Contract Number \([KXXX]\)
For
Software, Maintenance, and Support
between the
Washington State
Department of Transportation
and
\([Vendor]\)

Effective Date: __________________________
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CONTRACT NUMBER K[XXX]

for
Safety Inspection, Incident and Reporting Software, Maintenance, and Support

PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Transportation, an agency of Washington State government ("WSDOT") located at 310 Maple Park Avenue SE, Olympia, WA 98504 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 purchasing Safety Inspection, Incident and Reporting Software, Maintenance, and Support Services.

RECITALS

The state of Washington, acting by and through WSDOT, issued a Request for Proposal (RFP) dated March 10, 2015, (Exhibit A) for the purpose of purchasing Safety Inspection, Incident and Reporting Software, Maintenance, and Support in accordance with its authority under chapter 29.36 (42.41A) RCW.


The Department of Transportation evaluated all properly submitted Responses to the above-referenced RFP and has identified [Vendor] as the Apparently Successful Vendor.

The Department of Transportation has determined that entering into a Contract with [Vendor] will meet WSDOT’s needs and will be in WSDOT’s best interest.

NOW THEREFORE, WSDOT awards to [Vendor] this Software License Contract, the terms and conditions of which shall govern Vendor’s furnishing to WSDOT the Safety Inspection, Incident and Reporting Software, Maintenance, and Support. 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.

“Acceptance” shall mean that the Software has passed its Acceptance Testing and shall be formalized in a written notice from WSDOT to Vendor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products are installed.

“Acceptance Date” shall mean the date upon which WSDOT Accepts the Software as provided in the section titled Standard of Performance and Acceptance; or, if there is no Acceptance Testing, Acceptance Date shall mean the date Vendor delivers the Products.
“Acceptance Testing” shall mean the process for ascertaining that the Software meets the standards set forth in the section titled **Standard of Performance and Acceptance**, prior to Acceptance by the WSDOT.

“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 42.56 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, agency source code or object code, agency security data.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date by which the Products ordered is installed hereunder must be delivered.

“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 RFP-2015-0219.

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

“Help Desk” shall mean a service provided by Vendor for the support of Vendor’s Products. WSDOT shall report warranty or maintenance problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Installation Date” shall mean the date by which all Software ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

“License” shall mean the rights granted to WSDOT to use the Software that is the subject of this Contract.

“Order” or “Order Document” shall mean any official document and attachments thereto specifying the Software and/or Services to be licensed or purchased from Vendor under this Contract.

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

“Product(s)” shall mean any Vendor-supplied 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.

“RCW” shall mean the Revised Code of Washington.

“Response” shall mean Vendor’s Response to WSDOT’s RFP for Safety Inspection, Incident and Reporting Software, Maintenance, and Support, Exhibit B hereto.

“Schedule A: Cost Model” shall mean the attachment to this Contract that identifies the authorized Software and Services available under this Contract.

“Schedule B: 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.

“Services” shall mean those Services provided under this Contract and related to the Software License(s) being purchased that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

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

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

“Standard of Performance” shall mean the criteria that must be met before Software Acceptance, as set forth in the section titled Standard of Performance and Acceptance. The Standard of Performance also applies to all additional, replacement or substitute Software and Software that is modified by or with the written approval of Vendor after having been accepted.

“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 WSDOT Project Manager shall work with for the duration of this Contract and as further defined in the section titled Vendor Account Manager.

“WSDOT Contract Administrator” shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.
“WSDOT Project Manager” shall mean the WSDOT employee designated to manage and provide oversight of the day-to-day activities under this Contract. The WSDOT Project Manager shall be the primary contact with Vendor concerning Vendor’s performance under this Contract; Provided that, the WSDOT Project Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract.

