

Master Services Agreement

Contract Number

19-XXX

between

Consolidated Technology Services

and

Vendor

Effective Date: Month, Day, 2018

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CONTRACT NUMBER 19-XXX

PARTIES

This Master Services Agreement (“MSA” or “Contract”) is entered into by and between the state of Washington acting through **Consolidated Technology Services**, an agency of Washington State government (hereinafter “CTS”), 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, Consolidated Technology Services 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 “CTS User” and collectively the “CTS Users”) to contract with providers of telecommunications network services on the CTS Users’ behalf, and to manage the provision of those telecommunications network services to each CTS User under the terms and conditions set forth in various MSAs 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
 - a. DSS
 - b. OC
 - c. 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 CTS nor any CTS User or otherwise obligates the State, CTS or any CTS User to purchase any services hereunder nor prevent the State or CTS or any CTS User from purchasing the same or similar services from other sources, *provided that*, all legal acquisition requirements are satisfied; and

WHEREAS the MSA 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:

1. 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 CTS to Contractor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products or Services are delivered and accepted by CTS.

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

“Anticipated Breach Notice” shall mean notice provided to the Contractor by CTS 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 CTS 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, CTS source code or object code, or CTS 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 CTS or a CTS 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 CTS Contract Administrator shall work throughout the duration of this

Contract, and who shall be replaced only with the advance approval of the CTS Contract Administrator according to the procedures enumerated in the section titled Contract Account Manager.

“Contractor Demarcation Point” shall mean a physical location at the CTS 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 CTS’ equipment, as defined by the CTS Procurement Document.

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

“CTS” shall mean the Washington State Consolidated Technology Services.

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

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

“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 CTS 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 CTS 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 CTS Procurement Document.

“State Data Center” or **“SDC”** shall mean the CTS 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 CTS under an applicable Technical Addendum.

“Proprietary Information” shall mean information 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 CTS 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 CTS User device to the ingress port on the CTS 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 CTS 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 CTS Procurement Document, Exhibit A, any additional specifications set forth in Contractor’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 CTS document and attachments thereto specifying the Products or Services to be purchased from Contractor under this Master 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 Master Service Agreement that sets forth specific, detailed terms related to specific Products or Services that CTS or CTS Users require.

“Tech Order” shall mean the document sent by CTS 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 CTS that will be retained by Contractor in the event that CTS must cancel the Contract, or a portion thereof.

“Trouble Ticket” shall mean a Contractor ticket originated by CTS or a CTS 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.

Contract Term

2. Term

- 2.1. This Contract's Initial Term shall be approximately three and a half (3.5) years, commencing upon the Effective Date and expiring on April 30, 2022.
- 2.2. The Contract will automatically renew for an additional five (5) year term unless CTS provides written notice of intent to terminate prior to the expiration of the Initial Term.
- 2.3. After the Initial Term plus the automatic renewal terms in Section 2.2 above, , 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 CTS' option and accepted by the Contractor prior to the Contract's automatic extension. . No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.4. Term of Statement of Work (SOW).
 - a) The term of any SOW executed pursuant to this Contract shall be set forth in the SOW.
 - b) The Service Term indicated in any SOW shall survive the expiration of the contract but will not exceed the stated Service Term.

3. 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 CTS'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

4. Pricing

- 4.1. All pricing quoted on a CTS Procurement Document by a Contractor must reflect the maximum and complete costs CTS will incur when purchasing the requested Product(s) and/or Service(s) and shall include no additional cost to CTS.
- 4.2. Contractor agrees to provide the Products and Services to CTS at the prices set forth in the Statement of Work.
- 4.3. 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.

5. 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 CTS, the Universal Service Administrative Company ("USAC"), and any agency or organization administering the E-rate Program to ensure that CTS and/or any CTS 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 CTS Procurement Document and the FCC's rules and orders.
5. USF Documentation: Contractor shall provide to CTS within a commercially reasonable period of time, all of the information and documentation that the Contractor has or reasonably can acquire that CTS may need to prepare its E-rate applications and/or to document transactions eligible for E-rate support.

