Appendix B

23-RFP-001

PROPOSED CONTRACT TERMS

Contract Number

*[XXX-XXX-XXX]*

for

**High Resolution Land Cover Data Acquisition**

between the

*CONSOLIDATED TECHNOLOGY SERVICES*

and

*[Vendor]*

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

*[Add Effective Date]*

**Table of Contents**

1. Definition of Terms 1

Contract Term

2. Term 3

3. Survivorship 4

Pricing, Invoice And Payment

4. Pricing 4

5. Advance Payment Prohibited 5

6. Taxes 5

7. Invoice and Payment 5

8. Overpayments to Vendor 6

Vendor’s Responsibilities

9. Reseller Equipment/Software Obligations 6

10. Installation, Manufacturer's Diagnostic Tests. 6

11. Performance Warranty 7

12. Reseller Status 7

13. Purchased Services and Statement of Work 7

14. Commencement of Work 7

15. Ownership/Rights in Data 7

16. Site Security 8

17. Vendor Commitments, Warranties and Representations 9

18. Software Specifications 9

19. Compliance with Standards 10

20. Export Restrictions 10

21. Corporate Warranty 10

22. Title to Equipment 10

23. Shipping and Risk of Loss 10

24. Delivery 10

25. Installation and Set-up 11

26. Standard of Performance and Acceptance 12

27. Software and Equipment Warranty 14

28. Equipment Maintenance 15

29. Equipment and Maintenance Documentation 16

30. Spare Parts for Equipment 17

31. Minority and Women’s Business Enterprise (MWBE) Participation 17

32. Protection of Purchaser’s Confidential Information 17

33. Training 18

Software License

34. License Grant 19

35. Software Ownership 19

36. Software Specifications 20

37. Compliance with Standards 20

38. Date Warranty 20

39. Physical Media Warranty 20

40. Reauthorization Code Required 20

41. No Surreptitious Code Warranty 20

42. Software Upgrades and Enhancements 21

43. Software Maintenance and Support Services 21

44. Software Documentation 21

Contract Administration

45. Legal Notices 22

46. Purchaser *[Project or Business]* Manager 23

47. Vendor Account Manager 23

48. Section Headings, Incorporated Documents and Order of Precedence 23

49. Entire Agreement 24

50. Authority for Modifications and Amendments 24

51. Independent Status of Vendor 24

52. Governing Law 24

53. Subcontractors 24

54. Extention Pending Negotiations With Respect to Amending or Extending the Contract 25

55. Assignment 26

56. Publicity 26

57. Review of Vendor’s Records 26

58. Right of Inspection 27

General Provisions

59. Patent and Copyright Indemnification 27

60. Save Harmless 28

61. Insurance 28

62. Industrial Insurance Coverage 29

63. Licensing Standards 30

64. Antitrust Violations 30

65. Compliance with Civil Rights Laws 30

66. Severability 30

67. Waiver 30

68. Treatment of Assets 30

69. Vendor’s Proprietary Information 31

70. Standard Terms of Vendor 31

71. Spoliation- Notice of Potential Claims 31

Disputes and Remedies

72. Disputes 32

73. Non-Exclusive Remedies 32

74. Failure to Perform 32

75. Limitation of Liability 33

Contract Termination

76. Termination for Default 33

77. Termination for Convenience 35

78. Termination for Withdrawal of Authority 35

79. Termination for Non-Allocation of Funds 35

80. Termination for Conflict of Interest 35

81. Termination Procedure 35

82. Covenant Against Contingent Fees 36

Contract Execution

83. Authority to Bind 36

84. Counterparts 36

Schedules

**Schedule A:** ***Authorized Services and Price List***

**Schedule B:** ***Statement of Work Template***

**Schedule C:** ***MWBE Certification*** *[if applicable]*

Exhibits

**Exhibit A:** ***[Purchaser]* *Request for [Proposal/Quotation/Qualifications and Quotation] for [describe acquisition]***

**Exhibit B:** ***Vendor’s Response***

**CONTRACT NUMBER *[XXX-XXX-XXX]***

for

[describe acquisition]

**PARTIES**

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through Consolidated Technology Services an agency of Washington State government (“Purchaser” or “*CTS*”) located at *1500 Jefferson Street SE, 5th Floor, PO Box 41501, Olympia WA 98501* and *[Vendor]*, a *[corporation/sole proprietor or other business form]* licensed to conduct business in the state of Washington (“Vendor”), located at *[Vendor address]* for the purpose of providing *[describe Services to be provided]*.

**RECITALS**

The state of Washington, acting by and through *[Purchaser]*, issued a Request for *[Proposal/ Quotation/Qualifications and Quotation]* *[(RFX)]* dated *[date]*, (Exhibit A) for the purpose of purchasing *[describe Services to be provided]* in accordance with its authority under chapter 43.105 RCW.

*[Vendor]* submitted a timely Response to *[Purchaser]*’s *[RFX]* (Exhibit B).

The *[Purchaser]* evaluated all properly submitted Responses to the above-referenced *[RFX]* and has identified *[Vendor]* as the apparently successful Vendor.

The *[Purchaser]* has determined that entering into a Contract with *[Vendor]* will meet Purchaser’s needs and will be in Purchaser’s best interest.

[If not a competitive acquisition, discuss sole source or other acquisition method in place of the above Recitals.]

NOW THEREFORE, Purchaser awards to *[Vendor]* this Purchased Services Contract, the terms and conditions of which shall govern Vendor’s furnishing to *[Purchaser]* the *[describe Services to be provided]*. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

# Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

“**Breach**” shall mean the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by Purchaser.

**“Business Days and Hours”** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

 **“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or *[add other items as necessary or delete items not applicable]*.

**“Contract”** shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

**“CTS*”*** shall mean the same as Purchaser.

**“Effective Date”** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“Exhibit A”** shall mean the *[RFX].*

**“Exhibit B”** shall mean *[Vendor]*’s Response.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

**“Product(s)”** shall mean any Vendor-supplied equipment, Software, and documentation.

**“Proprietary Information”** shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“Purchased Services”** or **“Services”** shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract or a Statement of Work.