Contract Term

2. Term

2.1. Term of Contract for Licensed Software Purchases
   a) This Contract’s initial Licensed Software purchase term shall be \[\text{[______(__)]}\] years, commencing upon the Effective Date.
   b) This Contract’s Licensed Software purchase term may be extended by four (4) additional one (1) year terms, provided that the extensions shall be at WSDOT’s option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension 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 Contract for Maintenance and Support
   a) This Contract’s initial Software maintenance and support term shall be one (1) year, commencing the day following expiration of Vendor’s warranty for the Software.
   b) This Contract’s Software maintenance and support term may be extended by six (6) additional one (1) year terms: provided that the extensions shall be at WSDOT’s option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension 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.

3. Survivorship

All license and 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 Vendor; License Grant; Software Ownership; Ownership/Rights in Data; Date Warranty; No surreptitious Codes Warranty; Vendor Commitments, Warranties and Representations; Protection of WSDOT’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, and 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 [__$____]

4.2. Vendor agrees to provide the Products and Services at the Prices set forth in Schedule A. No other Prices shall be payable to Vendor for implementation of Vendor’s Response.

4.3. Upon expiration of Vendor-provided warranty as set forth in the section titled Software Warranty and upon election by WSDOT to receive maintenance and support Services from Vendor, WSDOT shall pay maintenance and support fees to Vendor at the Prices set forth below or in Schedule A.

4.4. Prices not be increased during the initial term of the Contract.

4.5. WSDOT shall reimburse Vendor for travel and other expenses as identified in this Contract, or as authorized in writing, in advance by WSDOT in accordance with the then-current rules and regulations set forth in the Washington State Administrative and Accounting Manual (http://www.ofm.wa.gov/policy/poltoc.htm). 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 total amount spent under this Contract.”

5. Advance Payment Prohibited

No advance payment shall be made for the Software and Services furnished by Vendor pursuant to this Contract.

6. Statewide Vendor Status

Vendor shall have completed registration with the Washington State Office of Financial Management (OFM) to become a statewide vendor number within ten (10) business days of notification of contract award.

7. Taxes

7.1. WSDOT will pay sales and use taxes, if any, imposed on the Products and 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. WSDOT, as an agency of Washington State government, is exempt from property tax.

7.2. 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.

8. **Invoice and Payment**

8.1. Vendor will submit properly itemized invoices to XXXXXXX. Invoices shall provide and itemize, as applicable:

a) WSDOT Contract number [XXX];
b) Vendor name, address, phone number, and State Wide Vendor Number;
c) Description of Software, including quantity ordered;
d) Date(s) of delivery and/or date(s) of installation and set up;
e) Price for each item, or Vendor’s list Price for each item and applicable discounts;
f) Installation and installation support charges
g) Maintenance charges;
h) Net invoice Price for each item;
i) Applicable taxes;
j) Shipping costs;
k) Other applicable charges;
l) Total invoice Price; and
m) Payment terms including any available prompt payment discounts.

8.2. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars ($50) or more must be accompanied by a receipt in order to receive reimbursement. (see subsection 4.5, above)

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

8.4. With each invoice Vendor shall provide an Affidavit of Amounts Paid specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 26 below.

8.5. During the installation phase, WSDOT shall pay installation charges on a monthly basis, in arrears. Payment of maintenance and support services of less than one (1) month’s duration shall be prorated at 1/30th of the basic maintenance charges for each calendar day. The agreed upon annual license maintenance fee shall be paid on an annual basis in advance within 60 days of being invoiced.
8.6. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.

8.7. The WSDOT Contract number [KXXX] must appear on all bills of lading, packages, and correspondence relating to this Contract.

8.8. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.

8.9. If WSDOT fails to make timely payment, per RCW 39.76.010, Vendor may invoice WSDOT 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 Software or receipt of Vendor’s properly prepared invoice, whichever is later.

9. **Overpayments to Vendor**

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

10. **Duplicate Payment**

WSDOT shall not pay the Vendor, if the Vendor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

**Software License**

11. **License Grant**

11.1. Vendor grants to WSDOT a non-exclusive license to use the Software and related documentation according to the terms and conditions of this Contract.

