Network Services Agreement

Contract Number

25-XXX

between

*Washington Technology Solutions*

and

Vendor

Effective Date: Month, Day, 2025

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**CONTRACT NUMBER 25-XXX**

**PARTIES**

This Network Services Agreement (“NSA” or “Contract”) is entered into by and between the state of Washington acting through **Washington Technology Solutions,** an agency of Washington State government (hereinafter “WaTech”), and **Vendor, Inc.,** licensed to conduct business in the state of Washington, (hereinafter “Contractor”) collectively referred to as “Parties” for the provisioning of telecommunication and network services to the State.

**RECITALS**

WHEREAS, Washington Technology Solutions has been designated as the manager and authorized agent for the State of Washington, various and numerous divisions and agencies of the State of Washington, and other municipal and county governments and agencies (each individually a “WaTech User” and collectively the “WaTech Users”) to contract with providers of telecommunications network services on the WaTech Users’ behalf, and to manage the provision of those telecommunications network services to each WaTech User under the terms and conditions set forth in various NSAs with individual providers thereof; and

WHEREAS, Contractor may provide the following telecommunication services, the specific terms for which will be reflected in a discrete addendum (“Technical Addendum”) that applies to technology traditionally defined as wireline technologies, including but not limited to:

1. Wireline Ethernet
2. Fixed Wireless Ethernet
3. Broadband/ local internet access
4. Wavelength DWDM
5. TDM/SONET
	1. DSS
	2. OC
	3. T1
6. Dark Fiber
7. SIP
8. Centrex
9. Enterprise ISP

WHEREAS, this Contract is an optional-use contract that neither financially binds the State nor WaTech nor any WaTech User or otherwise obligates the State, WaTech or any WaTech User to purchase any services hereunder nor prevent the State or WaTech or any WaTech User from purchasing the same or similar services from other sources, *provided that*, all legal acquisition requirements are satisfied; and

WHEREAS the NSA is not a sufficient procurement mechanism, but instead, merely reflects a set of agreed upon terms that are applicable when purchases are made pursuant to a sufficient procurement method.

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.

**“Acceptance”** shall mean that the Products or Services passed Acceptance Testing and shall be formalized in a written notice from WaTech to Contractor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products or Services are delivered and accepted by WaTech.

**“Acceptance Date”** for Contractor-installed Products or Services shall mean the date upon which WaTech Accepts the Products or Services as provided herein; and for WaTech-installed Products, shall mean the date of delivery of the Products, or, if delivery of partial Orders has been agreed to between WaTech and Contractor, the last date of delivery of the components of an Order*.*

**“Acceptance Testing”** shall mean the process for ascertaining that the Products or Services meet the standards set forth in the section titled Technical Requirements, prior to Acceptance by WaTech.

**“Anticipated Breach Notice”** shall mean notice provided to the Contractor by WaTech when a Force Majeure event will exceed one hundred and twenty days without correction or when a Contractor has a present duty of performance but indicates it will not perform pursuant to its obligations under the Contract.

**“ASV”** shall mean the Apparently Successful Vendor resulting from a WaTech Procurement Document.

“**Availability**” shall mean the ability of the Service to perform as defined in the Contract inclusive of the Service Level Agreement(s). Availability is measured in minutes of uptime (total minutes in a month minus- total minutes of unavailability) divided by the total minutes in the same calendar month during which the Services are Available.

**“Billing Format”** shall mean the format identified by the State in the applicable addendum. Each service must be included in a separate line item and include individual taxes.

**“Chronic Service”** is defined as failure to meet Service Level Agreements pursuant to and defined in the contract. A Service becomes a Chronic Service when any Outage extends beyond any one of the following two occurrences or duration ratios: (a) three (3) occurrences within thirty (30) consecutive days; or (b) five (5) occurrences within six (6) months.

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 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, WaTech source code or object code, or WaTech or State security information. Confidential Information also includes any Personal Information under the provisions of RCW 19.255.010 and RCW 42.56.590.

**“Contract”** shall mean this document, all schedules, addendums and exhibits, all amendments hereto and all Orders hereunder.

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

**“Contractor Account Manager”** shall mean a representative of Contractor assigned as the primary contact person with whom the WaTech Contract Administrator shall work throughout the duration of this Contract, and who shall be replaced only with the advance approval of the WaTech Contract Administrator according to the procedures enumerated in the section titled Contract Account Manager.

**“Contractor Demarcation Point”** shall mean a physical location at the WaTech User’s site where the Contractor’s service physically terminates, and its responsibility for their maintenance ends, and is cross-connected to the State or WaTech’s equipment, as defined by the WaTech Procurement Document.

**“Contractor Project Manager”** shall mean a representative of Contractor assigned to each WaTech installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled Contractor Project Manager.

**“Emergency Maintenance”** shall mean the Contractor efforts to correct conditions on the Contractors’ Service that are likely to cause a material disruption to or Outage in Services provided by Contractor and which require immediate action.

**“Guaranteed** **Install** **Interval”** shall mean the number of days the Contractor has committed to the delivery of the service to the specified termination location beginning when WaTech electronically sends a “Tech Order” to the Contractor.

“**MRC**” shall mean the Monthly Recurring Charge

“**MTTR**” or Mean Time to Restore shall mean the average time required to restore Contractor service to a normally operating state in the event of an Outage. MTTR is calculated on a per service line item basis, as a monthly average of the time it takes Contractor to repair all Outages on the specific Service. MTTR is measured from the time an Outage started until the time the Service is again available.

