

PROFESSIONAL SERVICES AGREEMENT

between

the Office of Pensions for the State of Delaware and CherryRoad Technologies Inc.

This Agreement ("Agreement") is entered into as of June 1, 2014 ("Effective Date") and will end on May 31, 2015, by and between the State of Delaware, Office of Pensions ("Delaware" and/or the "Office of Pensions"), and CherryRoad Technologies Inc., a Florida corporation, with offices at 301 Gibraltar Dive, Suite 2C, Powder Mill Plaza, Morris Plains, New Jersey, 07950 ("CherryRoad").

WHEREAS, the Office of Pensions issued a Request for Proposals to Conduct a PeopleSoft 9.2 HCM Upgrade Project, Bid Number: OMB14101-PS\_HCM\_PROJ, on November 22, 2013, (the "RFP") in which the Office of Pensions solicited proposals from qualified vendors to supply the professional services necessary to upgrade and enhance the Office of Pensions' PeopleSoft HCM program with a bid closing date of January 22, 2014; 3:00 PM EST; and

WHEREAS, the Office of Pensions received 6 proposals, of which 6 were timely delivered and responsive to the requirements of the RFP; and

WHEREAS, the Office of Pensions evaluated the 6 proposals which were properly submitted pursuant to the RFP's requirements, and conducted interviews with 2 firms; and,

WHEREAS, Delaware has determined to enter into this Agreement with CherryRoad because the proposal and presentation submitted by CherryRoad was the technically superior proposal and best fit the needs of the Office of Pensions.

WHEREAS, CherryRoad desires to provide such services to the Office of Pensions on the terms set forth below;

WHEREAS, Delaware and CherryRoad represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and CherryRoad (the "Parties") agree as follows:

**1. Services.**

1.1 CherryRoad shall perform for Delaware the services specified in the description of the statement of work ("Statement of Work"), attached hereto as Appendix A and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the Statement of Work, attached hereto as Appendix A; and (c) the Vendor Rate table ("Vendor Rates") attached hereto as Appendix B; (d) the RFP, attached hereto as Appendix C; and (e) CherryRoad's proposal dated January 22, 2014, attached hereto as Appendix D. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by CherryRoad shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the work product or a change in the services to be provided under this Agreement, it shall notify CherryRoad, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by CherryRoad for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 CherryRoad will not be required to make changes to its scope of work that result in CherryRoad's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under the Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

1.5 Delaware acknowledges that: (i) the services do not include software, (ii) all licenses for any software have already been obtained separately by Delaware, (iii) such separate license agreement(s) allow CherryRoad and its suppliers to perform the services, (iv) the software has already been delivered to Delaware, (v) Delaware has separately acquired and will continue to maintain all maintenance agreements with a separate software provider.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from June 1, 2014 through May 31, 2015. The Agreement may be extended for up to four (4) one (1) year periods.

2.2 Delaware will pay CherryRoad for the performance of services as described in the Statement of Work in Appendix A attached hereto.

2.3 Delaware's obligation to pay CherryRoad for the performance of services described in Appendix A, Statement of Work will not exceed the costs as set forth in the Statement of Work at Appendix A. It is expressly understood that the work defined in the appendices to this Agreement must be completed by CherryRoad and it shall be CherryRoad's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized by Delaware to CherryRoad.

2.4 CherryRoad has agreed to the payment schedule detailed in Appendix A, which conditions payments upon reaching specified completion milestones during the execution of the contract. CherryRoad shall certify in writing that it has completed each milestone with the submission of each invoice to Delaware and with sufficient detail to support the services provided, consistent with the form provided, and made a part hereto at Appendix E. Upon acceptance and approval that the milestone has been satisfactorily met by the Office of Pensions Project Manager, Delaware agrees to pay those invoices, within thirty

(30) days. In the event Delaware disputes a portion of an invoice, within thirty (30) days of the receipt of the disputed invoice, Delaware shall provide CherryRoad with a written explanation for the disputed amount, and will pay the undisputed portion of the invoice. All payments should be sent to CherryRoad at the address indicated on the invoice. Upon satisfactory completion of the work product, and final acceptance by the Office of Pensions Project Manager, a final payment, shall be paid to CherryRoad.

