**J2 – WSP Cloud Based Model Contract**

**SAAS CONTRACT**

**BETWEEN**

**THE WASHINGTON STATE PATROL**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DATED:**

TABLE OF CONTENTS

[1. Definitions. 1](#_Toc474505738)

[2. Term. 10](#_Toc474505739)

[3. Financial Matters. 10](#_Toc474505740)

[3.1 Charges. 10](#_Toc474505741)

[3.2 Maximum Amount and No Increases. 10](#_Toc474505742)

[3.3 Transportation and Insurance Charges. 10](#_Toc474505743)

[3.4 Taxes. 10](#_Toc474505744)

[3.5 Contractor Expenses. 10](#_Toc474505745)

[3.6 Invoices. 10](#_Toc474505746)

[3.7 Funding. 11](#_Toc474505747)

[3.8 Most Favored Customer. 12](#_Toc474505748)

[3.9 Overpayments to Contractor. 12](#_Toc474505749)

[3.10 Advance Payments Prohibited. 12](#_Toc474505750)

[3.11 Credits. 12](#_Toc474505751)

[3.12 Interest. 12](#_Toc474505752)

[3.13 Billing Limitations. 12](#_Toc474505753)

[3.14 Holdback. 13](#_Toc474505754)

[4. Project Management. 13](#_Toc474505755)

[4.1 Reports and Meetings. 13](#_Toc474505756)

[4.2 Contractor Project Manager. 14](#_Toc474505757)

[4.3 Contractor Staff. 15](#_Toc474505758)

[4.4 WSP Project Manager. 16](#_Toc474505759)

[4.5 Employment of State Personnel. 16](#_Toc474505760)

[4.6 Reference and Background Checks. 16](#_Toc474505761)

[4.7 Records Retention and Access Requirements. 16](#_Toc474505762)

[4.8 Accounting Requirements. 17](#_Toc474505763)

[4.9 Supplemental Contracts. 17](#_Toc474505764)

[4.10 Audit Reports. 17](#_Toc474505765)

[5. Services and Resources. 17](#_Toc474505766)

[5.1 Performance. 17](#_Toc474505767)

[5.2 Necessary Resources. 18](#_Toc474505768)

[5.3 Ownership. 18](#_Toc474505769)

[5.4 Use of Property. 18](#_Toc474505770)

[5.5 Damage to Property. 18](#_Toc474505771)

[5.6 Notice of Damage. 18](#_Toc474505772)

[5.7 Surrender of Property. 18](#_Toc474505773)

[5.8 WSP Property and Facility. 18](#_Toc474505774)

[6. Equipment. 18](#_Toc474505775)

[7. Services and Deliverables. 19](#_Toc474505776)

[7.1 General. 19](#_Toc474505777)

[7.2 Work Plan. 19](#_Toc474505778)

[7.3 Acceptance Process. 20](#_Toc474505779)

[7.4 Protection From Damage. 21](#_Toc474505780)

[7.5 Delivery. 21](#_Toc474505781)

[7.6 Interpretation of Deliverables. 21](#_Toc474505782)

[7.7 Representation. 21](#_Toc474505783)

[7.8 Source Code. 22](#_Toc474505784)

[7.9 Knowledge Transfer. 22](#_Toc474505785)

[8. Licenses. 22](#_Toc474505786)

[8.1 Grants. 22](#_Toc474505787)

[8.2 Term. 22](#_Toc474505788)

[8.3 Title. 22](#_Toc474505789)

[8.4 Documentation. 22](#_Toc474505790)

[8.5 Copies. 23](#_Toc474505791)

 [23](#_Toc474505793)

[9. WSP Ownership. 23](#_Toc474505796)

[10. Implementation. 23](#_Toc474505797)

[10.1 Implementation. 23](#_Toc474505798)

[10.2 Training. 23](#_Toc474505799)

[10.3 Conversion. 23](#_Toc474505800)

[11. Guaranty. 23](#_Toc474505801)

[11.1 Submission. 23](#_Toc474505802)

[11.2 Failure to Comply. 24](#_Toc474505803)

[12. Warranties. 24](#_Toc474505804)

[12.1 Deliverables and Services. 24](#_Toc474505805)

[12.2 Intellectual Property Rights. 25](#_Toc474505806)

[12.3 Date/Time Compliance Warranty. 25](#_Toc474505807)

[12.4 Unauthorized Code and Self Help Code. 26](#_Toc474505808)

[12.5 Power and Authority. 26](#_Toc474505809)

[12.6 Registration. 26](#_Toc474505810)

[12.7 Written Commitments. 26](#_Toc474505811)

[12.8 Legal and Regulatory Compliance. 26](#_Toc474505812)

[12.9 Performance Standards. 26](#_Toc474505813)

[12.10 Compatibility. 27](#_Toc474505814)

[12.11 Non-Obsolescence. 27](#_Toc474505815)

[12.12 Authorization. 27](#_Toc474505816)

[12.13 Ability to Perform. 28](#_Toc474505817)

[12.14 DISCLAIMERS. 28](#_Toc474505818)

[13. Operations and Maintenance Services. 28](#_Toc474505819)

[13.1 General Responsibilities. 28](#_Toc474505820)

[13.2 Inquiry and Assistance. 29](#_Toc474505821)

[13.3 Database. 29](#_Toc474505823)

[13.4 Enhancements. 29](#_Toc474505824)

[13.5 Deficiency Reports. 30](#_Toc474505825)

[13.6 Continuous Improvement. 30](#_Toc474505826)

[14. Dispute Resolution. 30](#_Toc474505827)

[14.1 Good Faith Efforts. 30](#_Toc474505828)

[14.2 Continued Performance. 30](#_Toc474505829)

[15. Changes. 31](#_Toc474505830)

[15.1 Changing Government Programs and Services. 31](#_Toc474505831)

[15.2 Issuance of Change Requests. 31](#_Toc474505835)

[15.3 Contractor Response to Changes and Change Requests. 31](#_Toc474505836)

[15.4 Agreement on Change Order. 31](#_Toc474505837)

[15.5 Disagreement. 31](#_Toc474505838)

[15.6 Termination. 32](#_Toc474505839)

[15.7 Contractor Submission of Change Request. 32](#_Toc474505840)

[15.8 Changes Initiated by Contractor. 32](#_Toc474505841)

[15.9 Update Key Documents. 32](#_Toc474505842)

[15.10 Pricing for Change Requests. 33](#_Toc474505843)

[16. Subcontractors. 33](#_Toc474505844)

[16.1 Permission Required. 33](#_Toc474505845)

[16.2 Contractor Responsibility. 33](#_Toc474505846)

[17. Additional Rights and Remedies. 34](#_Toc474505849)