**“Purchaser”** shall mean the state of Washington, *[Purchaser]*, any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser*.*

**“Purchaser *[Project or Business]* Manager”** shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor’s Account Manager shall work with for the duration of this Contract and as further defined in the section titled **Purchaser *[Project or Business]* Manager*.***

**“Purchaser Contract Administrator”** shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

**“Purchaser Contracting Officer”** shall mean *[name of Purchaser’s officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

**“RCW”** shall mean the Revised Code of Washington.

**“*[RFX]*”** shall mean the Request for *[Proposal/Quotation/Qualifications and Quotation]* used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**“Response”** shall mean Vendor’s Response to Purchaser’s *[RFX]* for *[describe acquisition]*, Exhibit B hereto.

**“Schedule A: *Authorized Services and Price List*”** shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

**“Schedule B: *Statement of Work Template*”** shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

**“Schedule C: *MWBE Certification*”** shall mean the attached certificate(s) indicating Vendor’s and/or one or more of Vendor’s Subcontractor’s status as a minority or women’s business enterprise.

**“Software”** shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**“Specifications”** shall mean the technical and other specifications set forth in the *[RFX]*, Exhibit A, and any additional specifications set forth in Vendor’s Response, Exhibit B.

**“Statement of Work”** or **“SOW”** shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract.A template SOW is attached as Schedule B.

**“Subcontractor”** shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

**“Vendor”** shall mean *[Vendor]*, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

**“Vendor Account Manager”** shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser *[Project or Business]* Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

**“Vendor Contracting Officer”** shall mean *[title of Vendor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

**“Work Product”** shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

# Term

## Term of Contract

The term of this Contract shall be *[\_\_\_\_\_\_(\_\_)]* years *[or other appropriate time period]*, commencing upon the Effective Date.

[–OR–]

### This Contract’s initial term shall be *[\_\_\_\_\_\_(\_\_)]* years *[or other appropriate time period]*, commencing upon the Effective Date.

### This Contract’s term may be extended by *[\_\_\_\_\_\_(\_\_)]* additional *[one (1)]* year *[or other appropriate time period]* term*[s]*, provided that the extensions shall be at Purchaser’s option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. The total term of this Contract shall not exceed *[\_\_]* years *[or other appropriate time period]*. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

[–OR–replace subsection 2.1b) above with the following.]

### b) This Contract’s term shall be automatically extended for *[\_\_\_\_\_\_(\_\_)]* additional *[one (1)]* year *[or other appropriate time period]* term*[s]* unless Purchaser terminates by giving written notice of its decision not to extend to Vendor not less than *[thirty (30)]* calendar days *[or other appropriate time period]* prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

## Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of the SOW shall not exceed the term of this Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

# Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Vendor’s Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity;** **Review of Vendor’s Records; Patent and Copyright Indemnification;** **Vendor’s Proprietary Information; Disputes;** and **Limitation of Liability** shall survive the termination of this Contract.

Pricing, Invoice and Payment

# Pricing

## The total amount expended under this Contract shall not exceed *[\_\_\_\_\_\_\_\_]* dollars *($\_\_\_) [Specify maximum dollar amount]*.

## Vendor agrees to provide the Services at the Prices set forth *[below or in Schedule A]*. No other Prices shall be charged by Vendor for implementation of Vendor’s Response.

## Prices may not be increased during the initial term of the Contract.

## If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.

## At least ninety (90) calendar daysbefore the end of the then-current term of this Contract, Vendor may propose Service rate increases by written notice to Purchaser Contract Administrator. Price adjustments will be taken into consideration by Purchaser Contract Administrator when determining whether to extend this Contract.

## Vendor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to Purchaser for subsequent purchases.

# Advance Payment Prohibited

No advance payment shall be made for the Software and Services furnished by Vendor pursuant to this Contract except allowable subscriptions or equipment warranties. In the case of allowable pre-payment of subscriptions or warranties, in no event shall the subscription period for which payment in advance is made exceed twelve month payment in advance.

# Taxes

## Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor’s income or gross receipts, or personal property taxes levied or assessed on Vendor’s personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.

## Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor’s staff shall be Vendor’s sole responsibility.

# Invoice and Payment

## This contract will be performanced based, meaning payment is tied to the succeful completion of the tasks.

## Vendor will submit properly itemized invoices to *[title of person to receive invoices]* at *[provide appropriate address]*. Invoices shall provide and itemize, as applicable:

### Purchaser Contract number *[XXX-XXX-XXX]*;

### SOW number *[YY-YY]*;

### Vendor name, address, phone number, and Federal Tax Identification Number;

### Description of Services provided;

### Date(s) that Services were provided, including number of hours worked;

### Vendor’s Price for Services;

### Net invoice Price for each Service;

### Applicable taxes;

### Other applicable charges;

### Total invoice Price; and

### Payment terms including any available prompt payment discounts.

## Purchaser shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month’s duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

## Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.

## The Purchaser Contract number *[XXX-XXX-XXX]* and SOW number *[YY‑YY]* must appear on all bills of lading, packages, and correspondence relating to this Contract.

## Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

## If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Vendor’s bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor’s properly prepared invoice, whichever is later.

## Purchaser shall withhold seventeen percent (17%)from each payment until acceptance by Purchaser *of the final deliverable.*

# Overpayments to Vendor

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days’ written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

Vendor’s Responsibilities

# Reseller Equipment/Software Obligations

Definition and Assignment of Warranty. Contractor will furnish to CTS the Software/Equipment manufactured by -------------, as specified herein. The Software/Equipment is being sold subject to and in accordance with the terms and conditions of -----------license agreement as set forth in Exhibit A hereto. To the extent that ----------- has made to Contractor any warranties or other commitments, Contractor hereby assigns, to the extent permissible under applicable law, but effective only upon acceptance by Customer of the Equipment, all of -------------warranties and other commitments related to the Equipment/Software.

# Installation, Manufacturer's Diagnostic Tests.

Each item of Equipment shall be installed by ------------- employees unless such installation is customarily performed by the user, in which case the installation will be performed by Contractor personnel or by CTS’ personnel under Contractor’s supervision. Installation of an item of Equipment shall be deemed to be complete when -------------- certifies to CTS that the item has been properly installed, is ready for use, that--------------- diagnostic tests have been performed, and that the Equipment, Hardware, Software and such systems software have met both these tests and ---------------- published specifications.

