirectly in any marketing tool, media release, public announcement or public disclosure relating to this Agreement, including in any promotional or marketing materials, web sites, customer lists, referral lists or business presentations, or should Client release, make or issue any such public statement or announcement relating to or arising from the Services of this Agreement, and any such communications, in Contractor's good faith determination, put Contractor or Contractor's Affiliates in a negative light, then Contractor shall not be prohibited from responding to such communications.

28.10 Equitable Relief. It is expressly agreed that a material breach of Section 15 of this Agreement, misappropriation of the intellectual property rights of a party hereto or failure to provide Transition Services required hereunder may cause irreparable harm to the other party and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, the parties shall be entitled to injunctive relief (without the necessity of posting any bond or surety) against the breaching party in the event of any such threatened or actual violation. The parties agree that any action relating to, or arising under this Section 28.10 shall be instituted and prosecuted in federal or state courts located in Boston, Massachusetts.

28.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

28.12 [Reserved].

28.13 Third Party Beneficiaries. Nothing in this Agreement, express or implied, shall or is intended to confer on any other entity, any rights, benefits, remedies, obligations or liabilities of this Agreement, other than the parties, their respective successors or permitted assigns.

28.14 Amendment; Waiver. No terms and conditions in any Contractor form, document, Task Order or otherwise, shall or shall be construed to modify, amend or in any way alter the terms and conditions set forth herein. No supplement, modification, amendment to or waiver of this Agreement shall be binding unless executed in writing by the party against whom enforcement of such supplement, modification, amendment or waiver is sought and is executed, if applicable, in the manner and with respect to the subject matter, consistent with the requirements of this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

28.15 **Federal Awarding Agency Reporting Requirements.** The Federal Awarding Agency will require regular reporting in connection with Services that are funded by federal grant money awarded to Client. Contractor will comply with any reporting requirements applicable to it and will cooperate with Client in meeting all such reporting. Under T&M Task Orders, Contractor shall provide the reporting requirements as part of the T&M Services.

28.16 **Conflict of Interest.** Contractor has disclosed to Client the following:

(a)   Contractor is an Affiliate of UHC, which is a health insurance issuer that has sought certification from Client or its Affiliate to participate in the Massachusetts health insurance exchange, and received provisional approval to so participate. The scope of work under this Agreement includes reviewing the work performed to design and implement each System, and making recommendations regarding more effective ways to implement each System, and that Contractor's recommendations in these areas could lead to future work for Contractor or its Subcontractors, some of whom are Affiliates of Contractor, to implement changes to one or more Systems.

(b)   Contractor owns a twenty-four percent (24%) ownership interest in hCentive, the Third Party Vendor that will be providing the hCentive Software.

(c)   Client acknowledges that it is authorized to accept the Services from Contractor under current applicable Law.

28.17 **Intentionally Deleted.**

29.   PROJECT MANAGEMENT.

29.1 **Implementation of and Adherence to CommonWay.** Where practicable, Contractor will implement and adhere to the CommonWay Methodology ("CommonWay"), the Commonwealth Project management methodology, including CommonWay's practices, forms, and other components. A description of the CommonWay methodology is available at the following link:

https://wiki.state.ma.us/confluence/display/commonwaylite/CommonWay+project+Management+Methodology

In the event that Contractor wishes to provide Project management services above and beyond what CommonWay supports, the Contractor may provide supplementary materials, upon and consistent with Client approval (in each case, such approval shall not be unreasonably withheld, conditioned or delayed).