[17.1 Liquidated Damages. 34](#_Toc474505850)

[17.2 Withholding Payments. 35](#_Toc474505851)

[17.3 Reductions in Payments Due. 35](#_Toc474505852)

[17.4 Substitute. 35](#_Toc474505853)

[17.5 Performance Standards. 35](#_Toc474505854)

[17.6 Suspension for Convenience. 35](#_Toc474505855)

[17.7 Right to Assurance. 35](#_Toc474505856)

[17.8 Corrective Action Plans. 36](#_Toc474505857)

[18. Insurance. 36](#_Toc474505858)

[18.1 Liability and Auto Insurance. 36](#_Toc474505859)

[18.2 Worker’s Compensation Coverage. 37](#_Toc474505860)

[18.3 Subcontractors. 38](#_Toc474505861)

[18.4 Premiums. 38](#_Toc474505862)

[18.5 Cancellation. 38](#_Toc474505863)

[18.6 Insurance Documents. 38](#_Toc474505864)

[18.7 Increased Coverage. 38](#_Toc474505865)

[18.8 Cross‑Liability. 38](#_Toc474505866)

[18.9 General. 38](#_Toc474505867)

[19. Confidential Information and Proprietary Information. 39](#_Toc474505868)

[19.1 Protection Obligations. 39](#_Toc474505869)

[19.2 Audit. 40](#_Toc474505870)

[19.3 Return. 40](#_Toc474505871)

[19.4 Unauthorized Disclosures or Uses. 40](#_Toc474505872)

[19.5 Nondisclosure of Other WSP Information. 41](#_Toc474505873)

[19.6 Exceptions. 41](#_Toc474505874)

[19.7 Survival. 41](#_Toc474505875)

[20. Indemnifications. 41](#_Toc474505876)

[20.1 Intellectual Property. 41](#_Toc474505877)

[20.2 General. 42](#_Toc474505878)

[20.3 Waiver of Statutory Immunity. 42](#_Toc474505879)

[21. Damages Disclaimers and Limitations. 43](#_Toc474505880)

[21.1 WSP’s Disclaimer of Damages. 43](#_Toc474505881)

[21.2 WSP’s Limitation of Liability. 43](#_Toc474505882)

[21.3 Contractor’s Limitation of Liability. 43](#_Toc474505883)

[21.4 Contractor’s Disclaimer of Damages. 43](#_Toc474505884)

[21.5 Exceptions to Contractor’s Limitation of Liability and Disclaimer of Damages. 43](#_Toc474505885)

[22. Termination. 44](#_Toc474505886)

[22.1 Termination for Contractor’s Material Breach. 44](#_Toc474505887)

[22.2 Termination for Rejection of Deliverables. 44](#_Toc474505888)

[22.3 Termination for Conflict of Interest. 44](#_Toc474505889)

[22.4 Termination for WSP’s Nonpayment. 44](#_Toc474505890)

[22.5 Termination Remedies. 44](#_Toc474505891)

[22.6 Termination for Convenience. 45](#_Toc474505892)

[22.7 Termination for Withdrawal of Authority. 45](#_Toc474505893)

[22.8 Termination for Non-allocation of Funds. 45](#_Toc474505894)

[22.9 Termination and Expiration Procedure. 46](#_Toc474505895)

[23. General Conditions. 47](#_Toc474505896)

[23.1 Anti‑Trust Violations. 47](#_Toc474505897)

[23.2 Assignment. 47](#_Toc474505898)

[23.3 Attorneys’ Fees and Costs. 48](#_Toc474505899)

[23.4 Authority. 48](#_Toc474505900)

[23.5 Binding Effect. 48](#_Toc474505901)

[23.6 Claims. 48](#_Toc474505902)

[23.7 Compliance With Civil Rights Laws. 48](#_Toc474505903)

[23.8 Compliance With Health and Safety Related Laws. 48](#_Toc474505904)

[23.9 Conflicts Between Documents; Order of Precedence. 48](#_Toc474505905)

[23.10 Conflicts of Interest. 49](#_Toc474505906)

[23.11 Contractor Certification Regarding Ethics. 50](#_Toc474505907)

[23.12 Contractor Commitments, Warranties, and Representations. 50](#_Toc474505908)

[23.13 Cooperation. 50](#_Toc474505909)

[23.14 Counterparts. 50](#_Toc474505910)

[23.15 Covenant Against Contingent Fees. 50](#_Toc474505911)

[23.16 Debarment and Suspension. 51](#_Toc474505912)

[23.17 Drug-Free Workplace. 51](#_Toc474505913)

[23.18 Entire Agreement; Acknowledgement of Understanding. 51](#_Toc474505914)

[23.19 Force Majeure. 51](#_Toc474505915)

[23.20 Governing Law. 51](#_Toc474505916)

[23.21 Headings. 51](#_Toc474505917)

[23.22 Independent Status of Contractor. 51](#_Toc474505918)

[23.23 Licensing Standards. 52](#_Toc474505919)

[23.24 Lobbying Activities. 52](#_Toc474505920)

[23.25 Modifications and Amendments. 52](#_Toc474505921)

[23.26 Non-waiver. 52](#_Toc474505922)

[23.27 Notice of Delay. 52](#_Toc474505923)

[23.28 Notices. 52](#_Toc474505924)

[23.29 Publicity. 53](#_Toc474505925)

[23.30 Remedies. 54](#_Toc474505926)

[23.31 Severability. 54](#_Toc474505927)

[23.32 Sovereign Immunity. 54](#_Toc474505928)

[23.33 Subpoena. 54](#_Toc474505930)

[23.34 Survival. 54](#_Toc474505931)

[23.35 UCC Applicability. 54](#_Toc474505932)

[23.36 Waiver. 55](#_Toc474505933)

[**EXHIBIT A.** CHARGES, PAYMENTS, KEY STAFF, DELIVERABLES AND STANDARDS 1](#_Toc474505934)

[**EXHIBIT B.** PERFORMANCE STANDARDS, AND ESCALATION PROCEDURE 1](#_Toc474505935)

[**EXHIBIT C.** REVISIONS TO THE RESPONSE 1](#_Toc474505936)

[**EXHIBIT D.** WORK PLAN AND ASSUMPTIONS 1](#_Toc474505975)

[**EXHIBIT E.** SOFTWARE 1](#_Toc474505976)

[**EXHIBIT F.** GUARANTY 2](#_Toc474505977)

[**EXHIBIT G** CONTRACTOR WAIVER 1](#_Toc474506089)

[**EXHIBIT H.** CONTRACTOR INSTRUCTION SHEET FOR FINGERPRINT BACKGROUND CHECKS 1](#_Toc474506090)

[**EXHIBIT I.** NONDISCLOSURE AGREEMENT 1](#_Toc474506091)

**SAAS CONTRACT**

This SaaS Contract (the “Contract”) is entered into as of the \_\_ day of \_\_\_\_\_\_\_, 2017 (the “Effective Date”), by and between the State of Washington, acting by and through the Washington State Patrol, an agency of Washington State government (“WSP”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [*State of incorporation*] [corporation/limited liability partnership/other] (“Contractor,” as defined further below).