11.2. WSDOT may modify any Vendor Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, Vendor Software will be removed from the derivative work and, at WSDOT’s option, either destroyed or returned to Vendor. In such situations, WSDOT retains a license only to use the Software in the derivative work.

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

11.4. WSDOT may copy each item of Software to a network
11.5. Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

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

12. Software Ownership

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

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

14. **Compliance with Standards**

14.1. Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Vendor to conform to the standards set forth in the RFP and Vendor Response.

14.2. Vendor warrants that it has received certification from an authorized certifying authority that its Software quality assurance practices conform to the requirements of the current version of the International Standards Organization (ISO) ISO-9001 standard “Quality systems - Model for quality assurance in design, development, production, installation and servicing” and that this certification was received within one (1) year of execution of this Contract. Vendor further warrants that it will maintain its quality assurance practices and certification in conformance with the ISO-9001 during the term of this Contract.

15. **Date Warranty**

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by WSDOT that may deliver date records from the Software, or interact with date records of the Software (“Date Warranty”). In the event a Date Warranty problem is reported to Vendor by WSDOT and such problem remains unresolved after three (3) calendar days, at WSDOT’s discretion, Vendor shall send, at Vendor’s sole expense, at least one (1) qualified and knowledgeable representative to WSDOT’s premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on WSDOT’s premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless WSDOT from and against any and all harm, injury, damages, costs, and expenses incurred by WSDOT arising out of said breach.

16. **Physical Media Warranty**

16.1. Vendor warrants to WSDOT that each licensed copy of the Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the “Physical Media Warranty”). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by WSDOT.
16.2. Vendor shall replace, at Vendor’s expense including shipping and handling costs, any Software copy provided by Vendor that does not comply with this warranty.

17. **No Surreptitious Code Warranty**

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

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

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

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

18. **Reauthorization Code Required**

Vendor’s Software shall not require a reauthorization code in order for the Software to remain functional upon WSDOT’s movement of the Software to another computer system.
Vendor’s Responsibilities

19. Site Security

While on WSDOT’s premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations. In addition, Vendor shall ensure compliance with the Information Technology security standards as stated in the Information Technology Manual, M 3017.00. Vendors are responsible for their customer support and engineers' actions and for any misconduct. WSDOT staff must be present when Vendors are on site.

20. Installation

Vendor shall coordinate the installation of the Software on WSDOT’s designated equipment with the WSDOT IT department in accordance with the installation requirements in RFP and Vendor Response.

21. Standard of Performance and Acceptance

21.1. 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 Software and any Software that is modified by or with the written approval of Vendor after having been Accepted.

21.2. The Standard of Performance for Software is defined as:

- **Performance** – no deterioration in software performance with multiple primary access, at least 5, and secondary read only access, at least 10, users.

- **Functionality** – meet the criteria identified in the RFP and in the vendor’s proposal

21.3. The Acceptance Testing period shall be thirty (30) calendar days starting from the day after the Software is installed and Vendor certifies that Software is ready for Acceptance Testing. WSDOT will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.

21.4. In the event the Software does not meet the Standard of Performance during the initial period of Acceptance Testing, WSDOT 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 the Software still has not met the Standard of Performance WSDOT may, at its option: (i) declare Vendor to be in breach of this Contract and terminate this Order or this Contract; or, (ii) at the sole option of WSDOT, demand replacement Software from Vendor at no additional cost to WSDOT; or, (iii) continue the Acceptance Testing for an additional thirty (30) calendar days. WSDOT’s option to declare Vendor in breach and terminate this
Order or this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.

21.5. Software shall not be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first WSDOT Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from WSDOT to Vendor.