# Performance Warranty

Contractor hereby assigns to the extent legally permissible all warranties provided by ------------ under its agreements and further warrants that the Equipment when installed and used with the System Software and utilities licensed by CTS will perform in accordance with the manufacturer's specifications for a period of six months following the System Acceptance Date.

# Reseller Status

Contractor also represents and warrants that it is a duly authorized valued added reseller of the ------------ and that it has a value added reseller's agreement currently in force under which it is authorized to make the commitments that it has made in this Agreement. The value added reseller agreement must be in full force and remain valid during the term of the Agreement. In the event the reseller loses it authorized status, it must immediately notify CTS and that loss could be the basis for a material breach of the Agreement.

# Purchased Services and Statement of Work

## All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW established between Purchaser and Vendor*.*

## The SOW shall at a minimum:

### Reference this Contract number *[XXX-XXX-XXX]*;

### Define project or task objectives;

### Describe the scope of Services or work to be performed;

### Identify deliverables;

### Specify a timeline and period of performance;

### Specify compensation and payment, e.g., the hourly rate and total Vendor hours to be provided or the fixed price for a deliverable, (whichever is applicable), total cost of the project, and reimburseable Vendor expenses;

### Describe Vendor’s roles and responsibilities and identify specific Vendor staff;

### Describe Purchaser’s roles and responsibilities;

### Provide signature block for both parties.

## The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

# Commencement of Work

No work shall be performed by Vendor until an SOW is executed by Vendor and Purchaser and is received by Vendor.

# Ownership/Rights in Data

## Any custom additions and modifications to Contractor’s Preexisting Material (defined below) and all data and work products produced pursuant to this Master Contract and any Work Order shall collectively be called “Work Product.” Purchaser shall have and retain all ownership, right, title, interest and all intellectual property rights to Work Product. To the extent that any such rights in the Work Product vest initially with the Contractor by operation of law or for any other reason, Contractor hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to Purchaser. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

## Contractor warrants that it is the owner of the Work Product and Preexisting Material and that it has full right to assign and license the same to Purchaser.

## Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

## During the Term and any time thereafter, Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section, and when so obtained or vested to maintain, renew, and restore the same.

## Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy, disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

## Contractor hereby grants to Purchaser a non-exclusive, royalty-free, irrevocable license to use, publish, translate, reproduce, deliver, perform, display, and dispose of materials and know how that are delivered under this Contract, but that do not originate therefrom (“Preexisting Material”).

## Contractor shall exert best efforts to advise DIS and Purchaser of all known or potential infringements of publicity, privacy or of intellectual property rights of the Preexisting Material furnished under this Contract. DIS and Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

# Site Security

* 1. Facility Access

Vendor understands that all Purchasers’ building entrances are controlled for access. In the event Vendor performs any work at any of Purchaser’s buildings, Vendor agrees to become familiar with Purchaser’s building and security policies, and further agrees to observe and comply with all Purchaser’s building and security policies or procedures.

Vendor understands that in order to obtain access to Purchaser’s premises, if applicable, Vendor must be issued a security badge by Purchaser. Vendor shall provide certain personal information, including valid government issued photo identification, prior to obtaining a security badge. Vendor further understands that Purchaser will collect and retain such personal information for so long as the contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to deny an application for a security badge. Failure of Vendor to comply with Purchaser’s security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser’s facilities.

Upon the earlier of termination of the Contract, or suspension or termination of access to Purchaser’s facilities, Vendor shall return all security badges.

* 1. Remote Access to Network

Vendor understands that in order to obtain remote access to Purchaser’s Local Area Network (LAN), email, or supported computing environments through a remote access connection (“Remote Access”), Vendor must comply with Purchaser’s Remote Access policy and any other applicable security policies or procedures. Vendor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.

* 1. Safety

Vendor shall observe and comply with OSHA regulations, all applicable safety and environmental laws and regulations, and all Purchaser’s rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

* 1. Information and System Security

Vendor acknowledges and understands that access to Purchaser’s computer networks may be necessary to perform the work under this Contract, and as a result Purchaser has placed or may place special confidence and trust in the Vendor in providing such access. Vendor acknowledges and understands that any access to Purchaser’s computer networks shall be limited, restricted and conditioned upon Vendor’s compliance with certain Purchaser policies and practices. Vendor warrants that it will perform all work for or on behalf of Purchaser in full compliance with the Information Services Board Security Policy, Standards and Guidelines, the Use of DIS Network policy attached hereto as Exhibit B, and any other security documents and best practices provided by Purchaser (“Security Policies”).

Vendor, having agreed upon Purchaser’s Security Policies as the acceptable standard for network security, warrants that it shall exercise its best efforts in the execution of the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, self help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of Purchaser’s network, system or data.

# Vendor Commitments, Warranties and Representations

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

# Software Specifications

All Software will conform in all material respects to its Specifications. Vendor warrants that the Products delivered hereunder shall perform in material conformance with the Specifications.

# Compliance with Standards

## Vendor represents that it shall use commercially reasonable efforts to ensure all Software and elements thereof, including but not limited to, documentation, shall meet and be maintained by Contractor to conform to applicable industry standards.

# Export Restrictions

Purchaser shall not transport or transmit, directly or indirectly, the Software or any technical data

received from Vendor, nor the direct product derived there from, outside the United States or Canada without Contractor’s prior written consent and without complying with all export laws and regulations of the United States.

# Corporate Warranty

Vendor hereby represents and warrants that the execution, performance and delivery of this Contract does not conflict with or constitute any default under any contract, agreement or other obligation of Vendor, including but not limited to license agreements, development agreements, assignment provisions or other contractual obligation.

# Title to Equipment

Upon successful completion of Acceptance Testing and receipt of Purchaser’s letter of Acceptance, Contractor shall convey to Purchaser good title to the Products, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If Purchaser subsequently transfers title to the Equipment to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser’s transferee.