**RECITALS**

WSP issued Request for Proposals \_\_\_\_\_ ( the “RFP”), which was dated\_\_\_\_\_\_\_, to solicit proposals for the provision of a new statewide sexual assault kit tracking system to track all sexual assault kits in Washington state (the “SAK Tracking System” or the “System” as defined further below) , and which is incorporated into the Contract by this reference;

The RFP gave bidders the option to propose to provide the System as a software-as-a-service (“SaaS”) which would require the bidder to provide WSP use and access to software and data which are hosted on equipment operated by the bidder at a site other than WSP’s site, for managing networking, and supporting and maintaining such software, equipment, data, and networking;

Contractor submitted a proposal, which was dated \_\_\_\_\_\_\_\_, in response to the RFP (the “Response”, as defined further below), and which is incorporated into the Contract by this reference;

WSP evaluated the Response and identified Contractor as the apparently successful bidder for its System which is provided as a SaaS;

Contractor desires to enter into an agreement with WSP to provide a System which is provided as a SaaS for the State of Washington; and

WSP and Contractor have agreed that the terms and conditions of this Contract shall govern Contractor’s provision of a System and associated services.

Therefore, in consideration of the foregoing Recitals and the mutual promises and covenants as set forth below, the parties agree as follows:

1. Definitions.

The following terms as used throughout this Contract shall have the meanings as set forth below.

“Acceptance”:

 A Notice from WSP to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 7.3.

“Acceptance Criteria”:

 The Specifications against which each Deliverable and Service shall be evaluated in accordance with Section 7.3 and the Performance Standards, warranties and other requirements described in this Contract, DEDs, and any subsequent amendments and Change Orders, and WSP’s satisfaction for Services which are not subsumed in a Deliverable.

“Acceptance Tests”:

 The tests or reviews that are performed by WSP to determine there are no Deficiencies in the Services or Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 7.3, including without limitation User Acceptance Tests on the System and testing the Operational Readiness of the System.

"Availability":

 The time that the System, in whole and in part, and Hosting Services are Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis. Availability shall be as described in Exhibit B, except for mutually agreed upon scheduled Maintenance activities.

"BAFO(s)":

 Contractor's best and final offer(s) in response to the RFP.

“business days”:

 Monday through Friday, 8:00am to 5:00pm, Pacific Time, except for holidays observed by the State of Washington.

“Change Order”:

 A written form, in response to a Change Request, that is mutually agreed to in writing by WSP and Contractor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 15.

“Change Request”:

 A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 15.

“Charges”:

 The amount(s) to be paid for Services and Deliverables under this Contract, in whole or in part, as described in Exhibit A and any subsequent written amendments or Change Orders.

“Confidential Information”:

 Various trade secrets and information of each party that either Contractor or WSP desires to protect against unrestricted disclosure including without limitation WSP non-publicly available Data, nonpublic Specifications, the Contractor’s Software, State security data, any nonpublic information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Contract, and information that is designated as confidential by the disclosing party and, subject to Section 19.1.2, 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. WSP Confidential Information includes but is not limited to: employee personal information, including residential addresses, Social Security numbers, personal e‑mail addresses, personal telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, , protected person identifying information from no contact/protection orders, , and such other Confidential Information as is described in this definition.

“Configuration(s)”:

 The setting up of the business rules and workflow of business decisions to be used to implement the specific business rules, workflow and related metadata of WSP, without utilizing programming language or database queries and the entering of data into tables that a software “rules engine” will process to determine workflow sequences, value limitation, and other variables, all without altering the Software source code.

“Confirmation”:

 WSP’s receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed or pre-tested through Contractor Testing a Deliverable in accordance with WSP’s Acceptance Criteria or pretested the System through Contractor Testing for compliance with the Specifications; and confirmed the Deliverable, including but not limited to the System, is ready for applicable Acceptance Tests.

 “Contractor”:

 The entity performing Services pursuant to this Contract, including the Contractor’s owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted subcontract, “Contractor” includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.

“Contractor Account Manager”:

 The Contractor individual who has overall management responsibilities for Contractor and to whom the Contractor Project Manager shall report for purposes of managing the administration of this Contract for Contractor.

“Contractor Project Manager”:

 The individual chosen by Contractor with Project management responsibilities for Contractor, as described in Section 4.2.

“Contractor Technology”:

 Intellectual property owned by Contractor prior to the Effective Date or developed and owned by Contractor outside the scope of this Contract (including modifications, enhancements or improvements thereto), including: Contractor’s proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and Contractor’s Proprietary Information.

“Contractor Testing”:

 Testing that is performed on the System (in whole or in part) and Hosting Services by Contractor before beginning Acceptance Tests on the System and Hosting Services and after Contractor has: completed installation of the Software on the Equipment; completed development of the Configurations and Custom Software; integrated the Software, including Third-Party Software, Custom Software, System Configurations, with the Data and Equipment as the System; pre-tested the System and Hosting Services for compliance with the applicable Specifications; and confirmed the readiness of the System and Hosting Services for Acceptance Tests in accordance with the Contract.

“Conversion”:

 The Services performed for converting historical and other Data for Processing by the Software and Services as described in the RFP, the Response, and the Conversion Plan Deliverables.

“Control”:

“Control”: The ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

“Converted Data”:

 The Data which has been successfully converted by Contractor for Processing by the System.

“Corrective Action Plan”:

 The detailed written plan required by WSP to correct or resolve a Deficiency or breach by Contractor or event causing the assessment of a liquidated damage against Contractor.

“Custom Software”:

 Software, including without limitation Interfaces, designed, developed or produced by Contractor under the Contract, but excluding Contractor Software.

“Cutover”:

 The event(s) that occurs after Acceptance of System when WSP decides to put System, in whole or in part, into Production in the Pilot and during Deployment.

“Data”:

 WSP’s records, files, forms, data, metadata, and other documents, including but not limited to Converted Data, if any.

“Date Warranty”:

 The warranty provided in Section 12.3.

“day(s)” or “Day(s)”:

 Calendar day(s), unless otherwise indicated.

“DED(s)”:

 Deliverable expectation documents that describe Acceptance Criteria for each Deliverable and Service subject to Acceptance Tests. Each DED is a Deliverable.