**“Network Operations Center”** or **“NOC”** shall mean the Contractor's facility in which their network and WaTech User's networks are monitored continuously.

**“NRC”** or “**Non-Recurring Charge**”shall mean the one time turn up fee or install fee.

**“Response”** shall mean the Contractor’s written submission responding to a WaTech Procurement Document.

**“State Data Center”** or **“SDC”** shall mean the WaTech data center facility located at 536 16th Ave, Olympia, WA.

**“Order”** shall mean any Products or Services provided under the applicable Technical Addendum, which shall be documented in a Statement of Work, or other documentation.

“**Outage**” shall mean a disruption in the Service impacting the Availability excluding a scheduled maintenance event.

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

**“Products”** shall mean all Contractor supplied goods and equipment purchased or received by WaTech under an applicable Technical Addendum.

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

**“Quincy Data Center”** or **“QDC”** shall mean the WaTech data center facility located at 2200 M St, Quincy, WA, run and operated by Sabey Data Centers.

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

**“Service Path**” shall mean the circuit, including the path from the egress port on the WaTech User device to the ingress port on the WaTech User device on other end of circuit.

**“Services”** shall mean those Services provided under this Contract related to items purchased, items under contract to receive, or items actually received by WaTech under an applicable Technical Addendum.

**“Service Term”** shall mean the period of time the Contractor has been awarded the right to provide Product or Services.

**“Specifications”** shall mean the technical and other specifications set forth in the WaTech Procurement Document, Exhibit A, any additional specifications set forth in WaTech’s Response, Exhibit B, and the specifications set forth in Contractor’s Product documentation, whether or not Contractor produces such documentation before or after this Contract’s Effective Date.

**“State”** shall mean the state of Washington.

**“Statement of Work”** or **“SOW”** shall mean the WaTech document and attachments thereto specifying the Products or Services to be purchased from Contractor under this Network Service Agreement and attached to a specific Technical Addendum.

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

**“Technical Addendum”** shall mean a shall mean an addendum incorporated into this Network Service Agreement that sets forth specific, detailed terms related to specific Products or Services that WaTech or WaTech Users require.

“**Tech Order**” shall mean the document sent by WaTech to the Contractor that specifies the technical details of the Products or Services to be implemented.

**“Termination Liability”** shall mean the portion of payments made by WaTech that will be retained by Contractor in the event that WaTech must cancel the Contract, or a portion thereof.

**“Trouble Ticket”** shall mean a Contractor ticket originated by WaTech or a WaTech User, or Contractor, by contacting the Contractor to report a Service disruption impacting Service Availability. The ticket will log circuit, reporting entity, reporting time, and brief description of Service Availability interruption.

**“WaTech”** shall mean the Washington State Washington Technology Solutions.

**“WaTech User”** shall mean each entity authorized by WaTech as manager for all WaTech Users to obtain Products or Services pursuant to the terms and conditions of this NSA, and may include the State of Washington or WaTech in its own right.

**“WaTech Procurement Document”** shall mean the document meeting WaTech’s competitive bidding requirements that results in a contract.

Contract Term

# Term

## This Contract’s Initial Term shall be approximately XX (X) years, commencing upon the Effective Date and expiring on April 30, 2027.

## After the Initial Term this Contract’s term may further be extended by up to five (5) additional one (1) year terms, provided that the extensions shall be offered at WaTech’s option and accepted by the Contractor prior to the Contract’s automatic extention. . No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

## Term of Statement of Work (SOW).

1. The term of any SOW executed pursuant to this Contract shall be set forth in the SOW.
2. The Service Term indicated in any SOW shall survive the expiration of the contract but will not exceed the stated Service Term.

# Survivorship

All purchase transactions executed 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 Contractor; Contractor Commitments, Warranties and Representations; Protection of WaTech’s Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity;** **Review of Contractor’s Records; Patent and Copyright Indemnification;** **Contractor’s Proprietary Information; Disputes;** and **Limitation of Liability**, shall survive the termination of this Contract.

Pricing, Invoice and Payment

# Pricing

## All pricing quoted on a WaTech Procurement Document by a Contractor must must reflect the maximum and complete costs WaTech will incur when purchasing the requested Product(s) and/or Service(s)and shall include no additional cost to WaTech.

## Contractor agrees to provide the Products and Services to WaTech at the prices set forth in the Statement of Work.

## Contractor may participate in the Federal Communication Commission’s E-rate Discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements.

# E-Rate

To the extent a purchase under a Technical Addendum is E-Rate eligible, the following section is applicable. Contractors bidding and contracting for e-rate eligible sites must be in full compliance with the Federal Communication Commission’s rules related to the E-Rate Discount -Universal Service Support Mechanism for Schools and Libraries (“E-Rate”). Contractor acknowledges that any contractual relationship resulting from an E-Rate eligible solicitation of proposals may be partially or entirely dependent upon the successful receipt of Universal Service Fund (“USF”) subsidies. To ensure compliance with all applicable USF regulations, program mandates and auditing requirements, Contractors must comply with the following:

1. USF Knowledge: Contractor shall have, at a minimum, a working knowledge of E-Rate Program.
2. USF Registration: Contractor shall submit with its proposal a valid Service Provider Identification Number (“SPIN”) and a valid Federal Communications Commission Registration Number (“FCCRN”).
3. USF Participation: Contractor shall agree to participate in the E-rate Program and to cooperate fully and in all respects with WaTech, the Universal Service Administrative Company (“USAC”), and any agency or organization administering the E-rate Program to ensure that WaTech and/or any WaTech User receives all of the E-rate funding for which it has applied and to which it is entitled in connection with Contractor’s Services and/or Products.
4. E-Rate procurement and contract clauses: The Contractor agrees that, when submitting a bid, it agrees to adhere to the then current e-rate obligations set forth in the applicable WaTech Procurement Document and the FCC’s rules and orders.
5. USF Documentation: Contractor shall provide to WaTech within a commercially reasonable period of time, all of the information and documentation that the Contractor has or reasonably can acquire that WaTech may need to prepare its E-rate applications and/or to document transactions eligible for E-rate support.