22. **Software Warranty**

Vendor warrants that the Software shall be in good operating condition and shall conform to the Specifications for a period of ninety (90) days, the Warranty Period. This Warranty Period begins the first day after the Acceptance Date. Vendor shall replace all Software that is defective or not performing in accordance with the Specifications, at Vendor’s sole expense.

23. **Software Maintenance and Support Services**

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

In addition, Vendor shall provide the following Services:

23.1. Help Desk Services. Vendor shall provide Help Desk Services for reporting errors and malfunctions and trouble shooting problems. Vendor’s Help Desk Services shall be [web-based and/or by toll-free telephone lines and/or via e-mail]. Vendor’s Help Desk Services shall include but are not limited to the following Services:

a) Assistance related to questions on the use of the subject Software;
b) Assistance in identifying and determining the causes of suspected errors or malfunctions in the Software;
c) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
d) Information on errors previously identified by WSDOT and reported to Vendor and detours to these where available; and
e) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.

23.2. On-line Support. Vendor may execute on-line diagnostics from a remote Vendor location solely to assist in the identification and isolation of suspected Software errors or malfunctions.
23.3. Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by WSDOT of identified errors or malfunctions in the Software, Vendor will either:

a) Provide WSDOT with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform WSDOT of the problem resolved and any significant operational differences resulting from the correction that is known by Vendor, or

b) Provide WSDOT with a written response describing Vendor’s then-existing diagnosis of the error or malfunction and generally outlining Vendor’s then-existing plan and timetable, subject to WSDOT’s approval, for correcting or working around the error or malfunction.

23.4. On-Call Support. If a problem occurs that significantly impacts WSDOT’s usage of the Software and remains unidentified or unresolved after WSDOT has utilized the detour or code correction prescribed by Vendor pursuant to subsection 23.1 or 23.3 above, Vendor will dispatch a qualified representative to the system location during Business Days and Hours. The representative must arrive within twenty four (24) Hours. This representative shall have the qualifications necessary to provide:

a) Advice and assistance in diagnosis and identification of Software errors or malfunctions.

b) On-site consultation on correction or detour of identified errors or malfunctions.

23.5. When Vendor performs Services pursuant to this Contract that require the use of WSDOT’s equipment, WSDOT agrees to make the equipment available at reasonable times and in reasonable time increments, and in no event will WSDOT charge Vendor for such use.

23.6. Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor at no additional cost to WSDOT. Such releases shall be licensed to WSDOT pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform WSDOT of the problems resolved including any significant differences resulting from the release that are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then-current unaltered release of Software applicable to the computer system.

24. 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 WSDOT.

25. Training

25.1. At the time of installation, Vendor shall provide (XX) days of training, by at least one qualified Vendor employee to be attended by up to XX (xx) of WSDOT’s employees, agents, or independent contractors, at the installation site or at such other location as the parties may agree. Such training shall, at a minimum, include orientation and familiarization training on the Software and be sufficiently thorough to instruct WSDOT’s staff in the use of the Software.

25.2. The starting date of the training will be as agreed by the parties, but in no case later than completion of installation.

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

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

With each invoice for payment and within thirty (30) days of WSDOT Contract Administrator’s request, Vendor shall provide WSDOT 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.

27. Protection of WSDOT’s Confidential Information

27.1. 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 42.56 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 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 WSDOT’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 WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Should any Confidential Information received in the performance of this Contract be breached, disclosure of such breach to WSDOT shall be made in accordance with RCW 19.255.010 and RCW 42.56.590.

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

27.3. 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.

27.4. WSDOT 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.

27.5. 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.

Contract Administration

28. Legal Notices

28.1. 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, to the parties at the
addresses 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: [Vendor]
Attn: [Vendor address]

To WSDOT at:
State of Washington
Department of Transportation
Attn: Jolena Missildine, CPPM, CCM
310 Maple Park Ave. 2B1
Olympia, WA 98504
Phone: (360) 705-7548
E-mail: missildj@wsdot.wa.gov

28.2. 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.