“Deficiency”:

 A failure of a Service or Deliverable or an omission, defect or deficiency in a Service or Deliverable, which causes it not to conform to its Specifications, or a failure to conform to reasonable commercial or industry standards for appearance, quality, functionality, or format.

“Deliverables”:

 Contractor’s products which are produced and/or prepared for WSP (either independently or in concert with WSP or third parties) during the course of Contractor’s performance under this Contract, including without limitation Deliverables which are described in Exhibit A and in the RFP and Response, the System in whole or in part, the Hosting Services, each Phase, Enhancements, work produced under the Work Plan and Change Orders including but not limited to Custom Software, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such Deliverables.

“Delivery Date(s)”:

 The dates described in the Work Plan for the delivery of the Deliverables and Services to WSP.

“Deployment”: The process of making the System and Hosting Services available for Production for all WSP authorized locations following Acceptance of the Pilot. Completion of Deployment shall be a Deliverable.

“Detailed System Design Deliverable”:

 The Deliverable containing the detailed design for the System. The Deliverable will include but not be limited to the user interface designs, detailed design Specifications for each Software module inclusive of purpose, logical flow, Configurations, inputs, outputs, Interfaces and unit test conditions, the physical database design based on detailed design Specifications, Software module designs and associated planned test conditions, and the design for the System to meet Performance Standards. Also referred to as the Solution Specification in the RFP.

 “Dispute Resolution”:

 The process for resolving disputes as described in Section 14.

“Documentation”:

 Any and all service and operations reports, technical and User manuals used in conjunction with the System and/or Deliverables, in whole and in part, including without limitation manuals provided by licensors of any Third‑Party Software.

“Downtime”:

 The time during which the System and Hosting Services are not fully Operational, measured on a monthly basis. Downtime begins when WSP notifies Contractor that the System and Hosting Services fail to be fully Operational and continues until WSP determines the System and Hosting Services have been returned to full Operational status.

“Effective Date”:

 The date of execution of the Contract by WSP.

“Enhancements”:

 Allupdates, upgrades, additions, and changes to, and future releases for the System in whole or in part, including without limitation updated versions of the System technical features and changes to the Software and Services as described in Section 13.5, versions of the Software ported or migrated to new platforms (e.g., new operating system software and Equipment infrastructure), and new versions of the Software written in upgraded or new computer programming languages.

“Equipment”:

The computer hardware on which the Software shall operate following its delivery, all operating system software for use with the Equipment, and Facilities and telecommunications services as listed in the RFP, Response, any amendments or Change Orders.

“Executable Code”:

 The version of the Software which is generated by an assembler from the Object Code of the Software and which will be installed and operated on the Equipment.

“Facilities”:

 The telecommunications lines, trunks, cables, fibers and other media used for voice, data, video, and fax transmissions.

“Function(s)”:

A discrete capability or function of the Software as described in the RFP, Response, and Documentation.

“Holdback”:

 The payment amounts held back by WSP from each Deliverable’s Charges, as described in Section 3.14.

**“Hosting Services”:** The Services which are provided by Contractor to manage and operate the Equipment for Processing the Data using the Software and for transmitting the Data between Contractor’s location for the System and WSP’s Sites and Users.

“Implementation”:

 The process for making the System and Hosting Services fully Operational for Processing the Data in WSP’s normal business operations. Implementation shall be completed when Contractor has completed the Implementation Services according to the Implementation Plan.

“Implementation Plan”:

 A plan prepared by Contractor as a Deliverable that details the transition from design and development of a Deliverable, Service, or Enhancement for WSP in accordance with Specifications.

“Interfaces”:

 Custom Software that is developed by Contractor for transmitting Data between the System and other systems.

“Key Personnel”:

 Contractor’s key Staff listed in as such in Exhibit A.

“Maintenance”:

 Support and maintenance services which will be performed by Contractor for the System and Hosting Services and which are described as such in the RFP and Response and in Section 13 below.

“Maximum Amount”:

 The maximum amount payable by WSP to Contractor under this Contract as described in Exhibit A.

“Notice”:

 A written document given by a party to the other in accordance with Section 23.28. Notice can also include electronic mail messages between WSP and Contractor personnel relevant to the Contract. All such messages shall include the WSP Contract number in the body or title of the message. An electronic mail message shall comprise sufficient notice when the sender includes two or more Contractor personnel (including author) and two or more WSP Contract authorized personnel (including author) as designed in writing by the WSP Chief or his or her designee in writing.

“Object Code”:

 The binary code version of Source Code that has been processed by a compiler.

“Obsolete” (and any variations thereof):

A Software, Equipment, and/or other Contractor Technology product that will no longer receive maintenance and support, beginning as of the effective date of an end-of service life announcement from the manufacturer or licensor with respect to a product. If no such announcement is published, then the Software, Equipment, and/or Contractor Technology product will be deemed Obsolete as of the earlier of (i) the date the manufacturer or licensor no longer maintains or supports the product or (ii) the date the manufacturer or licensor no longer includes it as part of its product and/or service offerings made generally available to its customers.

“Operational”:

 The condition when the System and Hosting Services are totally functional in accordance with the applicable Specifications and usable for their purposes in the daily operations of providing the System and Hosting Services.

“Operational Readiness”:

 Full functionality of the System and Hosting Services as described in the RFP and Response.

“Operations”:

 Services which will be performed by Contractor which are described in RFP and the Response and Exhibit B, Performance Standards, as they relate to the provision of the System and Hosting Services.

“Payment Events”:

 The events after which Contractor can issue invoices for the Charges, as described in Exhibit A.

“Performance Standards”:

 The standards to which the System, Hosting Services, and other Services provided by Contractor shall perform as required by this Contract and any succeeding amendments thereto, as described in the RFP, Exhibit B, and as otherwise agreed to by the parties in writing.

“Phase”:

 The combination of Functions described as a Phase in the RFP, Response, applicable Deliverables, and the Work Plan, including but not limited to the System, the Pilot, and completion of Deployment of the System and Hosting Services.

**“Pilot”:** The Implementation and Acceptance Test of the version of the System and Hosting Services in locations designated by WSP after completing Acceptance of the System and Hosting Services and Cutover of the System and Hosting Services initially into Production.

“Processing”:

 The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

“Production”:

 Actual use of the System by WSP in WSP’s production environment(s) and to perform its regular business operations, after Cutover.

"Project": The planned undertaking regarding the entire subject matter and the term of this Agreement, and the activities of all parties related hereto for the System and Hosting Services.

“Property”:

 All WSP Equipment, WSP Confidential Information, WSP Proprietary Information, Deliverables and other WSP real and personal property.