2.5 Unless provided otherwise, all expenses incurred in the performance of the services are to be paid by CherryRoad. If this Agreement specifically provides for expense reimbursement, CherryRoad shall be reimbursed only for reasonable expenses incurred by CherryRoad in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of Federal, State and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall deduct from any payment made to CherryRoad all reasonable damages, costs and expenses caused by CherryRoad's negligence, resulting from or arising out of errors or omissions in CherryRoad's work products, which have not been previously paid to CherryRoad. Prior to making any such deduction, Delaware shall notify CherryRoad in writing.

Invoices shall be submitted to:  
David C. Craik  
Office of Pensions  
McArdle Building  
860 Silver Lake Blvd., Suite 1  
Dover, DE 19904-2402

### **3. Responsibilities of CherryRoad.**

3.1 CherryRoad shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by CherryRoad, its subcontractors and their principals, officers, employees and agents under this Agreement. In performing the specified services, CherryRoad shall follow practices consistent with generally accepted professional and technical standards. CherryRoad shall be responsible for ensuring that all services, products and work product furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, CherryRoad shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. CherryRoad shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by CherryRoad's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of CherryRoad to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. CherryRoad will not produce a work product that violates or infringes on any copyright or patent rights. CherryRoad shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by CherryRoad shall not in any way relieve CherryRoad of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of CherryRoad's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CherryRoad shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by CherryRoad's performance or failure to perform under this Agreement.

3.4 CherryRoad shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by CherryRoad's employees under the personal supervision of the Project Manager. The positions anticipated include:

<b>Project</b>	<b>Name</b>	<b>Title</b>	<b>Project Involvement (%)</b>
HCM Upgrade Project	Lisa A. Gaunt	Project Manager	
	James Haag	Engagement Manager	
	John Morrison	HR Lead	
	Paul Nielsen	Functional Lead	
	Margarita Berenshteyn	Technical Lead	
	David Resh	Remote Tech	

3.5 Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, CherryRoad will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If CherryRoad fails to make a required replacement within thirty (30) days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of CherryRoad is unsuitable to Delaware for good cause, CherryRoad shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 CherryRoad shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 CherryRoad agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for

consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 CherryRoad has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 CherryRoad will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

4.1 A project schedule is included with the Statement of Work in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that CherryRoad fails to complete the project or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware may suspend the payments scheduled as set forth in the Statement of Work until such time as the failure is remedied to Delaware's reasonable satisfaction. Before suspending any payments Delaware shall notify CherryRoad in writing.

#### **5. State Responsibilities.**

5.1 In connection with CherryRoad's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 Delaware agrees that its officers and employees will cooperate with CherryRoad in the performance of services under this Agreement and will be available for consultation with CherryRoad at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The Services performed by CherryRoad under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform CherryRoad by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to CherryRoad. It is understood that Delaware's representatives' review comments do not relieve CherryRoad from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by CherryRoad as it may request, any data which Delaware has available, and which is necessary for the performance of CherryRoad duties herein, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

CherryRoad shall return any original data provided by Delaware.

5.6 Delaware shall assist CherryRoad in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement, and to the extent the provision of such data or document is not prohibited by law.

5.7 CherryRoad will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use CherryRoad's name, either express or implied, in any of its advertising or sales materials. CherryRoad reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

## **6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by CherryRoad for Delaware relating to the services to be performed hereunder shall become the property of Delaware, at such time that such work is completed pursuant to the Statement of Work, and paid for pursuant to the cost and payment schedule contained in the Statement of Work, and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. CherryRoad shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 CherryRoad retains all title and interest to the data it furnished pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project, subject to Section 6.1 above, and Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which CherryRoad retains title, whether individually by CherryRoad or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The Parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this

Section.

6.3 In no event shall CherryRoad be precluded from developing for itself, or for others, materials that are competitive with the Work Product, irrespective of their similarity to the Work Product. In addition, CherryRoad shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by CherryRoad prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of CherryRoad even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

**7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the Parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement. Should a request be made pursuant to 29 *Del. C.* § 10001, et seq., the Office of Pensions agrees, to the extent reasonably possible, to notify CherryRoad.

**8. Warranty.**

8.1 CherryRoad warrants that its services will be performed in a good and workmanlike manner. CherryRoad agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed. CherryRoad further warrants that the services provided pursuant to the Agreement will function as designed for a period of no less than one (1) year from the date of system acceptance. CherryRoad shall correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to Delaware requirements as specified in Appendix A, the Statement of Work.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by CherryRoad for Delaware in connection with the provision of the Services, CherryRoad shall pass through or assign to Delaware the rights CherryRoad obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification; Limitation of Liability.**

9.1 CherryRoad shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney's fees) directly arising out of (A) the negligence

or other wrongful conduct of CherryRoad, its agents or employees, or (B) CherryRoad's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) CherryRoad shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) CherryRoad shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise. The Office of Pensions shall fully cooperate with CherryRoad in the course of any defense of investigation under this section.

