



# EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R9/1-04)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number: A70-5-0916	2. Date prepared: 6/6/2006
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## 3. CONTRACTS & LEASES

<input type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input checked="" type="checkbox"/> Amendment# <u>3</u>
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other _____

## FISCAL INFORMATION

4. Account Number: 2070/537800/140000	5. Account Name: ISDH
6. Total amount this action: \$0.00	7. New contract total: \$270,157.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00

10. New total amount for each fiscal year:			
Year 2006	\$ 16,224.00	Year _____	\$ _____
Year _____	\$ _____	Year _____	\$ _____

## TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 9/30/2004	12. To (month, day, year): 9/27/2006
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13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input type="checkbox"/> RFP# _____	<input checked="" type="checkbox"/> Special Procurement

35. Will the attached document involve data processing or telecommunications systems(s)? ☒ Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):  
IC 5-22-10

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)

This contract amendment changes name of company from Mercator software, LLC to International Business Machines Corporation (IBM Corp) due to acquisition.

38. Justification of vendor selection and determination of price reasonableness:

The contractor is sole provider of maintenance for Agency Claims & Administration Processing system, which contains EDI translator package. This system complies with HIPAA requirements regarding standardization of transactions and code set compliance.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval	41. Date Approved	42. Budget agency approval <i>CHEN</i>	43. Date Approved 6/7/06
44. Attorney General's Office approval <i>CAB</i>	45. Date Approved 6-13-06	46. Agency representative receiving from AG	47. Date Approved

## AGENCY INFORMATION

14. Name of agency: Department of Health	15. Requisition Number: 400-6-3642
16. Address: State Department of Health Section 2-C 2 N MERIDIAN ST INDIANAPOLIS, IN 46204	

## AGENCY CONTACT INFORMATION

17. Name: Mark A Hempel	18. Telephone #: 317/232-2498
19. E-mail address: mhempel@idoa.in.gov	

## COURIER INFORMATION

20. Name: Beatrice Richardson	21. Telephone #: 317-233-3756
22. E-mail address: brichardson@idoa.in.gov	

## VENDOR INFORMATION

23. Vendor ID # 0000004215	
24. Name: IBM CORP	25. Telephone #: 317-201-7008
26. Address: 9229 DELEGATES ROW INDIANAPOLIS, IN 46240	
27. E-mail address: smlesto@us.ibm.com	

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) ☒ Yes ☐ No

29. Primary Vendor: M/WBE	30. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %

31. Sub Vendor: M/WBE	32. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %

33. Is there Renewal Language in the document?	34. Is there a "Termination for Convenience" clause in the document?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

# REQUISITION

Ship To: State Department of Health  
Section 2-C  
2 N MERIDIAN ST  
INDIANAPOLIS IN 46204

Bill to: State Department of Health  
Section 2-C  
2 N MERIDIAN ST  
INDIANAPOLIS IN 46204

Requisition No. 0000003642 Date 04/11/2006 Required Date 05/09/2006 Page 1 of 1  
Fund/Object/Center: 2070 / 537800 / 140000  
Dept Number: 195069  
Project Number:  
Requisition Number: 0000003642  
Requestor: RWHISLER Whisler, Roselyn-400  
Agency Number: 00400 Department of Health  
Facility:

## MUST COMPLETE FOR ICPR

☐ Print REQ  
☐ Streamline Eligible

Line	Item	Description	Quantity	UOM	Unit Price	Ext Amt
1-1		Renewal of software support for Mercator Software	1.0000	EA	16,224.0000	16,224.00

Vendor: 0000004215 INTERNATIONAL BUSINESS MACHINES CORPORAT

Contract dates: 9/27/02-9/30/04  
PO 03503613 (9/27/02-9/30/04)  
Amendment #1 adding additional license  
PO 03506808

Amendment 2 & Renewal #1 dates: 9/30/04-9/27/06  
A70-5-13, PO 05517271, (9/30/04-9/30/05)  
A70-6-38A, This PO (9/30/05-7/27/06)  
The following UN/CEFACT Unit of Measure  
Common Codes are used in this document:  
EA Each

Requisition Total \$ 16,224.00

90-6244471-6 04-8001

Requestor Signature <i>Carolyn Amstutz</i>	I certify that the item[s] requested is [are] necessary for the operation of this State Agency.	
Printed Name of Agency Head or Authorized Employee	Authorized Signature <i>[Signature]</i>	

### Contract Amendment # 3

This is an Amendment/ to the Contract entered into by and between **Indiana State Dept of Health** (hereinafter referred to as "State") and **Mercator Software, LLC**. (hereinafter referred to as "Contractor") dated 9/27/02. In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

To change company name from: Mercator Software, LLC (a wholly owned subsidiary of Ascential Software Corporation), 50 Washington Street, Westboro, MA 01581

To: International Business Machines Corporation ("IBM")  
50 Washington Street, Westboro, MA 01581

and add the following clauses to the existing contract:

**Compliance with Laws.** The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required here by to be included herein are hereby incorporated by reference. The enactment of any state and federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

a. The Contractor and its agents shall abide by all ethical requirements that apply to **persons who have a business relationship with the State**. As set forth in Indiana Code 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the contractor. In addition, the contractor may be subject to penalties under Indiana Code 4-2-6-12.

b. The Contractor certified by entering into this Agreement, that neither it nor its principal(s), is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payment in arrears and currently due to the State of Indiana may be withheld for payments, due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the **State may delay, withhold, or deny work** under any Supplement or contractual device issued pursuant to this Agreement.

If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlining herein. A determination by IDOA shall be binding on the parties.

Any payment that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health,

safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and ground for immediate termination of the Agreement and denial of further work with the State.

The Contractor hereby affirms that it is properly registered and owed not outstanding reports with the Indiana Secretary of State.

Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indian, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments or its liability to the State and has submitted proof of such payment to the State.

c. As required by IC 4-13-2-14.8: Notwithstanding any other law, rule, or custom, a person or company whom has a contract with the State or submits invoices to the state for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credit. For forms and additional information see the Auditor of State's website at [www.in.gov/auditor/forms](http://www.in.gov/auditor/forms).

#### **COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT**

As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation of Consumers], (ii) IC24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulations of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract even if IC 24-4.7 if preempted by federal law. (2) The Contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) exempt for de minimis and nonsystematic violations, has not violated the terms of IC24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if 24-4.7 is preempted by federal law.

#### **Payments**

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

Total amount of this action is **\$0.00** . Total remuneration of this contract is not to exceed **\$270,157.00**.

All other matters previously agreed to and set forth in the original agreement and not affected by this Amendment shall remain in full force and effect.

#### **Non-Collusion and Acceptance**

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

Rev 07/058:49 AM

**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

Signature: [Signature]  
Printed Name: Sam Lesturgeon  
Title: Client Executive  
Date: 3/14/06

**State of Indiana Agency:**

Signature: [Signature]  
Printed Name: LANE RIVERO  
Title: CRO  
Date: 5/23/06

**State Budget Agency**

Alice E. Niegand for  
Charles E. Schalliol  
Director  
Date: 6/7/2006

**Indiana Office of Technology**

By: [Signature] for  
Karl B. Browning  
Chief Information Officer  
Date: 31-May-2006

~~Indiana~~ **Department of Administration**  
~~Earl A. Goode~~ CARRIE HENDERSON

Commissioner  
Date: Mark H. Hyslop  
6/4/06

**Office of the Attorney General**

Elizabeth A. Brown for  
Stephen Carter  
Attorney General  
Date: 6-13-06

**Contract Amendment # 3**

This is an Amendment/ to the Contract entered into by and between **Indiana State Dept of Health** (hereinafter referred to as "State") and **Mercator Software, LLC**. (hereinafter referred to as "Contractor") dated 9/27/02. In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

To change company name from: Mercator Software, LLC (a wholly owned subsidiary of Ascential Software Corporation), 50 Washington Street, Westboro, MA 01581

To: International Business Machines Corporation ("IBM")  
50 Washington Street, Westboro, MA 01581

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a. The Contractor and its agents shall abide by all ethical requirements that apply to **persons who have a business relationship with the State**. As set forth in Indiana Code 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the contractor. In addition, the contractor may be subject to penalties under Indiana Code 4-2-6-12.

b. The Contractor certified by entering into this Agreement, that neither it nor its principal(s), is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payment in arrears and currently due to the State of Indiana may be withheld for payments, due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the **State may delay, withhold, or deny work** under any Supplement or contractual device issued pursuant to this Agreement.

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safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and ground for immediate termination of the Agreement and denial of further work with the State.

**The Contractor hereby affirms that it is properly registered and owed not outstanding reports with the Indiana Secretary of State.**

Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indian, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments or its liability to the State and has submitted proof of such payment to the State.

c. As required by IC 4-13-2-14.8: Notwithstanding any other law, rule, or custom, a person or company whom has a contract with the State or submits invoices to the state for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credit. For forms and additional information see the Auditor of State's website at [www.in.gov/auditor/forms](http://www.in.gov/auditor/forms).

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Total amount of this action is **\$0.00** . Total remuneration of this contract is not to exceed **\$270,157.00**.

All other matters previously agreed to and set forth in the original agreement and not affected by this Amendment shall remain in full force and effect.

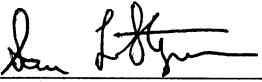
### **Non-Collusion and Acceptance**

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


Rev 07/058:49 AM

**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

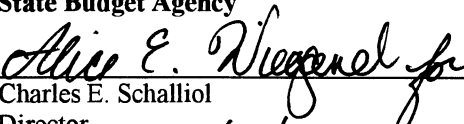
**Contractor:**

Signature:   
Printed Name: Sam LeStourgeon  
Title: Client Executive  
Date: 3/15/06


**State of Indiana Agency:**

Signature:   
Printed Name: LANCE RHODES  
Title: CFO  
Date: 5/23/06

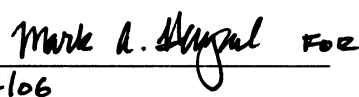
**State Budget Agency**

  
Charles E. Schalliol  
Director  
Date: 6/7/2006

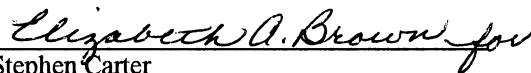
**Indiana Office of Technology**

By:   
Karl B. Browning  
Chief Information Officer  
Date: 31-May-2006

~~Indiana~~ Department of Administration

~~Earl A. Goode~~ CARRIE HENDERSON  
Commissioner  
Date:   
6/4/06

**Office of the Attorney General**

  
Stephen Carter  
Attorney General  
Date: 6-13-06





## IBM Completes Acquisition Of Ascential Software

**ARMONK, NY, MAY 2 - 02 May 2005:** IBM today announced it has completed its acquisition of Ascential Software Corporation a publicly held company based in Westboro, Mass.