28.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon Vendor or WSDOT, 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 WSDOT 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.

29. Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT’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 WSDOT concerning Vendor’s performance under this Contract. Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager: [Vendor address]
Phone: Fax: E-mail: [Vendor information]

30. WSDOT Project Manager

WSDOT shall appoint xxxxx who will be the WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. WSDOT Project Manager will be the principal contact for Vendor concerning business activities under
this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

WSDOT Project Manager:
Address:
Phone: E-mail:

31. Section Headings, Incorporated Documents and Order of Precedence

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

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

   a) Schedules A, B and C [if applicable]; [include other Schedules, if appropriate]
   b) WSDOT RFP-2015-0219 dated March 10, 2015;
   c) Vendor’s Response to RFP-2015-0219 dated [date];
   d) The terms and conditions contained on WSDOT’s purchase documents, if used; and
   e) 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 WSDOT and used to affect the sale of Software to WSDOT.

31.3. 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) WSDOT RFP-2015-0219 dated [date];
   e) Vendor’s Response to RFP-2015-0219 dated March 10, 2015;
   f) The terms and conditions contained on WSDOT’s order documents, if used; and
   g) 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 WSDOT and used to effect the sale of Software to WSDOT.

32. 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.

33. **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 WSDOT and Vendor Contracting Officers. Only WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of WSDOT.

34. **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.

35. **Governing Law**

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

36. **Subcontractors**

42.1 Vendor may, with prior written permission from the WSDOT Contract Administrator, 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 WSDOT for any breach in the performance of Vendor’s duties or obligations. 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 WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employees, or violations of applicable Sections of this Contract occasioned by the acts or omissions of Vendor’s Subcontractors, their agents or employees.

42.2 The Vendor is solely responsible and liable for ensuring that the terms and conditions set forth in this Contract are incorporated into any partnering or
42.3 For work to be performed for WSDOT, WSDOT reserves the right to reject any of the Vendor’s employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by the Vendor.

42.4 WSDOT may, in the exercise of its discretion and judgment, identify certain of Vendor’s employees as key personnel, and if so, the Vendor shall take all necessary steps to assure that said Vendor’s employees are available and assigned to the work as long as said employees are employed by Vendor.

37. Assignment

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

37.2. WSDOT 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 WSDOT of any of its duties and obligations hereunder.

38. Publicity

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

38.2. Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT’s name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT’s name therewith may, in WSDOT’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 WSDOT prior to such use.
39. **Review of Vendor’s Records**

39.1. 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 WSDOT’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.

39.2. 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 WSDOT’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 XXXX, County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

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

39.4. 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 WSDOT’s review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

**General Provisions**

40. **Patent and Copyright Indemnification**

40.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT’s use of the 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 WSDOT provided that WSDOT:

a) Promptly notifies Vendor in writing of the claim, but WSDOT’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.

40.2. If such claim has occurred, or in Vendor’s opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product 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 Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide WSDOT a refund. In the case of Product, Vendor shall refund to WSDOT its depreciated value. No termination charges will be payable on such returned Product, and WSDOT 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 WSDOT shall be refunded by Vendor.

40.3. Vendor has no liability for any claim of infringement arising solely from:
   a) Vendor’s compliance with any designs, specifications or instructions of WSDOT;
   b) Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or
   c) Use of the Product in a way not specified by Vendor; unless the claim arose against Vendor’s Product independently of any of these specified actions.

41. **Save Harmless**

Vendor shall defend, indemnify, and save WSDOT 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 WSDOT harmless shall not be eliminated or reduced by any alleged concurrent WSDOT negligence.

42. **Industrial Insurance Coverage**

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. WSDOT 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.
43. **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.)

44. **Uniform Commercial Code (UCC) Applicability**

44.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

44.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

44.3. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

45. **Antitrust Violations**

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

46. **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 WSDOT.

47. **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.
48. **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.