# Shipping and Risk of Loss

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser’s destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to Purchaser’s fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor’s fault or negligence.

# Delivery

## All Products purchased under this Contract shall be completely installed and ready to begin Acceptance Testing within forty-five (45) calendar days after Contractor’s receipt of an Order. Extensions will be granted at the sole option of the Purchaser. Time is of the essence with respect to delivery and Contractor may be subject to liquidated damages or termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.

## All deliveries made pursuant to this Contract must be complete. Unless Contractor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser’s Order Document number. Contractor’s delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

# Installation and Set-up

## Contractor shall separately itemize all installation and physical requirements for Equipment as listed below:

### Air conditioning

### Electrical requirement

### Special grounding

### Cabling requirement

### Weight (floor loading)

### Space requirements

### Humidity and temperature limits

### Noise level

## When installing Equipment, Contractor will provide, at no additional charge:

### A written installation support plan and schedule addressing staffing, site preparation requirements, resource allocation, testing procedures;

### Site surveys;

### Station reviews to identify user requirements;

### An on-site Manufacturer certified technician during and after the cutover until the Equipment operates properly;

### On-site user training for the Products; and

### System administration and Product training.

## Contractor personnel shall be Manufacturer certified in accordance with Manufacturer requirements. Upon request Contractor will furnish a copy of such certification to Purchaser.

## Purchaser shall have access to the work site at all times during installation.

## Purchaser shall prepare the environment to house the Equipment based upon written requirements provided by Contractor in its installation plan, as modified in writing and agreed to by the parties. Contractor’s specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Contractor’s Response. Any requirements for the environment not disclosed in Contractor’s installation plan will be completed by Contractor at no additional cost to Purchaser. Purchaser will provide standard commercial power. Contractor shall install an external, Manufacturer recommended surge protector between the power source and each major system.

## Contractor will acquire any permits, if required, at no additional cost to Purchaser. Contractor shall replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Contractor personnel to their original condition at no additional cost to Purchaser.

## Contractor is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called “cabling”) may be located within or on Purchaser's grounds and facilities.

## Before beginning work on or about Purchaser's premises, Contractor shall contact Purchaser’s communications network control center to determine if Purchaser’s cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any work that may impact underground utilities not owned by Purchaser, Contractor agrees to notify affected owners under the requirements of chapter 19.122 RCW, Underground Utilities.

## Purchaser hereby permits Contractor to interface with such cabling and design engineering systems in support of the delivery of the Products and Services ordered under this Master Contract.

## Contractor shall install the Products, with all features, options, parts and wiring ordered by Purchaser, ready for Acceptance Testing, on or before the Installation Date(s) specified in the Order Document. Failure to meet the Installation Date(s) may subject Contractor to liquidated damages or termination of an Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.

## After installing the Equipment, Contractor shall provide Purchaser with documentation of a successful system audit using Contractor’s diagnostic routines, as approved by Purchaser, demonstrating that the Products meet or exceed the Specifications. Contractor shall certify to Purchaser in writing that the Products are ready for Acceptance Testing. If after reviewing such documentation Purchaser agrees that the Products are ready for Acceptance Testing, Purchaser shall begin Acceptance Testing, as set forth in the section titled **Standard of Performance and Acceptance**.

# Standard of Performance and Acceptance

## This section establishes a Standard of Performance that must be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Products and any Product that is modified by or with the written approval of Contractor after having been Accepted.

## *[Alternative Language example]*Acceptance of a System will be based on the following criteria.

### Meeting or exceed the Standard of Performance defined below;

### All installation, wiring, and cabling requirements identified in Section X have been satisfied;

### Delivery to Purchaser of complete and updated as-built drawings indicating conformance with specifications;

### Conformance of installation and programming requirements as specified by the Purchaser; and

### Completion of all required training of Purchaser staff (see sectionY).

## The Standard of Performance for a Product is defined as a *[ninety percent (90%*) *or one hundred percent (100%), or other appropriate percent]* Effectiveness Level during the Acceptance Testing period set forth below.

## The Effectiveness Level for a Product is the percentage of time in a month that the Product is functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Product by the sum of the Operational Use Time plus the Product Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for a Product is defined as the total time the Product would normally be used. Product Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of a Product Failure. Product Failure is defined as a malfunction in the Equipment or Software that prevents the accomplishment of the intended function(s) of the Product.

## Downtime for each incident shall start from the time that Contractor knew or reasonably should have known of the Product Failure, or Purchaser makes a bona fide attempt to contact Contractor’s designated representative at the prearranged contact point, whichever occurs earlier, until the Product is returned to fully operational status in conformance with its Specifications. During periods of Product Failure downtime, Purchaser may use operable portions of the Product(s) when such action does not interfere with repair of the inoperable portions.

## The Acceptance Testing period shall be *[thirty (30) or other appropriate time period] [calendar days/Business Days],* starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. Purchaser will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.

## In the event the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Purchaser may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after *[ninety (90) calendar days, or other appropriate time period]* the Product still has not met the Standard of Performance Purchaser may, at its option: (1) declare Contractor to be in breach of this Contract and terminate this Order or this Contract; or, (2) demand replacement Product from Contractor at no additional cost to Purchaser; or, (3) continue the Acceptance Testing for an additional *[thirty (30) calendar days or other appropriate time period]*. Contractor shall pay all costs related to the preparation and shipping for Product returned pursuant to this section. Purchaser’s option to declare Contractor in breach and terminate this Order shall not be waived by Purchaser’s decision to continue Acceptance Testing beyond the delineated testing period..

## No Product shall be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first Purchaser Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from Purchaser to Contractor.

## Monthly Performance Monitoring. Throughout the warranty period and the initial and subsequent maintenance terms of this Contract, Purchaser shall monitor the Product to ensure that it conforms to the Standard of Performance established in this **Standard of Performance and Acceptance** section. Should the Product fail to operate in conformance with the Standard of Performance for any *[thirty (30) calendar days or other appropriate time period]* period, Contractor shall take corrective action as directed by Purchaser and, if the Product is Equipment, credit Purchaser a portion of the maintenance fees paid as provided in subsection 21.13 of the **Equipment Maintenance** section.