IBM announced a definitive agreement to acquire Ascential Software on March 14, 2005. Ascential's operations will be integrated into IBM's Information Management business.

Ascential Software complements and strengthens IBM's fast-growing information integration portfolio and further extends IBM's ability to enable customers to become on demand businesses by providing a single, agile infrastructure for delivering accurate, consistent, timely, and coherent information. Ascential Software is a leading provider of enterprise data integration software used to help build enterprise data warehouses, power business intelligence systems, consolidate enterprise applications, create and manage master repositories of critical business information, and enable on demand data access.

### About IBM

IBM is the world's largest information technology company, with 80 years of leadership in helping businesses innovate. Drawing on resources from across IBM and key Business Partners, IBM offers a wide range of services, solutions and technologies that enable customers, large and small, to take full advantage of the new era of e-business. For more information about IBM, visit [www.ibm.com](http://www.ibm.com).

###

### Contact(s) information

**Chris Andrews**  
IBM Media Relations  
(914) 766-1195  
[candrews@us.ibm.com](mailto:candrews@us.ibm.com)

#### Related XML feeds

##### Topic

##### Corporate

Financial news, company earnings, philanthropy, community service, human resources, sponsorship

##### Software

Information Management (DB2), Workplace, Portal & Collaboration Software (Lotus), Tivoli, Rational, WebSphere, Open standards, open source

##### XML feeds







*IBM*  
*50 Washington Street*  
*Westborough, Massachusetts*  
*01581*

9 September 2005

INDIANA STATE DEPARTMENT OF HEALTH  
PU HAN  
SECTION 2-C  
2 N MERIDIAN ST  
INDIANAPOLIS, IN 46204

Dear PU HAN:

**Re: Your Agreement with Ascential Software -- Completion of Transfer of Trade from the IBM acquisition of Ascential, effective October 1, 2005**

As you may know, on April 29, 2005, IBM completed the acquisition of Ascential Software, creating the new IBM Information Integration Solutions business unit within the IBM Software Group, Information Management Division. This unit was created to help companies integrate information across different applications in order to support strategic business initiatives such as master data management, business intelligence, and regulatory compliance.

Together, IBM and Ascential Software provide information integration offerings that enable IT to better meet these business needs, with trusted information delivered on demand and in the form required, while dramatically reducing information complexity. This provides breakthrough productivity benefits for business and IT alike. Since the acquisition, we have been delighted by the continued growth in our Information Integration business. The strong endorsements that we have received from customers and partners are testimony of the combined value of Ascential and IBM.

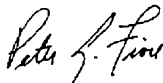
We are pleased to report that the integration of Ascential continues to progress on schedule and would like to take this opportunity to inform you that on October 1, 2005 we will finalize an important milestone in the integration known as "transfer of trade." On that date, we will consolidate all transaction fulfillment activity into the local IBM companies. Also on that date, your contracts with Ascential will be assigned in their entirety to the IBM company that does business in your country, by the local Ascential entity. Your contracts will continue to be fully honored by IBM. A document to explain the changes to billing, fulfillment and support, "Doing with Business with IBM," will be sent to you via email shortly. Please feel free to share this document with other individuals in your company who are also engaged with IBM.

Accordingly, from October 1, 2005, all documentation will be issued by IBM. Payment of any invoices after October 1, 2005, should be made to IBM, and complete payment details will be specified in the IBM invoices.

The mission of the Information Integration Solutions business continues to be focused on meeting your information integration needs now and into the future. To help you learn more about how we plan to do that, we would like to invite you to the upcoming Information Integration Live! event (formerly Ascential World). This will be held on November 13-15 in Las Vegas, Nevada, and will provide you with an ideal opportunity for in depth learning about our exciting new and expanded product portfolio, to see our vision for information integration, and to learn from industry experts. We hope you will be able to join us!

We would like to thank you for your continued support of our business, and welcome you to the IBM family. We would also like to assure you that while transfer of trade is taking place, the same personnel with whom you have been working will continue to be your primary interfaces at IBM. We look forward to continuing our business relationship with you through IBM and to helping you meet the information integration needs of your business.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter L. Fiore".

Peter L. Fiore  
Vice President, Information Integration Solutions  
IBM Software Group

# Memorandum

**Date:** Monday, April 05, 2006

**To:** Mark Hempel  
Purchasing Agent, IDOA

**Through:** Chris Mickens  
Director, Office of HIPAA Compliance

**From:** Reginia Love,  
Associate Project Manager  
Office of HIPAA Compliance

**Subject:** Justification for Sole Source with International Business Machines (IBM)

The Office of HIPAA Compliance (OHC) at Indiana State Department of Health (ISDH) is requesting to do a sole source maintenance contract with International Business Machines (IBM). According to 25 Indiana Administrative Code (IAC) 1.1-1-10 Sole source procurement and Indiana Code (IC) *Special Purchasing Methods*, 5-22-10-13, "A contract may be awarded for a supply or service without competition in other instances when there is *only one (1) source* for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply." Regarding this request, OHC provides a database called the Agency Claims & Administration Processing System (ACAPS), which contains IBM's Electronic Data Interchange (EDI) translator package, (formerly Mercator Software LLC (Ascential Software)). This translator package is an integrated part of the ACAPS system and enables the database to adhere to the Health Insurance Portability and Accountability Act (HIPAA), Administration Simplification, section concerning standardize transactions and code set compliance. Under HIPAA, covered entity Programs, here at ISDH, must process HIPAA compliant claims, or face Federal penalties. IBM's translator package has the X12 & HIPAA transaction templates already predefined, plus the standard national formats and code values that have been modified and integrated to comply with HIPAA standards and Program guidelines for processing claims through ACAPS. This translator software package was developed within the ACAPS system. ACAPS has been in production for over four years. One of the criteria of the original software purchase was based on the fact that they had a complete suite of the of the X12 & HIPAA transaction templates already predefined. Modification to the application at this time would not be cost-effective to change to another vendor. Therefore with IDOA approval, OHC request to proceed with pursuing a sole source contract with IBM to acquire maintenance for the translator software.

cc: MCSHCS Program  
cc: ISDH, Purchasing Contracts

**Whisler, Roselyn**


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**From:** Hempel, Mark  
**Sent:** Tuesday, March 21, 2006 9:39 AM  
**To:** Love, Reginia  
**Cc:** Whisler, Roselyn  
**Subject:** RE: IBM Articles of Acquisition

Reginia,  
 Great question; please have IBM submit the "corporate resolution" documentation with the contract file you are preparing. This document contains the legal language and shareholder approval of the acquisition. Normally, corporate general counsel and/or the CIO/CFO have this information. If you encounter issues retrieving that documentation, we can try to work with the letter you received from IBM. Thanks,

Mark

---

**From:** Love, Reginia  
**Sent:** Monday, March 20, 2006 9:09 AM  
**To:** Hempel, Mark  
**Cc:** Whisler, Roselyn; Love, Reginia  
**Subject:** FW: IBM Articles of Acquisition  
**Importance:** High

Mark,

The process to change the name from Mercator to IBM concerning EDS #'s A70-3-69, A70-3-798, A70-5-0916, has been on-going since October 2005. At this point questions have surfaced as to what legal documents does the State require from IBM to confirm the IBM acquisition of Ascential(Mercator Software)? I have attached a letter received from IBM, signifying the change, but do not believe this is all that is necessary for confirmation. On a previous name change with this contract, Mercator INC to Mercator LLC, Articles of Conversion were provided for confirmation.

I have made contact with Sam LeStourgeon, Indiana's IBM rep, however Sam was not sure what documents should be provided. Based on Sam's suggestion, I contacted IBM's legal office and received the response below. I look to your office for guidance on this matter and to a response as soon as possible.

Thanks in Advance  
 Reginia Love  
 ISDH/OHC  
 2 North Meridian Street  
 Indianapolis, IN 46204  
 317-233-7296 Off  
 317-233-8199 Fax

This message and any attachments may be confidential. If you are not the intended recipient, please

- (1) notify me immediately;
- (2) do not forward the message or attachment;
- (3) do not print the message or attachment; and
- (4) erase the message and attachment from your system.

*Take a break for Health!* [www.INShape.IN.gov](http://www.INShape.IN.gov)

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**From:** Gerald Klein [mailto:gklein@us.ibm.com]  
**Sent:** Thursday, March 16, 2006 2:42 PM  
**To:** Love, Reginia  
**Cc:** Whisler, Roselyn; LeStourgeon, Sam  
**Subject:** Re: IBM Articles of Conversion

3/21/2006

Reginia, is there a form I should be looking at?

-- Gerry

Gerry Klein  
Contracts & Negotiations Specialist  
Communications Sector - Central Region  
IBM Software Group  
Telephone: (203) 550-4658  
Fax: (203) 264-4382  
E-mail: gklein@us.ibm.com

"Love, Reginia" <Rlove@isdh.IN.gov>

To Gerald Klein/Hartford/IBM@IBMUS

cc Sam LeSturgeon/Indianapolis/IBM@IBMUS, "Whisler, Roselyn" <rwhisler@isdh.IN.gov>

03/16/2006 02:25 PM

Subject IBM Articles of Conversion

Sam,

Wonderful meeting you too. Along with what you have provided below another crucial item is needed to push Amendment#3 along, which is the Articles of Conversion, acknowledging the purchase of Ascential (Mercator) by IBM. Based on our meeting this morning, that documentation could possibly be provided by your IBM legal counsel point of contact, Gerry Klein. I am cc'ing him on this email. I look forward to working with you Sam.