“Proprietary Information”:

 (i) With respect to Contractor, the Contractor Technology; (ii) with respect to WSP, any information that WSP has a legal obligation to protect from unauthorized public disclosure; and (iii) information that either party clearly identifies as its proprietary information excluding, any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party’s act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

“Proprietary Software”:

 All computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor Staff in performing work that is not exclusively for this Contract and any modifications thereof and derivative works based thereon, and the documentation used to describe, maintain and use such Proprietary Software.

“RCW”:

 The Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at http;/apps.leg.wa.gov/rcw/.

“Report(s)”:

 Documents provided by Contractor to WSP regarding the System activities, events and Deliverables provided.

“Response”:

 Contractor’s response to the RFP, dated \_\_\_\_\_\_\_\_\_\_\_\_, as amended including by Exhibit C, BAFOs (if any), and any subsequent information provided by Contractor pursuant to this Contract.

“Schedule”:

 The dates described in the Work Plan for deadlines for performance of Services and other events and activities.

“Self Help Code”:

 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.

“Services”:

 The tasks and services to be performed and provided by Contractor as described in the RFP, the Response, the other parts of the Contract, and Change Orders, including without limitation Implementation Services, Hosting Services, project management, testing, production and delivery of the Services and Deliverables (including but not limited to Enhancements), Training, Operations and Maintenance.

“Site(s)”:

 The location(s) for the WSP or Contractor Equipment, Software, Data, and shall include the location of any reports requested for audit or review by WSP.

“Software”:

The application software for the System, as described in the RFP, Response, and Exhibit E; Custom Software; the Phases; the Configuration; and all Enhancements thereto; Third-Party Software; and the Contractor Technology, all of the above in Source Code and Object Code formats. Embedded code, firmware, internal code, microcode, and any other term referring to software that is residing in the Equipment or 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 Deficiency corrections.

“Source Code”:

 The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Executable Code which then directs the computer to perform its functions.

 “Specifications”:

 The technical and other specifications that define the requirements and that are used for Acceptance Criteria, as described in: (i) the RFP; (ii) the Response; (iii) subsequent Deliverables which have received Acceptance; (iv) the Performance Standards; (v) the Documentation; and (vi) all applicable State and federal policies, laws, regulations, and Standards. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein.

“Staff”:

 Contractor’s employees, Subcontractors and their employees, contractors, and agents who shall provide the Services on behalf of Contractor.

“State”:

 The State of Washington, including without limitation WSP and all of the State’s other agencies.

“Standard(s)”:

 Standards established by federal, State and industry organizations, including but not limited to the Standards in Section 1.11 of the RFP and Exhibit A.

“Subcontractor”:

 A person, partnership, or company, not in the employment of or owned by Contractor, which is performing Services or providing Deliverables under this Contract and which has a separate contract with or on behalf of Contractor.

“System”:

The complete collection of all Software, integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment which is hosted and operated by Contractor. The System, in whole and in part, is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Washington, for purposes of this Contract. The System is also referred to as the Sexual Assault Kits Tracking System in the RFP.

“Third‑Party Software”:

 Software and documentation that are (a) developed by third parties, (b) generally distributed for commercial use, (c) not specifically designed or developed for WSP, including without limitation operating system software, tools, utilities, and commercial‑off‑the‑shelf software, and (d) supplied by Contractor for use with the Deliverables and Services pursuant to this Contract.

“Training”:

 Any Training Deliverable or Service to be provided by Contractor to WSP.

“Unauthorized Code”:

 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.

 “User Acceptance Tests”:

 Any type of Acceptance Test identified by WSP or agreed upon between the parties to determine the functionality and compliance of Services and Deliverables provided by Contractor for Acceptance by WSP.

“User(s)”:

 Parties who will have use of and access to the System, including but not limited to WSP staff.

“Warranty Period(s)”:

 The one year period(s) following Acceptance of each Deliverable during which Contractor shall repair or replace the Deliverable at no charge, subject to extensions for Deficiency correction periods.

 “Work Plan”:

 The overall plan of activities for the delivery of Services and Deliverables, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard thereto, as provided in accordance with this Contract and Section 7.2.

“Work Product”:

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

“WSP Project Manager”:

The person designated by WSP to be responsible for day‑to‑day management of WSP resources and monitoring the status of Contractor’s performance under the Contract. The term includes, except as otherwise provided herein, an authorized representative of the WSP Project Manager acting within the limits of his/her authority.

1. Term.

 The term shall begin on the Effective Date and continue for five years, subject to earlier termination as provided in the Contract. In addition, WSP shall have the right in its sole discretion to renew the term for up to five additional one year terms unless terminated in whole or in part by WSP upon receipt by Contractor of 60 Days’ Notice prior to the end of each annual renewal term or as otherwise provided in the Contract.

1. Financial Matters.
	1. Charges.

 Contractor shall have the right to issue an invoice for Services, and Deliverables, including but not limited to the System, following the Payment Events. Except as otherwise provided herein and subject to WSP’s receipt of a correct invoice, to performance by Contractor of its obligations, and to WSP’s exercise of its rights and remedies, WSP shall pay Contractor the Charges for the Services and Deliverables which are described in Exhibit A within 30 days of receipt of such an invoice issued in accordance with the Contract.

* 1. Maximum Amount and No Increases.

 The Maximum Amount payable under the terms of this Contract shall be as set forth in Exhibit A. Contractor shall not increase the Maximum Amount or Charges, except pursuant to a written amendment to the Contract between the parties.

* 1. Transportation and Insurance Charges.

 Contractor shall pay the costs associated with transportation, delivery and insurance, if any, for each Deliverable.

* 1. Taxes.

 WSP shall pay Contractor for any sales or use taxes imposed on the Deliverables if WSP receives an invoice from Contractor for such taxes that are applicable. Contractor must pay all other applicable taxes including, but not limited to, the Washington Business and Occupation Tax, taxes based on Contractor’s income, gross receipts or revenue, or personal property taxes levied or assessed on Contractor’s personal property to which WSP does not hold title. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

* 1. Contractor Expenses.

 Contractor shall pay Contractor’s out‑of‑pocket expenses incurred in connection with providing the Services and Deliverables, and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel and per diem for its Staff.

* 1. Invoices.