9.2 If Delaware promptly notifies CherryRoad in writing of a third party claim against Delaware that any of its work product infringes a copyright or a trade secret of any third party, CherryRoad will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. CherryRoad will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Work Product; (2) Delaware's failure to use corrections or enhancements made available by CherryRoad; (3) Delaware's use of the Work Product in combination with any product or information not owned or developed by CherryRoad; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in CherryRoad's opinion is likely to be, held to be infringing, CherryRoad shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a non-infringing equivalent, or (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and CherryRoad's entire liability with respect to infringement.

9.3 Delaware agrees that CherryRoad's total liability to Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or CherryRoad negligence, errors, omissions, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to CherryRoad. For the avoidance of doubt, this limitation shall not apply to contract liability or other liability arising from CherryRoad gross negligence, willful, fraudulent or intentional conduct.

In no event shall CherryRoad be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, except to the extent that such liability arises from CherryRoad gross negligence, willful, fraudulent or intentional conduct.

## **10. Employees.**

10.1 CherryRoad has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by CherryRoad in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or



independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of CherryRoad who will be assigned to this project.

## **11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, CherryRoad shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. CherryRoad shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 CherryRoad acknowledges that CherryRoad and any subcontractors, agents or employees employed by CherryRoad shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees' Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 CherryRoad shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, CherryRoad has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose.

## **12. Suspension.**

12.1 Delaware may suspend performance by CherryRoad under this Agreement for such period of time as Delaware, at its sole discretion and for convenience, may prescribe by providing written notice to CherryRoad at least thirty (30) working days prior to the date on which Delaware wishes to suspend. Only if such suspension is for convenience, Delaware shall pay CherryRoad its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. The percentage of completion shall be calculated by multiplying the actual hours worked by CherryRoad in performance of the Services through the date of suspension by the rates stated in the Agreement with CherryRoad's electronic timekeeping system being used as the basis for determining the hours worked. CherryRoad shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by CherryRoad for any cause other than the error or omission of the CherryRoad, for an aggregate period in excess of 30 days, CherryRoad shall be entitled to an equitable adjustment of the compensation payable to CherryRoad under this Agreement to reimburse CherryRoad for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

### **13. Termination.**

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than twenty (20) calendar days written notice of its intent to terminate and a description of the failure in reasonable detail; and
- b. An opportunity for consultation with the terminating party prior to termination; and
- c. An opportunity to cure within ten (10) calendar days of written notice of the basis for termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after CherryRoad is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay CherryRoad that portion of the compensation, which has been earned as of the effective date of termination pursuant to the Statement of Work but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to CherryRoad at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of CherryRoad's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event CherryRoad shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of CherryRoad assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of CherryRoad to fulfill contractual obligations it is determined that CherryRoad has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and CherryRoad provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to CherryRoad, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CherryRoad or any agent or representative of CherryRoad to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in Section 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against CherryRoad it could pursue in the event of a breach of this Agreement by CherryRoad.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13.7 If termination for default is effected by CherryRoad under Section 13.1 or termination by Delaware for its convenience under Section 13.2 occurs CherryRoad shall be compensated for all services performed up to and including the effective date of termination which shall be calculated by multiplying the actual hours worked by CherryRoad in performance of the Services through the date of termination by the rates stated in the Agreement with CherryRoad's electronic timekeeping system being used as the basis for determining the hours worked at the rates identified in this Agreement at Appendix B. Such payment obligation shall be deemed a continuing obligation and shall survive the termination of this Agreement.

**14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

**15. Assignment; Subcontracts.**

15.1 Any attempt by CherryRoad to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by CherryRoad,

without prior written approval of Delaware.

15.3 Approval by Delaware of CherryRoad's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve CherryRoad of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 CherryRoad shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by CherryRoad, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the CherryRoad's request to subcontract.

**16. Non-Appropriation of Funds.**

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of Delaware requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**17. State of Delaware Business License.**

CherryRoad and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

**18. Complete Agreement.**

18.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and CherryRoad with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the Parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 CherryRoad may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the Parties hereto with respect to the subject matter hereof.

