



FINAL JULY 15, 2013

MORNEAU SHEPELL LIMITED

- and -

**THE RETIREMENT BOARD OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE
STATE OF RHODE ISLAND, and THE MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND**

APPLICATION SERVICE PROVIDER AGREEMENT

July 15, 2013

TABLE OF CONTENTS

TABLE OF EXHIBITS AND SCHEDULES	ii
APPLICATION SERVICE PROVIDER AGREEMENT	1
Article 1 Definitions	2
Article 2 Engagement of Morneau Shepell for Services	
Article 3 Grant of License	
Article 4 Acceptance of Deliverables	
Article 5 Changes to Contract	
Article 6 Payment to Morneau Shepell	
Article 7 Intellectual Property Ownership	
Article 8 Confidentiality	
Article 9 Covenants, Representations and Warranties	
Article 10 Indemnities, Limitation of Liability and Insurance	
Article 11 Dispute Resolution	
Article 12 Term and Termination	
Article 13 Defaults	
Article 14 General	
14.1 Force Majeure	
14.2 Subcontractors	
14.3 Assignment	
14.4 Conflict of Interest	
14.5 Notices	
14.6 Counterparts and Facsimile Signature	
14.7 Relationship	
14.8 Publicity/Non-Disparagement	
14.9 Severability	
14.10 Waiver	
14.11 Entire Agreement	
14.12 Amendments	
14.13 Governing Law	
14.14 Further Assurances	
14.15 Binding Effect	
14.16 Time of the Essence	

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A	Morneau Shepell Key Personnel
Exhibit B	Requirements Tracking Matrix
<u>Schedule A</u>	Morneau Shepell Software, Implementation Services and Other Deliverables
<u>Schedule B</u>	Subcontractor Services and Third-Party Software
<u>Schedule C</u>	Implementation Workplan
<u>Schedule D</u>	Solution Development
<u>Schedule E</u>	Acceptance Specifications/User Acceptance Testing
<u>Schedule F</u>	Project Payments & Fees
<u>Schedule G</u>	Change Order Procedures and Time & Materials Rates
<u>Schedule H</u>	Training, Hosting and Support Services
<u>Schedule I</u>	Project Documentation
<u>Schedule J</u>	Adjusted Assumptions Applicable to Agreement

APPLICATION SERVICE PROVIDER AGREEMENT

THIS AGREEMENT is made as of the 15th day of July, 2013.

BETWEEN:

MORNEAU SHEPELL LIMITED, a company incorporated under the laws of Delaware (“**Morneau Shepell**”)

- and -

THE RETIREMENT BOARD OF THE EMPLOYEES’ RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND AND THE MUNICIPAL EMPLOYEES’ RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND, both established under the laws of Rhode Island (sometimes referred to hereinafter as the “**Board**” or “**ERSRI**”). For purposes of this Agreement, Morneau Shepell and/or ERSRI may each be referred to hereafter as a “party,” or collectively as “the parties.”

BACKGROUND:

- Morneau Shepell offers Application Service Provider (“**ASP**”) and co-sourcing models as administration solutions in providing administration services for retirement programs.
- Morneau Shepell administers pension and health & welfare plans in the United States and provides administrative solutions for both active employee and retired members (“**Benefits Administration**”)
- Morneau Shepell’s business includes the licensing of software tools that are used to assist in Benefits Administration.
- The Board administers retirement programs for (i) certain employees of the State of Rhode Island, (ii) certain teachers employed by Local Educational Units in the State of Rhode Island, and (iii) certain municipal employees of participating municipalities in the State of Rhode Island.
- ERSRI wishes to retain Morneau Shepell to provide an ASP administration solution for its retirement programs.
- ERSRI wishes to obtain a license from Morneau Shepell to utilize the Software and Third Party Software and engage Morneau Shepell to provide Implementation, Hosting and Maintenance Services all on the terms and conditions set forth in this Agreement.

**ARTICLE 1
DEFINITIONS**

1.1 **Definitions**

Unless the context otherwise specifies or requires, for the purposes of this Agreement all capitalized terms set out herein shall have the meanings set forth below:

“**Acceptance**” refers to the procedure for testing and acceptance of the Software more particularly set out in Schedule E;

“**Acceptance Date**” means the date on which ERSRI issues a Certificate of Acceptance;

“**Account Administrator**” has the meaning set out in Section 2.2(c);

“**Administrator’s Logon**” has the meaning set out in Section 2.2(c);

“**Agents**” has the meaning set out in Section 8.4;

“**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions mean this Agreement along with all Schedules, Exhibits attached hereto, Change Orders, and all other purchase order(s), written contract(s), agreement(s), statement(s) of work that may be annexed to this Agreement from time to time, and as may be amended from time to time;

Ariel[™] – means the following *Ariel[™]* software modules: Ariel DB Pension and Ariel Health and Welfare;

“**Business Day**” means a day on which the head offices of both parties are open for business, and shall not include a Saturday, Sunday, federal holiday, or state holiday in Rhode Island;

“**Business Information**” means all

- (i) financial, business and personal information and data, in any form, relating to ERSRI and Morneau Shepell and their respective customers, clients, affiliates, consultants and employees;
- (ii) products and services supplied by ERSRI and Morneau Shepell and their respective affiliates;
- (iii) business and marketing plans and strategies of ERSRI and Morneau Shepell;
- (iv) studies, ERSRI lists, charts, plans, tables and compilations of business and industry information acquired or prepared by or on behalf of ERSRI and Morneau Shepell; and
- (v) any other information not specifically identified above pertaining to the business or business operations of ERSRI and Morneau Shepell;

“**Certificate of Acceptance**” means a notice issued by ERSRI (i) indicating that ERSRI has completed its testing of the Software for a Release, and (ii) identifying the corrections that Morneau Shepell must implement prior to issuance of a Certificate of Completion for such Release;

“Certificate of Completion” means a notice issued by Morneau Shepell and acknowledged and accepted in writing by ERSRI indicating that the Software and Hosting Services for a Release are complete and ready for use as a retirement program administration solution in accordance with the Specifications for such Release;

“Certificate of Installation” means a notice issued by Morneau Shepell indicating that the Software and Services for a Release are ready for examination and testing preliminary to Acceptance, as set out in Schedule E;

“Changes” means additions, removal and/or substitution of text and/or graphics content in Deliverables, changes in features, complexity or nature of Deliverables or Services or the functionality of the Software;

“Change Order” means an accepted Change Request executed by the parties constituting a direction for Morneau Shepell to prepare Changes;

“Change Request” means a request for Changes issued by ERSRI pursuant to Article 5;

“Completion Date” means the date upon which the parties have jointly executed a Certificate of Completion for a Release;

“Computer Technology” means all scientific and technical information or material pertaining to any machine, appliance or process utilized in connection with the ASP administration solution provided by Morneau Shepell under the terms of this Agreement, including specifications, proposals, models, designs, formulae, test results and reports, analyses, simulation results, tables of operating conditions, materials, components, industrial skills, operating and testing procedures, shop practices, know-how and show-how;

“Confidential Information” means the provisions of this Agreement and all information contained in any form whatsoever (a) that is not generally available to or used by others; (b) that is supplied by and designated as Confidential by either ERSRI or Morneau Shepell; (c) the utility or value of which is not generally known or recognized, whether or not the underlying details are in the public domain; and/or (d) that is acquired or developed by or on behalf of either of the parties from time to time and that is disclosed or made available by a Disclosing Party to a Receiving Party in connection with this Agreement or the performance of obligations hereunder, and includes (i) in the case of ERSRI, all ERSRI Business Information, and, (ii) in the case of Morneau Shepell, all Morneau Shepell Business Information, Software and Computer Technology, whether patentable or not;

“Default” has the meaning set out in Article 13;

“Deliverable” means any item identified as a Deliverable in Schedule A or a Change Order.