 Contractor shall submit correct monthly invoices to the WSP Project Manager for all Charges and other amounts to be paid by WSP hereunder. Contractor shall not submit an invoice for Payment Events until after their occurrence. All invoices submitted must meet with the approval of the WSP Project Manager or his or her designee(s) prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by this Contract. Incorrect or incomplete invoices will be returned by WSP to Contractor for correction and reissue. The Contract number must appear on all invoices, bills of lading, packages, and billing correspondence relating to this Contract. Invoices must reference this Contract and provide detailed information and in a format as requested by WSP, including without limitation:

* + 1. Contractor name, address, telephone number and federal tax identification number;
		2. An itemization of each Deliverable for which payment is sought, and the Acceptance date triggering payment, if applicable;
		3. Applicable Charges;
		4. Delivery Date(s) of Service delivery and/or Deliverables, as applicable;
		5. By Change Request, the number of dollars or hours charged with the number of dollars or hours agreed to or estimated;
		6. Federal Tax Identification Number;
		7. Any other Project-related costs with a detailed, itemization of such costs, if applicable;
		8. Sales or use taxes, if applicable;
		9. Holdback amounts;
		10. Credits, if any; and
		11. Total amount due.
	1. Funding.
		1. The parties acknowledge and agree that this Contract is dependent upon the availability of State funding. If funding to make payments in accordance with the provisions of this Contract is not forthcoming from the State for the terms of this Contract, or is not allocated or allotted to WSP by the federal government and/or the State for periodic payment pursuant thereto in the current or any future fiscal period, then the obligations of WSP to make payments after the effective date of such non-allocation or non-funding, as provided in the Notice, will cease and terminate as applicable.
		2. If funding, to make payments in accordance with the provisions of this Contract, is delayed or is reduced from the federal government and/or the State for the terms of this Contract, or is not allocated or allotted in full to WSP by the federal government and/or the State for periodic payment pursuant thereto in the current or any future fiscal period, then the obligations of WSP to make payments will be delayed or be reduced accordingly or WSP shall have the right to terminate the Contract as provided in Section 22.6. If such funding is reduced, WSP in its sole discretion shall determine which aspects of the Contract shall proceed and which Services shall be performed, with Contractor’s Charges for such Services and Charges for associated Deliverables determined in accordance with those in the Response. In these situations, WSP will pay Contractor for Services and Deliverables in accordance with the terms of Section ‎22.6.3 and Section 22.8. Any obligation to pay by WSP will not extend beyond the end of WSP’s then‑current funding period, except as otherwise provided in Section 22.6 and Section 22.8.
		3. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, WSP in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.
	2. Most Favored Customer.

 Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor for Deliverables or Services are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting substantially similar qualifications or requirements as WSP. Except as otherwise herein provided, if Contractor shall, during the term of this Contract, enter into arrangements with any other customer that meets substantially similar qualifications or requirements as WSP to provide greater benefits or more favorable terms than as provided herein for provision of same or similar services as provided to WSP, Contractor shall be obligated to provide the same to WSP.

* 1. Overpayments to Contractor.

 Contractor shall promptly, but in all cases credit WSP the full amount of any erroneous payment or overpayment upon the invoice immediately following Notice of an erroneous payment or overpayment to which Contractor is not entitled. If Contractor fails to make such a timely credit, WSP may charge Contractor one percent per month on the amount due until paid in full.

* 1. Advance Payments Prohibited.

 No advance payment shall be made for goods or Services furnished by Contractor pursuant to this Contract.

* 1. Credits.

 Any credits due WSP under this Contract may be applied against Contractor’s invoices with appropriate information attached, upon giving of Notice required herein, if any, by WSP to Contractor.

* 1. Interest.

 Undisputed amounts remaining unpaid after 30 days following their due date will accrue interest and shall be paid to Contractor as provided in RCW 39.76.010.

* 1. Billing Limitations.

 WSP shall not pay any claims for payment for Services submitted more than 12 months after the calendar month in which the Services were performed unless such failure to submit the claim to WSP by Contractor is due to the fault of WSP, nor shall WSP pay for Services performed under this Contract if the Contractor has charged or will charge the state of Washington or any other party for the same Services.

* 1. Holdback.

 WSP shall retain a Holdback of 10% of the Charges for each Deliverable which has received Acceptance and for which WSP has agreed to pay Charges in a Change Order. WSP shall authorize Contractor’s submission of an invoice, and WSP shall pay within 30 days of receipt of such an invoice submitted in accordance with the Contract, for:

* + 1. 100% of the cumulative Holdback amount on such invoice for the first Phase following Cutover of the first Phase;
		2. 100% of the cumulative Holdback amount for the second Phase following Acceptance of all Deliverables remaining to receive Acceptance after Cutover of the second Phase; and
		3. 100% of the Holdback amount for each Change Order following Acceptance of all Deliverables in the Change Order.
1. Project Management.
	1. Reports and Meetings.
		1. Contractor shall participate in person in meetings as described below and as may be agreed upon between the parties, except when such meetings may be conducted by telephone conference call, videoconference, and/or web conference in WSP’s sole discretion.
		2. The Contractor Project Manager and other appropriate Key Personnel shall attend weekly status meetings with the WSP Project Manager and other members of WSP during the Project at times as mutually agreed upon in a Project management plan. These meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and WSP Project Manager, but will also allow both Contractor and WSP to discuss other issues that may concern either party.
		3. Brief written status reports shall be provided by Contractor at least 24 hours prior to these weekly meetings. Status reports shall describe the previous week’s activities, including Deficiencies encountered and their disposition, results of tests, whether or not deadlines were met, and any Deficiencies that may have arisen that need to be addressed before proceeding to the next activities. Also described will be the anticipated activities for the current week and any changes to project risks and risk mitigations. All Reports shall be produced in formats and with the level of detail approved by WSP and delivered in accordance with the terms of this Contract.
		4. Contractor shall produce a monthly report summary that compares actual performance by Contractor of the Services (including but not limited to activities related to Deliverables) to budgeted Charges and dates in the Schedule. Contractor shall provide such monthly report summary for such Services to WSP.
		5. As requested by WSP, the Contractor Project Manager shall both prepare and assist the WSP Project Manager in preparing special Reports and presentations related to the provision of the System for WSP. The Contractor Project Manager and other Key Personnel shall also provide or produce such Reports or information as are requested by the WSP Project Manager.
		6. The Contractor Project Manager or a designee shall attend, at a minimum, quarterly account and work plan review meetings with the WSP Project Manager and at other times as agreed upon by the parties. Contractor senior management and Subcontractor senior management (in Contractor’s discretion) shall meet on a calendar quarterly basis with executives of the WSP for the Contractor Project Manager to report on the status of the Project, progress in completing the Work Plan, issues and risks on the Project, and plans to resolve outstanding issues.
		7. During the first six months of the term, the parties shall mutually agree upon when to hold meetings during Maintenance.
	2. Contractor Project Manager.
		1. Contractor shall assign to the Contract a Contractor Project Manager of a management level sufficient to assure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and approved by WSP prior to his or her appointment as Contractor Project Manager. The approval process may include, at WSP’s discretion, an interview with the proposed original or any replacement Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison between the Contractor and the WSP Project Manager.
		2. Contractor represents and warrants that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Contract. The Contractor Project Manager shall function as Contractor’s authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall be able to make binding decisions pursuant to this Contract for Contractor and approve Change Orders for Contractor. A written commitment by the Contractor Project Manager and persons designated by him or her in writing for this purpose, within the scope of this Contract, shall be binding upon Contractor. The Contractor Project Manager or other substitute Project management personnel for Contractor shall be full‑time until Acceptance of all Project related Deliverables following Cutover of the System.
		3. The Contractor Project Manager shall not be changed from the person proposed in the Response, except as provided in Section 4.3.1. If the Contractor Project Manager is removed or replaced, Contractor will promptly (but in no event more than ten Days) provide Notice to WSP, submit a resume, and obtain approval of the replacement Contractor Project Manager from WSP, prior to his or her beginning work on the Project. Contractor shall temporarily fill the Contractor Project Manager within seven Days of it being vacated and shall fill the position with a permanent fulltime replacement within 45 Days of the Contractor Project Manager’s removal or departure.
	3. Contractor Staff.
		1. Prior to the Effective Date, Contractor shall have provided to WSP an organization chart of Contractor’s Staff, including names of Key Personnel for the Project and positions during Maintenance. Contractor shall also provide to WSP job descriptions for Key Personnel positions.
		2. Except in the case of a leave of absence, sickness, death, or termination of employment, Key Personnel shall not be changed during the Project from the people who were described in the Response without the prior written approval of WSP until completion of their assigned tasks, as described in the Work Plan, or the end of first year of the Warranty Period for the System if such tasks are not so described in the Work Plan. Such changes to Key Personnel as permitted herein may be made pursuant to written letters that are approved by WSP.
		3. During the term of the Contract, WSP reserves the right to approve or disapprove Contractor’s and any Subcontractor’s Key Personnel assigned to this Contract, to approve or disapprove any proposed changes in Key Personnel, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by WSP subject to WSP’s compliance with applicable laws. Contractor shall provide WSP with a resume of any member of its Key Personnel or a Subcontractor’s Key Personnel assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.
		4. All Staff proposed by Contractor as replacements for other Key Personnel shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.
		5. Contractor assumes sole and full responsibility for its acts and the acts of its Staff. Contractor understands and agrees that WSP does not assume liability for the actions of Contractor’s Staff. Contractor agrees that it has no right to indemnification or contribution from WSP for any judgments rendered against Contractor, its Subcontractors or other Staff.
		6. Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of WSP. Contractor will indemnify and hold WSP harmless from any and all such claims asserted against WSP. WSP agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. If principles of governmental or public law are involved, however, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor’s written consent. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from WSP (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).
	4. WSP Project Manager.

 The Contractor Project Manager’s primary point of contact in matters of contract performance and management shall be the WSP Project Manager. The WSP Project Manager or his or her designee or successor will manage this Contract on behalf of WSP and will be the principal point of contact for the Contractor concerning Contractor’s performance under this Contract.

* 1. Employment of State Personnel.

 Contractor shall not knowingly hire on a full‑time, part‑time, or other basis during the period of this Contract any managerial, professional or technical personnel of WSP that are or have been at any time during the term of this Contract in the employ of WSP, except regularly retired employees, without the written consent of WSP. Further, Contractor shall not knowingly engage on this Contract on a full‑time, part‑time, or other basis during the period of this Contract any retired employee who has not been retired for at least one year, without the prior written consent of WSP.

* 1. Reference and Background Checks.

Due to the confidential nature of the information and materials which will be accessible to Contractor, WSP shall have the right to conduct reference checks and background checks on Contractor Staff to be used to provide the Services. WSP reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks or additional sources of information. Contractor agrees that, as a requirement of this Contract, any Contractor employee, assistant, agent, or Subcontractor employee, agent or contractor performing work under this Contract, may be required to, and, if required by WSP, shall: (i) pass a fingerprint-based background check in accordance with WSP requirements, including but not limited to Exhibit H; and (ii) conduct and provide results of a criminal background investigation.  Contract shall pay the costs of the background and fingerprint checks and investigations. Contractor shall comply with WSP instructions on submitting fingerprints and other information to WSP in order to complete these checks. And, such an investigation as described above may include, but not be limited to, criminal history records checks. Contractor further agrees to cooperate fully with WSP in completion of these checks and investigations. Results of the checks and investigations and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract. Failure of a Contractor employee, agent or Subcontractor employee, agent or contractor to cooperate with WSP during the background checks (including but not limited to fingerprint-based background check) as described above will result in WSP’s rejection of such person and may result, in WSP’s discretion, in the immediate termination of the Contract.

* 1. Records Retention and Access Requirements.
		1. Contractor shall agree to the conditions of all applicable WSP, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records pertaining to Services and Deliverables provided pursuant to this Contract. In addition, Contractor shall agree to the following terms regarding retention of records and access for WSP, State and federal government officials.
		2. Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of work performed by Contractor and its Subcontractors under this Contract and shall retain all such records for six years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Contract.
		3. 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 WSP Project Manager and/or WSP, State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, Contractor shall provide electronic copies in formats reasonably requested by WSP of these records to the extent commercially practicable. However, access to these records will be provided within Thurston County, at no cost to WSP or at a location mutually agreed upon in writing by the parties. During the six-year period after this Contract term or one year term following litigation, delivery and access to these items will be at no cost to WSP. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
		4. The records retention and review requirements of this Section shall be included by Contractor in any of its subcontracts with Subcontractors. WSP’s personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges for services rendered in connection with an audit requested by WSP.
	2. Accounting Requirements.

 Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Contract, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

* 1. Supplemental Contracts.

 WSP may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. Contractor shall cooperate with such other contractors and WSP in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

* 1. Audit Reports.

 Contractor shall provide, upon WSP’s request, a copy of those portions of Contractor’s and its Subcontractors’ internal audit reports relating to the Services provided to WSP under this Contract.

1. Services and Resources.
	1. Performance.

 Contractor shall perform the Services and Deliverables as described and required by this Contract and all subsequent Contract amendments, including but not limited to, any such Enhancements to Services and Deliverables implemented by Contractor to achieve the objectives described in this Contract. Contractor shall have responsibility for managing the Project to successful completion in accordance with the requirements of the Contract.

* 1. Necessary Resources.