6. Tariffs

- 6.1. 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 CTS 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.
- 6.2. 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 CTS shall have the right partially or entirely to terminate the contract without liability.
- 6.3. Before this Contract becomes effective, Contractor shall provide to CTS copies of its current tariffs which pertain to the provision of the Service described herein.
- 6.4. 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 CTS' rights or obligations under the contract. These shall be provided to the CTS 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 CTS' rights or obligations under this contract.

- 6.5. 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 CTS 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 CTS will have the right partially or entirely to terminate the contract without liability.

7. Shared Use Network Manager

Contractor acknowledges that CTS is obtaining the Products and Services provided under this Contract as manager of a shared use network for the benefit of the CTS Users, and that any Product or service provided under this Contract may be shared with any CTS User authorized by CTS to take such Product or Service, subject to compliance with any applicable laws, regulations, or policy governing the shared use of telecommunications services. CTS 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.

8. 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 CTS may prepay up to twelve months for such subscription.

9. Taxes

- 9.1. CTS will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder.
- 9.2. 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. CTS, as an agency of Washington State government, is exempt from property tax.
- 9.3. CTS shall not pay Universal Service Fund, Interstate subscriber line fee or internet service taxes.
- 9.4. 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.
- 9.5. 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.
- 9.6. 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.

10. Invoice and Payment

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

- 10.1. Invoices that do not contain the proper Billing Format and detail shall be returned unpaid and without penalty to CTS. Contractor shall cure the improper Billing Format and returned a compliant invoice within thirty (30) days of notification by CTS of the improper Billing Format.
- 10.2. 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: <http://www.ofm.wa.gov/accounting/Contractors.asp>.
- 10.3. 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.
- 10.4. With each invoice Contractor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 25 below.
- 10.5. If CTS fails to make timely payment, Contractor may invoice CTS 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.

11. Overpayments to Contractor

Contractor shall refund to CTS 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, CTS may charge Contractor one percent (1%) per month on the amount due, until paid in full.

Contractor's Responsibilities

12. Eligibility to Bid

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

- 12.1. Contractor has customers within the State of Washington of similar size or complexity as the CTS Users, considered individually and collectively.
- 12.2. Contractor has an office operating in the State of Washington.
- 12.3. 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.
- 12.4. 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 CTS Procurement Document.

- 12.5. 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 CTS.

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

13. Service Installation

- 13.1. Unless otherwise stated in an applicable Technical Addendum, the Guaranteed Install Interval shall commence when CTS 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.
- 13.2. If Contractor must conduct a site survey or be on the CTS User's premises for any reason, Contractor must provide CTS and the affected CTS 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, CTS User has ten (10) business days to respond and provide the requested access to Contractor.

Should the CTS User not respond and provide requested access to Contractor within ten (10) business days, Contractor must notify CTS in writing, so that CTS 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 CTS' sole discretion, and if approved by CTS, CTS 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 CTS of the delay as described herein.

- 13.3. 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.
- 13.4. Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the CTS 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 CTS or the affected CTS User as CTS 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.

14. Roadmap Meetings

CTS 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.

15. 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 MSA, 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.

16. Site Security

While on CTS's or a CTS 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 CTS or CTS User's site that require background checks as stated in the applicable CTS 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 CTS or any CTS User has successfully completed the required background check.

17. 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>. CTS 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 CTS 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 MSA or applicable Technical Addendum.

18. Chronic Service

Contractor shall have a thirty (30) day period to cure Chronic status for a Service provided under an Order or this Contract pursuant to Section 57 "Termination for Default" ("Chronic Cure Period.") During a Chronic Cure Period, the impacted Products/Services must not exhibit an Outage.

In the event a Product or Service is designated by CTS as a Chronic Service, CTS 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 avoidance of doubt, the designation of Chronic is in addition to, and not in lieu of, SLA remedies/credits as defined in this Contract.

19. 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.

20. Building Coordination Responsibilities

20.1. 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 CTS provided site contact(s) agency point of contact. Moreover, the Contractor will be solely responsible to coordinate and communicate with the CTS User point of contact provided site contact(s) to determine and follow all onsite procedures and protocols required for that site by the CTS User.