**Note: How long will it take to receive this documentation?**

*Roselyn, Fed tax id is included at the bottom of this email.....*

Thanks in Advance

Reginia Love

ISDH/OHC

2 North Meridian Street

Indianapolis, IN 46204

317-233-7296 Off

317-233-8199 Fax

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---

**From:** Sam LeSturgeon [mailto:smlesto@us.ibm.com]

**Sent:** Thursday, March 16, 2006 1:11 PM

**To:** Love, Reginia; cmikens@isdh.IN.gov

**Cc:** Dave Hathaway; Juan Lopez Jr

**Subject:** IBM Contracts for ISDH

Reginia and Chris, it was good to meet you both today. Please find attached our base terms and conditions that is approved by the State of Indiana. We use these almost monthly for a variety of hardware, software and services at the state. I also attach an ordering agreement, again always used at the state in conjunction with the first document. The **bold** text is what can change for each transaction.

3/21/2006

The only other document needed will be the supplement showing individual software products and costs for each. We can work with Juan Lopez to get these costs.

I copy Dave Hathaway, as I mentioned he is our local software specialist and Juan Lopez that knows the Mercader products well.

IBM Federal ID number is 13-087-1985.

*(See attached file: IBM Indiana renewed signed BOA starting June 2005.pdf)*

*(See attached file: Indiana IBM Ordering Agreement for ISDH SW.doc)*

Sam LeStourgeon  
Senior Client Executive, IBM Public Sector  
Cell 317-201-7008, Fax 317-566-3858  
9229 Delegates Row, Indpls, IN 46240



## **Amendment #\_2 and Renewal #1\_**

A70-3-69

License fee support renewal for Mercator Software.

This is an Amendment to the Contract entered into by and between Indiana State Dept of Health (hereinafter referred to as "State") and Mercator Software, Inc. (now Mercator Software, LLC) (hereinafter referred to as "Contractor") dated 9/27/02.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

Company name has changed from: Mercator Software, Inc., 45 Danbury Road, Wilton, CT 06897,  
(a wholly owned subsidiary of Ascential Software Corporation)

to: Mercator Software, LLC (a wholly owned subsidiary of Ascential Software Corporation), 50 Washington Street, Westboro, MA 01581

Contact name: Gregory B. Lewis

All other matters previously agreed to and set forth in the original agreement and not affected by this Amendment shall remain in full force and effect.

Pursuant to IC 5-22-17-4 and the terms of the contract, the Indiana State Dept of Health (hereinafter referred to as "State") exercises its option to renew its contract for support with Contractor under the same terms and conditions of the original contract dated 9/27/02.

Total amount of this renewal is \$ 31,824.00. Total remuneration of this contract is not to exceed \$ 270,157.00.

### **Non-Collusion and Acceptance**

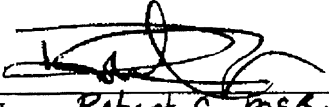
The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company,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

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**


**Mercator Software, LLC,**  
formerly Mercator Software, Inc.

(Where Applicable)


By:   
Printed Name: Robert C. McBride  
Title: Treasurer  
Date: 15 Jun 04

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

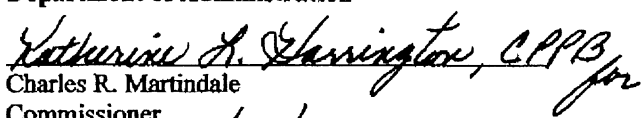
**State of Indiana Agency:**  
Indiana State Dept of Health

By:   
Printed Name: Gregory A. Wilson, M.D.  
Title: State Health Commissioner  
Date: 10/12/04

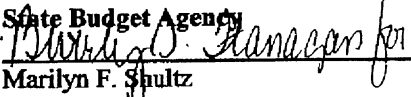
**Information Technology Oversight Commission**

  
Laura J. Larimer  
Executive Director  
Date: 10/18/04


**Department of Administration**

  
Katherine A. Harrington, CPPB  
Charles R. Martindale  
Commissioner  
Date: 11/01/04

**State Budget Agency**

  
Marilyn F. Shultz  
Director  
Date: November 5, 2004

**Office of the Attorney General**

  
Stephen Carter  
Attorney General  
Date: 11-10-04

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

ONE RODNEY SQUARE

P.O. BOX 636

WILMINGTON, DELAWARE 19899-0636

TELEPHONE NO.: (302) 651-3000

FACSIMILE NO.: (302) 651-3001

DIRECT FACSIMILE NO.: 302-651-3017

EMAIL:

**FACSIMILE TRANSMITTAL SHEET**

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Yael Dur

FIRM: \_\_\_\_\_

CITY: \_\_\_\_\_

DATE: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_

FACSIMILE NO.: 888 329-5659FROM: D. BeuschFLR/RM.: 4th FloorDIRECT DIAL: 302-651-TOTAL NUMBER OF PAGES INCLUDING COVER(S): 1

This facsimile is intended only for use of the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this facsimile, you are hereby notified that any dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the address above via the local postal service. We will reimburse any costs you incur in notifying us and returning the facsimile to us.

**Message:**

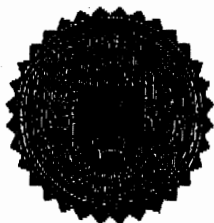
# Delaware

PAGE 1

## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "MERCATOR SOFTWARE, INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "MERCATOR SOFTWARE, INC." TO "MERCATOR SOFTWARE, LLC", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF OCTOBER, A.D. 2003, AT 6:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

2350400 8100V

AUTHENTICATION: 2690781

030660532

DATE: 10-15-03

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 06:59 PM 10/14/2003  
FILED 06:59 PM 10/14/2003  
SRV 030660532 - 2350400 FILE

**CERTIFICATE OF CONVERSION  
TO LIMITED LIABILITY COMPANY  
OF  
MERCATOR SOFTWARE, INC.**

Mercator Software, Inc., a Delaware corporation (the "Corporation") does hereby certify to the following facts relating to the conversion of the Corporation into a Delaware limited liability company (the "Conversion") under the name Mercator Software, LLC (the "Company") pursuant to Section 266 of the Delaware General Corporation Law ("DGCL") and Sections 18-204 and 18-214 of the Delaware Limited Liability Company Act ("DLLCA"):

1. The Corporation was originally incorporated on September 9, 1993, under the laws of Delaware under the name TSI International Software Ltd.
2. The name of the corporation immediately prior to the filing of this Certificate of Conversion to Limited Liability Company is Mercator Software, Inc.
3. The name of the limited liability company into which the Corporation shall be converted, as set forth in its Certificate of Formation, is Mercator Software, LLC.
4. The Conversion has been approved in accordance with the DGCL and the DLLCA.

10/15/2003

17:19

302 651 3017 → 16965840918883295659

NO. 552

004

10/14/03

19:01

:302-651-3017 → D

D

C

NO. 329

003

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate of Conversion to Limited Liability Company to be executed in its name this 8<sup>th</sup> day of October, 2003.

MERCATOR SOFTWARE, INC.

By: /s/ Peter L. Fiore

Name: Peter L. Fiore

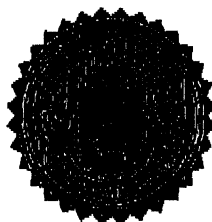
Title: President

# Delaware

PAGE 2

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "MERCATOR SOFTWARE, LLC" FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF OCTOBER, A.D. 2003, AT 6:59 O'CLOCK P.M.

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

2350400 8100V

AUTHENTICATION: 2690781

030660532

DATE: 10-15-03

10/14/03 19:01 :302-651-3017 → D C

State of Delaware NO. 329 D04  
Secretary of State  
Division of Corporations  
Delivered 06:59 PM 10/14/2003  
FILED 06:59 PM 10/14/2003  
SRV 030660532 - 2350400 FILE

**CERTIFICATE OF FORMATION**

**OF**

**MERCATOR SOFTWARE, LLC**

1. The name of the limited liability company is Mercator Software, LLC.
2. The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

**[SIGNATURE PAGE FOLLOWS]**



10/14/03 19:01 :302-651-3017 → D

D C

NO. 329 005

IN WITNESS WHEREOF, the corporation has caused this Certificate of Formation to be executed in its name this 8<sup>th</sup> day of October, 2003.

ASCENTIAL SOFTWARE  
CORPORATION, as Sole Member  
of MERCATOR SOFTWARE, LLC

By: /s/ Peter L. Fiore

Name: Peter L. Fiore

Title: President

## Contract Amendment to Add Product #1

Date: January 21, 2003

Page 1 of 2

Requisition Number: A70-3-798

This is an amendment to add product to the contract entered into by and between The Indiana State Department of Health ("State") and Mercator Software, Inc. ("Contractor/Vendor") numbered as A70-3-69 (Copy Attached).

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows: Schedule A of the Vendor's Software License and Professional Services Agreement, page 8 would increase from 2 to 4 Mercator Design Studio Licenses including ongoing-support at the Gold level through the term of the Contract, September 30, 2004. The product required is two (2) additional Mercator Design Studio Licenses. The two (2) additional Design Studio Licenses are needed to enable all four members assigned to do Electronic Data Interchange (EDI) mapping, to create and maintain maps that translate HIPAA EDI transactions and check compliance into the processing system being developed for the Indiana State Department of Health's HIPAA compliance effort.

The cost of each Design Studio License is \$10,666.50. The total amount of this action is \$21,333. Total remuneration of this amendment is not to exceed \$21,333. The contract amount will increase from \$217,000 to \$238,333.

Payment for the two additional licenses may be invoiced for the full amount upon signature completion of this Contract Amendment to Add Product #1 and is subject to receipt of goods and shall be made following receipt of a properly prepared invoice.

All other matters previously agreed to and set forth in the original agreement and not affected by the amendment shall remain in full force and effect.


The rest of this page is left blank intentionally.

## NON-COLLUSION and ACCEPTANCE STATEMENT:

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

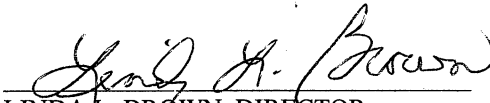
**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract and amendments do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

  
GERALD KLEIN  
VP, AMERICAS GENERAL COUNSEL &  
CORPORATE SECRETARY  
MERCATOR SOFTWARE, INC.