# Tariffs

## Contractor agrees to make all State or Federal tariff filings that are required by law or regulation and that are necessary for contract performance. Contractor shall provide WaTech with copies of all such tariffs on the same day they are filed. Contractor shall certify that all terms, conditions, and prices in the tariff are as stated in this Contract, and that the tariff contains nothing inconsistent with the Contract.

## If necessary, Contractor shall make any initial filing required to implement the contract within ten (10) days after the Effective Date of this Contract. If such initial filing is not permitted to become effective by the appropriate regulatory body (30) days after the date of contract award, then WaTech shall have the right partially or entirely to terminate the contract without liability.

## Before this Contract becomes effective, Contractor shall provide to WaTech copies of its current tariffs which pertain to the provision of the Service described herein.

## After this Contract becomes effective, except for any filing pursuant to Section 9.1 hereof, Contractor agrees to provide advance copies of all revisions to tariffs or new tariffs that specifically pertain to the contract or that may materially and adversely affect the WaTech's rights or obligations under the contract. These shall be provided to the WaTech at least ten (10) days in advance of the intended filing date. Contractor shall make no revisions to its tariffs that materially and adversely affect the WaTech's rights or obligations under this contract.

## If any ruling, order or determination of any regulatory agency or court of competent jurisdiction shall materially and adversely affect the Contractor's ability to offer Services under the terms and conditions of this Contract, Contractor agrees to immediately develop a proposal that provides comparable service to WaTech at rates equal to or less than those set forth in the contract, and under terms and conditions identical to those set forth in the contract, to the extent permissible under applicable legal and regulatory requirements. Such service may be provided under other existing tariffs (if this can be done at such tariffs' then effective rates without further revision) or under newly filed tariffs. If Contractor is unwilling or unable to develop such a proposal within ten (10) days of any such event, the WaTech will have the right partially or entirely to terminate the contract without liability.

# Shared Use Network Manager

Contractor acknowledges that WaTech is obtaining the Products and Services provided under this Contract as manager of a shared use network for the benefit of the WaTech Users, and that any Product or service provided under this Contract may be shared with any WaTech User authorized by WaTech to take such Product or Service, subject to compliance with any applicable laws, regulations, or policy governing the shared use of telecommunications services. WaTech remains solely responsible for all Products and Services ordered by it or billed to its account, for determining who is authorized to use those Products and Services and for taking appropriate actions to enforce such a determination, and for immediately notifying Contractor of any unauthorized use.

# Advance Payment Prohibited

No advance payment shall be made for Products or Services furnished by Contractor pursuant to this Contract, with the exception of allowable subscriptions, in which case WaTech may prepay up to twelve months for such subscription.

# Taxes

## WaTech will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder.

## Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property. WaTech, as an agency of Washington State government, is exempt from property tax.

## WaTech shall not pay Universal Service Fund, Interstate subscriber line fee or internet service taxes.

## Contractor 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 Contractor or Contractor’s staff shall be Contractor’s sole responsibility.

## To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor, and the Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Products or Services are rendered or a later time. The Contractor need not accept any order without reasonable proof of the Subscribing Entity's tax-exempt status.

# Invoice and Payment

Additional invoice obligations may be set forth in an applicable Technical Addendum.

## Invoices that do not contain the proper Billing Format and detail shall be returned unpaid and without penalty to WaTech. Contractor shall cure the improper Billing Format and returned a compliant invoice within thirty (30) days of notification by WaTech of the improper Billing Format.

 At a minimum, Contractor invoices must contain the following:

* WaTech Site ID/Site Name
* CDR (Circuit Design Record)
* Site Address
* Circuit ID
* SOW Number

## Contractor shall complete registration with the Washington Statewide Contractor Payment Registration system prior to issuing any invoices for Products or Services. Registration may be completed at: <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>

## Payments shall be due and payable within thirty (30) days after receipt and Acceptance of Products or Services or thirty (30) days after receipt of properly prepared invoices, whichever is later.

## If WaTech fails to make timely payment, Contractor may invoice WaTech 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 Contractor’s bank account or if a check or warrant is postmarked within thirty (30) days of Acceptance of the Product/Services or receipt of Contractor’s properly prepared invoice, whichever is later.

## Contractor is required to send invoices to WaTech in electronic format to both WaTechAP@watech.wa.gov and EDN\_VIM@watech.wa.gov - WaTech will not retrieve invoices from Contractor website or portal.

# Overpayments to Contractor

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

# Subcontractor Payments Reporting Requirements

This Contract is subject to compliance tracking using the State’s business diversity management system, Access Equity (B2Gnow). Access Equity is web-based and can be accessed at the Office of Minority and Women’s Business Enterprises at https://omwbe.diversitycompliance.com/. The Contractor and all Subcontractors shall report and confirm receipt of payments made to the Contractor and each Subcontractor through Access Equity. The Contractor may contact the OMWBE for technical assistance in using the Access Equity system. User guides and documentation related to Contractor and Subcontractor access to and use of Access Equity are available online at https://omwbe.wa.gov/access-equity-help-center. The Public Owner reserves the right to withhold payments from the Contractor for non-compliance with this section. For purposes of this section, Subcontractor means any subcontractor working on the Contract, at any tier and regardless of status as certified WMBE or Non-WMBE.