20.2. Landlord Permission

Contractor shall obtain the Landlord or other authorized entity’s written consent prior to submitting a response to a CTS 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. CTS may request a copy of the consent at any time.

21. (M) Construction Coordination

21.1. 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.

21.2. 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.)

21.3. Equipment

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

21.4. *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.

21.5. *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.

22. RFP Proper Communication

All communications relevant to an active CTS Procurement Document must be in writing to the CTS Procurement Document Coordinator at the contact information named in the procurement document. CTS Users shall not provide any information related to a procurement document that is currently active. Any information provided by a CTS 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.

23. 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.

24. 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 CTS.

25. Minority and Women's Business Enterprise (MWBE) Participation (delete if not applicable)

With each invoice for payment and within thirty (30) days of CTS Contract Administrator's request, Contractor shall provide CTS 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.

26. Protection of CTS' Confidential Information

- 26.1. 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 CTS or of a CTS User. To the extent practicable CTS shall mark documents Confidential Information as Confidential, unless 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 CTS or the affected CTS 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 CTS. 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.
- 26.2. Immediately upon expiration or termination of this Contract, Contractor shall, at CTS's option: (i) certify to CTS that Contractor has destroyed all Confidential Information pursuant to industry standards; or (ii) return all Confidential Information to CTS; or (iii) take whatever other steps CTS reasonably requires of Contractor to protect the Confidential Information of CTS and each CTS User.
- 26.3. CTS reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract.
- 26.4. 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

27. 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:

[Contractor Name]

Attn:

To CTS at:

State of Washington
Consolidated Technology Services
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:
E-mail:

Phone: 360-407-8781
E-mail: ctsdlois@cts.wa.gov

- 27.1. 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.
- 27.2. 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 CTS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process.

28. Contractor Account Manager

Contractor shall appoint an Account Manager for CTS' 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 CTS concerning Contractor's performance under this Contract. Contractor shall notify the CTS 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:

29. Contractor Project Manager

Contractor shall assign a Contractor Project Manager for each CTS project. CTS shall have the right to disapprove of the selected Contractor Project Manager, as well as any named successor to that position. Should CTS so disapprove, Contractor will select another individual to fill that position. The Contractor Project Manager shall be the principal point of contact for CTS 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.

30. Section Headings, Incorporated Documents and Order of Precedence

- 30.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 30.2. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
 - a) Statement of Work to a Technical Addendum
 - b) CTS' Procurement Document;
 - c) Technical Addendum to the MSA;
 - d) MSA and
 - e) Contractor's Response to CTS' Procurement Document.

31. 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.

32. 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 CTS and Contractor, and Contractor expressly acknowledges that no CTS User may, without CTS' express prior written consent, modify, amend, alter or waive any section or condition of this Contract.

33. 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).

34. 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.

35. Subcontractors

Contractor may, with prior written permission from CTS, 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 CTS 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 CTS or any CTS User, and all sections of this Contract shall apply to all Subcontractors.

36. Assignment

- 36.1. With the prior written consent of CTS which consent shall be at CTS' 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 CTS 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.
- 36.2. CTS 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.

37. Publicity

- 37.1. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Products and Services by CTS or any CTS Users and shall not be so construed by Contractor in any advertising or other publicity materials.
- 37.2. Contractor agrees to submit to CTS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Products or Services furnished by Contractor wherein CTS's or a CTS User's name is mentioned, language is used, or Internet links are provided from which the connection of CTS' or a CTS User's name with Contractor's Products or Services may, in CTS' 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 CTS *prior* to such use.

38. Review of Contractor's Records

- 38.1. 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.
- 38.2. 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 CTS 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 CTS is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 38.3. Contractor shall incorporate into its subcontracts this section's records retention and review requirements.
- 38.4. 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 CTS's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

39. 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.