DATE: 1/30/03

**Certification of Funds:**

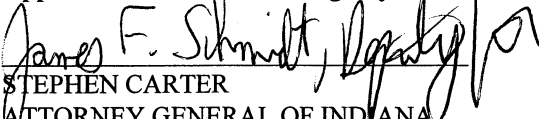
  
LINDA L. BROWN, DIRECTOR  
DIVISION OF FINANCE  
OPERATIONAL SERVICES COMMISSION  
INDIANA STATE DEPARTMENT OF HEALTH  
DATE: 2-5-03

**Approved:**


  
DAVID PERLINI, COMMISSIONER  
DEPARTMENT OF ADMINISTRATION

STATE OF INDIANA  
DATE: 2/28/03

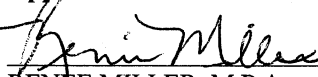
**Approved as to Form and Legality:**

  
STEPHEN CARTER  
ATTORNEY GENERAL OF INDIANA  
DATE: 3/18/03


**Recommended By:**

  
WENDY GETTELFINGER, R.N., D.N.S., J.D.  
ASSISTANT COMMISSIONER  
CHILDREN AND FAMILY HEALTH SERVICES  
COMMISSION  
INDIANA STATE DEPARTMENT OF HEALTH  
DATE: 2/3/03

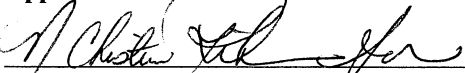
**Approved and Ratified:**

  
RENEE MILLER, M.P.A.  
ASSISTANT COMMISSIONER  
OPERATIONAL SERVICES COMMISSION FOR  
GREGORY A. WILSON, M.D.  
STATE HEALTH COMMISSIONER  
INDIANA STATE DEPARTMENT OF HEALTH


DATE: 2/6/03  
**Approved:**

  
JOE D. HUNT, M.P.H., CHAIRMAN  
INFORMATION MANAGEMENT RESOURCES  
COMMITTEE  
INDIANA STATE DEPARTMENT OF HEALTH  
DATE: 3 February 2003

**Approved:**

  
DAVID PERLINI, CHAIRPERSON  
INFORMATION TECHNOLOGY OVERSIGHT  
COMMISSION  
STATE OF INDIANA  
DATE: 10-February-2003

**Approved:**

  
MARILYN F. SHULTZ  
STATE BUDGET DIRECTOR  
STATE OF INDIANA  
DATE: 03/10/03

035036/3

7/11/07  
STATE DEPT. OF HEALTH  
02 OCT -9 AM 10:58

(rev. 11/30/01)

**ADDENDUM**

This Addendum amends the attached and foregoing contract with the entity designated herein as Contractor.

State Agency: Indiana State Department of Health

Contractor/Vendor: Mercator Software, Inc.

Address: 45 Danbury Road,  
Wilton, CT 06897

Attached contract consists of 13 pages (with/without) terms on both sides.

Contract term begins upon date of signature completion, and Mercator will provide support for the software through September 30, 2004. The Software License is perpetual.

Total consideration for term of agreement is: \$217,000.00 as detailed in Exhibit 1.

The terms and conditions of the attached contract are incorporated herein by reference and subject to: the approval of the signatories hereto; the appropriation and availability funds; compliance with Indiana law; and the modifications made herein.

**1. Deleted Provisions**

By mutual agreement of the parties the following provisions of Contractor's form contract are deleted from this agreement and are not legally binding on the parties:

**Governing Laws**

Any contract provision requiring the contract to be construed with laws other than the State of Indiana is hereby deleted.

**Indemnification**

Any clause requiring the State to indemnify the Contractor is hereby deleted.

**Insurance**

Any contract provision requiring the State to maintain insurance is hereby deleted.

No other clauses are deleted, unless specifically listed here: See Exhibit 2.

The parties agree to the following additional provisions:

## **2. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this agreement. They shall make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

## **3. Assignment**

The Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

## **4. Authority to Bind Contractor**

Notwithstanding anything in the contract to the contrary, the signatory for the contractor represents that he/she has been duly authorized to execute contracts on behalf of the contractor designated above and has obtained all necessary or applicable approvals from the home office of the contractor to make this contract fully binding upon the contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the State of Indiana.

## **5. Changes in Work**

In the event a major change in the scope, character or complexity of the work is required after the work has begun, adjustments in compensation to the Contractor shall be negotiated between the parties and mutually agreed to in a signed "Change Control Request" form. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## **6. Compliance with Laws**

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

## **7. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition**

- A. All preexisting proprietary software and related documentation of the Contractor used to provide services and products under this contract and all derivative works, ideas, inventions, discoveries, processes and improvements, computer programs, including, without limitation, modifications, fixes, improvements and enhancements of the Contractor's preexisting proprietary software and related documentation and all intellectual property rights therein (whether or not patentable), created, conceived or first reduced to practice by Contractor, alone or with others, in connection with the services rendered hereunder shall be and remain proprietary to and the exclusive property of Contractor and the State shall not obtain any rights or interests therein.
- B. Any secret concepts, methods, techniques, processes, adaptations, programs, documentation, and ideas developed before or during this contract by the Contractor shall remain the sole and exclusive property of the Contractor.
- C. All preexisting proprietary software and related documentation of the State used to provide services and products under this contract and all derivative works, ideas, inventions, discoveries, processes and improvements, computer programs, including, without limitation, modifications, fixes, improvements and enhancements of the State's preexisting proprietary software and related documentation and all intellectual property rights therein (whether or not patentable), created, conceived or first reduced to practice by the State, alone or with others, in connection with the Services rendered hereunder shall be and remain proprietary to and the exclusive property of the State and the Contractor shall not obtain any rights or interest therein.
- D. It is acknowledge that the Contractor and the State have no rights to software owned by a third party which is used under a license agreement beyond that granted by the license agreement, even when that software is used to provide services under this contract.

## **8. Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

## **9. Conflict of Interest**

- A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

- 1. The individual executing this contract;
- 2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
- 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this contract consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

#### **10. Debarment and Suspension**

Contractor certifies, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this agreement by any federal agency or department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

#### **11. Default by State**

If the State, sixty (60) days after written notice, fails to correct or cure any breach of this contract, then the contractor may cancel and terminate this agreement and collect all monies due up to and including the date of termination.

#### **12. Disputes**

Should any disputes arise with respect to this contract, Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this contract will not be cause for Contractor to terminate this contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

### **13. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this agreement is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made apart of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;



- B. Establishing a drug-free awareness program to inform employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

#### **14. Force Majeure**

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

#### **15. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

#### **16. Governing Laws**

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

#### **17. Indemnification**

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall not provide such indemnification to the Contractor.

#### **18. Independent Contractor**

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

#### **19. Information Technology Accessibility**

The contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended.

#### **20. Key Person(s)**

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this contract for whatever reason, the State shall have the right to terminate this contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to the contract. Substitution of another for the Contractor shall not be permitted without express written permission from the State.
- C. Nothing in sections A and B above should be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person to this contract is                     None

## **21. Licensing Standards**

The parties agree that Contractor and its employees and subcontractors will comply with all applicable licensing standards, certification standards, accrediting standards and any other laws or regulations governing services to be provided by the Contractor pursuant to this agreement. State shall not be required to reimburse Contractor for any services performed when Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, or regulations. If licensure, certification or accreditation expires or is revoked, Contractor agrees to notify State immediately thereof.

## **22. Material Incorporated or Referred to in Contract**

The Contractor has supplied herewith all written materials, documents, or instruments mentioned or referred to in the contract except, where applicable, user manuals which will be included with the equipment upon delivery and which do not alter the terms of this agreement.

## **23. Nondiscrimination**

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

## **24. Order of Precedence**

Any inconsistency or ambiguity in this contract shall be resolved by giving precedence in the following order: (1) State Addendum contract (2) Contractor's contract (3) State Request for Quotation (4) attachments prepared by the State (5) Contractor's response to State Request for Quotation and (6) attachments prepared by the Contractor.

## **25. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

## **26. Payments**

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures. See Exhibit 1 for additional payment terms and schedule requirements.

## **27. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-5, and IC 34-13-1-6.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

## **28. Renewal Option**

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal of the license fee support service will be at \$15,000 per year and may include an increase of up to 4% per year at the sole discretion of the State.

## **29. Substantial Performance**

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

## **30. Successors and Assignees**

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this contract without the prior written consent of the State of Indiana.

### **31. Taxes**

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this contract.

### **32. Termination for Convenience**

This contract, as it pertains to License Support and/or services, may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

### **33. Termination for Default**

- A. If either party fails to comply with or perform when due any term or condition of this contract, the other party shall notify the defaulting party of its default in writing, and the defaulting party shall have thirty (30) days to cure the default. If the default is not cured within thirty (30) days, the non-defaulting party may declare, in writing delivered to the defaulting party, that this contract is terminated, and this contract shall terminate immediately upon the giving of such written declaration without any further notice ("Termination").
- B. The State shall pay the contract price for completed supplies delivered and services accepted in accordance with this contract. The Contractor shall not be responsible for the level of preparation and learning capability of persons receiving training. Termination for default with regard to services shall be available only for failure to provide the training in a professional manner and pursuant to the agreed specifications for that training. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- C. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this contract.

### **34. Waiver of Rights**

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

### **35. Work Standards**

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

### **36. Non-Collusion and Acceptance**

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

### **37. Affirmation**

I swear or affirm under the penalties of perjury that the State's Boilerplate contract clauses have not been altered modified or changed in any way except for the following rhetorical paragraphs:

The rest of this page is left blank intentionally.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Mercator Software, Inc.