The Contractor shall:

a. Register and enter all required Subcontractor information into Access Equity no later than 15 days after the Public Owner creates the Contract Record.

b. Complete the required user training (two (2) one-hour online sessions) no later than 20 days after the Public Owner creates the Contract Record.

c. Report the amount and date of all payments (i) received from the Public Owner, and (ii) paid to Subcontractors, issuance of each payment made by the Public Owner to the Contractor, unless otherwise specified in writing by the Public Owner, except that the Contractor shall mark as “Final” and report the final Subcontractor payments) into Access Equity no later than thirty (30) days after the final payment is due the Subcontractor(s) under the Contract, with all payment information entered no later than sixty (60) days after end of fiscal year.

d. Monitor contract payments and respond promptly to any requests or instructions from the Public Owner or system-generated messages to check or provide information in Access Equity.

e. Coordinate with Subcontractors, or Public Owner when necessary, to resolve promptly any discrepancies between reported and received payments.

f. Require each Subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from the Contractor or a higher tier Subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier Subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from the Contractor or system-generated messages to check or provide information in Access Equity; and (v) coordinate with Contractor, or Public Owner when necessary, to resolve promptly any discrepancies between reported and received payments.

Contractor’s Responsibilities

# Eligibility to Bid

By bidding on WaTech Procurement Documents, Contractor represents and warrants the following:

## Contractor has customers within the State of Washington of similar size or complexity as the WaTech Users, considered individually and collectively.

## Contractor has an office operating in the State of Washington.

## Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 RCW. Contractors should familiarize themselves with the requirements prior to submitting a Response.

## Within thirty (30) days of being identified as the ASV, Contractor must be licensed to conduct business in Washington, including registering with the Washington State Department of Revenue. The Contractor must collect and report all applicable taxes. The Contractor must submit its Unified Business Identification (UBI) number within thirty (30) days of being identified as the ASV for any WaTech Procurement Document.

## Contractor has not been debarred by a governmental entity, nor has it had a contract terminated for breach in the past five (5) years. In the event either event occurs, Contractor shall immediately provide information pursuant to the “Notice” section. Such notice shall include details of the event, when the event occurred and all other relevant information as requested by WaTech.

In the event WaTech obtains independent and verified knowledge of the Contractor experiencing any of the above, WaTech may consider the event a material breach.

# Service Installation

## Unless otherwise stated in an applicable Technical Addendum, the Guaranteed Install Interval shall commence when WaTech electronically sends the Tech Order to the Contractor. A Copy of the Tech Order applicable to a Technical Addendum will be provided as an Exhibit to the applicable Addendum. Tech Orders will be provided within seven (7) days after receipt of the signed SOW.

## If Contractor must conduct a site survey or be on the WaTech User’s premises for any reason, Contractor must provide WaTech and the affected WaTech User at least three (3) business days’ notice in writing prior to the site survey or visit to the premises. Upon receipt of notice from Contractor, WaTech User has ten (10) business days to respond and provide the requested access to Contractor.

## Should the WaTech User not respond and provide requested access to Contractor within ten (10) business days, Contractor must notify WaTech in writing, so that WaTech may evaluate the cause of the delay, as well as reassess whether the Guaranteed Install Interval should be adjusted. Adjustments to the Guaranteed Install Interval shall be at WaTech’s sole discretion, and if approved by WaTech, WaTech will notify Contractor in writing. An adjustment to the Guaranteed Install Interval is not guaranteed, and will not be considered if Contractor does not notify WaTech of the delay as described herein.

## Contractors are urged and expected to inspect the site where Services are to be performed and to ensure all conditions that may affect the cost or the installation timeline are determined and accounted for, to the extent that the information is reasonably obtainable to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

## Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the WaTech User’s premises. If Contractor’s failure to use reasonable care causes damage to any of this property, Contractor shall replace or repair the damage at no expense to WaTech or the affected WaTech User as WaTech directs. If Contractor fails or refuses to make such repair or replacement, Contractor shall be liable for the cost, which may be deducted from the contract price.

# Roadmap Meetings

WaTech reserves the right to request strategic roadmap meetings to discuss long term relationship issues, operational best practices, and roadmap in addition to the technical briefings required.

# Escalation Management

Contractor shall provide an escalation management team comprised of top contributors from cross functional departments and an identified Escalated Accounts Manager. For purposes of this section, Escalated Accounts Manager means the Contractor-identified resource that will be responsible for following the escalation matrix, maintaining contact information for the matrix, holding the Contractor accountable for tasks and pushing remediation forward. This process is set forth in Schedule A. It must include the Escalated Accounts Manager for this NSA, as well as identify the escalation contact and path for each Technical Addendum. Upon request, Contractor will provide a current organization chart reflecting the escalation management team: Sales team, Pre-sales Engineering team, Project management Team, Service Delivery Team, Operations team, Post sales engineering team, Legal/contract team, and local, state, and regional VPs.

# Site Security

While on WaTech’s or a WaTech User’s premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, and security regulations.

Contractor shall establish and enforce protocols designed to keep its facilities secure from access by unauthorized personnel and to preserve the security and integrity of the facilities.

Contractor shall ensure that its personnel have successfully completed a background check prior to providing Services on WaTech or WaTech User’s site that require background checks as stated in the applicable WaTech Procurement Document as a condition of access to the premises.

