

Element # 9 – Exit Management Plan

Section 9.1 Termination:

- Should Provider show a sustained inability to meet the Service Level Agreements and goals, defined in this SOW, and if in Company's opinion there is no effective cure for these failures within the next ninety (90) days, Company shall have the option, in its sole discretion, to terminate this SOW ninety (90) days after providing written notice to Provider of its intent to terminate for non-performance.
 - For purposes of determining sustained inability to meet the SLAs, Company shall compare Provider's monthly metrics, over a reasonable period of time, against the objectives, goals and requirements (the "Requirements") set forth in the Agreement and the SOW. If Provider and Company agree that Provider has not met the Requirements in any given month for reasons outside of Provider's reasonable control, that month's performance shall be omitted from the determination of performance defined below.
- o Company shall consider the Provider to have shown sustained inability to meet the "Requirements" if:
- Any single metric fails to meet the minimum Requirements for the most recent three (3) months, or
 - Any single metric fails to meet the minimum Requirements for any two (2) of the most recent six (6) months, or
 - Any single metric that has an average level, over the most recent nine (9) months, that fails to meet the rolling nine month minimum Requirements as set forth in the Performance Management section above.
- Termination for Convenience. Either Party will have the right to terminate this Agreement upon one hundred and eighty (180) days written notification to the other Party after the initial term of the Agreement. In the event of termination for convenience by either Party, Provider shall give Company reasonable time and Facility access to relocate its operations. Further, during the notice period prior to any termination, Provider shall ensure the continuity of order processing with zero impact to Company's Customers, and shall comply with Section 9.3 below. If either Party terminates for convenience, the Parties will agree on the division of all costs associated with the transfer of the operations associated with this SOW.
- In the event of termination of this SOW for any reason, including expiration of the term of this SOW, Provider shall give Company reasonable time and Facility access to relocate its operations. Further, during the notice period prior to any termination, Provider shall ensure the continuity of order processing with zero impact to Company's Customers, and shall comply with Section 9.3 below.

Element 9.2 Transfer

- Notwithstanding anything contained herein to the contrary, if any Transfer occurs in violation of the Change of Control provisions set forth elsewhere in this SOW, Company shall have the right to terminate this SOW and/or the Agreement in accordance with Section 2.2 of the MRA.

Element 9.3 Termination Assistance Services

- As part of the Services, Provider shall provide to Company, the eligible recipients and/or their designee(s) the Termination Assistance Services described below.
 - o Provider shall provide the Termination Assistance Services for the period of time requested by Company, commencing upon notice of termination from Company, regardless of the reason for the termination, and continuing for up to six (6) months following the termination or non-renewal of the Agreement and/or this SOW,
 - o Company may extend the length of time during which Provider must perform Termination Assistance Services upon sixty (60) days prior notice, provided that the duration of Termination Assistance Services shall not exceed six (6) months without Provider's prior written consent. If Company provides less than sixty (60) days prior notice of an extension, Provider shall nonetheless use commercially reasonable efforts to comply with Company's request for extension. Rates for these Termination Assistance Services shall be Provider's then-current base rates for its services.
 - o At Company request, Provider shall provide Termination Assistance Services directly to an eligible recipient or an entity acquiring control of an eligible recipient. This commitment shall not include sharing with a Provider competitor any Provider proprietary information, processes, equipment, materials, tools, systems, software, software logic or source code.
 - o All Termination Assistance Services shall be provided subject to and in accordance with the terms and conditions of this Agreement. Provider shall perform the Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it was required to provide during the Term of the Agreement. To the extent Company requests the continuation of all or part of the Services, the quality and level of performance of such Services following the expiration or termination of the Agreement or Provider's receipt of a notice of termination or non-renewal shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect. Provider's Personnel who are reasonably considered critical to the performance of the Services and Termination Assistance Services shall be retained on the Company account through the completion of all relevant Termination Assistance Services, unless such critical Provider Personnel leave the employ of Provider.
 - o At Company's request, the Termination Assistance Services provided by Provider shall include all the Services, described in this SOW, as well as those described below. Termination Assistance Services will not include the need for any custom processes, solutions, systems or software developed exclusively for Company unless Company paid for the development.