Gerald Klein  
Gerald Klein  
VP, Americas General Counsel & Corporate  
Secretary

Date: 9/23/02

Federal Tax I.D.# 061132156

Indiana State Department of Health

Wendy Gettelinger  
Wendy Gettelinger, R.N., D.N.S., J.D.  
Assistant Commissioner  
Children and Family Health Services  
Date: 9/23/02

Approved:

Information Technology  
Oversight Commission:

Glenn A. Lawrence  
Glenn A. Lawrence,  
Commission Chair  
Date: 9/25/02

Joe D. Hunt  
Joe D. Hunt, M.P.H.  
Chairman  
Information Resources Management Committee  
Date: 24 Sept 2002

Department of Administration:

Glenn A. Lawrence  
Glenn A. Lawrence  
Commissioner  
Date: 9/27/02

Linda Brown  
Linda Brown  
Director  
Division of Finance  
Date: 9/24/02

State Budget Agency:

Marilyn Schultz  
Marilyn Schultz  
Director  
Date: 9/27/02

Chris Stamm  
Chris Stamm  
M.B.A., M.S.W., A.C.S.W., L.S.W., C.R.F.M.  
Assistant Commissioner  
Operational Services Commission For  
Gregory A. Wilson, M.D.  
State Health Commissioner  
Date: 9/24/02

Approved as to form and legality:

Stephen Carter  
Stephen Carter  
Attorney General of Indiana  
Date: 9-27-02

## Exhibit 1

### Payment Terms and Schedule:

Payment obligations are subject to the encumbrance of monies and shall be made in accordance with Indiana payment policies and procedures. Invoicing may occur upon receipt of the fully executed Agreement. Payment is subject to receipt of goods/services and shall be made following receipt of a properly prepared invoice. ISDH is a tax-exempt governmental entity, and any invoices submitted for payment shall not include taxes. Total payment during the initial term of this Agreement shall not exceed \$217,000.

This defines the payment terms and schedule for the engagement defined in the Addendum and Mercator Software License Agreement, including Schedules A and B.

### Contract Prices

Defined below are the amounts due to Contractor upon approval and signed acceptance, in accordance with this contract, by the ISDH of the identified Deliverables described in this Contract. Payments are due under the invoicing procedures and payment terms defined in this exhibit and the Addendum.

### Software License Fee

The Mercator software license fee of \$105,000 may be invoiced for the full amount upon delivery. Payment is subject to receipt of goods and shall be made following receipt of a properly prepared invoice.

<i>Professional Services</i>	
<p><i>HIPAA Architectural Assessment:</i></p> <p>The Mercator architect will determine where to utilize Mercator functionality to provide the best, seamless interface architecture using the least number of external components and create a structured interface environment template where additional interfaces and transactions can be added with little or no effect on existing interfaces, and utilize a common error handling facility. The Mercator system architect will prepare and deliver to ISDH a comprehensive design evaluation with data flow charts, implementation recommendations and an outline of implementation phases and steps. Approval and sign-off by ISDH.</p> <p>Estimated time to complete the above deliverable is 40 hours billed at a rate of \$300.00 per hour for on-site services and \$250.00 an hour for off-site services for a total not to exceed \$12,000.</p>	<p><b>\$12,000</b></p>



<b>Contract Deliverable Payments</b>	
<p><b>System Startup:</b></p> <p>Installation, configuration, testing, and tuning of (Mercator Design Studio, Mercator Integration Broker, Mercator Commerce Manager, Mercator Partner Manager) and any additional software required in the ISDH environment to enable electronic data exchange to meet the HIPAA EDI requirements. Final testing and evaluation according to established and agreed upon specifications provided by Mercator to ISDH. Approval and sign-off by ISDH.</p> <p>Estimated time to complete the above deliverable is 40 hours billed at a rate of \$300.00 per hour for on-site services and \$250.00 an hour for off-site services for a total not to exceed \$12,000.</p>	<b>\$12,000</b>
<p><b>HIPAA Workshop:</b></p> <p>One Mercator Consultant for 5-day workshop introduces the ISDH implementation team to the Mercator HIPAA Solution, including install and development of test systems and prototypes. Mercator provides 10 sets of documentation materials for the ISDH team use during and after training. ISDH reserves the right to make additional copies. After completing a HIPAA workshop, team members will be prepared to move forward and implement the prototype transactions developed in the workshop and the other HIPAA transactions with limited need for additional assistance from Mercator. Approval and sign-off by ISDH.</p> <p>Estimated time to complete the above deliverable is 40 hours billed at a rate of \$300.00 per hour for on-site services and \$250.00 an hour for off-site services for a total not to exceed \$12,000.</p>	<b>\$12,000</b>
<b>Total Payments</b>	<b>\$36,000</b>

#### Technical Assistance

Technical Assistance that is beyond the scope of the License Support portion of this contract be it on-site or over the telephone is valid for up to 40 hours for on-site assistance at an hourly rate of \$300, not to exceed two (2) on-site visits and 160 hours of off-site assistance at an hourly rate of \$250 and will be available throughout the term of this contract or until the allotted time is exhausted. Total expense allocated for technical assistance is \$52,000. Prior to the use of any Technical Assistance hours, approval must be obtained from the Director of External Information Services by phone and confirmed by email or fax. All invoices for Technical Assistance shall be at the end of the month the hours are used and contain a balance of hours remaining.

### Personal Flexible Learning Plan

The Mercator Flexible Learning Plan for four (4) named individuals will be provided at a cost of \$6,000 per person for a total of \$24,000. This plan allows the individual to attend any Mercator public class offered anywhere in the world for one year. The ISDH reserves the right to substitute another named individual(s) to replace any of the original named individuals should they leave employment with the ISDH or be transferred from the HIPAA Project. The training year will start upon Mercator receiving the names of the four individuals, but no later than sixty (60) days after receiving a fully executed contract. Upon receipt of the names, Mercator may invoice for the full training amount.

### Software License Fee

As part of the Software License fee, the Contractor will provide on-going support at the Gold Level for a period of two years. Payment is subject to and shall be made following delivery of the software and receipt of a properly prepared invoice.

<i>Budget Totals</i>	
<i>Item</i>	<i>Amount</i>
Software License Fee	\$105,000
Architectural Assessment, System Startup & HIPAA Workshop	36,000
Technical Assistance	52,000
Personal Flexible Learning Plan	24,000
<i>Total Payments</i>	<i>\$217,000</i>

### Invoicing Procedures and Payment Terms

Upon acceptance of the defined deliverable, an invoice will be prepared and submitted to the Director of External Information Services at the ISDH for approval. Any outstanding issues will be resolved between the Director of External Information Services and the Contractor's Project Manager based on the defined deliverable. Contractor's invoices shall be due upon presentation.

### Renewal

Renewal Option, clause 29 in the Addendum, only applies to the Software License Fee Support portion of this contract.

Exhibit to the Addendum to the Software License and Professional Services Agreement between MERCATOR Software, Inc. and the Indiana State Department of Health

## **Exhibit 2**

1. Delete provision 4 in its entirety.
2. Delete the last two sentences of provision 7.
3. Delete provision 10 in its entirety.
4. Delete provision 11 in its entirety.
5. Delete provision 12 in its entirety.
6. Delete provision 13 in its entirety.
7. Delete the last sentence of provision 15.
8. Delete provision 17 up to and including section V.
9. Delete everything after the word "paid" in subprovision VIII of provision 17, and add "under Schedule A for the software or the total amount paid under the work assignment for services or the total amount paid for other authorized services Mercator provides."
10. Delete "including the use of Customer's logo" from the third line of provision 18.2.
11. Delete provision 18.4 in its entirety.
12. Delete "indemnification and" from the first line of provision 18.6.
13. Add "including Schedule A and Schedule B and the Addendum" after the word "Agreement" on the first line of provision 18.8, but before the phrase "is the entire and exclusive understanding."
14. Delete "Upon execution of Agreement" from the License Support Renewal Pricing Section on the last page of Schedule A, page 10 and add "upon delivery of the software."
15. Delete "2 year(s) following License Support Commencement Date" from the License Support Renewal Date Section on the last page of Schedule A, page 10 and add "October 1, 2004."
16. Delete "As per Section 7 of the Agreement" from the License Support Renewal Pricing Section on the last page of Schedule A, page 10 and add "as per provision 29 of the Addendum."
17. Delete the second sentence of the first paragraph of Schedule B.
18. Add "In the event the State requests transition services upon notice of expiration or termination of the this agreement, Mercator shall use commercially reasonable efforts to provide such reasonable services, at Mercator's then current rate" after the fifth paragraph on page two of Schedule B and before paragraph six on page two of Schedule B.

Exhibit to the Addendum to the Software License and Professional Services Agreement between MERCATOR Software, Inc. and the Indiana State Department of Health

# SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This Agreement is between MERCATOR Software, Inc., a Delaware corporation, having its principal place of business at 45 Danbury Road, Wilton, CT 06897 ("MERCATOR") and the Indiana State Department of Health ("Customer"), having its principal place of business at 2 North Meridian Street, Indianapolis, IN 46204.

## 1. Definitions and Basis of Agreement.

Capitalized terms have the meanings given to them throughout this Agreement. MERCATOR wishes to grant and Customer wishes to receive a right to use MERCATOR's proprietary Software. Accordingly:

2. **License Agreement.** MERCATOR grants Customer the perpetual, non-exclusive, non-transferable, right to use the Software solely in the Environment defined in Schedule A hereunder. Customer does not have the right to further license or sublicense the rights granted in this Agreement. The Software and related documentation are and shall remain the property of MERCATOR. All rights not expressly granted herein are reserved by MERCATOR and/or its licensors. This Agreement grants no additional express or implied license, right or interest in any copyright, patent, trade secret, trademark, invention or other intellectual property right of MERCATOR or its licensors. Customer receives no right to and will not sell, assign, license, sublicense, lease, market, transfer, encumber or suffer to exist any lien or security interest on any MERCATOR product or any incorporated software of any MERCATOR licensor, and any such action shall be void; nor will Customer take any action that would cause any such Software to be placed in the public domain.

3. **Restrictions on Use.** The foregoing rights to use the Software shall be subject to any and all applicable restrictions which shall include but not be limited to the following: (i) Customer shall not copy or allow copies of the Software to be made, except as specifically allowed under this Agreement; (ii) Customer shall not sell, lease, sublicense, distribute, or otherwise transfer the Software to any person, firm or entity; (iii) Customer shall not modify, alter, adapt, or publicly perform or display the Software or documentation provided by MERCATOR in any manner; (iv) Customer shall not use the Software to provide computer services (whether remote access, batch, or otherwise) to third parties; and (v) Customer shall not decompile, disassemble, reverse translate, or otherwise reverse engineer any portion of the Software. The Design Studio is not to be used for production purposes.