40. 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

41. Patent and Copyright Indemnification

- 41.1. Contractor, at its expense, shall defend, indemnify, and save CTS and each CTS User harmless from and against any claims against CTS or a CTS 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 CTS or a CTS 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 CTS or a CTS User provided that CTS (by itself or through the affected CTS User):
- a) 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
 - b) 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.
- 41.2. If such claim has occurred, or in Contractor's opinion is likely to occur, CTS 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 CTS a refund. In the case of Product, Contractor shall refund to CTS its depreciated value. No termination charges will be payable on such returned Product, and the CTS 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 CTS or any CTS User shall be refunded by Contractor.

42. Save Harmless

Contractor shall defend, indemnify, and save CTS and each CTS 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.

43. Insurance

- 43.1. 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 CTS within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at CTS' sole option, result in this Contract's termination.
- 43.2. The minimum acceptable limits shall be as indicated below for each of the following categories:
- a) 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;
 - b) 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;
 - c) 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;
 - d) Umbrella or Excess Liability policy providing excess limits over the primary policies in an amount not less than \$3 million; and
 - e) Professional Liability Errors and Omissions and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.
- 43.3. Contractor shall pay premiums on all insurance policies. CTS shall be named as an additional insured as "CTS, as Manager and Agent for the benefit of each CTS User taking Products or Services from Contractor from time to time under Contract number 19-XXX on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) so designating CTS as an additional named insured. Such policies shall also reference this Contract number 19-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 CTS by the insurer.
- 43.4. 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.
- 43.5. The failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 43.6. Contractor shall furnish to CTS 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 CTS sole option, result in this Contract's termination.

43.7. By requiring insurance herein, CTS 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 CTS in this Contract.

44. 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. CTS 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.

45. 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.

46. Antitrust Violations

Contractor and CTS recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by CTS. Therefore, Contractor hereby assigns to CTS 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 CTS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

47. 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.

48. 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.

49. 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.

50. Treatment of Assets

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

- 50.2. Any property of CTS or a CTS User furnished to Contractor shall, unless otherwise provided herein or approved by CTS, be used only for the performance of this Contract.
- 50.3. Contractor shall be responsible for any loss of or damage to property of CTS or a CTS 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.
- 50.4. Upon loss or destruction of, or damage to any property of CTS or a CTS User, Contractor shall notify CTS thereof and shall take all reasonable steps to protect that property from further damage.
- 50.5. Contractor shall surrender to CTS all property of CTS or a CTS User prior to completion, termination, or cancellation of this Contract.
- 50.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

51. Contractor's Proprietary Information

Contractor acknowledges that CTS 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, CTS shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, CTS 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, CTS will release the requested information on the date specified.

Disputes and Remedies

52. Disputes

52.1. Billing Disputes

- a) CTS 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.
- b) Contractor must respond to formal billing disputes within fifteen (15) days and resolve within sixty (60) days

52.2. Other Disputes

- a) In the event a bona fide dispute concerning a question of fact arises between Contractor and CTS and it cannot be resolved between the Parties or by the CTS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- b) 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.

- a) 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.
- b) CTS 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.
- c) If the subject of the dispute is the amount due and payable by CTS for Products or Services being provided by Contractor, Contractor shall continue providing Products or Services pending resolution of the dispute provided CTS pays Contractor the amount CTS, 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.

53. 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.

54. Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, CTS shall give Contractor written notice of such Failure to Perform. If after thirty (30) days from the date of the written notice Contractor still has not performed, then CTS may withhold all monies due for the Product(s) and Service(s) that are non-performing and payable to Contractor, without penalty to CTS, until such Failure to Perform is cured or otherwise resolved.

55. Force Majeure Events

- 55.1. 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 CTS' control.
- 55.2. 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) 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.

- 55.3. CTS 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.

56. Limitation of Liability

- 56.1. The Parties agree that neither Contractor, CTS nor any CTS 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.
- 56.2. Neither Contractor, CTS, nor any CTS 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

57. Termination for Default

- 57.1. 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 CTS 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 CTS deems timely, this Contract may be terminated immediately by written notice from CTS to Contractor, or an Order may be terminated by written notice to Contractor from CTS and CTS shall not be liable for any penalties, liability, or termination charges.
- 57.2. In the event of a Chronic Service, CTS 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 CTS 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.