o At Company's request, Provider shall: (i) assist Company, an eligible recipient and/or their designee(s) in developing a written transition plan for the transition of the Services to Company, such eligible recipient, or their designee(s) (ii) perform programming and consulting services to assist in implementing the transition plan, for an agreed upon fee ; (iii) train personnel designated by Company, an eligible recipient and/or their designee(s) in the use of any common or Company owned business processes, work instructions and work procedures and any equipment, software, systems, materials and/or tools used in connection with the provision of the Services; (iv) catalog all business processes, work instructions, work procedures, software, Company Data, equipment, materials, third party contracts and/or tools used to provide the Services;; (v) provide machine readable and printed listings and associated documentation for source code for Software owned by Company and source code to which Company is entitled under this Agreement (to the extent in the possession of Provider) and assist in its re-configuration; (vi) provide technical documentation for non-proprietary Software used by Provider to provide the Services to the extent such Software will be used by the successor provider of the Services as provided for herein; (vii) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition of the Services to Company, an eligible recipient and/or their designee(s); (viii) create and provide copies of the Company Data in the format and on the media reasonably requested by Company an eligible recipient and/or their designee(s), and agreed to by Provider, (ix) provide a complete and up-to-date, electronic copy of the non-proprietary Policy and Procedures Manual and applicable business processes, work instructions and work procedures used in the performance of the Services by Provider in the format and on the media reasonably requested by Company and agreed to by Provider; and (x) provide other technical assistance requested by Company as long as it does not disclose to a competitor of Provider, Provider proprietary information, processes equipment, materials, tools, systems, software or software logic/ code,.

· Hiring.

o Company, the eligible recipient(s) and/or their designee(s) shall be permitted to undertake, subject to Provider's approval, which shall not be unreasonably withheld, to hire, effective after the later of the expiration or termination of the Agreement or completion of any Termination Assistance Services Agreement any Provider Personnel primarily assigned to the performance of Services during the twelve (12) months preceding the expiration or termination date. Provider shall retain the right to provide an offer to any management personnel that Provider may need for other Provider operations. Provider shall waive, and shall request its Subcontractors and Affiliates to waive, their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by Company, the eligible recipient(s) and/or their designee(s). Provider shall provide Company, the eligible recipient(s) and/or their designee(s) with reasonable assistance in their efforts to hire such Provider Personnel, and shall give Company, the eligible recipient(s) and/or their designee(s) reasonable access to such Provider Personnel for interviews, evaluations and recruitment to the extent

allowed by law. Company shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive of the performance by Provider of its obligations under this Agreement.

- o With respect to Subcontractors, Provider shall use commercially reasonable efforts to (A) obtain for Company, the eligible recipient(s) and their designee(s) the rights to hire as stated in a. above, and (B) ensure that such rights are not subject to subsequent Subcontractor approval or the payment by Company, the eligible recipient(s) and/or their designee(s) of any fees unless required by an existing subcontractor agreement.

· Upon termination of the Agreement, at Company's request, Provider shall provide Company with a listing of all subcontracts and third party contracts used by Provider, Provider's subcontractors or Provider's affiliates to perform the Services. Provider shall, at Company's request, use commercially reasonable efforts to cause any such subcontractors, Provider affiliates, or third party contractors to permit Company, the eligible recipient(s) and/or their designee(s) to assume prospectively any or all such contracts or to enter into new contracts with Company, the eligible recipient(s) and/or their designee(s) on substantially the same, or more favorable, terms and conditions, including price. If the subcontractors and third party contract parties agree to the transfer to Company, an eligible recipient, and/or their designee(s), Provider shall undertake all steps necessary to affect such transfers in a commercially reasonable time frame. Provider shall use commercially reasonable efforts to obtain the right to assign all necessary contracts without the imposition of a charge or fee imposed on Company, the eligible recipient(s) and/or their designee(s). At the time of any such transfer, Provider shall: (i) represent and warrant that it is not in default under such subcontracts and third party contracts and that all payments have been made thereunder through and including the date of assignment; and (ii) notify Company of any subcontractor's or third party contractor's default with respect to such transferred contracts of which Provider is aware at the time of the transfer.