“Disclosing Party” means a party to this Agreement that discloses, either directly or through agents, Confidential Information to a Receiving Party;

“Downtime” means a period of time when the Website is unavailable to ERSRI (internal users or external users, such as employers or members);

“Effective Date” shall mean July 1, 2013;

“Electronic Communications” has the meaning set out in Section 2.2(f);

“ERSRI Materials” has the meaning as set out in Section 7.1(b);

“ERSRI Supplied Data” means the data inputted or supplied by ERSRI from time to time using the Software and Hosting Services, including historical data that requires conversion, and which shall be part of the Confidential Information;

“Escrow Agreement” has the meaning set out in Section 2.2(h);

“Executives” has the meaning set out in Section 11.1;

“Fees” means the fees to be paid to Morneau Shepell by ERSRI pursuant to Section 6.1 and Schedule F for the licenses granted and the Services performed pursuant to this Agreement;

“Force Majeure Event” has the meaning ascribed thereto in Section 14.1;

“Hardware” means computer and computer related hardware specified or approved by Morneau Shepell for the purposes of operating the Software and the Website;

“Hosting Services” means the hosting of the Software and Data on the servers of Morneau Shepell and providing access thereto to ERSRI through an Internet connection;

“Implementation Services” means those implementation services set out in Schedule A attached hereto;

“Installation Date” means the date on which Morneau Shepell issues a Certificate of Installation;

“Key Personnel” has the meaning ascribed thereto in Section 2.4, and Morneau Shepell Key Personnel are identified in Exhibit A;

“Licenses” means all software and other licenses granted to ERSRI by Morneau Shepell or third parties in connection with the Software;

“Licensed Users” mean those persons who are authorized by ERSRI to access the Software and, via the Hosting Services, in accordance with this Agreement and more particularly described in Schedule A attached hereto;

“Maintenance and Support Services” means the activities set out in Schedule H attached hereto;

“Material Breach” has the meaning ascribed thereto in Section 13.1;

“Primary Use Hours” means the range of hours each Business Day that ERSRI uses the Website or Software, and defined here as 6:00 a.m. – 10:00 p.m. Eastern Time, Monday through Friday.

“Project Manager(s)” has the meaning set out in Section 11.1;

“Project Documentation” means all written manuals, documents, drawings or other tangible items pertaining to the administration solution to be provided by Morneau Shepell to ERSRI under this Agreement, including but not limited to the items listed in Schedule I attached hereto;

“Receiving Party” means a party to this Agreement that receives Confidential Information from a Disclosing Party pursuant to Article 8 hereof;

“Release” means a Release of Software and/or Services as set out in Schedule A, as may be amended from time to time and collectively referred to as **“Releases”**;

“Services” means the:

- a) Implementation Services;
- b) Hosting Services; and
- c) Maintenance and Support Services;

to be provided by Morneau Shepell to ERSRI pursuant to the provisions of this Agreement, as more particularly described in Schedules A and H attached hereto, and any other services described in a Change Order;

“Software” includes the Morneau Shepell software listed in Schedule A;

“Source Code” means the then-current version of the ASP administration solution, including but not limited to the Software (and/or Third-Party Software) and the proprietary tools incorporated in or used to generate the ASP administration solution, all in human readable form;

“Specifications” means the technical, functional, operational, performance or other relevant specifications or requirements of the Software, as set forth in the Workbook and/or otherwise identified as “Specifications” by the parties in writing in accordance with any Exhibit or Schedule attached hereto and made a part hereof;

“Suits” has the meaning set out in Section 9.1(f);

“Term” has the meaning set out in Section 12.1;

“Termination Date” shall be the date that is ten years after the Completion Date of the last Release;

“Third Party Software” includes the third party software listed in Schedule B;

“Time and Materials Rates” means the time and materials rates charged from time to time by Morneau Shepell to its clients (as set forth herein in Schedule F), as such rates may be adjusted from time to time by Morneau Shepell, acting reasonably and upon written notice to ERSRI;

“Transition Plan” has the meaning set out in Section 12.5;

“User Acceptance Testing (“UAT”) Deliverables” means delivery of the items as set out in Schedule A, and subject to the user and testing procedures set forth in Schedule E;

“Website” refers to the web site that is hosted by Morneau Shepell for access by ERSRI;

“Workbook” means the workbook to be prepared as part of the Implementation Services, as mutually agreed by the parties acting reasonably, and more particularly referenced in Schedule C.

1.2 Construction of Agreement

In this Agreement:

- (a) all usage of the word “including” or the phrase “e.g.,” in this Agreement shall mean “including, without limitation,” throughout this Agreement;
- (b) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (c) the division of this Agreement into separate Articles, Sections, Subsections, Exhibits and Schedule(s), the provision of a table of contents, a table of Exhibits and Schedules, and the insertion of headings is for convenience of reference only, and shall not affect the construction or interpretation of this Agreement; and
- (d) the terms and conditions hereof are the result of negotiations between the parties and this Agreement shall not be construed in favor of or against any party by reason only that a party or its professional advisors participated in the preparation of this Agreement.

1.3 Schedules, Exhibits, and Other Documents Incorporated by Reference

- (a) Schedules and Exhibits to this Agreement are incorporated herein by reference and will be deemed to be a part hereof. The provisions of Sections 1.1 and 1.2 shall apply *mutatis mutandis* to any amendment, supplement or addendum to any Schedule or Exhibit required to be delivered pursuant to the provisions hereof.
- (b) In the event that there is a conflict or ambiguity within the text of this Agreement and any other incorporated documents, the order of precedence shall be: First, the executed Agreement and Second, any incorporated Schedules and/or Exhibits.
- (c) Morneau Shepell’s assumptions relating to the Services and Fees are set forth in Schedule J to this Agreement.
- (d) The parties agree that Exhibit B will initially be comprised of (i) the ERSRI Request for Proposal for Pension Administration System Modernization No. 2011-001 (the “RFP”) and amendments 1,2,3 and 4 and (ii) Morneau Shepell’s Technical Proposal submitted September 9, 2011, in response to the RFP. Within 120 days of the date of execution of this Agreement, or such other reasonable time the Parties agree, the foregoing RFP and Technical Proposal shall be removed and replaced by a Requirements Tracking Matrix which will be developed by the Parties commencing on or before execution of this Agreement.

ARTICLE 2
ENGAGEMENT OF MORNEAU SHEPELL FOR SERVICES

2.1 Engagement

ERSRI hereby engages Morneau Shepell to provide the Services as set out herein and as more particularly described in the Schedules attached hereto, and Morneau Shepell hereby agrees to provide the Services in accordance with this Agreement.

2.2 Obligations of Morneau Shepell and ERSRI

- (a) The Services relating to each Release to be provided by Morneau Shepell shall be as follows:
- (i) Consistent with the Implementation Workplan (Schedule C), Morneau Shepell shall provide the Implementation Services during the implementation phase commencing July 1, 2013, up to and including the applicable Release Completion Date in accordance with Schedules A through G;
 - (ii) When Morneau Shepell has developed and installed the Software and Services for a Release, it shall issue to ERSRI a Certificate of Installation;
 - (iii) Upon issuance of the Certificate of Installation, ERSRI shall conduct examination and testing in accordance with the installation and user acceptance tests for the Release set forth in Schedules D and E;
 - (iv) Upon completion of the testing phase, ERSRI shall issue a Certificate of Acceptance specifying all corrections which Morneau Shepell shall make relating to the Release prior to the issuance of a Certificate of Completion;
 - (v) After Morneau Shepell has made all corrections to the installed Software and Services for the Release, Morneau Shepell shall issue a Certificate of Completion, which, when accepted in writing by ERSRI, shall mean that the implementation phase for the Release shall be complete; and
 - (vi) Commencing after the applicable Release Completion Date, Morneau Shepell shall provide the Hosting Services, Maintenance and Support Services, and final versions of Project Documentation, in accordance with Schedules H and I.
- (b) ERSRI shall be responsible for, and Morneau Shepell assumes no liability in respect of, the accuracy and completeness of the ERSRI Supplied Data.
- (c) Morneau Shepell will issue to one or more Licensed Users as specified by ERSRI (“**Account Administrators**”) an individual logon identifier and password (“**Administrator’s Logon**”) for purposes of administering access to the Services and the Software. ERSRI acknowledges and agrees that only its Account Administrator shall be authorized to bind ERSRI in connection with any Services provided to ERSRI. Using Administrator’s Logon, the Account Administrator shall assign each remaining Licensed User a unique logon identifier and password and assign, manage and control each such Licensed User’s access to the Services. ERSRI shall be responsible to ensure that each Licensed User will:

- (i) be responsible for the security and/or use of his or her logon identifier;
 - (ii) not disclose such logon identifier to any person or entity;
 - (iii) not permit any other person or entity to use his or her logon identifier; and
 - (iv) use the Services in a manner that is consistent with, and permitted under this Agreement.
- (d) ERSRI will also be responsible for:
 - (i) advising each Licensed User of his or her obligations under this Agreement and of the license restrictions set forth herein; and
 - (ii) any and all costs and expenses incurred through the use of ERSRI's logon(s).
- (e) Morneau Shepell reserves the right to deny, suspend, or revoke access to the Services or the Software, in whole or in part, upon thirty (30) days advance written notice to ERSRI, if ERSRI, and/or its Licensed Users are in Material Breach of this Agreement or are using the Services or Software in a manner inconsistent with the permitted uses under this Agreement. Any such notice shall specify in detail the alleged Material Breach or improper use, and such notice shall be withdrawn if ERSRI cures the Material Breach within said thirty-day period (the "cure period") or, during the cure period, initiates a cure and thereafter proceeds with reasonable diligence to complete the cure. In the event that Morneau Shepell desires to terminate this Agreement as a result of any alleged Material Breach or unpermitted use of the Software or Services, it shall comply in all respects with Articles 12 (Termination) and 13 (Default) below. In the event that ERSRI disputes the existence of a Material Breach or occurrence of an unpermitted use, said dispute shall be resolved in accordance with Article 11 (Dispute Resolution) below.
- (f) ERSRI will be responsible for all electronic communications, including account registration and other account holder information, e-mail and financial, accounting and other data ("**Electronic Communications**") entered through or under ERSRI access number(s), logon(s), password(s), or account number(s). Morneau Shepell will act as though any Electronic Communications it receives under ERSRI's access number(s), password(s) or account number(s) has been sent by ERSRI. ERSRI agrees to notify Morneau Shepell immediately if ERSRI becomes aware of any change, loss, theft or unauthorized use of any of ERSRI access number(s), password(s), logon(s) and/or account number(s). The security of the ERSRI Supplied Data shall be maintained through the use of industry acceptable data encryption, data security protocols, passwords and/or other methods, as such methods may, from time-to-time, be approved by the National Institute for Standards and Technology ("**NIST**") or other equivalent authority.
- (g) The Services allow ERSRI to send Electronic Communications directly to Morneau Shepell and interact within applicable areas of the Services. Electronic Communications include the ERSRI Supplied Data. ERSRI acknowledges and agrees to the following with respect to use of Electronic Communications through the Services:
 - (i) Morneau Shepell shall be entitled, but is not obligated, to review or retain ERSRI's Electronic Communications for ERSRI compliance with this Agreement and to verify the security of the Services. Morneau Shepell, upon reasonable advanced written notice and written consent from ERSRI, may also review or retain Electronic Communications for other reasons, which Morneau Shepell believes in good faith, will improve the quality of the Services;

- (ii) Subject to the Confidentiality provisions of this Agreement (Article 8 below), Morneau Shepell may disclose Electronic Communications, if required to by law or in the good faith belief that such disclosure is reasonably necessary to:
 - (A) comply with legal, judicial or other governmental process;
 - (B) enforce this Agreement;
 - (C) respond to claims that any Electronic Communications violate the rights of third parties, or
 - (D) protect the rights, property, or personal safety of Morneau Shepell; and

provided, however, that Morneau Shepell shall not disclose any Electronic Communications without first notifying ERSRI reasonably in advance of such disclosure.

- (iii) Neither ERSRI nor Morneau Shepell will use any Electronic Communications for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening;
- (iv) Neither ERSRI nor Morneau Shepell will upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights, and in no event shall either party upload, introduce or transmit in, to or through the Website any viruses, worms, trap door, back doors, timers, clocks, counters or other limiting, harmful or destructive routines, instructions, files or designs;
- (v) ERSRI shall not provide, disclose, divulge or make available to or permit use (directly or indirectly) of the Software or Services by, any third party without Morneau Shepell's prior written consent;
- (vi) ERSRI agrees to provide Morneau Shepell with ERSRI's e-mail address(es), promptly provide Morneau Shepell with any changes to ERSRI's e-mail address(es) or relevant personnel changes and accept Electronic Communications from Morneau Shepell at the e-mail address(es) ERSRI specifies; and
- (vii) ERSRI understands that the technical processing and transmission of the Services, including ERSRI's Electronic Communications, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices; provided, however, that such transmissions shall, in all instances, be subject to and comply with any applicable security protocols as set forth in this Agreement.

- (h) **Source Code Escrow Agreement, Compiled Version of Application, and Periodic Return of ERSRI Supplied Data.** Morneau Shepell and ERSRI shall enter into a Source Code escrow agreement in the form and substance satisfactory to Morneau Shepell and ERSRI, acting reasonably ("**Escrow Agreement**"), requiring Morneau Shepell, upon the occurrence of any event set forth in said Escrow Agreement, to allow ERSRI to access the Source Code for the Software. In addition, subject to such Escrow

Agreement, Morneau Shepell shall provide the escrow agent with a locally installable, compiled version of the application(s) (including all upgrades to the core platform) comprising the Software. Morneau Shepell shall also provide to the escrow agent in accordance with the Escrow Agreement, at intervals to be agreed upon by the parties, a duplicate copy of the ERSRI Supplied Data, including but not limited to accounting and CRM data, Ceridian data, and tax data and Morneau Shepell shall charge a fixed fee for such service which will be outlined in Schedule F. The parties shall comply with the terms of the Escrow Agreement and ERSRI shall be responsible to pay all escrow fees and any related costs.

- (i) **Optional Health & Welfare Services.** In connection with its Technical Proposal submitted to ERSRI, Morneau Shepell proposed to provide health insurance enrollment and administration services to ERSRI or an affiliate. ERSRI has informed Morneau Shepell that health insurance enrollment and administration for participants in ERSRI's retirement programs is currently administered by the State of Rhode Island Department of Administration ("RIDO"). In the event that RIDO desires to include health insurance enrollment and administration in the Services to be provided by Morneau Shepell, then ERSRI (or RIDO) shall notify Morneau Shepell thereof in writing on or before July 1, 2014 and Morneau Shepell and RIDO shall enter into a written agreement on terms and conditions which shall, in all material respects be substantially similar to the terms and conditions of this Agreement and the health insurance enrollment and administration services as specified in Morneau Shepell's Technical Proposal (including but not limited to Section 1.3.5 thereof) at the prices specified in Schedule F. Upon receipt of such notice, Morneau Shepell shall commence the implementation of the health insurance enrollment and administration software and services as outlined in such agreement. For greater certainty, the contracting parties for any such agreement, amendment or supplement shall be RIDO and Morneau Shepell, and ERSRI shall not receive any benefit or incur any obligation in relation thereto.

2.3

Policies

- (a) If any Morneau Shepell employees or subcontractors are on-site on ERSRI's premises, such employees and subcontractors will adhere to ERSRI's workplace policies as described below:
 - (i) **Background Check** – Morneau Shepell shall provide proof, via Bureau of Criminal Investigation check or similar, from any jurisdiction where such employees or subcontractors reside, that all staff and subcontractor staff that perform work on-site have recently undergone a successful background check.
 - (ii) **Building Access** –Any Morneau Shepell or subcontractor employees that work on-site at ERSRI premises shall be subject to ERSRI building access rules. The ERSRI Project Manager shall be responsible for allocating building access, equipment access, and any other necessary services available from ERSRI which may be used by Morneau Shepell and its subcontractors. Any use of ERSRI facilities, equipment, internet access, and/or services shall only be for the purpose of providing the Services hereunder as authorized by the ERSRI Project Manager, and ERSRI may require, at its sole discretion acting reasonably, that any persons having access shall confirm in writing that such persons shall comply with any and all applicable access policies.

