

Contract Number *KXXX*

For

Enterprise Content Management System

Between the

Washington State

Department of Transportation

And

[Vendor]

Effective Date: _____

[Add Effective Date]

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CONTRACT NUMBER KXXX

for

Enterprise Content Management System

PARTIES

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through Department of Transportation, an agency of Washington State government (“WSDOT”) located at 310 Maple Park Ave, SE, Olympia WA, 98501, and [Vendor], a [corporation/sole proprietor or other business form] licensed to conduct business in the state of Washington (“Vendor”), located at [Vendor address] for the purpose of purchasing an Enterprise Content Management System.

RECITALS

The state of Washington, acting by and through *Washington State Department of Transportation*, issued a Request for Proposal RFP-2014-2019 dated 02/19/2014, (Exhibit A) for the purpose of purchasing an Enterprise Content Management System in accordance with its authority under chapter 39.26 RCW.

[Vendor] submitted a timely Response to the WSDOT’s RFP (Exhibit B).

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

The WSDOT 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 Enterprise Content Management System Contract, the terms and conditions of which shall govern Vendor’s furnishing to WSDOT the Enterprise Content Management System and Services. 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 delivered.

“**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 hereunder must be delivered.

“Department” shall mean the same as WSDOT.

“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*.

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

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

“License” shall mean the rights granted to WSDOT to use the Software that is the subject of 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 equipment, Software, and documentation.

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

“RCW” shall mean the Revised Code of Washington.

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

“Response” shall mean Vendor's Response to WSDOT's **RFP** for an Enterprise Content Management System, Exhibit B hereto.

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

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

“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 **Acceptance Testing**. 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.

“State of Washington” Unless otherwise restricted, includes all members of the State of Washington, State Purchasing Cooperative including where applicable: State agencies, political subdivisions of Washington qualified non-profit corporations, institutions of higher education (e.g., colleges, universities, community & technical colleges) who choose not to purchase independently under RCW 23.B.10.029.

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

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

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

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

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

“WSDOT” shall mean the state of Washington, Department of Transportation, any division, section, office, unit or other entity of WSDOT or any of the officers or other officials lawfully representing WSDOT.

“WSDOT Contract Administrator” shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.

“WSDOT Contracting Officer” shall mean the Assistant Secretary of WSDOT Finance & Administration, or the person to whom signature authority has been delegated in writing. The term includes, except as otherwise provided in the RFP, an authorized representative of the WSDOT Contracting Officer acting within the limits of his/her authority.

“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

- a) This Contract's initial Licensed Software purchase term shall be one (1) year, commencing upon the Effective Date.
- b) This Contract's term may be extended by five (5) 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. The total term of this Contract shall not exceed 6 years. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- c) Any license purchased or service performed beyond the fiscal or biennial year's end is contingent upon receipt of funding.

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 five (5) additional one (1) year term(s): provided that the extensions shall be at Purchaser's option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days 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. 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.
- 4.2. 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 and Exhibit B.
- 4.3. Prices not be increased during the initial term of the Contract.
- 4.4. If Vendor reduces its Prices for any of the Software or Services during the term of this Contract, WSDOT shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the WSDOT Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.5. After the 1 (one) year initial term ends, cost increases shall not exceed three (3%) percent increase in any one year above the immediately preceding year's fee.
- 4.6. At least one hundred twenty (120) calendar days before the end of the then-current term of this Contract, Vendor may propose license fees and Service rate increases by written notice to WSDOT Contract Administrator. Price adjustments will be taken into consideration by WSDOT Contract Administrator when determining whether to extend this Contract.
- 4.7. Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to WSDOT for subsequent purchases.

5. Advance Payment Prohibited

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

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 WSDOT Invoice Processing Unit at WSDOTOITVendorPayments@wsdot.wa.gov. Invoices shall provide and itemize, as applicable:
- a) WSDOT Contract number *KXXX*;
 - b) Vendor name, address, phone number, and Federal Tax Identification 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) Maintenance charges;
 - g) Net invoice Price for each item;
 - h) Applicable taxes;
 - i) Shipping costs;
 - j) Other applicable charges;
 - k) Total invoice Price; and
 - l) Payment terms including any available prompt payment discounts.
- 8.2. 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.
- 8.3. 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 30 below.
- 8.4. WSDOT shall pay maintenance and support charges on a yearly basis, in arrears. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 8.5. The WSDOT Contract number *KXXX* must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.6. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 8.7. 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. 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.

12. Ownership/Rights in Data

- 12.1. WSDOT and Vendor agree that all data and work products (collectively called “Work Product”) produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by WSDOT. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 12.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to WSDOT the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 12.3. Vendor shall execute all documents and perform such other proper acts as WSDOT may deem necessary to secure for WSDOT the rights pursuant to this section.
- 12.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of WSDOT. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 12.5. Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to WSDOT with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise WSDOT at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. WSDOT shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. WSDOT shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

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 Response.

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

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

19. Software Documentation

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

Vendor's Responsibilities

See exhibits A and B for Vendor Responsibilities

Shipping and Risk of Loss

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

20. Delivery

20.1. Vendor shall deliver the Products ordered pursuant to this Contract on or before the Delivery Date. For any exception to this Delivery Date, Vendor must notify WSDOT and obtain prior approval in writing. Time is of the essence with respect to delivery and Vendor may be subject to liquidated damages and/or termination of an order or of this Contract and/or other damages available under law for failure to deliver on time.

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

20.3. If Vendor chooses to deliver product via the Internet, Vendor shall maintain a web site from which WSDOT may download the Software. Such web site shall be of a design approved by both Vendor and WSDOT prior to this Contract's execution. Vendor shall not change such web site without the prior written consent of WSDOT. Time is of the essence with respect to delivery and Vendor may be subject to termination of this Contract and/or other damages available under law for failure to maintain an operable web site.