At a minimum, every five years the Contractor is responsible for obtaining an updated basic level criminal background check for each employee that provides Services which have required a background check previously and shall resubmit a signed statement confirming that each employee providing Services to WaTech or any WaTech User has successfully completed the required background check.

# Security Standards

Contractor agrees to follow best security practices for the applicable industry, and must comply with the then-current version of the Office of the Chief Information Officer (OCIO) Standard 141.10., *Securing Information Technology Assets*, as applicable for the technology detailed in a Technical Addendum. The OCIO IT security standards are located at <http://www.ocio.wa.gov/policy/securing-information-technology-assets-standards>. WaTech has the right to review and modify these obligations. Contractor is obligated to provide notice not less than 48 hours after it suspects its network security has been breached in a manner that potentially affects the integrity of the WaTech data or the quality of the telecommunications services provided. In the event of a data breach of Confidential Information, the Contractor shall be responsible for following all protocols related to notification, which shall be at the individual claimant level. Further, the Contractor shall provide, at a minimum, two (2) years of identity tracking for each individual whose data has been breached or may have been breached.

In the event an Acceptable Use Policy (AUP) is needed, the Parties will reach mutual agreement to the terms and document the AUP to be used under this Contract in an amendment to the NSA or applicable Technical Addendum.

# Chronic Service

In the event a Product or Service is designated by WaTech as a Chronic Service, WaTech shall have the choice between:

1. The right to substitute a different Service or a different Service Path component for the affected Service without incurring any penalty, further liability, termination charge, or installation fees; or
2. Termination under Section 57 “Termination for Default.”

For avoidence of doubt, the designation of Chronic is in addition to, and not in lieu of, SLA remedies/credits as defined in this Contract.

# Rights-of-Way and Permits

As applicable, Contractor shall be solely responsible to directly, or through third parties, use its best efforts to obtain and maintain all rights-of-way necessary for installation of fiber optic facilities and all permits required to provide Services under an Order. Except as otherwise provided herein, any and all costs associated with acquiring the rights-of-way up to the termination point, and all permits including but not limited to, the costs of installing conduit or of altering the structure to permit installation of Contractor provided facilities, shall be borne entirely by the Contractor.

# Building Coordination Responsibilities

## *Building Coordination*

 Contractor shall be responsible for management of all coordination with building owners for any site under Contract. Contractor shall coordinate with the business owners through the WaTech provided site contact(s) agency point of contact. Moreover, the Contractor will be solely responsible to coordinate and communicate with the WaTech User point of contact provided site contact(s) to determine and follow all onsite procedures and protocols required for that site by the WaTech User.

## *Landlord Permission*

 Contractor shall obtain the Landlord or other authorized entity’s written consent prior to submitting a response to a WaTech Procurement Document when the proposed Service installation requires modification to the premises through construction, build, vault or conduit installation, temporary or permanent building mounting, including pathways used, or other impacts. Contractor’s signature of the SOW is a representation and warranty that it has obtained the consents required under the Contract. WaTech may request a copy of the consent at any time.

#  (M) Construction Coordination

## *Utilities*

The location of all existing buried facilities shall be located and marked prior to any digging by the Contractor or Subcontractor. The Contractor shall be responsible for damage to any existing buried utilities.

## *Aerial Placement*

The Contractor or Subcontractor shall utilize standard industry hardware to attach aerial cable at pole locations (strand vices, guy hooks, cable suspension clamps, corner suspension clamps, etc.)

## *Equipment*

All gas/diesel motorized equipment shall have proper mufflers and meet any other applicable environmental/safety requirements.

## *Trenching/Digging/Boring*

Any trenching/digging/boring sites shall be backfilled as required under the applicable permit. If the permit does not specify backfill, then Contractor shall backfill to contours and elevations of undisturbed surrounding terrain. Sidewalk restoration shall match the sidewalk being removed.

## *Work in Manholes*

Before work commences in conduit system manholes, the Contractor or Subcontractor shall follow industry standards for atmospheric testing, ventilation, barricading and signage of each manhole that will be entered by the Contractor/Subcontractor. Contractor/Subcontractor shall maintain proper ventilation throughout the work process.

# RFP Proper Communication

All communications relevant to an active WaTech Procurement Document must be in writing to the WaTech Procurement Document Coordinator at the contact information named in the procurement document. WaTech Users shall not provide any information related to a procurement document that is currently active. Any information provided by a WaTech user will be considered unofficial and non-binding on the State. Any other direct or indirect communication with employees or (sub) contractors of our organization regarding this RFP will be treated as misconduct and may result in the Contractor’s Response being disqualified.

# Order for Products or Services

All Orders for Products or Services must be documented in an amendment or Statement of Work to the applicable Technical Addendum. Any additional charges that are not documented in either an amendment or a SOW will not be honored.

# Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor 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 Contractor in its Response or contained in any Contractor 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 WaTech.

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

With each invoice for payment and within thirty (30) days of WaTech Contract Administrator’s request, Contractor shall provide WaTech an *Affidavit of Amounts Paid.* The *Affidavit* *of Amounts Paid* shall either state that Contractor 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. Contractor shall maintain records supporting the *Affidavit* *of Amounts Paid* in accordance with this Contract’s **Review of Contractor’s Records** section.

# Protection of WaTech’s Confidential Information

## Contractor 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 Confidential Information of WaTech or of a WaTech User. To the extent practicable WaTech shall mark documents Confidential Information as Confidential, unless the the Confidential nature of the document is immediately and reasonably apparent to the recipient. Contractor agrees to hold all such Confidential Information in strictest confidence and not to make use of any such 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 the express written consent of WaTech or the affected WaTech User, as the case may be, or as provided by law. Contractor 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 WaTech. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Contractors that may come into contact with medical data will be required to complete a Business Associate agreement (as defined in 45 CFR 160.103) , as required by federal or state laws, including HIPAA, prior to the commencement of any work.

## Immediately upon expiration or termination of this Contract, Contractor shall, at WaTech’s option: (i) certify to WaTech that Contractor has destroyed all Confidential Information pursuant to industry standards; or (ii) return all Confidential Information to WaTech; or (iii) take whatever other steps WaTech reasonably requires of Contractor to protect the Confidential Information of WaTech and each WaTech User.

## WaTech reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract.

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

**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, by emails, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the Parties at the addresses provided in this section.

|  |  |
| --- | --- |
| **To Contractor at:** | **To WaTech at:** |
| [Contractor Name] | State of WashingtonWashington Technology Solutions |
| **Attn:**  | **Attn:**  Contract Administrator |
|  | ***If by US Postal Service:*** | ***If by Overnight Courier:*** |
|  | PO Box 41501 | 1500 Jefferson St. SE |
|  | Olympia, WA 98504 | Olympia, WA 98501 |
| Phone:  | Phone: 360-407-8781 |
| E-mail:  | E-mail: ctsdlols@watech.wa.gov  |

## Notices shall be effective upon receipt or four (4) 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 Products or Services provided pursuant to this Contract is served upon Contractor or WaTech, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process.

# Contractor Account Manager

Contractor shall appoint an Account Manager for WaTech’s account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor’s Account Manager will be the principal point of contact for WaTech concerning Contractor’s performance under this Contract. Contractor shall notify the WaTech Contract Administrator, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

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

# Contractor Project Manager

Contractor shall assign a Contractor Project Manager for each WaTech project. WaTech shall have the right to disapprove of the selected Contractor Project Manager, as well as any named successor to that position. Should WaTech so disapprove, Contractor will select another individual to fill that position. The Contractor Project Manager shall be the principal point of contact for WaTech and shall coordinate Contractor’s activities. The Contractor Project Manager shall produce and maintain a complete plan for all Contractor-related activities concerning installation and training.

# 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.

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

### Statement of Work to a Technical Addendum

### WaTech’sProcurement Document;

### Technical Addendum to the NSA;

### NSA and

### Contractor’s Response to WaTech’s Procurement Document.

# 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 **Contractor 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 shall be effective or binding unless it is in writing and signed by WaTech and Contractor, and Contractor expressly acknowledges that no WaTech User may, without WaTech’s express prior written consent, modify, amend, alter or waive any section or condition of this Contract.

# Independent Status of Contractor

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. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW (State Civil Service Law) or Title 51 RCW (Industrial Insurance).

# 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. 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 Thurston County within the state of Washington.

# Subcontractors

Contractor may, with prior written permission from WaTech, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor’s duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to WaTech for any breach in the performance of Contractor’s duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to WaTech or any WaTech User, and all sections of this Contract shall apply to all Subcontractors.

# Assignment

## With the prior written consent of WaTech which consent shall be at WaTech’s sole option, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to WaTech that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.

## WaTech may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington.

# Publicity

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

## Contractor agrees to submit to WaTech, all advertising, sales promotion, and other publicity materials relating to this Contract or any Pproducts or Services furnished by Contractor wherein WaTech’s or a WaTech User’s name is mentioned, language is used, or Internet links are provided from which the connection of WaTech’s or aWaTech User’s name with Contractor’s Products or Services may, in WaTech’s judgment, be inferred or implied. Contractor 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 WaTech *prior* to such use.

# Review of Contractor’s Records

## Contractor 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 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. Contractor 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 WaTech 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, Contractor shall provide access to these items within Thurston County or the county where WaTech is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

## Contractor shall incorporate into 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 Contractor’s cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WaTech’s review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

# Standard Terms of Contractor

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.

General Provisions

# Patent and Copyright Indemnification

## Contractor, at its expense, shall defend, indemnify, and save WaTech and each WaTech User harmless from and against any claims against WaTech or a WaTech User that any Products or Services stated in an Order supplied hereunder, or the use of the Product or Services stated in an Order within the terms of this Contract by WaTech or a WaTech User, infringes any patent, copyright, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys’ fees awarded by a court or incurred by WaTech or a WaTech User provided that WaTech (by itself or through the affected WaTech User):

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

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

## If such claim has occurred, or in Contractor’s opinion is likely to occur, WaTech agrees to permit Contractor, at its option and expense, either to procure the right to continue using the Product or Services stated in an Order or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product and provide WaTech a refund. In the case of Product, Contractor shall refund to WaTech its depreciated value. No termination charges will be payable on such returned Product, and the WaTech 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 seven (7)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 WaTech or any WaTech User shall be refunded by Contractor.

# Save Harmless

Contractor shall defend, indemnify, and save WaTech and each WaTech User 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 Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

# Insurance

## Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor 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, Contractor shall provide written notice of such to WaTech within one (1) Business Day of Contractor’s receipt of such notice. Failure to buy and maintain the required insurance may, at WaTech’s sole option, result in this Contract’s termination.

## The minimum acceptable limits shall be as indicated below for each of the following categories:

### Commercial General Liability covering the risks of bodily injury (including death), property damage and personal and advertising 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 (if any), 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 Contractor’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 or Excess Liability policy providing excess limits over the primary policies in an amount not less than $3 million; and

### Professional Liability Errors and Omissions and coverage of not less than $1 million per occurrence/$2 million general aggregate.

## Contractor shall pay premiums on all insurance policies. WaTech shall be named as an additional insured as “WaTech, as Manager and Agent for the benefit of each WaTech User taking Products or Services from Contractor from time to time under Contract number 22-XXX on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) so designating WaTech as an additional named insured. Such policies shall also reference this Contract number 22-XXX and shall have a condition that they not be revoked by the insurer until forty-five (45) days after notice of intended revocation thereof shall have been given to WaTech by the insurer.

## All insurance provided by Contractor 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.

## The failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

## Contractor shall furnish to WaTech copies of certificates and endorsements of all required insurance within thirty (30) days of this Contract’s Effective Date and copies of renewal certificates and endorsements 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 WaTech sole option, result in this Contract’s termination.

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

# Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor 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. WaTech will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this Contract.

# Licensing Standards

Contractor 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

Contractor and WaTech recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by WaTech. Therefore, Contractor hereby assigns to WaTech 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 WaTech 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, Contractor 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 Contractor’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 Contractor may be declared ineligible for further contracts with the State.

# Nondiscrimination

49.1 Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

49.2 Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

49.3 Default. Notwithstanding any provision to the contrary, CTS may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until CTS receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified in RCW 49.60.530(3), CTS may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

49.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

# 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

## Nothing contained in this Contract shall be construed to transfer title to any property furnished by WaTech or any WaTech User.

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

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

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

## Contractor shall surrender to WaTech all property of WaTech or a WaTech User prior to completion, termination, or cancellation of this Contract.

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

# Contractor’s Proprietary Information

Contractor acknowledges that WaTech is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, WaTech shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor’s Proprietary Information, WaTech will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WaTech will release the requested information on the date specified.

Disputes and Remedies

# Disputes

## Billing Disputes

### WaTech and Contractor can dispute an invoice within one hundred twenty (120) days of receiving it. No changes or disputes will be permitted beyond that timeline.

### Contractor must respond to formal billing disputes within fifteen (15) days and resolve within sixty (60) days

## Other Disputes

### In the event a bona fide dispute concerning a question of fact arises between Contractor and WaTech and it cannot be resolved between the Parties or by the WaTech Contract Administrator, 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 five (5) Days. The initiating party shall have five (5) Days to review the response. If after this review a resolution cannot be reached, both Parties shall have five (5) Days to negotiate in good faith to resolve the dispute.

### If the dispute cannot be resolved after five (5) Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) 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 five (5) 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 its attorneys’ fees and share equally the cost of the third panel member.

### Both Parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.

### WaTech and Contractor 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 WaTech for Products or Services being provided by Contractor, Contractor shall continue providing Products or Services pending resolution of the dispute provided WaTech pays Contractor the amount WaTech, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, 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 Contractor fails to perform any substantial obligation under this Contract, WaTech shall give Contractor written notice of such Failure to Perform. If after thirty (30) daysfrom the date of the written notice Contractor still has not performed, then WaTech may withhold all monies due for the Product(s) and Service(s) that are non-performing and payable to Contractor, without penalty to WaTech, until such Failure to Perform is cured or otherwise resolved.

# Force Majeure Events

## For purposes of this Section, a “Force Majeure Event” means any event beyond the reasonable control of a party including acts of God, fires, floods, vandalism, sabotage, war, terrorist action, riot, civil commotion, rebellion, general labor stoppage, interruptions in telecommunications or utilities services caused by a Force Majeure Event, or acts of a government, regulatory or any other competent authority or compliance with any law or governmental or regulatory order, rule, regulation or direction outside of WaTech’s control.

## If a party is prevented, hindered or delayed from or in performing any of its obligations under this Contract by a Force Majeure Event, then (i) its obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed, (ii) as soon as reasonably possible after commencement of the Force Majeure Event it shall give notice in writing to the other party of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under this Contract; and (iii) such party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the party’s abaility to perform its obligations under this Agreement and to mitigate the consequences thereof and (iv) as soon as reasonably possible after the cessation of the Force Majeure Event it shall give notice in writing of the cessation of the Force Majeure Event and shall resume performance of all of its obligations under this Contract.

## WaTech shall have the right to terminate all or any portion of the Contract, an applicable Technical Addendum, Order, or Service provided under the applicable Technical Addendum with by providing a notice of Anticipated Breach with thirty (30) days prior notice in the event of a delay or interruption of performance by Contractor resulting from a Force Majeure Event which exceeds one hundred twenty (120) days, despite Contractor’s use of its best efforts to recover from such Force Majeure Event, by delivering to Contractor an Anticipated Breach Notice that states at a minimum the termination date at the end of the one hundred an twenty days in accordance with this Contract.

# Limitation of Liability

## The Parties agree that neither Contractor, WaTech nor any WaTech User 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, or data breach related, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections 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 Contractor’s Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

## Neither Contractor, WaTech, nor any WaTech User 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 Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the WaTech Contract Administrator shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) days or as otherwise agreed in writing. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. Contractor acknowledges that time is of the essence for a successful cure the the violation. If Contractor’s failure or violation is not so corrected in a manner WaTech deems timely, this Contract may be terminated immediately by written notice from WaTech to Contractor, or an Order may be terminated by written notice to Contractor from WaTech and WaTech shall not be liable for any penalities, liability, or termination charges.

## In the event of a Chronic Service, WaTech may terminate the affected Service and its associated Order without incurring any penalty, further liability beyond termination date, Termination Liability, and any termination charge to WaTech provided that written notice of termination is provided to the Contractor within one hundred and eighty (180) days of the Chronic occurrence and cure period giving rise to the termination.

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

## If WaTech or any WaTech User taking Services or Products 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 Contractor shall give WaTech written notice of such failure, which shall be corrected by WaTech within thirty (30) days, or as otherwise agreed. If such failure to perform by a WaTech User is not so corrected, any Services or Products being provided to such WaTech User pursuant to a particular WaTech Order or Orders may be terminated to such WaTech User by written notice from Contractor to WaTech. If such failure to perform by WaTech constitutes a material violation of this Contract, then, this Contract may be terminated by written notice from Contractor to WaTech.

## 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 WaTech, it is in the best interest of the State, WaTech may terminate this Contract, in whole or in part, by giving thirty (30) days written notice to Contractor. WaTech is liable only for payments for Products and Services received and accepted by WaTech prior to the effective date of termination, inclusive of applicable Termination Liability (TLA) as set forth in the applicable Technical Addendum.

# Termination for Withdrawal of Authority

## In the event that WaTech’s authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract or any Order and prior to normal completion, WaTech may terminate this Contract, or WaTech a WaTech User may terminate its Order(s), by thirty (30) days written notice to Contractor. No penalty shall accrue to WaTech in the event this section shall be exercised. This section shall not be construed to permit WaTech or any WaTech User to terminate this Contract to terminate its Order(s) in order to acquire similar Products or Services from a third party. If this Contract is terminated pursuant to this Section, WaTech is liable only for payments required by the terms of this Contract for Products or Services received and accepted by WaTech prior to the effective date of termination.

## In the event that a WaTech User’s authority to perform any of their duties related to receiving services from WaTech through this contract is withdrawn, reduced, or limited in any way after the commencement of a SOW and prior to normal completion, WaTech or a WaTech User may terminate or amend SOW(s) or individual circuits in Service under this Contract and its associated SOW(s) without penalty upon thirty (30) days prior written notice. This section shall not be construed to permit WaTech or the WaTech User to terminate SOW(s) in order to acquire similar Products or Services from a third party. If a SOW is terminated pursuant to this Section, WaTech is liable only for payments required by the terms of this Contract for Products or Services received and accepted prior to the effective date of termination.

# Termination for Non-Allocation of Funds

## If funds are not allocated to WaTech to continue this Contract, or if a WaTech User is no longer allocated funds to continue receiving Services or Products under any individual Order in any future period, WaTech may terminate this Contract in whole, or WaTech may terminate those individual circuits in service to the affected WaTech User under this Contract upon not less than seven (7) dayswritten notice to Contractor. WaTech will not be obligated to pay any further charges for Products or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WaTech agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WaTech in the event this section shall be exercised. This section shall not be construed to permit WaTech to terminate this Contract, or WaTech to terminate its Order(s) in order to acquire similar Products or Services from a third party. If a circuit is terminated pursuant to this Section, WaTech is liable only for payments required by the terms of this Contract for Services received and accepted by WaTech prior to the effective date of termination.

## If funds are not allocated to any WaTech User to continue with Service under SOW(s) associated with this Contract in any future period, WaTech may amend or terminate the applicable SOW(s) or the individual circuits in Service to such WaTech User under this Contract. WaTech will not be obligated to pay any further charges for Products or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WaTech agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WaTech in the event this section shall be exercised. This section shall not be construed to permit WaTech or its end user WaTech User to terminate SOW(s) in order to acquire similar Products or Services from a third party. If a SOW is terminated pursuant to this Section, WaTech is liable only for payments required by the terms of this Contract for Products or Services received and accepted by WaTech prior to the effective date of termination.

# Termination for Conflict of Interest

WaTech may terminate this Contract, its Order(s), by written notice to Contractor if WaTech determines, after due notice and examination, that the Contractor 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 or any Order is so terminated, WaTech shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract or any Order.

# Termination Procedure

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

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

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

# Covenant Against Contingent Fees

## Contractor 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 Contractor.

## In the event Contractor breaches this section, WaTech shall have the right to either annul this Contract without liability to WaTech, or, in WaTech’s discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, 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.

|  |  |  |
| --- | --- | --- |
| **Approved** |  | **Approved** |
| State of WashingtonWashington Technology Solutions |  | Vendor, Inc. |
|  |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Print or Type Name Date* |  | *Print or Type Name Date* |
|  |  |  |
| *Title* |  | *Title*  |

**Network Services Agreement 25-XXX**

**Schedule A**

**Escalation Procedures**

**Contractor to insert processes and procedures around internal escalation paths here. Schedule A should not be only this table, but needs the contractor narrative included as well.**

|  |  |  |  |
| --- | --- | --- | --- |
| Position | 1st Contact- point person for initial contact | 2nd Contact- escalation point after working with 1st Contact | 3rd Contact- highest point of escalation |
| Sales Team | Email: Phone: | Email: Phone: | Email: Phone: |
| Pre-engineering Team | Email: Phone: | Email: Phone: | Email: Phone: |
| Project Management Team | Email: Phone: | Email: Phone: | Email: Phone: |
| Service Delivery/Operations Team | Email: Phone: | Email: Phone: | Email: Phone: |
| Post-sales Engineering Team | Email: Phone: | Email: Phone: | Email: Phone: |
| Legal/Contract Team  | Email: Phone: | Email: Phone: | Email: Phone: |
|  | Name | Email | Phone |
| Local VP |  |  |  |
| State VP |  |  |  |
| Regional VP |  |  |  |