2.4 Morneau Shepell Key Personnel

Morneau Shepell shall staff the Services to be provided under this Agreement with a core team of development professionals as set forth in Exhibit A.

ARTICLE 3 GRANT OF LICENSE

3.1 Grant of License

- (a) Morneau Shepell hereby grants ERSRI a limited, revocable (subject to the limited grounds for revocation, and upon the conditions for revocation set forth herein), non-transferable and non-exclusive license to access, and to grant the Licensed Users access to, the Software and the Third Party Software in connection only with the administration of ERSRI's own retirement programs as set out in this Agreement during the Term of this Agreement. Other than the Fees outlined in Schedule F, Morneau Shepell shall be responsible for all costs associated with the grant of any license hereunder, and shall keep all licenses current and paid up to date. The license granted to ERSRI to use the Software and Third Party Software terminates upon termination or expiration of this Agreement. Morneau Shepell retains all rights in the Software not specifically granted herein to ERSRI.
- (b) ERSRI does not have the right to reverse engineer, disassemble, decompile, unlock, recreate, copy, license, sublicense, create derivative software from, sell, rent, lease, loan, distribute, transfer or otherwise deal with the Software or Third Party Software or any part thereof.

ARTICLE 4 ACCEPTANCE OF DELIVERABLES

4.1 Acceptance of the Deliverables

Acceptance of the Deliverables, to include the Software, Services and UAT Deliverables, shall be subject to the user testing and acceptance process set out in Schedules D and E.

ARTICLE 5 CHANGES

5.1 Change Requests

- (a) ERSRI may, at any time, issue a Change Request to Morneau Shepell in respect of any proposed Changes, in accordance with the following provisions and the provisions of Schedule G. The parties shall analyze the impact that any such Change will have on the project timeline.
- (b) The parties shall jointly determine the fee payable to Morneau Shepell for the requested Changes, as well as a detailed description of the Changes and their impact on the project milestones and timelines. Both parties shall cooperate reasonably in negotiating an agreed fee for any proposed Changes. If the parties are not able to agree, ERSRI may, if it still wishes to obtain the Changes, either (i) elect to order the Changes at the Time and Materials Rates, or (ii) have the Change fee determined through mediation in accordance

with the Dispute Resolution procedure below in Article 11.1(c) after first exhausting the Dispute Resolution procedures outlined in Subsections 11.1(a) and (b). Any such Change Fee mediation shall be binding.

5.2 Report by Morneau Shepell Where Time and Materials Rates Utilized

- (a) Upon the election of ERSRI to obtain Changes at the Time and Materials Rates, Morneau Shepell shall forthwith provide to ERSRI a non-binding, good faith estimate of the cost of implementing the Changes set out in the Change Request and an evaluation of the extent to which, if any, the implementation of such Changes would result in a change to the functionality of the Software.
- (b) Such information shall provide an estimate concerning the length of time and the costs resulting from such Change Request and shall be sufficient to permit informed evaluation by ERSRI.
- (c) Within 10 days of receipt of such information (or such longer period as reasonably required by ERSRI and notified by ERSRI to Morneau Shepell in writing), ERSRI shall advise Morneau Shepell whether or not it wishes to proceed with the Changes, and if so, then the parties shall negotiate a written Change Order.

5.3 Change Orders

Where a Change Request proceeds, it shall be constituted as a Change Order. Such Change Order shall be in writing and executed by the parties and contain:

- (a) a detailed description of the proposed Changes, the price or fee arrangement therefor, and a project plan relating to the implementation of such Changes;
- (b) any related changes to the Software and/or the Maintenance process; and
- (c) any impact on Hosting Service Fees or Maintenance and Support Services Fees.

An executed Change Order shall be deemed to amend the Agreement as of the date set out therein.

5.4 Duty of Morneau Shepell

Morneau Shepell agrees that it shall use commercially reasonable efforts to implement any Changes requested by ERSRI, and shall only be entitled to refuse to implement a requested Change where the proposed Change is not technically feasible to implement, taking into consideration the limitations of any of the Software, the Hardware or any communications technology, or where Morneau Shepell reasonably believes that the implementation of the Change Order would have a material adverse effect on Morneau Shepell's ability to provide Maintenance or would result in a breach of the intellectual property rights of any third party or a breach of Morneau Shepell's security measures.

5.5 Compliance

The parties shall perform such responsibilities as are required to be performed by them under any Change Order, as if the matters referred to therein had appeared in and been part of this Agreement.

ARTICLE 6
PAYMENT TO MORNEAU SHEPELL

6.1 **Payment to Morneau Shepell**

The total Fees to be paid to Morneau Shepell by ERSRI for the Software, Implementation Services, Hosting Services, and Maintenance and Support Services under this Agreement shall be \$ 21,430,300, unless otherwise agreed to by the parties in writing as an amendment to this Agreement. Payment shall take place as follows

- (a) In consideration of the provision of the Implementation Services, the grant of license for the Software and Third Party Software, and the provision of the Services by Morneau Shepell under this Agreement, ERSRI shall pay to Morneau Shepell the Fees described in Schedule F, when and as same shall become due.
- (b) In consideration for the performance by Morneau Shepell of its obligations under each Change Order, the applicable Change Order fees will be payable in accordance with the terms of each Change Order.
- (c) To the extent applicable or required by law, ERSRI shall pay all applicable federal, state and local taxes on all Fees or other charges, but shall not be responsible to pay any taxes on Morneau Shepell's income.
- (d) Fees are payable within 30 days of invoice date. ERSRI shall pay interest to Morneau Shepell on overdue accounts at the rate of 1 percent per month (12 percent per annum).
- (e) The Fees listed in Schedule F do not include any transition service fees associated with transition services which may be required upon expiration or termination of this Agreement. Such transition fees shall be negotiated by the parties at the applicable time and shall be outlined in a Change Order.

6.2 **On-Site Audit**

ERSRI shall have the right, at Morneau Shepell's premises at any time during business hours, on 30 days' written notice, for up to three (3) Business Days, (based on an eight hour day during regular business hours of Morneau Shepell) per calendar year, to conduct an audit (i) to confirm that security and data protection protocols utilized by Morneau Shepell comply with NIST or other industry acceptable standards; (ii) to verify Fees invoiced to ERSRI pursuant to this Agreement; or (iii) to satisfy ERSRI's own audit or governance and oversight requirements. If ERSRI requires more than three (3) Business Days per calendar year or if Morneau Shepell is required to produce special reports as part of the audit process, Morneau Shepell will have the right to charge for this function at an agreed-upon rate.

Morneau Shepell shall have the right to refuse the use by ERSRI of any particular auditor or firm, provided that it has reasonable grounds for doing so, including that such firm is a competitor of Morneau Shepell. Morneau Shepell shall be provided with any draft findings, reports, or observations and have a reasonable period of time to respond thereto. Upon the conclusion of an audit, a copy of any findings, reports or observations shall be provided to Morneau Shepell.

In the event that, as a result of any such audit, ERSRI identifies any issue which, in ERSRI's reasonable judgment, is deficient, or requires improvement, then ERSRI shall promptly notify Morneau Shepell of same in writing, such notice to include ERSRI's requirements for correcting any such

deficiency. Within thirty (30) Business Days of receipt of such notice, Morneau Shepell shall confirm in writing that it will promptly implement such corrective measure, or shall notify ERSRI of its disagreement with said requirements. In the event of disagreement between the parties, the dispute shall be resolved in accordance with Article 11 (Dispute Resolution).