49. **Treatment of Assets**

49.1. Title to all property furnished by WSDOT shall remain in WSDOT. 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 WSDOT 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 WSDOT.

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

49.3. Vendor shall be responsible for any loss of or damage to property of WSDOT 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.

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

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

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

50. **Vendor’s Proprietary Information**

Vendor acknowledges that WSDOT 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, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor’s Proprietary Information, WSDOT 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, WSDOT will release the requested information on the date specified.
Disputes and Remedies

51. 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. WSDOT 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.

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

51.2. 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 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.

51.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

51.4. WSDOT 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.

51.5. If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided WSDOT pays Vendor the amount WSDOT, 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.

52. **Attorneys’ Fees and Costs**

52.1. If any litigation is brought to enforce any term, condition, or section of this
Contract, or as a result of this Contract in any way, the prevailing party shall be
awarded its reasonable attorneys’ fees together with expenses and costs incurred
with such litigation, including necessary fees, costs, and expenses for services
rendered at both trial and appellate levels, as well as subsequent to judgment in
obtaining execution thereof.

52.2. In the event that the parties engage in arbitration, mediation or any other
alternative dispute resolution forum to resolve a dispute in lieu of litigation, both
parties shall share equally in the cost of the alternative dispute resolution method,
including cost of mediator or arbitrator. In addition, each party shall be
responsible for its own attorneys’ fees incurred as a result of the alternative
dispute resolution method.

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 Vendor fails to perform any substantial obligation under this Contract, WSDOT shall
give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days
from the date of the written notice Vendor still has not performed, then WSDOT may
withhold all monies due and payable to Vendor, without penalty to WSDOT, until such
Failure to Perform is cured or otherwise resolved.

55. **Limitation of Liability**

55.1. The parties agree that neither Vendor nor WSDOT 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 a Date Warranty or No Surreptitious Code Warranty issue or 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.

55.2. Neither Vendor nor WSDOT shall be liable for damages arising from causes
beyond the reasonable control and without the fault or negligence of either
Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT 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, WSDOT, or their respective Subcontractors.

55.3. 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.

55.4. 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**

56. **Termination for Default**

56.1. If either WSDOT 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 thirty (30) calendar days 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. WSDOT 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 WSDOT to terminate the Contract.

56.2. In the event of termination of this Contract by WSDOT, WSDOT shall have the right to procure the Products and 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 Products and Services and the replacement costs of such Products and 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 WSDOT resulting from Vendor’s breach. WSDOT 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 WSDOT for Vendor’s default.
56.3. 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**.

56.4. 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.

57. **Termination for Convenience**

When, at the sole discretion of WSDOT, it is in the best interest of the State, WSDOT Contract Administrator may terminate this Contract, in whole or in part, by fourteen (14) calendar day written notice to Vendor. If this Contract is so terminated, WSDOT is liable only for payments required by the terms of this Contract for Software and Services received and Accepted by WSDOT prior to the effective date of termination.

58. **Termination for Non-Allocation of Funds**

If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may terminate this Contract by seven (7) calendar day written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT 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. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

59. **Termination for Conflict of Interest**

WSDOT may terminate this Contract by written notice to Vendor if WSDOT 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, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

60. **Termination Procedure**

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

60.2. Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property, Products, or Work Products 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.
60.3. Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by WSDOT, provided that in no event shall WSDOT 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. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

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

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
State of Washington
Department of Transportation

Approved
[Vendor]

Print or Type Name                                   Date
Print or Type Name                                   Date
Title
Title

State of Washington  Software, Maintenance and Support
Department of Transportation  28  Contract # [KXXX]
Schedule A
Cost Model

as of  [date]

for
Contract Number [XXX-XXX-XXX]
with
[Vendor]

[Vendor] is authorized to sell only the Products identified in this Schedule A at the Prices set forth in this Schedule A under this Contract.
Schedule B

MWBE Certification