# Software and Equipment Warranty

## Contractor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of one (1) year *(*the Warranty Period) commencing upon the first day after the Acceptance Date.

## Software: During the Warranty Period, Vendor must provide a replacement copy or correction service at no additional cost to CTS for any error, malfunction, or defect, if any, in the Vendor-supplied Software that, when used as delivered, materially fails to perform in accordance with applicable Documentation (including, without limitation any specifications set forth in the Documentation regarding the performance or accuracy of execution of the Software).

## During the Warranty Period, Contractor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Contractor’s expense. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications.

## Contractor agrees that all warranty service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Contractor further agrees to act as the sole point of contact for warranty service. Contractor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.

## Contractor shall provide Help Desk Services for reporting warranty issues and for trouble-shooting problems. Contractor’s Help Desk Services can be reached at [toll-free number].

## Contractor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Contractor’s employee(s) responding at each level and the elapsed time before the next level of response is invoked. Contractor’s escalation procedures are attached as Schedule D.

## Non-emergency maintenance/repair response time during warranty will be within eight (8) Business Hours after notification and will be performed during Business Hours. When on-site, Contractor must report to Purchaser’s designated coordinator prior to and after each service call.

## Emergency on-site maintenance/repair response time during warranty will be within two (2) hours, twenty-four (24) hours per day, seven (7) days per week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours after notification. Emergency maintenance applies to: (i) Failure of signaling; (ii) Failure of power supply; and (iii) Failure of any terminals deemed critical by Purchaser to the functioning of Purchaser’s business functions.

## Any work or upgrade that may affect service must be coordinated with Purchaser’s coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser’s prior written approval.

## Purchaser agrees that Contractor will not be liable for any damages caused by Purchaser’s actions or failure of Purchaser to fulfill any of its responsibilities for site installation.

# Equipment Maintenance

At the expiration of the Warranty Period set forth in the section titled **Equipment Warranty**, Contractor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

## Contractor shall offer one or more maintenance service plan(s) attached as Schedule C to keep the Equipment in good operating condition or restore it to good working order in accordance with the Specifications or, upon Purchaser’s prior written approval, to current standards.

## Contractor shall provide contracted maintenance support twenty-four (24) hours per day, Seven (7) days per week, every day of the year including all holidays.

## Contractor personnel responding to maintenance calls, repairing or servicing the system shall be Manufacturer-certified to work on the Products.

## Contractor warrants service availablity during the life of the Product or for seven (7) years from its Acceptance Date, whichever is longer.

## Contractor shall maintain a log on Purchaser’s premises that details repairs, preventive maintenance and upgrades to the system. The log shall be available for inspection by CTS’ upon request.

## Purchaser shall provide Contractor access to the System to perform maintenance service.

## When on-site, Contractor shall report to Purchaser’s designated coordinator prior to and after each service call.

## Routine maintenance and any maintenance or upgrade that may affect service must be coordinated with Purchaser’s coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser’s prior written approval.

## Preventive Maintenance. Contractor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Contractor-supplied information Purchaser shall develop and provide to Contractor in writing the schedule within which Contractor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to Purchaser within or contiguous with remedial maintenance.

## Upon completion of each maintenance call, Contractor shall furnish a maintenance activity report to Purchaser, which shall include, as a minimum, the following:

### Date and time notified;

### Date and time of arrival;

### Type and serial number(s) of machine(s);

### Time spent for repair;

### Description of malfunction;

### List of parts replaced; and

### Additional charges, if applicable.

## There shall be no additional maintenance charges for:

### Replacement parts;

### Preventive maintenance, regardless of when performed;

### Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;

### Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material; or

### Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.

## Guaranteed two hour response time.

### For the term of the maintenance service, Contractor shall provide Purchaser with a guaranteed two (2) hour maintenance response time for the Equipment purchased hereunder. Within two (2) hours after notification by Purchaser that Purchaser is experiencing Equipment problems, Contractor’s qualified field engineer shall arrive at Purchaser’s location to correct such problem or shall connect to the problem system remotely via modem, RAS, network connection. This guaranteed two (2) hour response service shall be available to Purchaser twenty-four hours per day, seven days per week, every day of the year including holidays (24x7x365).

### If Contractor’s maintenance personnel fail to arrive at Purchaser’s installation site within two (2) hours, Contractor shall be assessed liquidated damages, as set forth in the subsection of this Contract titled **Liquidated Damages – Specific**, for each “late” hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival.

## Maintenance Credits For Equipment Malfunction

### Contractor shall grant a credit to Purchaser for any Equipment being maintained by Contractor that fails to perform at an Effectiveness Level of 99.5% trouble-free during any month. The Effectiveness Level for an item of Equipment shall be defined and computed in the same manner as provided for in the **Standard of Performance and Acceptance** section of this Contract. (see section 19.4).

###  The credit granted by Contractor shall be fifty percent (50%) of the monthly maintenance fee for each percentage point a machine falls below its required effectiveness level. For example if the credit is 50% and the actual effectiveness level for a machine is 88% instead of the required 90%, the maintenance credit would be 100% of the monthly maintenance fee for that month, i.e., 2 percentage points below the requirement so 2 x 50% = 100% credit.

### If the Equipment fails to operate at an Effectiveness Level of 99.5% for two (2) consecutive months, it shall be considered a Failure to Perform.

# Equipment and Maintenance Documentation

Contractor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor’s Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference. If Contractor maintains its technical, electrical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

# Spare Parts for Equipment

Contractor shall make available to Purchaser either a depot repair center and/or an availability guarantee of component parts and sub-assemblies necessary for on-going maintenance and operation of the Products. Contractor guarantees part availability for a minimum of seven (7) years from the Acceptance Date of a Product by Purchaser. In addition, Contractor shall have a complete on-site “crash kit” of spare parts or a permanent maintenance facility with a full parts inventory within a distance that will meet the specified emergency on-site response times.

# Minority and Women’s Business Enterprise (MWBE) Participation

With each invoice for payment and within thirty (30) days of Purchaser Contract Administrator’s request, Vendor shall provide Purchaser an *Affidavit of Amounts Paid.* The *Affidavit* *of Amounts Paid* shall either state that Vendor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Vendor shall maintain records supporting the *Affidavit* *of Amounts Paid* in accordance with this Contract’s **Review of Vendor’s Records** section.