ARTICLE 7 INTELLECTUAL PROPERTY OWNERSHIP

7.1 Intellectual Property

Morneau Shepell will own all the technology and information, excluding ERSRI Supplied Data, involved or contained in the Deliverables, Software, the Services or any Changes, including the look and feel, the database designs, the architecture of the technology, and any elements of the technology that are intrinsic to the Software. Therefore, subject to the foregoing:

- (a) the parties acknowledge that, as between ERSRI and Morneau Shepell, the following are included in the intellectual property of Morneau Shepell:
 - (i) the Software;
 - (ii) the Deliverables; and
 - (iii) such portions of the content of the Website as have not been exclusively created or provided by ERSRI; and

- (b) the parties acknowledge that, as between ERSRI and Morneau Shepell, the following, are included in the intellectual property of ERSRI:
 - (i) the ERSRI Supplied Data;
 - (ii) the content of the Licensed Users' personal logs;
 - (iii) Licensed Users' user profiles; and
 - (iv) the trade-marks, if any, of ERSRI used in connection with the Website,(collectively referred to herein as the “**ERSRI Materials**”).

ARTICLE 8 CONFIDENTIALITY

8.1 Confidentiality Covenant

Each party acknowledges that it would be damaging to the other party if its Confidential Information were disclosed to or obtained by third parties. Accordingly, during the term of this Agreement and thereafter, neither party shall disclose any Confidential Information, and shall use commercially reasonable best efforts to prevent the other party's Confidential Information from being disclosed to or obtained by any person or entity for any purpose except as described in this Article 8. Each party's efforts will not be less than those which it takes to prevent disclosure of its own proprietary information of like significance. The parties agree to

comply with all applicable laws with respect to the protection of personal healthcare information of any participant in ERSRI's retirement programs. Notwithstanding anything to the contrary in this Agreement, the parties expressly acknowledge that ERSRI is subject to the Rhode Island Access to Public Records Act, Rhode Island General Laws §§ 38-2-1, *et seq.* (the "**Public Records Act**"), and as such, this Agreement and any documents, records, or communications created in connection with the administration solution and/or the services rendered by Morneau Shepell may be subject to disclosure in accordance with the provisions of said Public Records Act. Notwithstanding the foregoing, ERSRI acknowledges that certain Morneau Shepell Confidential Information is considered by Morneau Shepell not to be a "public record" as defined by the Public Records Act, including trade secrets, proprietary, commercial and financial information of Morneau Shepell and the provisions of this Agreement identified in Schedule K. As such, no proprietary, business and pricing information provided by Morneau Shepell pursuant to this Agreement shall be considered by Morneau Shepell to be a "public record" pursuant to the Public Records Act. If ERSRI is required or requested to produce Morneau Shepell Confidential Information in accordance with the Public Records Act or any other law or regulation, it shall immediately notify Morneau Shepell of such request or requirement in writing, so that Morneau Shepell, if it deems advisable, may either (a) respond to ERSRI or the requesting party regarding such request for Morneau Shepell Confidential Information before it is disclosed or, (b) seek one or more protective orders or other appropriate remedies to prevent or limit such disclosures.

8.2 **Exceptions**

The obligations of confidentiality set out above do not apply to information that:

- (a) is part of the public domain without a breach of this Agreement;
- (b) is obtained by the Receiving Party from a third party who has no obligation of confidentiality to the Disclosing Party; or
- (c) is independently developed or obtained by the Receiving Party without breach of this Agreement.

8.3 **Permitted Disclosure/Legal Process**

It is not a breach of Section 8.1 to disclose Confidential Information required to be disclosed by law, judicial or arbitration process or by governmental authorities, provided that the Receiving Party first gives the Disclosing Party reasonable notice of such law, order or process and takes all reasonable steps to restrict such disclosure and protect the confidentiality to the fullest extent possible.

8.4 **Disclosure to Employees and Agents**

The Receiving Party may only disclose the Disclosing Party's Confidential Information to those of its employees and those of its contractors, agents, suppliers or vendors (the "**Agents**") if and when such employees and Agents:

- (a) have a need to know such information so that the Receiving Party may meet its obligations under this Agreement; and
- (b) are under a written obligation with the Receiving Party to keep confidential such information with terms that are at least as restrictive as the confidentiality provisions set out in this Article 8.

In such case, the Receiving Party will, prior to disclosing the information to such employees and Agents, advise them of their obligations under this Article 8, and for those Agents not already bound by such obligations pursuant to non-disclosure or confidentiality agreements with Morneau Shepell, require the execution of a written confidentiality agreement in compliance with subparagraph 8.4(b).

8.5 Copying of Confidential Information

Neither party shall copy or reproduce the other's Confidential Information except as may be required for the performance of its obligations hereunder. All copies will, on reproduction, contain the same proprietary and confidential notices and legends which appear on the original documents and information.

8.6 Return or Destruction of Confidential Information

Each party, upon the request of the other, shall return all of the other party's Confidential Information and copies in its possession (except for archival copies for business record keeping purposes, as necessary) to the other party or destroy such Confidential Information and copies as directed by the other party and certify their destruction. Upon expiration or termination of this Agreement, each party shall promptly return or destroy (as directed by the other party) the other party's Confidential Information (except for archival copies for business record keeping purposes, as necessary).

8.7 Injunctive Relief

Each party acknowledges and agrees that:

- (a) the restrictions set forth in this Article 8 are reasonable in the circumstances and all defenses to the strict enforcement thereof by the Disclosing Party, other than any applicable exceptions herein, are hereby waived;
- (b) a violation of any of the provisions of this Article 8 will result in immediate and irreparable harm and damage to the Disclosing Party; and
- (c) in the event of any violation of any provision of this Article 8, the Disclosing Party shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

**ARTICLE 9
COVENANTS, REPRESENTATIONS AND WARRANTIES**

9.1 By Morneau Shepell

Morneau Shepell hereby covenants, represents and warrants that:

- (a) Morneau Shepell is a corporation in good standing under the laws of the State(s) in which it is incorporated and has its principal place of business, and is fully authorized to enter into and perform the obligations set forth in this Agreement;
- (b) the Services will be performed by qualified personnel, consistent with industry standards, the Specifications in all material respects, and all provisions of this Agreement and other incorporated documents in all material respects;

- (c) the Deliverables and Services will be provided in all material respects in accordance with the (i) Specifications applicable to each Deliverable or Service listed in Schedule A, and (ii) all provisions of this Agreement and other incorporated documents;
- (d) Morneau Shepell will employ industry standard measures (pursuant to standards promulgated by NIST or other equivalent authority) to protect the Software against unauthorized disclosure and viruses, and will not knowingly insert into the Software any viruses or harmful code that is intended to destroy or corrupt data or disable software or hardware or allow unauthorized or undetected access;
- (e) The performance of Morneau Shepell's obligations under this Agreement shall not materially violate any contract, covenant, law, regulation or other restriction to which it is a party; and
- (f) there is no suit, action, dispute, civil or criminal litigation, claim, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review (the "**Suits**"), pending or, to the best of Morneau Shepell's knowledge, information and belief, threatened against it and relating to the Software, and Morneau Shepell is not aware of any intellectual property rights held by any other person, which would adversely affect the right of ERSRI to obtain and use the Services or to use the Software, nor are there facts known to it which are likely to give rise to any such Suit.

9.2 By ERSRI

ERSRI hereby covenants, represents and warrants that:

- (a) ERSRI is unaware of any circumstances or facts that may constitute evidence that any portion of the ERSRI Supplied Data developed or to be developed by ERSRI or the use thereof contemplated herein does or will violate or infringe upon any copyright, trademark, confidential information or trade secret of any other person or that the Confidential Information utilized by ERSRI in the course of developing any portion of the Website infringes upon the intellectual property rights or confidentiality rights of any other person.
- (b) ERSRI will access the Software and will cause the Licensed Users to access and use the Website in accordance with applicable law and this Agreement and in such manner as not to violate or infringe any copyright, trade-mark, confidential information or trade secret of any other person.