**19. Miscellaneous Provisions.**

19.1 In performance of this Agreement, CherryRoad shall comply with all applicable Federal, State and local laws, ordinances, codes and regulations. CherryRoad shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the Parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 CherryRoad covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CherryRoad further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 CherryRoad acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. CherryRoad recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare CherryRoad in breach of the Agreement, terminate the Agreement, and designate CherryRoad as non-responsible.

19.6 CherryRoad warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

19.7 This Agreement was drafted with the joint participation of both Parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

19.8 CherryRoad shall maintain all public records, as defined by 29 *Del. C.* § 502 (7), relating to this Agreement and its work product for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit CherryRoad's performance and records pertaining to this Agreement at the CherryRoad business office during normal business hours.

**21. Insurance.**

21.1 CherryRoad shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 general aggregate, and
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 general aggregate; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 general aggregate, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 general aggregate, and
- F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. CherryRoad shall provide thirty (30) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with Delaware. The certificate holder is as follows:  
CherryRoad Technologies Inc.

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this Agreement by Delaware, CherryRoad hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or

services purchased or acquired by Delaware pursuant to this Agreement.

**23. Surviving Clauses**

The following clauses survive the termination of this Contract: Sections 6, 7, 8 and 9.

**24. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. CherryRoad consents to jurisdiction and venue in the State of Delaware.

**25. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:  
David C. Craik  
Office of Pensions  
McArdle Building  
860 Silver Lake Blvd., Suite 1  
Dover, DE 19904-2402

TO CHERRYROAD:  
  
Attn: Barbara Robinson  
CherryRoad Technologies Inc.  
301 Gibraltar Drive, Suite 2C  
Powder Mill Plaza  
Morris Plains, NJ 07950

**26. Force Majeure.** Neither CherryRoad nor the Office of Pensions shall be held responsible for delays in the performance of its obligations hereunder resulting from causes which are beyond the reasonable control of such Party and which are not reasonably foreseeable in the ordinary course of a PeopleSoft 9.2 HCM Upgrade Project (a "Force Majeure Delay") including, but not limited to, delays due to industry wide strikes or labor disputes, governmental restrictions, war or other national emergency, delay in transportation, accidents, fire, damage or other casualties, natural disasters, including without limitation floods, earthquakes and hurricanes and other adverse weather conditions, including without limitation rain and snow ("Force Majeure Event"). If a Force Majeure Event shall occur, the Party asserting the delay, ("Delayed Party"), shall give written notice of the underlying Force Majeure Event to the other Party within ten (10) days after the date that such Delayed Party becomes aware of or, with the exercise of reasonable due diligence, should have become aware of, the occurrence of the Force Majeure Event and that such occurrence will result in a delay in the performance of the Delayed Parties' obligations under this Agreement. Provided either the Delayed Party has timely notified the other party of a Force Majeure Event as required hereunder, then the time for the Delayed Parties' performance shall be extended on a day for day basis by the time of the delay actually caused by such Force Majeure Event (subject to any limits set forth in this Agreement). If the Delayed Party fails to give such timely notice, it shall have the period of time to which it would otherwise be entitled to a Force Majeure Delay (but for the late notice) reduced on a day for day basis for each day that the notice is late. By way of example, if a

Force Majeure Event causes a fifteen (15) day delay, and the Delayed Party gives notice thirteen (13) days after the date that the party becomes aware of or, with the exercise of reasonable diligence, should have become aware of, the Force Majeure Event and that the Force Majeure Event will result in a delay hereunder, the Delayed Party shall be entitled to an extension of (and the associated Force Majeure Delay shall be) 12 (rather than 15) days. The Delayed Party must show that commercially reasonable efforts to avoid or mitigate the impact of the Force Majeure Event gave rise to the Force Majeure Delay.

**SIGNATURE PAGE TO FOLLOW**



IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE  
OFFICE OF PENSIONS

*Original on File*

Name: Dave C. Craik  
Title: Pension Administrator, Office of Pensions

Date: 5/30/14

ATTEST

CHERRYROAD TECHNOLOGIES INC.

*Original on File*

Name: \_\_\_\_\_  
Title: VP - CFO

Date: 5-27-14

*Original on File*

Name: \_\_\_\_\_  
Title: Jeremy Gulban  
President

Date: May 27, 2014