# Protection of Purchaser’s Confidential Information

## Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes (“Confidential Information”). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or *[add other items as necessary or delete items not applicable]*, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

## Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser’s option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser’s Confidential Information.

## Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor’s records shall be subject to inspection, review or audit in accordance with **Review of Vendor’s Records**.

## Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

## Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

# Training

## Service Training. Prior to installation, Contractor agrees to provide manufacturer’s service training, which shall consist of manufacturer’s standard program designed for authorized service centers and/or pre-qualified staff. A fee may be charged for training, as set forth in Schedule A.

### The starting dates of the training will be as agreed by the parties

### The training fee, whether separately stated under the pricing provisions of this Contract or included in the cost of the Equipment, shall cover all costs of training. Purchaser shall not be responsible for any additional manufacturer’s costs for training required pursuant to this section.

### Purchaser shall have the right, so long as the Equipment purchased hereunder is in use by Purchaser, to give instruction to Purchaser’s personnel in all courses described above and all revisions thereto without charge, using materials supplied by Contractor. Such use by Purchaser of Contractor’s materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Contractor. Contractor grants to Purchaser the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

## Use Training. At the time of installation, Contractor agrees to provide initial training and a six-month follow up training session, both at the installation site, for a minimum of *[\_\_\_\_\_\_ (\_\_)]* of Purchaser’s staff. Such training shall be sufficiently thorough to instruct, and certify, if required, such staff in the use of the Products. This will include, at a minimum, orientation and familiarization training on the Equipment. Initial training shall be completed in time for the staff to operate the Products in the required fashion with minimum Contractor aid immediately after installation and testing of Equipment.

### The starting dates of the training will be as agreed by the parties.

### The training fee, whether separately stated under the pricing sections of this Contract or included in the cost of the Products, shall cover all costs of training. Purchaser shall not be responsible for any additional Contractor costs for training required pursuant to this section.

### Purchaser shall have the right, so long as the Products purchased hereunder is in use by Purchaser, to give instruction to Purchaser’s personnel in all courses described above and all revisions thereto without charge, using materials supplied by Contractor. Such use by Purchaser of Contractor’s materials shall include the right to make derivative works and to reproduce the materials or derivative work solely for the permitted use, which creation, use, and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Contractor. The above rights shall be at no additional charge.

Software License

# License Grant

## Contractor grants to Purchaser a non-exclusive, fully-paid-up, perpetual, site-wide, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract.

## Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Contractor or Software owner.

## Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when Purchaser’s facilities, or any portion thereof, are inoperable due to emergency situations.

## Business or Support Termination Rights. In the event that Contractor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, subject to payment obligations not to exceed the Contract Prices.

## Freedom of Use. Contractor understands that Purchaser may provide information processing services to other users that are governmental entities and other tax supported entities. Contractor further understands that Purchaser may provide services to the public through web-based applications. Software delivered hereunder may be used in the delivery of these services. Contractor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

# Software Ownership

Contractor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to Purchaser that Contractor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that Contractor has the right to license the Software to Purchaser as provided in this Contract; and that Purchaser’s use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent trademark or other intellectual property right worldwide or violate any third party’s trade secret, contract or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

# Software Specifications

All Software will conform to its Specifications. Contractor warrants that Products delivered hereunder shall perform in accordance with these Specifications.

# Compliance with Standards

## Contractor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Contractor to conform to applicable industry standards.

# Date Warranty

Contractor warrants that all Products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Products, or interact with date records of the Products (“Date Warranty”). In the event a Date Warranty problem is reported to Contractor by Purchaser and such problem remains unresolved after five (5) calendar days, at Purchaser’s discretion, Contractor shall send, at Contractor’s sole expense, at least one (1) qualified and knowledgeable representative to Purchaser’s premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser’s premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

# Physical Media Warranty

## Contractor warrants to Purchaser that each licensed copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the “Physical Media Warranty”). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by Purchaser.

## Contractor shall replace, at Contractor’s expense including shipping and handling costs, any Software copy provided by Contractor that does not comply with this warranty.

# Reauthorization Code Required

If a reauthorization code must be keyed in by Contractor for the Software to remain functional upon movement to another computer system, Contractor shall provide the reauthorization code to Purchaser within one (1) Business Day after receipt of Purchaser’s notice of its machine upgrade or movement.

# No Surreptitious Code Warranty

## Contractor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Contractor further warrants Contractor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out or other function, implemented by any type of means or under any circumstances, which may restrict Purchaser’s use of or access to any program, data or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

## As used in this Contract, “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

## As used in this Contract, “Unauthorized Code” means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

## Contractor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

# Software Upgrades and Enhancements

Contractor shall, as part of maintenance purchased pursuant to this contract:

## Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;

## Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Products supplied to Purchaser; and

## Supply at no additional cost interface modules that are developed by Contractor for interfacing the Software to other Software products.

# Software Maintenance and Support Services

Contractor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications and that Purchaser shall bring to Contractor’s attention. Contractor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Contractor shall disclose all known defects and their detours or workarounds to Purchaser.

# Software Documentation

Contractor shall provide two (2) complete sets of documentation for each Software Order, including technical, maintenance, and installation information. Contractor shall also provide two (2) complete sets of documentation for each updated version of Software Contractor provides pursuant to the **Software Upgrades and Enhancements** section. Contractor shall provide the documentation on or before the date Contractor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor’s Software documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

Contract Administration

# Legal Notices

## Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid *certified mail or by electronic mail*, to the parties at the contact information provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

|  |  |
| --- | --- |
| **To Vendor at:** | **To Purchaser at:** |
| *[Vendor]* | State of Washington*[Purchaser]* |
| **Attn:**  | **Attn:** *[Purchaser Contract Administrator]* |
| *[Vendor address]* | *[Purchaser address]* |
|  |  |
|  |  |
| Phone:  | Phone:  |
| Fax:  | Fax:  |
| E-mail:  | E-mail:  |

## Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

## In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

# Purchaser *[Project or Business]* Manager

Purchaser shall appoint *[name]* who will be the Purchaser *[Project or Business]* Manager for this Contract and will provide oversight of the activities conducted hereunder. Purchaser *[Project or Business]* Manager will be the principal contact for Vendor concerning business activities under this Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser *[Project or Business]* Manager assigned to this Contract.