9.3 Express Warranties by Morneau Shepell

Morneau Shepell hereby expressly makes the following warranties:

- (a) The Software shall, in all material respects and at all times as outlined in this Agreement, conform to, and perform in accordance with the Specifications;
- (b) All licenses granted hereunder, including any and all support arrangements for any third-party licenses, shall, at all times, be fully paid up, current, and expressly provide that ERSRI is a permitted licensee (and Morneau Shepell shall, upon request, furnish to ERSRI written evidence thereof);

- (c) The Software and the ERSRI Supplied Data shall, in accordance with industry standards, at all times, be reasonably secure and protected against unpermitted disclosure or third party access; and
- (d) The administration solution provided by Morneau Shepell shall provide for a system of (i) 99% uptime during Primary Use Hours and (ii) 97% uptime overall for all major functions proposed, excluding scheduled Downtime, ERSRI-initiated scheduled Downtime, any Internet Service Provider (ISP) failure or other matters beyond Morneau Shepell's control. In all cases where possible, Morneau Shepell will conduct such activities outside of ERSRI's Primary Use Hours as defined herein. Downtime during Primary Use Hours will be scheduled at least ten (10) Business Days in advance by mutual agreement. Morneau Shepell shall notify ERSRI in writing of any scheduled Downtime in all cases. In the event that required Downtime during non-Primary Use Hours is not known at least 24 hours in advance, notice will be given to ERSRI prior to 4:00 p.m. Eastern Time preceding the non-Primary Use Hours period during which the Downtime will occur. In an emergency situation during Primary Use Hours or non-Primary Use Hours, Morneau Shepell may have to take immediate action to correct a problem and forego the notification obligations in this Section 9.3. In such case, Morneau Shepell will notify ERSRI as soon as possible.

9.4 Exclusion

The representations and warranties contained in this Agreement are in lieu of any other warranties or conditions, express or implied, including, but not limited to, implied warranties or conditions of merchantable quality or fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage of trade, all of which are expressly disclaimed.

9.5 Disclaimer

Subject to this Article 9, Morneau Shepell makes no warranty, express or implied, respecting the codes, programs, systems and/or designs developed, supported and maintained pursuant to this Agreement. Morneau Shepell specifically does not warrant that the Software, Hosting Services, codes, programs, systems and/or designs developed, supported and maintained pursuant to this Agreement will operate uninterrupted or error free.

**ARTICLE 10
INDEMNITIES, LIMITATION OF LIABILITY AND INSURANCE**

10.1 Indemnity by Morneau Shepell – Intellectual Property Infringement

[REDACTED]

10.2 General Indemnity by Morneau Shepell

[REDACTED]

10.3 General Indemnity by ERSRI

ERSRI agrees to indemnify, defend, and hold harmless Morneau Shepell, its officers, directors, managers, employees, agents, elected and appointed officials, from and against any and all claims; suits; liabilities; damages; settlements (which are approved in writing by ERSRI); judgments; and

costs and expenses (which are awarded by a court of competent jurisdiction in respect thereof), including reasonable attorney's fees of Morneau Shepell, if applicable, and reasonable attorney's fees of other counsel Morneau Shepell may retain (collectively "Claims"), caused, alleged to be caused, or arising out of (i) any act or omission of ERSRI (or any of its subcontractors or other agents) in connection with the performance of this Agreement, or (ii) any gross negligence, willful misconduct or fraud on the part of ERSRI (or any of its subcontractors or other agents), provided that ERSRI is notified promptly in writing of any such Claim, has the exclusive right to control the defense, and, at its request and expense, is given authority and assistance by Morneau Shepell reasonably required for such defense.

ERSRI shall defend or settle at its own expense any and all suits, actions or claims against Morneau Shepell charging that any part of the Deliverables developed by ERSRI and made available to Morneau Shepell hereunder, or any portion of the Website that is not hosted by Morneau Shepell, infringes any trade-mark, industrial design, trade secret or copyright in Canada or the United States of America, provided that ERSRI is notified promptly in writing, has the exclusive right to control such defense and at its request and expense, and is given authority and assistance by Morneau Shepell reasonably required for such defense. ERSRI will pay all damages awarded in any such suit, action or claim, and will indemnify and save harmless Morneau Shepell from any other cost or liability reasonably incurred by it as a result of such suit, action or claim; provided that nothing in this Section 10.3 shall require ERSRI to indemnify Morneau Shepell for any matter arising from any Default by Morneau Shepell.

10.4 Indemnity by ERSRI – Illegal Use of Website

ERSRI shall defend or settle at its own expense any and all charges, suits, actions or claims against Morneau Shepell charging that:

- (a) any of the content of the Website created by ERSRI; or
- (b) the ERSRI Materials; or
- (c) the use of the Website or the Software by Licensed Users

are illegal, provided that ERSRI is notified promptly in writing, has the exclusive right to control such defense and at its request and expense, is given authority and assistance by Morneau Shepell reasonably required for such defense. ERSRI will pay all damages and/or fines awarded or levied in any such suit, action or claim, or in any conviction, if the claim is criminal in nature, and will indemnify and save harmless Morneau Shepell from any other cost or liability reasonably incurred by it as a result of such charge, suit, action or claim; provided that nothing in this Section 10.4 shall require ERSRI to indemnify Morneau Shepell for any matter arising from any Default by Morneau Shepell or any criminal act of Morneau Shepell.

10.5 Limitation of Liability

[REDACTED]

10.6 Insurance

[REDACTED]

**ARTICLE 11
DISPUTE RESOLUTION**

11.1 Dispute Resolution

- (a) The parties agree to attempt to negotiate a resolution of any disputes arising in connection with this Agreement prior to referring the matter to arbitration or other legal process. In the event of a dispute between ERSRI and Morneau Shepell, the project managers for each party (the “**Project Manager(s)**”), shall attempt to co-operatively and with due diligence resolve the issue. If either one of the Project Managers believes that they are unable to resolve the dispute in a timely manner, they shall promptly escalate the matter to the senior executives of each party (the “**Executives**”). In the event of such escalation, the Executives shall promptly review and attempt co-operatively and with due diligence to resolve the issue.
- (b) If the Executives are unable to resolve the dispute within fifteen (15) Business Days after referral, the parties will submit the dispute to a mediator in accordance with the procedures set out below. If after mediation, pursuant to this Section 11.1, the parties are still unable to resolve the dispute, either party may commence legal action in a court of competent jurisdiction; provided, however, that any dispute under Article 6.2, may, at the election of either party, after exhausting the dispute resolution processes in Subsections 11.1(a) and (b), be referred for binding arbitration before the American Arbitration Association in accordance with the Commercial Arbitration Rules for the AAA then in effect; and provided, further, that the locale for any such arbitration shall be Providence, Rhode Island.
- (c) The mediator shall be selected by the parties from a list of three (3) independent mediators with experience in legal and information technology matters nominated by the American Arbitration Association through its Boston, Massachusetts Office (the “AAA”). If the parties are unable to agree upon a mediator within seven (7) days then, at the request of either party, the mediator shall be selected by the AAA. The mediation shall be held in the City of Providence.
- (d) The parties shall participate in good faith in the mediation and the related negotiations for a period of thirty (30) days from the date of the first mediation session called by the mediator. The mediator shall control the procedural aspects of the mediation.
- (e) The parties agree that prior to the expiration of the initial thirty (30) day mediation period; the mediation period may be extended for an additional length of time as agreed to by the parties. Either party may terminate the mediation at any time after the expiration of the initial thirty (30) day mediation period or, if extended, upon the expiration of the extension.
- (f) If the parties accept any recommendation made by the mediator or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the parties whereupon it will become binding on the parties.
- (g) Each party to the mediation shall bear its own costs and an equal share of the fees and costs of the mediation.
- (h) The dispute resolution provisions set forth in this Article shall apply to any and all disputes arising under this Agreement, including but not limited to disputes or

disagreements as to the existence of an Event of Default justifying termination under Articles 12 and 13 below.

ARTICLE 12 TERM AND TERMINATION

12.1 Term

This Agreement shall be effective as of the Effective Date, and shall terminate on the Termination Date (the “**Term**”), unless renewed or terminated earlier in accordance with the terms and conditions herein. As long as it is not in default of the provisions of this Agreement, ERSRI shall have the exclusive right and option to renew the Term of this Agreement for up to five additional terms of two years each, provided that ERSRI delivers a written notice of renewal to Morneau Shepell at least one hundred eighty (180) days prior to the expiration of the then current term. Upon timely delivery of each such renewal notice, the Agreement shall renew in accordance with the terms and conditions set out herein, including the renewal term Fees specified in Schedule F which may be mutually adjusted as agreed to by the parties.