For the avoidance of doubt, it is understood and agreed that, nothing contained herein shall prevent Company, the eligible recipients or their designee(s) from contracting directly or indirectly with any subcontractor or third party utilized by Provider, Provider's subcontractors or Provider's affiliates to perform any Services.

· Except as provided in the Pricing Model, any agreed upon Termination Assistance Services beyond the billable events covered in the Pricing Model will be billed to Company at Provider's cost plus twelve percent (12%).

With respect to all equipment leases and third party contracts, including software licenses, necessary to perform the Services and for which Provider is financially responsible, Provider shall use commercially reasonable efforts to: (i) obtain for Company, the eligible recipients and/or their designee(s) any and all license, sublicense, assignment or other rights required for Company, the eligible recipients and/or their designees(s) to assume such leases or contracts; (ii) ensure that the granting of such license, sublicense, assignment or other rights is not subject to subsequent third party approval or the payment by Company, the eligible recipients and/or their designee(s) of license, assignment or transfer fees; and (iii) ensure that the terms,

conditions and prices applicable to Company, the eligible recipients and/or their designee(s) following their assumption of the leases or contracts are no less favorable than those otherwise applicable to Provider, and are sufficient to enable the uninterrupted continuation of the activities comprising the Services. As part of the Termination Assistance Services, Provider shall supply to Company, the eligible recipients and/or their designee(s) the following :

1. Company Owned and Developed Materials. With respect to software or related materials owned or licensed by Company prior to the commencement of this SOW and/or software or related materials created for and paid or by Company as part of the Services hereunder ("Company Owned Material), Provider shall, at no cost to Company:
 - o Deliver to Company or any third party designated by Company any and all Company Owned Materials and all copies thereof in whatever form or medium available, including that used by Provider in connection with the Services as of the date of such expiration or termination; and
 - o Following confirmation by Company that the copies of the Company Owned Materials delivered by Provider are acceptable and in good working order, and upon completion by Provider of any Termination Assistance Services for which such Company Owned Materials are required, Provider shall destroy or securely erase all other copies of such Materials then in Provider's possession and cease using such Materials and any information contained therein for any purpose.

2. Provider Owned Materials shall mean any software and related materials owned or developed by Provider, without payment from Company: (i) prior to the effective date of this SOW, or (ii) outside of the scope of the Services. Company acknowledges and agrees that it has no right, title or interest in or to any Provider Owned Materials.

3. Third Party software – Company acknowledges and agrees that it has no right, title or interest in or to any third party software used in the performance of Services hereunder except those that may be granted in any sublicense from Provider or in a separate license obtained by Company from the owner or an authorized supplier of such third party software. Company further acknowledges that upon termination or expiration of this SOW or the Agreement, Provider shall be under no obligation to transfer or otherwise assign its rights in any such third party software to Company or any Company designated party.

4. The Parties intend, as of the effective date of this SOW, that Provider Owned Software as embodied in the _____ system as the (WMS"). The Parties agree that the _____ system is Provider Owned Material as that term is defined herein. Should Company desire to continue to use _____ for any reason after termination or expiration of this SOW or the Agreement, the Parties will negotiate in good faith to enable Company to license _____, and any other Provider Owned Materials necessary to the proper functioning of _____, for continued use. Any such license shall include the right for Company to sublicense the Provider Owned Materials to a Company designated third party, in Company's sole discretion.