# Vendor Account Manager

Vendor shall appoint an Account Manager for Purchaser’s account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor’s Account Manager will be the principal point of contact for Purchaser concerning Vendor’s performance under this Contract. Vendor shall notify Purchaser Contract Administrator and Purchaser *[Project or Business]* Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

|  |
| --- |
| Vendor Account Manager:  |
| Address: |
| Phone: | Fax: | E-mail: |

# Section Headings, Incorporated Documents and Order of Precedence

## The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

## Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

### Schedules A, and B *[if applicable]*; *[include other Schedules, if appropriate]*

###  *[Purchaser] [RFX]* dated *[date]*;

### Vendor’s Response to *[Purchaser]* *[RFX]* dated *[date]*;

### Any SOW entered into pursuant to this Contract;

### The terms and conditions contained on Purchaser’s purchase documents, if used; and

### All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

## In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

### Applicable federal and state statutes, laws, and regulations;

### Sections of this Contract;

### Schedule A; *[include other Schedules, if appropriate]*

###  *[Purchaser] [RFX]* dated *[date]*;

### Any SOW entered into pursuant to this Contract;

### Vendor’s Response to *[Purchaser]* *[RFX]* dated *[date]*;

### The terms and conditions contained on Purchaser’s order documents, if used; and

### All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

# Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

# Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Vendor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of Purchaser.

# Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. 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 purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

# Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for ThurstonCounty, Washington.

# Subcontractors

Vendor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor’s duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor’s duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser’s Confidential Information**, and **Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Vendor’s Subcontractors, their agents or employees. The **Patent and Copyright Indemnification**, **Protection of Purchaser’s Confidential Information**, **Ownership/Rights in Data, Publicity** and **Review of Vendor’s Records** sections of this Contract shall apply to all Subcontractors.

# Extention Pending Negotiations With Respect to Amending or Extending the Contract

# So long as the parties are negotiating in good faith for changes in this Contract then the term of this Contract shall be automatically extended on the same terms and conditions such that termination occurs not less than 6 months after the end of such good faith negotiations. The end of good faith negotiations may be declared in writing by either party. Following such declaration, there shall be a 30 day period in which either party may provide written notice to the other party of its intent to terminate this Contract at the end of the extended Contract term. The purpose of this section is to ensure that neither party is forced to arbitrarily conclude negotiations for a lack of time to address budgetary or operational concerns and to provide an opportunity for provision of timely termination notice after negotiations are concluded.

# Assignment

## Either party may assign this Agreement and its obligations hereunder to any successor to its business by merger or consolidation or to any party acquiring substantially all of the assets of the assignor’s business that is the subject of the Contract, provided the assigning party causes the assignee to assume in writing all obligations of the assignor under this Agreement and provides written notcie to the other party of such assumption. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

## Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

# Publicity

## The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor’s Services by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.

## Vendor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Vendor wherein Purchaser’s name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser’s name therewith may, in Purchaser’s judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.

# Review of Vendor’s Records

## Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women’s Business Enterprise participation, protection and use of Purchaser’s Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

## All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser’s Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract’s term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

## Vendor shall incorporate in its subcontracts this section’s records retention and review requirements.

## It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor’s cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser’s review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

# Right of Inspection

## Vendor shall provide right of access to its facilities to Purchaser, or any of Purchaser’s officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

# Patent and Copyright Indemnification

## Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product or Work Product supplied hereunder, or Purchaser’s use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys’ fees awarded by a court or incurred by Purchaser provided that Purchaser:

### Promptly notifies Vendor in writing of the claim, but Purchaser’s failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and

### Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

## If such claim has occurred, or in Vendor’s opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide Purchaser a refund. In the case of Work Product, Vendor shall refund to Purchaser the entire amount Purchaser paid to Vendor for Vendor’s provision of the Work Product. In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4)years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

## Vendor has no liability for any claim of infringement arising solely from:

### Vendor’s compliance with any designs, specifications or instructions of Purchaser;

### Modification of the Product or Work Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or

### Use of the Product or Work Product in a way not specified by Vendor;

unless the claim arose against Vendor’s Product or Work Product independently of any of these specified actions.

# Save Harmless

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claims, including reasonable attorneys’ fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor’s obligation to defend, indemnify, and save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

# Insurance

## Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best’s Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within one (1) Business Day of Vendor’s receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser’s sole option, result in this Contract’s termination.

## The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

### Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

### Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than $1 million per accident;

### Employers Liability insurance covering the risks of Vendor’s employees’ bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;

### Umbrella policy providing excess limits over the primary policies in an amount not less than $3 million;

### Professional Liability Errors and Omissions, with a deductible not to exceed $25,000, conditioned upon subsection 31.3 below, and coverage of not less than $1 million per occurrence/$2 million general aggregate; and

### Crime Coverage with a deductible not to exceed $1 million, conditioned upon subsection 31.3 below, and coverage of not less than $5 million single limit per occurrence and $10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

## For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for Purchaser’s benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to Purchaser, in the amount of $1 million, during the initial and any subsequent terms of this Contract, and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at Purchaser’s sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. “Irrevocable stand-by letter of credit” as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Purchaser (the beneficiary) of a written demand therefor.

## Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number *[XXX-XXX-XXX]* and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.

## All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

## Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor’s liability or responsibility.

## Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract’s Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser’s sole option, result in this Contract’s termination.

## By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor’s liability under the indemnities and reimbursements granted to Purchaser in this Contract.

# Industrial Insurance Coverage

If required under Washington law, Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

# Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

# Antitrust Violations

Vendor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

# Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

# Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

# Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

# Treatment of Assets

## Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the “property” is Vendor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

## Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.

## Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor’s negligence or that results from Vendor’s failure to maintain and administer that property in accordance with sound management practices.

## Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

## Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.