29.2 **Project Plans.** Where practicable, Project plans will implement CommonWay forms and procedures to the maximum possible extent. CommonWay Project plan templates and related information   are   available   at   the   following   link: https://wiki.state.ma.us/confluence/pages/viewpage.action?pageId=69894234

Specifically, and without in any way limiting the foregoing, Contractor will, where practicable, use the following CommonWay templates:

(a)   Contractor will, where practicable, employ and keep up to date the CommonWay RACI Matrix to specify the entities who must be responsible, accountable, consulted, and informed over the course of the Project. A template of the RACI Matrix is available at the following link:

https://wiki.state.ma.us/confluence/download/attachments/69894234/RACI+Sample.pdf?version=2&modificationDate=1259597781000)

(b)   Contractor will, where practicable, employ and keep up to date the CommonWay Risk Register. A template of the Risk Register is available at the following link:

https://wiki.state.ma.us/confluence/download/attachments/69894234/Risk+Management+Plan+SAMPLE.pdf?version=1&modificationDate=1253731664000)

(c)   Contractor will, where practicable, employ and keep up to date the CommonWay Weekly and Monthly Status Reports. Templates of the Weekly and Monthly Reports are available at the following links:

https://wiki.state.ma.us/confluence/download/attachments/69894234/Weekly+Status+Report.doc?version=4&modificationDate=1322688450000

and

https://wiki.state.ma.us/confluence/download/attachments/69894234/Monthly+Status+Report.doc?version=6&modificationDate=1267111894000

(d)   Contractor will, where practicable, employ and keep up to date the CommonWay Capital Budget Report. A template of the Capital Budget Report is available at the following link:

https://wiki.state.ma.us/confluence/download/attachments/69894234/Capital+Budget+Sample.pdf?version=1&modificationDate=1267048097000

(e)   Contractor will, where practicable, employ and keep up to date the CommonWay Change Management Plan. A template of the Change Management Plan is available at the following link:

https://wiki.state.ma.us/confluence/download/attachments/69894234/ChangeManagementPlanSample.pdf?version=2&modificationDate=125665429200

30.   EXHIBITS.

The following attachments are hereby incorporated by reference into this Agreement, as may be amended, modified or supplemented in accordance with this Agreement (the "Exhibits"):

Exhibit A	Form of Task Order
Exhibit B	Task Orders
Exhibit C	Change Request Form
Exhibit D	Hourly Rates
Exhibit E	[Reserved.]
Exhibit F	Commonwealth Terms and Conditions; Standard Contract Form; Standard Forms
Exhibit G	Contractor Employee Confidentiality Agreement and Summary of Contractor Employee IP Assignment Provisions
Exhibit H	Client Workplace Policies
Exhibit I	Contractor Business Continuity Plan
Exhibit J	Mitigation Letter
Exhibit K	Project Plan
Exhibit L	Application Development Processes
Exhibit M	Administration and Finance Policy on the Use of Information Technology Resources
Exhibit N	[Reserved.]
Exhibit O	Data Management and Confidentiality Agreement
Exhibit P	CMS Requirements
Exhibit Q	Client Confidentiality Agreement Form
Exhibit R	Contractor Facilities
Exhibit S	[Reserved]
Exhibit T	[Reserved.]
Exhibit U	hCentive Agreement
Exhibit V	System Policies and Practices
Exhibit W	Background Checks

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

CONTRACTOR:

OPTUMINSIGHT, INC.

By: _____
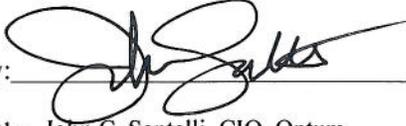
Title: John C. Santelli, CIO, Optum

Date: 9-30-14

CLIENT:

MASSACHUSETTS OFFICE OF
INFORMATION TECHNOLOGY

By: William G. Oates

Title: Commonwealth CIO

Date: _____

Reviewed and Approved By:

Legal Division

Title: _____

Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

CONTRACTOR:

OPTUMINSIGHT, INC.

By:_____

Title:_____

Date:_____

CLIENT:

MASSACHUSETTS OFFICE OF
INFORMATION TECHNOLOGY

By:___William G. Oates_____

Title:__Commonwealth CIO_____

Date:_____9/30/2014_____

Reviewed and Approved By:

Legal Division

Title:_____

Date:_____