12.2 Termination for Convenience

(a) Subject to subsection 12.2(b) below, each party shall have the right to terminate this Agreement at any time by giving at least twelve (12) months’ prior written notice of termination to the other party. In the event of termination by Morneau Shepell, notwithstanding anything to the contrary herein, Morneau Shepell shall continue to provide Services hereunder for such reasonable period of time as may reasonably be necessary for ERSRI to complete a transition to another software provider pursuant to the Transition Plan. In the event of termination by ERSRI, it shall pay to Morneau Shepell the fees specified in Schedule F during the notice period, whether or not ERSRI requires Services to be provided during such period, and any other fees or charges payable under other provisions of this Agreement including, without limitation, those for termination assistance. Further, if the termination by ERSRI occurs pursuant to this section 12.2, ERSRI shall pay all Implementation Service Fees incurred by Morneau Shepell calculated on Time and Materials Rates, less any Implementation Service Fees already paid to Morneau Shepell.

(b) Notwithstanding subsection 12.2(a) above, Morneau Shepell shall not be entitled to terminate this Agreement until after the issuance of a Certificate of Completion for the Implementation Services. In the event that Morneau Shepell shall terminate this Agreement prior to issuance of a Certificate of Completion for the Implementation Services, then such termination shall constitute an Event of Default, in which case Morneau Shepell shall be liable to ERSRI for any and all costs incurred by ERSRI in order to obtain a working administration solution equivalent to the Software and Services specified to be provided by Morneau Shepell under the terms of this Agreement.

In the event of any merger, consolidation, or sale of all or substantially all of Morneau Shepell’s stock (or its assets relating to the Services) with or to any third party, regardless whether such third party intends to perform the obligations of Morneau Shepell for the balance of any remaining Term hereunder, Morneau Shepell, as part of the terms of any such merger, consolidation or sale, shall deliver notice of this Agreement and shall require that the acquiring or merging party agree to be bound by the terms of this Agreement for (i) the balance of the remaining Term, or, (ii) in the event that the acquiring party intends to cease carrying on the normal business of Morneau Shepell, for such reasonable period of time as may reasonably be necessary for ERSRI to complete a transition to another software provider.

12.3 **Termination upon Event of Default**

- (a) ERSRI may terminate this Agreement upon a Morneau Shepell Event of Default.
- (b) Morneau Shepell may terminate this Agreement upon an ERSRI Event of Default.

12.4 **Notice of Termination**

Any termination hereof for cause shall be by written notice from the terminating party to the other party setting out, as the case may be, the Morneau Shepell Event of Default or ERSRI Event of Default that has given rise to the right of termination.

12.5 **Upon Termination**

Upon termination, each party shall return or destroy (as directed by the other party) the other party's Confidential Information and proprietary materials and data (except for archival copies for business record keeping purposes, as necessary), which shall include all software, original files and other materials, and all copies, including unauthorized copies, of such materials in all media, including portions of either originals or copies, in the receiving party's possession or under its control. Each party agrees that it will refrain from using any such materials or copies thereof owned by the other party. The proprietary materials consist of but are not limited to software, devices, records, data, notes, reports, proposals, business cards, letters, specifications, drawings, equipment, and other materials, and any other material defined herein as constituting Confidential Information. Upon termination of this Agreement, the parties will agree, in advance, to a transition plan outlining the services to be performed, special reports to be provided, data extracts to be provided, services to be provided, timeline for execution, and the fees and costs associated with this transition (the "**Transition Plan**"). Notwithstanding such termination, all obligations arising prior thereto shall be complied with and any provisions of this Agreement that by their nature operate beyond the termination or expiration of this Agreement shall survive such termination.

ARTICLE 13 DEFAULTS

13.1 **Defaults and Events of Default**

The occurrence of any one or more of the following events shall constitute a "**Default**" by a party under this Agreement, but shall only be considered an ERSRI Event of Default or Morneau Shepell Event of Default, as the case may be, if such Default is not remedied prior to the expiration of the relevant notice period (if any) or the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) Either party fails in any material respect to perform or observe any of its material obligations under this Agreement ("**Material Breach**") and such failure shall continue unremedied pursuant to Section 13.2 hereof;
- (b) Either party breaches its confidentiality obligations contained in Article 8 or materially exceeds its license rights contained in Article 3;
- (c) A decree or order of a court having jurisdiction is entered
 - (i) declaring either party bankrupt or insolvent; or

- (ii) approving as properly filed a petition seeking a winding up or arrangement or compromise of either party under any other bankruptcy, insolvency or analogous law; or
- (iii) issuing process or execution against either party with respect to all or substantially all its property or assets or ordering the winding up, dissolution or liquidation of either party, and any such decree or order continues unstayed and in effect for a period of 30 days from its issuance and is not withdrawn or discharged within such period; or
- (d) A trustee, receiver, receiver and manager, interim receiver, monitor, custodian, master or special master or other person with similar powers is appointed in respect of either party or in respect of all or a substantial portion of its property or assets and any such appointment continues undismissed and in effect for 30 days; or
- (e) Either party ceases to carry on its business in the normal course or makes a sale in bulk (including a sale of the majority of its assets) which materially affects its ability to perform its obligations hereunder.

13.2 Remedy Period for Material Breach

- (a) If a party is in Material Breach of this Agreement, the other party shall without prejudice to any other rights or remedies it has, give the party in Material Breach written notice in order that the defaulting party may remedy the Material Breach.
- (b) Such notice shall identify in reasonable detail the events which the non-defaulting party believes have occurred and which constitute or evidence a Material Breach, the provisions that have not been performed or complied with, and the actions which, in the opinion of the non-defaulting party, would be required to comply with such provisions and cure the Material Breach. A Material Breach shall be deemed not to have occurred unless the non-defaulting party has given notice as above but the mere giving of such notice shall not be conclusive as to whether or not a Material Breach has occurred.
- (c) Following the date of the receipt of such notice of Material Breach, the defaulting party shall have thirty (30) days in which to take the necessary steps to cure its Material Breach. Except for a Material Breach relating to the non-payment of Fees, such 30-day remedy period shall be extended for a period of up to ninety (90) days, or longer if the parties agree in writing, if:
 - (i) the defaulting party is taking steps to promptly cure the Material Breach;
 - (ii) the cure cannot practically be achieved within the 30-day period; and
 - (iii) the defaulting party gives the non-defaulting party, within the initial 30-day period, written notice of a need for extension and the actions it is taking to cure its Material Breach or non-performance and the number of days which it will require to cure its Material Breach.

13.3 Rights Upon an Event of Default

Upon the occurrence of an uncured ERSRI Event of Default or a Morneau Shepell Event of Default, the non-defaulting party may do any or all of the following as such party, in its sole and absolute discretion shall determine:

- (a) it may immediately terminate this Agreement by giving notice thereof pursuant to Section 12.3; and
- (b) it may exercise any of its other rights and remedies provided for hereunder or otherwise available to it at law or in equity.

ARTICLE 14 GENERAL

14.1 Force Majeure

Neither party shall be liable to the other for any delay or failure to perform due to fire, flood, earthquake, acts of God, acts of war, riots, civil disorder, strikes, lock-outs or labor disruptions or any other cause whether similar or dissimilar beyond its reasonable control (a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event but only for so long as such Force Majeure Event continues and such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. The party delayed by a Force Majeure Event shall immediately notify the other party by telephone (to be confirmed in writing) of the occurrence of a Force Majeure Event and describe in reasonable detail the circumstances causing the Force Majeure Event. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. The parties will attempt to meet such extended performance times; however, if such extended performance times conflict with Morneau Shepell’s pre-existing contractual commitments to other licensees, it shall so advise ERSRI, and the parties shall use best efforts to agree to an alternative implementation schedule. If the parties are unable to agree upon an alternative implementation schedule, or if the delay continues for a period of 3 months or more, this Agreement may be terminated by either party and neither party shall be liable to the other for such termination.