## All reference to Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

# Vendor’s Proprietary Information

Vendor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor’s Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

# Standard Terms of Vendor

Except for the End User License and Warranty Agreement attached to this Agreement, no additional terms, provisions, or conditions of any business form that either party may use will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement.

# Spoliation- Notice of Potential Claims

Each party shall promptly notify the other party of all potential third party claims that arise or result from this Contract. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence.

Disputes and Remedies

# Disputes

In the event a dispute arises under this Contract, it shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

## In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

## The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

### If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

### The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

### Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

## Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

## If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

# Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

# Failure to Perform

If Vendor fails to perform any substantial obligation under this Contract, Purchaser shall give Vendor written notice of such Failure to Perform. If after fifteen (15) calendar daysfrom the date of the written notice Vendor still has not performed, then Purchaser may withhold all monies due and payable to Vendor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

# Limitation of Liability

## The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Vendor’s Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

## Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.

## If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.

## Neither party shall be liable for personal injury to the other party or damage to the other party’s property except personal injury or damage to property proximately caused by such party’s respective fault or negligence.

Contract Termination

# Termination for Default

## If either Purchaser or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within fifteen days (15) or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.

## In the event of termination of this Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Vendor’s breach. Purchaser shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser for Vendor’s default.

## If the Failure to Perform is without the defaulting party’s control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

## This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

# Termination for Convenience

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar dayswritten notice to Vendor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by Purchaser prior to the effective date of termination.

# Termination for Withdrawal of Authority

In the event that Purchaser’s authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

# Termination for Non-Allocation of Funds

If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

# Termination for Conflict of Interest

Purchaser may terminate this Contract by written notice to Vendor if Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, Purchaser shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

# Termination Procedure

## In addition to the procedures set forth below, if Purchaser terminates this Contract, Vendor shall follow any procedures Purchaser specifies in Purchaser’s Notice of Termination.

## Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Vendor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

## Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

## Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

# Covenant Against Contingent Fees

## Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.

## In the event Vendor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser or, in Purchaser’s discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

# Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

# Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

***In Witness Whereof***, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**This Contract is effective this \_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_.**

|  |  |  |
| --- | --- | --- |
| **Approved** |  | **Approved** |
| State of Washington*[Purchaser]* |  | *[Vendor]* |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Print or Type Name Date |  | Print or Type Name Date |
| Title |  | Title  |

|  |  |  |
| --- | --- | --- |
| **Approved as to Form** |  | **Vendor Information** |
| State of Washington |  | Vendor’s UBI Number: |
| Office of the Attorney General |  |  |
|  |  |  |
|  |  |  |
|  |  | Minority or Woman Owned Business Enterprise |
| Signature |  |  |
|  |  | Yes No [ ]  |
| Print or Type Name |  | (Certification Number) |
| Assistant Attorney General |  |  |
| Title Date |  |  |

**Schedule A**

***Authorized Services and Price List***

as of *[date]*

**for**

**Contract Number *[XXX-XXX-XXX]***

**with**

***[Vendor]***

*[Vendor]* is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

[List information required to be included by the Vendor, e.g., Service categories and descriptions, Prices (hourly rates), and Products (if any), etc.]

**Schedule B**

Statement of Work *[YY-YY]*

**to**

**Contract Number *[XXX-XXX-XXX]***

**for**

*[describe acquisition]*

This Statement of Work (SOW) is made and entered by and between *[Purchaser]* (“Purchaser”), and *[Vendor]* (“Vendor”), for *[describe acquisition or purpose of SOW]*. This SOW incorporates by reference the terms and conditions of Contract Number *[XXX-XXX-XXX]* in effect between the Purchaser and Vendor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Vendor agree as follows:

#### Project or Task Objectives

*[Describe in detail the project or task objectives.]*

#### Scope of Work and Deliverables

Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

*[Describe in detail what work Vendor will perform. Identify all tasks, work elements and objectives of the SOW, and timeline for completion of the major elements of the project.]*

Vendor shall produce *[describe in detail what deliverables Vendor will produce]*.

#### Timeline and Period of Performance

The period of performance for this project will start on *[start date]* and the work tasks are estimated to continue through *[end date]*. Purchaser has the right to extend or terminate this SOW at its sole discretion.

#### Compensation and Payment

Purchaser shall pay Vendor an amount not to exceed *[\_\_\_\_\_\_\_\_]* dollars *($\_\_\_) [specify maximum dollar amount]* for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Vendor’s compensation for services rendered shall be based on Vendor’s Prices as set forth in the Contract’s Schedule A, *Authorized Services and Price List* as follows:

*[List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc.]*

*[Expenses are optional. Travel costs are the most common reimbursable expense. If no travel is expected, insert a statement to that effect, e.g. “All activities are expected to take place in the greater (fill in location) area, thus no travel expenses are expected or authorized.” If Purchaser agrees to reimburse travel costs, include the following language.]*

Purchaser shall reimburse Vendor for travel and other expenses as identified in this SOW, or as authorized in writing, in advance by Purchaser in accordance with the current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoc.htm>). No payment of travel expenses will be made to Vendor for routine travel to and from Purchaser’s location. Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars ($50) or more when requesting reimbursement. The amount reimbursed to Vendor is included in calculating the “not to exceed” amount specified above.

[If Vendor will be reimbursed for any other expenses, describe them and any cost limits in this section.]

#### Vendor Staff, Roles and Responsibilities

*[Identify Vendor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]*

#### Purchaser Staff, Roles and Responsibilities

*[Identify Purchaser staff who will be involved and describe in detail their roles and responsibilities.]*

#### Additional Terms and Conditions Specific to this SOW

[State additional terms and conditions specific to this SOW not found in Contract, if any.]

***In Witness Whereof***, the parties hereto, having read this SOW *[YY-YY]* to Contract Number *[XXX-XXX-XXX]* in its entirety, do agree thereto in each and every particular.

|  |  |  |
| --- | --- | --- |
| **Approved** |  | **Approved** |
| *[Purchaser]* |  | *[Vendor]* |
|  |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Print or Type Name* |  | *Print or Type Name* |
| *Title Date* |  | *Title Date* |

**Schedule C**

***MWBE Certification***