21. 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.

22. Installation

All installation of the Software purchased pursuant to this Contract for use by WSDOT will be by and at the sole expense of WSDOT.

23. Standard of Performance and Acceptance

23.1. The Standard of Performance for Software is defined in the RFP and Vendor's Response

- 23.2. 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.
- 23.3. 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.
- 23.4. 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.

24. Software Warranty

Vendor warrants that the Software shall be in good operating condition and shall conform to the Specifications for a period of time period as specified by Vendor's Response, 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.

25. Software Upgrades and Enhancements

Vendor shall:

- 25.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 25.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to WSDOT.

26. Software Maintenance and Support Services

- 26.1 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.

- 26.1. Maintenance period coincides with the first business day of the Warranty Period and shall be for a overall term of 15 months. For all phases of this project, annual maintenance fees will be limited to the rates as established in Schedule A.
- 26.2. An annual true up schedule shall be maintained by Purchaser which shall be conducted on or before the renewal date of each year of the contract term. Any adjustments shall be provided by the Purchaser Project Manager to the Vendor Account Manager for inclusion in the annual maintenance billing.

27. 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.

28. Training

Vendor agrees to provide training as set forth in Exhibit B, in accordance with the requirements set forth in Exhibit A.

- 28.1. 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.

29. 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.

30. Protection of WSDOT's Confidential Information

- 30.1. 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, 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 shall be made in accordance with [RCW 19.255.010](#) and [RCW 42.56.590](#).

- 30.2. 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.
- 30.3. 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**.
- 30.4. 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.
- 30.5. 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

31. Legal Notices

- 31.1. 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, 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: Tammy Cash, Contract Administrator

PO Box 47408, 2B1

Olympia, WA 98504-7408

Phone:

Fax:

E-mail:

Phone: 360-705-7661

Fax: 360-704-6381

E-mail: cashta@wsdot.wa.gov

31.2. 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.

31.3. 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.

32. 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:

Address:

Phone:

Fax:

E-mail:

33. WSDOT Project Manager

WSDOT shall appoint XXX 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:

Fax:

E-mail:

34. Section Headings, Incorporated Documents and Order of Precedence

- 34.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 34.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) Schedules A, B
 - b) WSDOT's RFP dated February 19, 2014;
 - c) Vendor's Response to WSDOT's RFP dated February 19, 2014;
 - 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 effect the sale of Software to WSDOT.
- 34.3. 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 and B
 - d) WSDOT's RFP dated February 19, 2014;
 - e) Vendor's Response to WSDOT's RFP dated February 92, 2014;
 - 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 subcontracting relationships with other entities for work related to this Contract. Liability includes management responsibility and quality assurance for work performed and financial responsibility for payments to and by partner organizations or subcontractor to others.
- 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.

40. Assignment

- 40.1. With the prior written consent of WSDOT Contract Administrator, which consent shall not be unreasonably withheld, 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.
- 40.2. 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.

41. Publicity

- 41.1. 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.
- 41.2. 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.

42. Review of Vendor's Records

- 42.1. 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.
- 42.2. 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 Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 42.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 42.4. 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

43. Patent and Copyright Indemnification

- 43.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product or Work Product supplied hereunder, or WSDOT's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by 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.
- 43.2. 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 Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide WSDOT a refund. In the case of Work Product, Vendor shall refund to Purchaser the entire amount Purchaser paid to Vendor for Vendor's provision of the Work Product. In the case of Product, Vendor shall refund to 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.
- 43.3. 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 or Work Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or
 - c) Use of the Product or Work Product in a way not specified by Vendor;
- unless the claim arose against Vendor's Product or Work Product independently of any of these specified actions.

44. 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.

45. Insurance

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

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

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 46.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- f) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 46.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

45.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for WSDOT's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to WSDOT, in the amount of \$1 million, during the

initial and any subsequent terms of this Contract and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by WSDOT (the beneficiary) of a written demand therefor.

- 45.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name WSDOT as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number KXXX and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to WSDOT by the insurer.
- 45.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 45.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 45.7. Vendor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WSDOT's sole option, result in this Contract's termination.
- 45.8. By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

46. 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.

47. 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.)

48. Uniform Commercial Code (UCC) Applicability

48.1. 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.

48.2. 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.

48.3. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. Treatment of Assets

- 53.1. 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.
- 53.2. Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved by WSDOT, be used only for the performance of this Contract.
- 53.3. 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.
- 53.4. 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.
- 53.5. Vendor shall surrender to WSDOT all WSDOT property prior to completion, termination, or cancellation of this Contract.
- 53.6. All reference to Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

54. 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

55. Disputes

- 55.1. 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.
- 55.2. 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.
- 55.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 55.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 55.5. 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.
- 55.6. 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.

56. Attorneys' Fees and Costs

- 56.1. 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.
- 56.2. 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.

57. 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.

58. 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.

59. Limitation of Liability

- 59.1. 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 **OSHA/WISHA**, **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.
- 59.2. 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.
- 59.3. 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.
- 59.4. 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

60. Termination for Default

- 60.1. 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.
- 60.2. 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.

- 60.3. 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**.
- 60.4. 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.

61. 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 days 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.

62. Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. 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.

63. 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 days *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.

64. 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.

65. Termination Procedure

- 65.1. 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.
- 65.2. 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.
- 65.3. 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.
- 65.4. 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.

66. Covenant Against Contingent Fees

- 66.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 66.2. In the event Vendor breaches this section, WSDOT shall have the right to either annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

67. Authority to Bind

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

Schedule A
Authorized Product and Price List

as of *[date]*

for
Contract Number KXXX
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 C
MWBE Certification