- 57.3. In the event of termination of an Order or this Contract by CTS, CTS 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 CTS or any CTS User resulting from Contractor's breach. CTS 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 CTS for Contractor's default up to the total amount of MRCs per month for up to twelve months and NRCs originally bid.
- 57.4. If CTS or any CTS 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 CTS written notice of such failure, which shall be corrected by CTS within thirty (30) days, or as otherwise agreed. If such failure to perform by a CTS User is not so corrected, any Services or Products being provided to such CTS User pursuant to a particular CTS Order or Orders may be terminated to such CTS User by written notice from Contractor to CTS. If such failure to perform by CTS constitutes a material violation of this Contract, then, this Contract may be terminated by written notice from Contractor to CTS.
- 57.5. 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**.
- 57.6. 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.

58. Termination for Convenience

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

59. Termination for Withdrawal of Authority

- 59.1. In the event that CTS' 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, CTS may terminate this Contract, or CTS a CTS User may terminate its Order(s), by thirty (30) days written notice to Contractor. No penalty shall accrue to CTS in the event this section shall be exercised. This section shall not be construed to permit CTS or any CTS 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, CTS is liable only for payments required by the terms of this Contract for Products or Services received and accepted by CTS prior to the effective date of termination.

59.2. In the event that a CTS User's authority to perform any of their duties related to receiving services from CTS through this contract is withdrawn, reduced, or limited in any way after the commencement of a SOW and prior to normal completion, CTS or a CTS 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 CTS or the CTS 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, CTS 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.

60. Termination for Non-Allocation of Funds

60.1. If funds are not allocated to CTS to continue this Contract, or if a CTS User is no longer allocated funds to continue receiving Services or Products under any individual Order in any future period, CTS may terminate this Contract in whole, or CTS may terminate those individual circuits in service to the affected CTS User under this Contract upon not less than seven (7) days written notice to Contractor. CTS 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. CTS agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to CTS in the event this section shall be exercised. This section shall not be construed to permit CTS to terminate this Contract, or CTS 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, CTS is liable only for payments required by the terms of this Contract for Services received and accepted by CTS prior to the effective date of termination.

60.2. If funds are not allocated to any CTS User to continue with Service under SOW(s) associated with this Contract in any future period, CTS may amend or terminate the applicable SOW(s) or the individual circuits in Service to such CTS User under this Contract. CTS 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. CTS agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to CTS in the event this section shall be exercised. This section shall not be construed to permit CTS or its end user CTS 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, CTS is liable only for payments required by the terms of this Contract for Products or Services received and accepted by CTS prior to the effective date of termination.

61. Termination for Conflict of Interest

CTS may terminate this Contract, its Order(s), by written notice to Contractor if CTS 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, CTS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract or any Order.

62. Termination Procedure

- 62.1. In addition to the procedures set forth below, if CTS terminates this Contract, Contractor shall follow any reasonable procedures CTS specifies in CTS' Notice of Termination.
- 62.2. Unless otherwise provided herein, CTS shall pay to Contractor the agreed-upon Price, if separately stated, for the Products and Services received by CTS, provided that in no event shall CTS 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. CTS may withhold from any disputed amounts due Contractor such sum as CTS determines to be necessary to protect CTS and any CTS Users from potential loss or liability.
- 62.3. Contractor shall pay amounts due CTS as the result of termination within thirty (30) days of notice of the amounts due. If Contractor fails to make timely payment, CTS may charge interest on the amounts due at one percent (1%) per month until paid in full.

63. Covenant Against Contingent Fees

- 63.1. 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.
- 63.2. In the event Contractor breaches this section, CTS shall have the right to either annul this Contract without liability to CTS, or, in CTS'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

64. Authority to Bind

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

65. 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

State of Washington
Consolidated Technology Services

Approved

Vendor, Inc.

Signature

Signature

Print or Type Name *Date*

Print or Type Name *Date*

Title

Title

Master Services Agreement 19-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	1 st Contact- point person for initial contact	2 nd Contact- escalation point after working with 1 st Contact	3 rd 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			