14.2 Material Subcontractors

Morneau Shepell shall have the right, subject to the terms and conditions set forth in this Section 14.2, in diligent performance of any of its duties, obligations, and responsibilities hereunder to engage any affiliate, company, firm, or independent contractor (each, a “**material subcontractor**”) required to provide certain core Services pursuant to this Agreement, including the sub-license of the Third Party Software as follows:

- (a) All material subcontractors are listed in Schedule B. Prior to engaging any proposed material subcontractor, Morneau Shepell shall notify ERSRI in writing of the proposed material subcontractor, and shall provide ERSRI with information regarding the suitability of such proposed material subcontractor to provide Services or Third Party Software under this Agreement;
- (b) Upon receipt of notice of any proposed material subcontractor, and before Morneau Shepell shall be permitted to engage said material subcontractor, ERSRI shall, as promptly as possible, notify Morneau Shepell of any objection, asserted in good faith, that ERSRI may have to the proposed material subcontractor, and in connection with such notice, shall identify any deficiencies pertaining to said proposed material subcontractor;

- (c) Upon receipt of any such objection, Morneau Shepell shall take into consideration such objection and shall discuss such objections with ERSRI before deciding to use the material subcontractor;
- (d) No material subcontractor shall be engaged without first executing a confidentiality agreement in form reasonably satisfactory to ERSRI confirming that the material subcontractor will protect all Confidential Information and shall be bound by the confidentiality, security, and data protection provisions of this Agreement;
- (e) Any material subcontractor agreement hereunder shall contain, at a minimum, the following provisions:
 - (i) Assuring that ERSRI shall have reasonable direct access to such material subcontractor for purposes of carrying out the terms and conditions of this Agreement;
 - (ii) Confirming that ERSRI is a third-party beneficiary of any such material subcontract;
 - (iii) Requiring such material subcontractor to provide reasonable training to ERSRI as may be needed to operate the Services and use the Licenses or Third-Party Licenses granted hereunder;
 - (iv) Confirming that each material subcontractor shall be subject to ERSRI's right to conduct on-site audits as set forth above (and subject to the provisions set forth) in Section 6.2; and
 - (v) Granting a power of attorney (with full rights of substitution) to ERSRI to enforce all of such material subcontractor's subcontract obligations in the event that Morneau Shepell is in default hereunder or fails or is unable to perform the terms and conditions of this Agreement for any reason.
- (f) Notwithstanding the foregoing, but subject to Section 14.2(e) above, Morneau Shepell shall have the right to subcontract with certain material subcontractors listed in Schedule B to provide the Third Party Software.
- (g) In all cases in which Morneau Shepell engages a material subcontractor under this Section 14, Morneau Shepell retains full responsibility for performance under this Agreement and shall be solely responsible for assuring that each such material subcontractor provides full and timely performance on an uninterrupted and continuous basis, and Morneau Shepell shall be responsible for any and all consequences or damages resulting from the breach or non-performance by any material subcontractor, subject to the limits described in Section 10.5.

14.3 Assignment

Neither party shall, without the approval in writing of the other (which approval may not be arbitrarily withheld, conditioned or delayed), assign or transfer its interest in this Agreement (nor its interest in the licenses arising out of this Agreement).

14.4 **No Conflicts of Interest/Political Contributions**

Morneau Shepell represents, covenants and warrants that it has no existing relationships that involve the State of Rhode Island or ERSRI, or which would compromise the Services being provided hereunder, and Morneau Shepell agrees to provide ERSRI with notice if any such conflict of interest should arise. Morneau Shepell covenants and agrees that it will report any contributions made to a candidate for public office in the State of Rhode Island in compliance with Title 17 Chapter 27 of the Rhode Island General Laws. Additionally, Morneau Shepell covenants that it will make no political contributions to the General Treasurer or the Governor of Rhode Island during the Term (or any renewal thereof) of this Agreement.

14.5 **Notices**

All notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and addressed as follows:

- (a) if to ERSRI,

Employees' Retirement System of Rhode Island
50 Service Avenue, 2nd Floor
Warwick, RI 02886-1021

Attention: Frank J. Karpinski, Executive Director

Fax No.: (401) 462-7691

With a copy to:
Michael P. Robinson, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

Facsimile No. (401) 272-1403

- (b) if to Morneau Shepell,
Morneau Shepell Limited
800 Square Victoria
Suite 4000, PO Box 211
Montréal (Que)
H4Z 0A4

Attention: Pierre Chamberland, EVP, COO, Admin Solutions
Facsimile No.: 514-875-2673

With a copy to:
Morneau Shepell Ltd.
Suite 700, 895 Don Mills Road
Tower One
Toronto, Ontario
M3C 1W3

Attention: General Counsel
Facsimile No: 416-445-7989

and shall be sent by certified mail, by overnight delivery (written receipt required), or by electronic mail (read receipt to be retained by sender and recipient to confirm receipt by reply electronic mail). Either party may change its postal or electronic mail address for notification purposes by giving the other party notice of the new postal or electronic mail address and the date upon which it will become effective. A communication shall be deemed to have been received as of the next Business Day following its transmission by electronic mail.

14.6 **Counterparts and Facsimile Signature**

This Agreement may be executed in counterparts and delivered via facsimile or other electronic means, all of which when executed and delivered, shall be deemed to constitute one single, originally signed agreement between the parties.

14.7 **Relationship**

Except as expressly set out herein, nothing contained in this Agreement shall create or imply any agency relationship between the parties, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties.

14.8 **Publicity/Non-Disparagement**

Neither party shall make use of the other's name or products or of any information related to this Agreement or related documents for publicity purposes without the prior written consent of the other, provided however, Morneau Shepell shall be able to refer to ERSRI as a client in a proposal to a potential client upon successful completion of the project. This restriction applies to news releases, sales literature, promotional brochures, advertisements (including photographs and films) and public announcements which refer to the other party's name or products. Neither party shall publish nor cause to be published to any third party any disparaging or damaging remarks about the other party.

14.9 **Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected thereby, and each such provision shall be valid and enforceable to the extent granted by law.

14.10 **Waiver**

No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

14.11 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the parties relating to the subject matter hereof.

14.12 **Amendments**

No amendment to, or change or discharge of, any provision of this Agreement shall be valid unless in writing and signed by authorized representatives of each party.

14.13 **Governing Law**

This Agreement shall be governed by the laws of the State of Rhode Island excluding its rules governing conflicts of laws. The federal and state courts of the State of Rhode Island shall have exclusive jurisdiction over all disputes arising hereunder. The parties agree that jurisdiction and venue in such courts is appropriate and irrevocably consent to the jurisdiction of such courts.

14.14 **Further Assurances**

Subsequent to the execution and delivery of this Agreement and without any additional consideration, each of the parties shall execute and deliver or cause to be executed and delivered any further legal instruments and perform any acts which are or may become necessary to carry out the true intent and meaning of this Agreement.

14.15 **Binding Effect**

This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.

14.16 **Time of the Essence**

Time shall be of the essence under this Agreement.

14.17 **Guaranty of Morneau Shepell Ltd.**

Morneau Shepell Ltd., the parent of Morneau Shepell Limited (which is contracting with ERSRI in this Agreement), hereby unconditionally guarantees all obligations of Morneau Shepell Limited under Sections 10.2 and 10.5 above in accordance with the terms of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties have caused this Agreement to be signed as of the date set out on the first page hereof.

MORNEAU SHEPELL LIMITED

By: _____
Pierre Chamberland
EVP, COO, Admin Solutions

MORNEAU SHEPELL LTD., under Section 14.17 guaranteeing the indemnity obligations of Morneau Shepell Limited under Sections 10.2 and 10.5

By: _____
Name:
Title:

**THE RETIREMENT BOARD OF THE
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND, and
THE MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF THE STATE
OF RHODE ISLAND**

By: _____
Name:
Title:

