PROPOSED CONTRACT TERMS

Contract Number

[XXX-XXX-XXX]

for

between the

WASHINGTON TECHNOLOGY SOLUTIONS

and

[Vendor]

Effective Date: _____

[Add Effective Date]

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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 Washington Technology Solutions an agency of Washington State government ("Purchaser" or "WaTech") 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:

1. 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.

"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.

"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.

"WaTech" shall mean the same as Purchaser.

"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

2. Term

2.1. Term of Contract

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

[–OR–]

a) This Contract's initial term shall be *[_____(__)]* years *[or other appropriate time period]*, commencing upon the Effective Date.

b) 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.

2.2. 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.

3. 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

4. Pricing

4.1. The total amount expended under this Contract shall not exceed *[_____]* dollars *($___) [Specify maximum dollar amount]*.

4.2. 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.

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

4.4. 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.

4.5. At least ninety (90) calendar days before 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.

4.6. 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.

5. 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.

6. Taxes

6.1. 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.

6.2. 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.

6.3. 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.

7. Invoice and Payment

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

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

a) Purchaser Contract number *[XXX-XXX-XXX]*;
b) SOW number *[YY-YY]*;
c) Vendor name, address, phone number, and Federal Tax Identification Number;
d) Description of Services provided;
e) Date(s) that Services were provided, including number of hours worked;
f) Vendor's Price for Services;
g) Net invoice Price for each Service;
h) Applicable taxes;
i) Other applicable charges;
j) Total invoice Price; and
k) Payment terms including any available prompt payment discounts.

7.3. 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.

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

7.5. 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.

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

7.7. 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.

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

7.9. 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 _____ at _____ 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, no later than _____, 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.

8. 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

9. Purchased Services and Statement of Work

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

9.2. The SOW shall at a minimum:

a) Reference this Contract number *[XXX-XXX-XXX]*;

b) Define project or task objectives;

c) Describe the scope of Services or work to be performed;

d) Identify deliverables;

e) Specify a timeline and period of performance;

f) 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 reimbursable Vendor expenses;

g) Describe Vendor's roles and responsibilities and identify specific Vendor staff;

h) Describe Purchaser's roles and responsibilities;

i) Provide signature block for both parties.

9.3. 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.

10. Commencement of Work

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

11. Ownership/Rights in Data

11.1. 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.

11.2. 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.

11.3. 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.

11.4. 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.

11.5. 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.

11.6. 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").

11.7. Contractor shall exert best efforts to advise WaTech and Purchaser of all known or potential infringements of publicity, privacy or of intellectual property rights of the Preexisting Material furnished under this Contract. WaTech 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.

12. Site Security

a. 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.

b. 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.

c. 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.

d. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Protection of Purchaser's Confidential Information

19.1. 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.

19.2. 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.

19.3. 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**.

19.4. 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.

19.5. 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.

20. Standard of Performance and Acceptance

20.1. 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.

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

a) Meeting or exceed the Standard of Performance defined below;

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

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

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

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

20.3. 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.

20.4. 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.

20.5. 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.

20.6. 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.

20.7. 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..

20.8. 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.

20.9. 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.

21. Training

21.1. 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.

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

b) 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.

c) 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.

21.2. 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.

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

b) 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.

c) 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.

Contract Administration

22. Legal Notices

22.1. 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: *[Vendor address]*	**Attn:** *[Purchaser Contract Administrator]* *[Purchaser address]*
Phone: Fax: E-mail:	Phone: Fax: E-mail:

22.2. 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.

22.3. 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.

23. 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.

24. 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:

25. Section Headings, Incorporated Documents and Order of Precedence

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

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

a) Schedules A, and B *[if applicable]*; *[include other Schedules, if appropriate]*
b) *[Purchaser] [RFX]* dated *[date]*;
c) Vendor's Response to *[Purchaser] [RFX]* dated *[date]*;
d) Any SOW entered into pursuant to this Contract;
e) The terms and conditions contained on Purchaser's purchase documents, if used; and
f) 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.

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

a) Applicable federal and state statutes, laws, and regulations;
b) Sections of this Contract;
c) Schedule A; *[include other Schedules, if appropriate]*
d) *[Purchaser] [RFX]* dated *[date]*;
e) Any SOW entered into pursuant to this Contract;
f) Vendor's Response to *[Purchaser] [RFX]* dated *[date]*;
g) The terms and conditions contained on Purchaser's order documents, if used; and

h) 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.

26. 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.

27. 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.

28. 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.

29. 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, Washington.

30. 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.

31. 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.

32. Assignment

32.1. 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.

32.2. 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.

33. Publicity

33.1. 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.

33.2. 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.

34. Review of Vendor's Records

34.1. 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.

34.2. 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.

34.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

34.4. 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.

35. 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

36. Patent and Copyright Indemnification

36.1. 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:

a) 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

b) 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.

36.2. 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.

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

a) Vendor's compliance with any designs, specifications or instructions of Purchaser;

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

c) 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.

37. 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.

38. Insurance

38.1. 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.

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

a) 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;

b) 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;

c) 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;

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

e) 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

f) 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.

38.3. 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.

38.4. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

39. 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.

40. 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.)

41. 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.

42. 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.

43. Nondiscrimination

43.1 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.

43.2 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).

43.3 Default. Notwithstanding any provision to the contrary, WaTech 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 WaTech 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), WaTech 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.

43.4 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.

44. 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.

45. 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.

46. Treatment of Assets

46.1. 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.

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

46.3. 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.

46.4. 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.

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

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

47. Vendor's Proprietary Information

Vendor acknowledges that Purchaser 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 Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 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.

48. 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.

49. 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

50. 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.

50.1. 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.

50.2. 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.

a) 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.

b) 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.

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

50.3. 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.

50.4. 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.

51. Non-Exclusive Remedies and Rule of Construction

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

51.2. The parties agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or part of it.

52. 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 days from 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.

53. Limitation of Liability

53.1. 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.

53.2. 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.

53.3. 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.

53.4. 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

54. Termination for Default

54.1. 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.

54.2. 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.

54.3. 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**.

54.4. 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.

55. 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 days written 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.

56. 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.

57. 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.

58. 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.

59. Termination Procedure

59.1. 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.

59.2. 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.

59.3. 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.

59.4. 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.

60. Covenant Against Contingent Fees

60.1. 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.

60.2. 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

61. Authority to Bind

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

62. 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 Washington Technology Solutions *[Purchaser]*	**Approved** *[Vendor]*
Signature	Signature
Print or Type Name Date	Print or Type Name Date
Title	Title

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title Date

Vendor Information
Vendor's UBI Number:
Minority or Woman Owned Business Enterprise Yes _____ No ☐ (Certification Number)

Schedule A
Authorized Services

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:

1. Project or Task Objectives

[Describe in detail the project or task objectives.]

2. 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]*.

3. 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.

4. 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.]

5. 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.]

6. Purchaser Staff, Roles and Responsibilities

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

7. 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