4. ~~**Fees.** Customer shall pay MERCATOR the Software License Fees and License Support Service Fees set forth in Schedule A of this Agreement as follows: 100% upon execution of this Agreement. License Support Service Fees for subsequent years shall be paid by Customer no later than thirty (30) days prior to the expiration of each annual term, based upon an invoice for License Support Services issued by MERCATOR. "Delivery" shall mean transfer of the Software to a carrier selected by MERCATOR (or actual receipt if delivered by MERCATOR directly to Customer). In the event Customer requests a carrier or class of service other than MERCATOR's usual carrier, Customer shall pay, or reimburse MERCATOR for such carrier's charges. Payments received more than ten (10) days after invoice date shall be subject to a delinquency fee of 1 1/2% per month (or the maximum legal rate, if less) from invoice date.~~

5. **Warranty.** (a) MERCATOR warrants that it has the right to (i) enter into this Agreement and (ii) grant the license hereunder. (b) MERCATOR represents and warrants to Customer that the Software shall perform substantially in accordance with MERCATOR's technical documentation. If however, any modifications are made to the Software by Customer, or any employee or agent thereof, without MERCATOR's written consent, the warranties in Section 5(a) and 5(b) shall not apply. (c) Notwithstanding anything in Section 5(a) and 5(b) hereof, Customer shall notify MERCATOR in writing within thirty (30) days following Delivery of the Software in regard to a claim of any breach of the warranty set forth in Section 5(a) or 5(b) hereof. If MERCATOR determines in its reasonable discretion that a breach of the warranty has occurred, MERCATOR's sole obligation under this warranty is to cure such breach in a manner consistent with MERCATOR's regular business practices. Software is not designed or licensed for use in hazardous environments and/or those requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation systems, communication systems, air traffic control systems, life-support systems and weapons systems.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **License Support.** (a) License Support Services. For the period indicated in Schedule A of this Agreement beginning upon the date of original Delivery of the Software to Customer ("Initial License Support Period") and thereafter for each yearly License Support Renewal Period for which Customer pays the applicable License Support Service Fee, MERCATOR will make the following License Support Services available to Customer: (i) Customer Support Access. MERCATOR personnel will be available to three (3) named technical contacts of Customer by phone, email and web access to answer questions regarding the use of the most current release of the Software released by MERCATOR, and to help Customer identify, verify, and resolve problems with such Software. (ii) Telephone Support. Telephone Support is currently available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time but subject to change at the option of MERCATOR. MERCATOR holidays are excluded. (iii) New Releases. MERCATOR shall provide Customer with copies of any standard new versions of the Software that are not separately priced and are released by MERCATOR on a general basis to its customers paying for License Support Services. All such new releases shall be subject to the terms and conditions of this Agreement. Where MERCATOR has made available to Customer a current release of the Software, MERCATOR shall not be obligated to support the prior release for more than six (6) months thereafter. (iv) Dial-in Access. For purposes of providing day-to-day support, Customer shall allow remote access to Customer's system. High-speed access (usually via a TCP/IP) connection shall be utilized when available. Customer acknowledges that MERCATOR's ability to provide efficient License Support Services is contingent upon Customer arranging for dial-in access promptly after execution of this Agreement. (b) Termination of License Support. Either party may terminate License Support Services by giving written notice to the other party at least ninety (90) days prior to the end of any License Support Period. Upon termination for any reason, Customer's rights to receive the foregoing License Support Services will cease.
7. **Additional Costs.** In the event MERCATOR is required to provide repair or diagnostic services not

associated with the foregoing warranty, or repair program defects caused by non-standard modifications to the Software, or for which corrections have previously been submitted to Customer, Customer shall be charged according to MERCATOR's then prevailing rates and for MERCATOR's out-of-pocket expenses. ~~License Support Services under a License Support Renewal Period, and the addition of features or products shall also be at the prices set forth in MERCATOR's then current price list. MERCATOR reserves the right to change such charges without prior notice.~~

8. **Ownership.** All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Software are and will remain the exclusive property of MERCATOR or its licensors, whether or not specifically recognized or perfected under local applicable law. Customer will not take any action that jeopardizes MERCATOR's or its licensor's proprietary rights or acquire any right in the Software, except the limited use rights specified in Section 2. MERCATOR or its licensors will own all rights in any copy, translation, modification, adaptation or derivation of the Software, including any improvement or development thereof, without regard to the author, inventor or creator of the same and without regard to the identity of the person or organization providing the resources used to develop such derivation.
9. **Confidential Information.** (a) Customer acknowledges that the Software is a confidential and proprietary trade secret of MERCATOR. Customer, including Customer's agents and employees, shall keep the Software and all related confidential materials in strictest confidence. Each party agrees that it will hold all confidential information of the other party in confidence with the same degree of care as it uses to safeguard its own confidential information, provided that such degree of care shall not be less than reasonable care. Customer shall not copy the Software or any related confidential materials. (b) Neither MERCATOR nor Customer will have any confidentiality obligation with respect to any portion of the Software or other information that (i) has become publicly known through no wrongful act of the receiving party, (ii) has been rightfully received from a third party without restriction on disclosure and without breach of this Agreement, (iii) has been independently developed by the receiving party, (iv) has been approved for release by written authorization of the disclosing party, (v) has been furnished by the

disclosing party to a third party without a similar restriction on disclosure.

Each party acknowledges that it has an obligation to obligate its employees, contractors and agents to keep any and all confidential information confidential pursuant to this Agreement and shall instruct its employees with access to confidential information, and require in writing its contractors and other agents with access to confidential information, not to disclose such confidential information to third parties without the prior consent of the other party.

Without prejudice to the generality of the foregoing, Customer is hereby notified that the source code of Software and parts thereof whether developed by MERCATOR or its licensors is confidential information and Customer agrees not to disassemble, decompile, or otherwise reverse engineer MERCATOR supplied software, and Customer agrees that it will not remove or allow to be removed any copyright notice, trade secret or other proprietary rights notice from the MERCATOR software.

Each party agrees that it shall not use any confidential information except for the purpose of exercising rights and fulfilling obligations under this Agreement. It is agreed that in the event of a breach of this Agreement money damages may not be adequate and either party may seek an injunction or other equitable relief.

- 10. Infringement — Indemnification.** — Provided MERCATOR is given prompt written notice of any claim and complete authority and information required for the defense thereof, MERCATOR shall pay all costs and damages made in settlement or awarded against Customer resulting from any claim based on an allegation that the Software as supplied by MERCATOR hereunder infringes a copyright, trade secret, U.S. patent or contract right of any third party. **Infringement Indemnification — Remedy.** If a final injunction as described in Section 10 is obtained, or if in MERCATOR's opinion such an injunction is likely to be obtained, MERCATOR may, at its sole option, either (i) procure the right to continue using the Software, (ii) replace or modify the Software to eliminate the infringement while providing substantially equivalent functionality, or (iii) if neither (i) nor (ii) can be reasonably effected by MERCATOR, direct Customer to terminate all licenses for the Software and refund to Customer a portion of the Software License Fee paid to MERCATOR, which shall be calculated by multiplying the Software License Fee attributable to each infringing copy of the Software by a fraction, the numerator of which shall be determined by subtracting

~~from sixty (60) the number of calendar months between the date the Software License Fee for such copy was received by MERCATOR and the date on which the license for such copy is terminated, and the denominator of which shall be sixty (60).~~ The parties acknowledge that no portion of the Software License Fee for any copy of Software shall be refunded more than five (5) years after the date such amount was received by MERCATOR. MERCATOR and MERCATOR's licensors will have no obligation hereunder for any claim of infringement based on (i) the use of a superseded or altered release of the Software if such infringement would have been avoided by the use of a current, unaltered release of the Software (ii) the combination or use of the Software with software, hardware or other materials not furnished by MERCATOR if such infringement would have been avoided by the use of MERCATOR products alone, or (iii) the use of the Software was for a purpose other than that permitted under this Agreement.

- 11. Limitation of Liability/Indemnification.** In no event shall either party be liable to the other for any indirect, incidental, special, punitive, or consequential damages or lost profits arising out of, resulting from, or in any way connected with this Agreement, even if it has been advised of the possibility of such damage. Except for breach of confidentiality, intellectual property indemnification, or as specified elsewhere in this Agreement, in no event shall either party be liable to the other for any direct damages, regardless of the form of action, in excess of the total amount paid for the applicable purchase of Software, i.e. the initial purchase or a subsequent purchase under a MERCATOR Software Supplement. Except in those jurisdictions, which do not recognize the exclusion or limitation of incidental or consequential damages, this shall be the parties' exclusive remedy. Customer shall indemnify MERCATOR for any tariffs, duties, penalties, or liabilities resulting from MERCATOR's adherence to Customer's delivery instructions with respect to the Software or MERCATOR'S good faith efforts to deliver the Software in the absence of Customer instructions. Customer shall indemnify MERCATOR for all losses and expenses associated with any claims by third parties against MERCATOR relating to the use of the Software by Customer to the extent that they are based upon the manner in which Customer uses the Software and the output generated by such use.
- 12. Default and Termination.** If Customer shall breach any material portion of this Agreement and shall fail to

~~cure such breach within thirty (30) days of MERCATOR's notice thereof, Customer's rights to use the Software shall cease and unpaid installments, if any, shall be immediately due. In the event of such termination, Customer's rights to use the Software shall cease and Customer shall certify to MERCATOR in writing that all proprietary and confidential information regarding the Software of a machine-readable nature and all other proprietary information has been returned to MERCATOR or destroyed.~~

~~13. Taxes. Customer shall be responsible for all taxes of whatever nature, including sales, use, value added, excise, or similar taxes associated with this Agreement or Customer's use of the Software, except where based upon MERCATOR's net income or corporate franchise.~~

14. Inspection. During the term of this Agreement, MERCATOR or its representative may, upon prior notice to Customer, inspect the files, computer processors, equipment and facilities of Customer during normal working hours to verify Customer's compliance with this Agreement. While conducting of such inspection, MERCATOR or its representative will be entitled to copy any item that Customer may possess in violation of this Agreement.

15. Export Restrictions. Customer acknowledges that the Software and all related technical information, documents and materials, are subject to export controls under the U.S. Export Administration Regulations. Customer will (a) comply strictly with all legal requirements established under those controls, (b) cooperate fully with MERCATOR in any official or unofficial audit or inspection that relates to these controls, and (c) not export, re-export, divert or transfer, directly or indirectly, any such Software or related technical information, documents or materials thereof to Cuba, Libya, North Korea, or any additional country that is embargoed by Executive Order, unless Customer has obtained the prior written authorization of MERCATOR and the U.S. Commerce Department. ~~Customer shall indemnify and hold harmless MERCATOR from any suit or proceeding brought against MERCATOR based on a claim that Customer has violated U.S. export restrictions.~~

16. Governmental Agencies. To the extent that Software provided under this Agreement is commercial computer software developed exclusively at private expense such Software is in all respects proprietary data belonging to MERCATOR or its licensors. (a) Department of Defense End Users. If the Software is

licensed by or on behalf of agencies or units of the Department of Defense (DoD), then, pursuant to DoD FAR Supplement Section 227.7202 and its successors (48 CFR 227.7202) the Government's right to use, reproduce or disclose the Software licensed under this agreement is subject to the restrictions of this Agreement. (b) Civilian Agency End Users. If the Software is licensed by or on behalf of civilian agencies of the U.S. Government, then, pursuant to FAR Section 12.212, the Government's right to use, reproduce or disclose the Software licensed under this Agreement is subject to the restrictions of this Agreement. This paragraph shall not be used to infer any right to license, assign, transfer, or sublicenses to the U.S. Government or Civilian Agencies.

~~17. Professional Services. Separate and apart from the purchase of the License hereunder, Customer may purchase services from MERCATOR in accordance with any Work Assignment issued under this Agreement. All services provided to Customer by MERCATOR hereunder shall be subject to the terms and conditions of this Agreement; in the event of a conflict between this Section 17 (including Work Assignments issued hereunder) and the remainder of this Agreement, this Section 17 (including Work Assignments issued hereunder) shall control.~~

~~I. Purchase of Services. Customer may purchase services from MERCATOR in accordance with any Work Assignment issued hereunder and attached hereto at the time of execution and any additional Work Assignments issued hereunder describing additional services agreed upon from time to time by mutual written agreement, with those Work Assignments incorporated into and governed by this Agreement. MERCATOR is under no obligation to provide services without written acceptance by MERCATOR of any Work Assignment(s) issued from time to time hereunder. MERCATOR will function solely in accordance with the parameters described in the mutually agreed upon Work Assignments issued from time to time hereunder and the terms and conditions of this Agreement.~~

~~II. Term of Service Obligation. MERCATOR shall be under no obligation to continue providing services in the future, although MERCATOR shall fulfill obligations agreed to by way of written acceptance of Work Assignment(s) issued hereunder.~~

~~III. Compensation. In consideration for the services rendered under this Agreement, Customer will pay MERCATOR in accordance with the~~

~~corresponding Work Assignment(s) issued hereunder. Any estimates made by MERCATOR for the cost of services to Customer whether made orally, in a schedule, in a Work Assignment issued hereunder, a proposal, or any other written document shall be made in good faith, but are not guaranteed in any way to any extent by MERCATOR and do not change any Work Assignment to a fixed price contract. MERCATOR acknowledges that it is not entitled to any benefits provided by Customer to its employees. In the event Customer requests MERCATOR to perform the services hereunder (i) in excess of forty-five (45) hours during a normal business week, (ii) during weekend hours; to the extent that such weekend hours constitute an excess of forty-five (45) hours of services already performed by MERCATOR for that week or (iii) on a Customer scheduled holiday, Customer shall pay MERCATOR 1 1/2 times the hourly rate specified in the applicable Work Assignment. Customer agrees to provide MERCATOR with fourteen (14) days prior written notice of the request for any of the above additional hours of service or the request for any services to be performed on a weekend.~~

~~IV. Expenses. Customer will reimburse MERCATOR for reasonable expenses incurred in the performance of its obligations under this Agreement. MERCATOR will be required to provide documentation of expenses incurred and shall submit requests for payment of expenses with documentation to Customer in accordance with the billing procedures outlined in Section V.~~

~~V. Billing Procedure. MERCATOR shall submit invoices to Customer showing professional services fees and expenses as per Section IV. Customer agrees to pay MERCATOR the amount upon receipt of invoice. If a dispute arises, Customer will notify MERCATOR within five (5) working days from receipt of the invoice to resolve the disputed amount. Payments received more than ten (10) days after invoice date shall be subject to a delinquency fee of 1 1/2% per month (or the maximum legal rate, if less) from invoice date.~~

VI. Independent Contractor. Both Customer and MERCATOR agree that MERCATOR will act as an independent contractor in the performance of its duties under this Agreement. As such, MERCATOR will not be eligible for any benefits provided by Customer to its employees. MERCATOR shall be responsible for payment of all taxes arising out of MERCATOR's activities in accordance with this Agreement, including, by way of illustration, but not limited to, federal and

state income taxes, social security taxes, unemployment insurance taxes, and any other taxes or business license fees as required. Moreover, MERCATOR agrees to obtain all necessary insurance coverage, including, by way of illustration, but not limited to, liability, workers' compensation and state disability insurance. Finally, MERCATOR shall comply with all applicable federal, state and local laws.

MERCATOR shall not represent directly or indirectly that it is an agent or legal representative of Customer, nor shall MERCATOR incur any liabilities or obligations of any kind in the name of or on behalf of Customer other than those specifically made as part of this Agreement.

VII. Derivative Works. Any and all inventions, documents, data, programs and/or training materials developed for Customer and produced by MERCATOR in the execution of the services are considered derivative works of MERCATOR and MERCATOR owns all rights of interest in and to its proprietary software and derivative works. If, in the production of the program(s) or material(s), MERCATOR incorporates elements from pre-packaged, off-the-shelf program(s), MERCATOR is responsible for obtaining, at its own expense, any and all releases necessary to utilize the material in such fashion and will provide written assurance to Customer that such releases and permission has been obtained.

VIII. Liability for Damages. Customer agrees that MERCATOR's liability hereunder for damages, regardless of the form of action, shall not exceed the total amount paid for services under the applicable Work Assignment or in the authorization for the particular service if no Work Assignment is made. This shall be Customer's exclusive remedy, under Schedule A for the software or the total amount paid under the Work Assignment for services, or the total amount paid for other authorized services MERCATOR provides.

Customer further agrees that MERCATOR will not be liable for any lost profits, nor for any claim or demand against Customer by any other party.

MERCATOR shall not be liable to Customer (or any of Customer's customers) for any delay in performance or any failure in performance hereunder caused in whole or in part by reason of force majeure, which shall be deemed to include the occurrence of any event beyond the control of MERCATOR, such as Customer's failure to furnish necessary information with respect to details to be determined by Customer or other



delays or failures of performance on the part of Customer, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, failure or delays in transportation, laws, regulations or acts of any national, state, or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, accident, fire, explosion, flood, storm, or other act of God, shortage of labor, fuel, raw materials, machinery or technical failures. Customer shall not refuse to accept delivery by reason of delays occasioned by force majeure. Any delay resulting from force majeure shall correspondingly extend the time for performance by MERCATOR.

MERCATOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**IX. Non-Solicitation.** Neither party shall solicit for employment or hire any employee of the other performing services or training under this Agreement twelve (12) months following execution of this Agreement or during the period of time services or training are provided and for a period of twelve (12) months thereafter.

#### **18. General Provisions.**

**18.1 Assignment.** This Agreement may not be assigned by Customer or by operation of law without the express written approval of MERCATOR. Customer acknowledges that in the ordinary course of its business MERCATOR may assign its right to receive payments hereunder to a third party for value. Customer agrees not to assert against such a third party any claims or defenses which Customer may have against MERCATOR whether by operation of law or otherwise. Notwithstanding the foregoing, however, the Company hereby acknowledges MERCATOR's right to use subcontractors for the performance of services hereunder. All such subcontractor services shall be in accordance with the standards set forth in the applicable Work Assignment issued hereunder.

**18.2 Press Releases.** Subject to review by Customer, MERCATOR shall be entitled to issue a press release,

~~including the use of Customer's logo, following execution of this Agreement publicizing the existence of this Agreement and describing the relationship of the parties herein.~~

**18.3 Notices.** All notices and demands hereunder shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth above (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, or by nationally-recognized private express courier and shall be deemed complete upon receipt. If such Notice is intended for MERCATOR, notice must be sent to the attention of its Chief Financial Officer.

~~**18.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Connecticut.~~

**18.5 Limitation on Claims.** Any action by either party arising out of, resulting from, or in any way connected with this Agreement (except for breach by Customer of confidentiality) must be brought within one (1) year of the date the right, claim, demand, or cause of action shall first accrue (or, if such period is shorter than the minimum period allowed by law, then the minimum period allowed by law), provided that actions by MERCATOR against Customer for Fees may be brought within two (2) years from the date of the last payment.

**18.6 Survival of Certain Provisions.** The ~~indemnification and confidentiality and ownership obligations set forth in this Agreement shall survive the termination of the Agreement by either party for any reason.~~

**18.7 Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.

**18.8 All Amendments in Writing.** This Agreement, including Schedule A and Schedule B and the Addendum, including Exhibits 1 and 2, is the entire and exclusive understanding between MERCATOR and Customer with respect to the Software, superseding any prior agreements and understandings regarding the Software, and may only be modified by written amendments executed by both parties. Only

officers of MERCATOR have the authority to modify this Agreement on behalf of MERCATOR. Purchase orders or similar documents relating to the Software issued by Customer shall be for Customer's internal

use only and shall have no effect on this Agreement.

MERCATOR and Customer have caused this Agreement to be executed by their duly-authorized representatives as of the date set forth below, the individuals signing personally warranting their authority to do so.

MERCATOR SOFTWARE, INC.

(CUSTOMER)

By: \_\_\_\_\_  
(Authorized Signature)  
Gerald Klein  
(Printed Name)  
VP, Americas General Counsel & Corporate Secretary  
(Title)

By: \_\_\_\_\_  
(Authorized Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A

### Environment:

<b>PRODUCTION SERVER #1:</b>  Location: Indiana # of CPUs or MIPS 2 CPU's Operating System Windows Server Serial # To Be Determined  <b>Software:</b> Mercator Integration Broker X Mercator Process Integrator _____ Mercator SDK _____  <b>License Limitation:</b>  Customer's license to the Software permits Customer to use the Software solely in support of translating HIPAA for the Indiana State Department of Health project.	<b>PRODUCTION SERVER #2:</b>  Location: _____ # of CPUs or MIPS _____ Operating System _____ Server Serial # _____  <b>Software:</b> Mercator Integration Broker _____ Mercator Process Integrator _____ Mercator SDK _____  <b>License Limitation:</b>
<b>NON-PRODUCTION SERVER #1:</b>  Location: Indiana # of CPUs or MIPS 2 CPU's Operating System Windows Server Serial # To Be Determined  <b>Software:</b> Mercator Integration Broker x Mercator Process Integrator _____ Mercator SDK _____	<b>NON-PRODUCTION SERVER #2:</b>  Location: _____ # of CPUs or MIPS _____ Operating System _____ Server Serial # _____  <b>Software:</b> Mercator Integration Broker _____ Mercator Process Integrator _____ Mercator SDK _____

### DESIGN COMPONENTS:

Mercator Design Studio 2  
Mercator Process Designer \_\_\_\_\_

\*For any additional servers, Customer shall complete an Attachment detailing the above.

Customer's license to the Software hereunder is restricted to the following marked options:

<b>RESOURCE ADAPTERS</b> <b>Messaging</b> <input type="checkbox"/> IBM WebSphere (MQSeries) <input type="checkbox"/> BEA MessageQ <input type="checkbox"/> BEA Tuxedo <input type="checkbox"/> Candle Roma <input type="checkbox"/> Java Messaging Service (JMS) <input checked="" type="checkbox"/> Microsoft MSMQ <input type="checkbox"/> Oracle AQ <input type="checkbox"/> TIBCO Rendezvous	<b>A2A/B2B Integration Packages</b> <input type="checkbox"/> SAP <input type="checkbox"/> PeopleSoft <input type="checkbox"/> Siebel <input type="checkbox"/> EDI: EDIFACT <input checked="" type="checkbox"/> EDI: X12 <input type="checkbox"/> Importer: COBOL <input checked="" type="checkbox"/> Importer: TEXT <input checked="" type="checkbox"/> Importer Collection: XML <input type="checkbox"/> EDI: TRADACOMS	<b>Industry Integration Packages</b> <input checked="" type="checkbox"/> Healthcare: HIPAA X12N <input checked="" type="checkbox"/> Healthcare: NCPDP <input checked="" type="checkbox"/> Healthcare: HL7 <input type="checkbox"/> FS Manager <input type="checkbox"/> SWIFT <input type="checkbox"/> GSS for SWIFT ISO 15022 plus SWIFT <input type="checkbox"/> GSS for GSTPA
<b>Database</b> <input type="checkbox"/> IBM DB2 <input checked="" type="checkbox"/> Oracle <input checked="" type="checkbox"/> Microsoft SQL Server <input type="checkbox"/> Sybase SQL Server <input type="checkbox"/> Informix <input type="checkbox"/> OLE DB <input checked="" type="checkbox"/> ODBC	<b>Communication</b> <input checked="" type="checkbox"/> XML <input type="checkbox"/> COM <input checked="" type="checkbox"/> E-mail <input checked="" type="checkbox"/> FTP <input checked="" type="checkbox"/> HTTP <input type="checkbox"/> Sockets <input type="checkbox"/> VAN <input type="checkbox"/> Java Class <input type="checkbox"/> JCA Gateway	<b>Expansion Options</b> <input type="checkbox"/> Security Module <input checked="" type="checkbox"/> Commerce Manager <input type="checkbox"/> CICS Execution <input checked="" type="checkbox"/> Event Server <input type="checkbox"/> Event Agent <input type="checkbox"/> Add-on SDK <input type="checkbox"/> IMS-DC Execution

In the event Customer is licensed to two (2) or more production servers as detailed above, Customer shall indicate any difference in the options included for each production server.

Software License Fee \$ 105,000

This fee includes full support during normal business hours (8am-8pm EST, Monday—Friday), 24x7 after-hours technical assistance with production system down issues, and all applicable software updates and releases, for a two-year period following delivery of the software, to and including September 30, 2004. Mercator provides Gold support customers with full support during regular business hours. Additionally, Gold support customers enjoy the peace of mind provided by the availability of 24x7 after-hours technical assistance with production system down issues and are provided with all applicable software updates and releases.

Personal Flexible Learning Plan for 4 Individuals: \$24,000

Location of Training, if any: Any training location

Enrollees in the Personal Flexible Learning Plan™ program may attend any public class anywhere in the world at no additional charge for one full year.

<b>Professional Services:</b>	To be invoiced as rendered per schedule B
Architectural Assessment:	\$12,000
System Startup:	\$12,000
HIPAA Workshop:	\$12,000
Technical Assistance	<u>\$52,000</u>
Total Consulting	\$88,000

**Pricing Summary:**

Software License Fee	\$ 105,000
Personal Flexible Learning Plan:	\$ 24,000
Architectural Assessment:	\$ 12,000
System Startup:	\$ 12,000
HIPAA Workshop:	\$ 12,000
Technical Assistance	\$ 52,000
Grand Total:	\$ 217,000

Payment Terms: Upon receipt of invoice

Required Delivery Date: Upon execution of Agreement

Warranty Period: Thirty (30) days following Delivery of Software pursuant to Section 5 of the Agreement

Software License Fee Support  
Service Renewal Date:

2 year(s) following License Support Commencement Date October 1, 2004

Billing Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Customer PO Number: \_\_\_\_\_

Special billing instructions, if any: \_\_\_\_\_



Schedule B-  
Professional Services Work Assignment 02-01

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**Indiana State Department of Health**

Contact Name :  
Contact Email :  
Contact Phone :  
Contact Fax :  
Contact Address :

The purpose of this Work Assignment is to assist INDIANA STATE DEPARTMENT OF HEALTH with the following services ("Services"). ~~Unless otherwise defined below, there are no deliverables associated with this Work Assignment.~~

As we have discussed, the relevant skills our team needs in order to assist you include:

- Mercator Consultant with Healthcare HIPAA experience
- Mercator Consultant with Commerce Manager experience

While onsite, our team will focus on whatever you require, but you have outlined the following deliverable as most important:

- **HIPAA Architectural Assessment:** Mercator's system architect will work together with your team to perform a detailed architectural evaluation. Additionally, the system architect will prepare and deliver a comprehensive design evaluation with data flow charts and implementation recommendations. From this information, the Mercator architect will determine where to utilize Mercator functionality to provide the best, seamless interface architecture using the least number of external components and create a structured interface environment template where additional interfaces and transactions can be added with little or no affect on existing interfaces, and utilize a common error handling facility.

40 Hours

- **System Startup Services:** A Mercator consultant will install, test and tune your development system at the Indiana State Department of Health. Mercator installation engineers with experience on the platforms used in your environment work with your system administrators to ensure a stable platform for your production rollout.

40 Hours

- **HIPAA Workshop:** A Mercator consultant will conduct a HIPAA Workshop at the customers site. After completing a HIPAA workshop at the Indiana State Department of Health, they will be prepared to move forward and implement the prototype transactions developed in the Workshop and the other HIPAA transactions in their plan with limited need for additional assistance from Mercator.

40 Hours

- **Technical Assistance Onsite(Mapping Mentoring and Implementation Services):** In order to further assist with the implementation Mercator will provide additional technical assistance for implementing the State of Indiana solution. Mercator consultants will assist in the set up and initial testing of the Mercator environment and/or will provide mapping and mentoring services as needed.

40 Hours

- **Technical Assistance Offsite(Mapping Mentoring and Implementation Services):** In order to further assist with the implementation Mercator will provide additional technical assistance for implementing the State of Indiana solution. Mercator consultants will assist in the set up and initial testing of the Mercator environment and/or will provide mapping and mentoring services as needed.

160 Hours

This Work Assignment is valid for up to 320 hours of assistance, not to extend beyond December 31, 2003, at an hourly rate of \$250.00 for offsite assistance and \$300.00 for onsite assistance which includes travel and expenses. In the event the INDIANA STATE DEPARTMENT OF HEALTH requests a consultant to perform the services hereunder (i) in excess of forty-five (45) hours during a normal business week, (ii) during weekend hours; to the extent that such weekend hours constitute an excess of forty-five (45) hours of services already performed by Consultant for that week or (iii) on a INDIANA STATE DEPARTMENT OF HEALTH scheduled holiday, INDIANA STATE DEPARTMENT OF HEALTH shall pay Consultant 1 1/2 times the hourly rate specified herein. INDIANA STATE DEPARTMENT OF HEALTH agrees to provide Consultant with fourteen (14) days prior written notice of the request for any of the above additional hours of service or the request for any services to be performed on a weekend. The estimated start date is September 30, 2002 with an estimated end date of December 31, 2003. Our assistance will end upon the first occurrence of either Mercator providing 320 hours of assistance or INDIANA STATE DEPARTMENT OF HEALTH determining the Services are no longer necessary. All rates are in U.S. Dollars. Clients are billed for actual time. This rate is valid for the length of this Work Assignment. This Work Assignment may further be terminated by either party provided the other party is given not less than thirty (30) days written notice of termination.

A formal Change Control Request ("CCR") will be required to vary the scope of this engagement. The CCR must include the requested change, the reason for the change, the potential impact of the change and must be signed by authorized representatives of both parties.

**In the event the State requests transition services upon notice of expiration or termination of the this agreement, Mercator shall use commercially reasonable efforts to provide such reasonable services, at Mercator's then current rate.**

Any estimates made by Mercator for the cost of services to INDIANA STATE DEPARTMENT OF HEALTH or for work schedules whether made orally, in a Change Control Request, or any other written

document shall be made in good faith, but are not guaranteed by Mercator and do not change any Work Assignment or Change Control Request to a fixed price contract. Mercator will however, notify INDIANA STATE DEPARTMENT OF HEALTH as soon as practicable if an estimate will be exceeded and INDIANA STATE DEPARTMENT OF HEALTH may then terminate the services according to the terms outlined in the applicable Professional Services Agreement.

~~This schedule B references all terms and conditions set forth in the Software License Agreement/Professional Services Agreement, signed \_\_\_\_\_ (including any Exhibits, Schedules or Attachments thereto) between Mercator Software, Inc. and the INDIANA STATE DEPARTMENT OF HEALTH.~~