 WSP shall provide resources and personnel as described in this Contract. Contractor shall provide the personnel and all other materials and resources necessary for the performance of the Services and provision of Deliverables. Contractor shall ensure that its representatives have the hardware and software necessary to complete the engagement as identified in the Contract.  WSP will not supply hardware or software to Contractor or unless specifically agreed to in writing. Charges shall be reduced to the extent that WSP performs obligations which are described in the Contract as being performed by Contractor in accordance with Section 14.

* 1. Ownership.

 Title to all Property furnished by WSP, if any, shall remain in WSP. Title to all Property purchased by Contractor, for which Contractor has been directly reimbursed by WSP under this Contract, shall pass to and vest in WSP unless otherwise provided.

* 1. Use of Property.

 Any Property furnished to Contractor by WSP shall, unless otherwise provided herein, or approved in writing by the WSP Project Manager, be used only for the performance of its obligations under and subject to the terms of this Contract.

* 1. Damage to Property.

 Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor’s willful misconduct or negligent acts or omissions or from the failure on the part of Contractor to maintain and administer that Property in accordance with the terms of the Contract. Notwithstanding anything to the contrary herein, Contractor shall be liable to WSP for any damages resulting from damage to Property, which damages result from or are caused by Contractor’s acts or omissions. Contractor shall ensure that the Property is returned to WSP in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any WSP Property, and shall do so without requesting contribution from WSP.

* 1. Notice of Damage.

 Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the WSP Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

* 1. Surrender of Property.

 Contractor shall surrender to WSP all Property upon the earliest of expiration or termination of this Contract.

* 1. WSP Property and Facility.

 WSP will provide Contractor access to and use of the WSP Equipment for development, testing and Implementation of any Services or Deliverables as described in the RFP. Contractor’s use of the WSP Equipment shall be subject to WSP’s security, administrative and other requirements.

1. Equipment.

 Contractor shall provide Equipment to provide Services for the System, including but not limited to Operations for the Software for Processing the Data at Contractor’s Site in accordance with the Contract. Contractor shall provide at least 60 days advance Notice to WSP before Contractor moves its Equipment to another Site, and Contractor shall in such Notice provide WSP information as is requested by WSP to coordinate such move and avoid any negative impact from such move.

1. Services and Deliverables.
	1. General.
		1. Contractor shall provide the Services and Deliverables as described in the RFP, the Response, the Work Plan, DEDs, and other parts of this Contract, and as shall be mutually agreed upon in writing between Contractor and WSP. Contractor shall utilize the Specifications, the RFP, the Response, the Deliverables for which WSP has previously granted Acceptance, DEDs, Contractor’s professional knowledge, and this Contract as the basis of Services and Deliverables. Contractor shall retain backup copies in writing and on electronic media pertaining to Data and Deliverables until 180 days after termination or expiration of this Contract, unless otherwise required by this Contract and shall provide WSP on its request with a copy thereof until that time.
		2. All Services and Deliverables shall be subject to WSP’s review or Acceptance, including without limitation Deliverables which are provided pursuant to Change Orders. WSP’s review or Acceptance of Services and Deliverables shall be in accordance with the time frames and terms therefor set forth in this Contract or in the Work Plan.
	2. Work Plan.
		1. The Work Plan will initially be included in Exhibit D. Contractor shall produce and provide to WSP an update to the Work Plan as a Deliverable with input from WSP within 21 Days of the Effective Date. The Work Plan shall provide detailed information, in a Microsoft Project (Version 2010 or later) document, including but not limited to tasks, Deliverables, Schedule, tasks and task dependencies, identification of resource requirements, and the Payment Schedule. The Work Plan shall be inclusive of the mutual expectations and work to be performed by WSP and Contractor in order to complete the Project successfully. In the event of failure of the parties to agree upon the update to the Work Plan and/or of WSP to give its Acceptance thereof within 45 Days of the Effective Date, WSP may invoke its right to immediatelyterminate this Contract, and, in WSP’s discretion, pursue negotiations with an alternative vendor.
		2. Contractor shall maintain the Work Plan. Contractor shall adhere to the Work Plan and its associated Schedule. The Schedule in the Work Plan shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by WSP. However, the Schedule may, in WSP’s discretion, be extended on a day‑to‑day basis to the extent that WSP’s review of a Service or Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process is longer than described in the Schedule.
		3. Contractor shall provide WSP with updates to the Work Plan monthly, as described in the RFP and Response, and as otherwise necessary throughout the term of this Contract to accurately reflect the status of activities, tasks, events, Services, Deliverables and projected Schedule(s) for such activities, tasks, events, Services and Deliverables. Contractor will present the updated Work Plan at a time agreed to by the parties in writing, and the updated Work Plan will highlight changes made from the prior Work Plan. Any such update changes must be agreed upon in writing by the WSP Project Manager. Any Work Plan change request which would result in an increased cost to WSP shall be considered a Change Order under Section 15. Any Work Plan change that would require an amendment to this Contract shall be approved by the WSP Chief or his or her designee in writing. The Work Plan progress updates shall allow adequate time, in WSP’s reasonable judgment, for WSP to review and comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor. However, unless otherwise specifically agreed to in writing by the WSP Chief or his or her designee in writing, WSP’s agreement on a change to the Work Plan shall not relieve Contractor of liability for damages arising from such failures to perform its obligations as required herein under the original Work Plan. Contractor shall provide updated copies of its detailed Work Plans in Microsoft 2010 format and an online manner accessible and usable by WSP.
	3. Acceptance Process.
		1. Contractor must give Confirmation for each Deliverable and applicable Services before WSP shall begin performing Acceptance Tests. Upon delivery of a Service or Deliverable and receipt of Confirmation from Contractor that the Service or Deliverable meets applicable Specifications, WSP will, with Contractor’s assistance at no additional charge and in accordance with the Work Plan, review or perform Acceptance Tests on the Service or Deliverable, as applicable, to determine whether there is conformation to such Specifications. WSP will provide Acceptance for a Service or Deliverable if it has no Deficiencies. However, if a Deficiency is found, WSP will notify Contractor in an e‑mail or other document of Deficiencies used as the grounds for WSP’s decision not to give Acceptance. Contractor shall correct Deficiencies at no cost to WSP and WSP which will review or perform Acceptance Tests to verify whether the Service or Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor’s times for correcting Deficiencies and WSP’s review thereof shall be in accordance with the timeframes set in the Work Plan, or, if time periods for correcting Deficiencies by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Work Plan, each such time period shall be ten business days.
		2. If Contractor is unable to correct all Deficiencies within the number of days described in the Work Plan following the scheduled Acceptance Date, or if no such date is in the Work Plan, WSP may, within 30 days from such scheduled Acceptance Date, at its sole option: (a) continue reviewing or performing Acceptance Tests on the Deliverable or Service and require Contractor to continue until Deficiencies are corrected or eliminated; (b) require Contractor to provide, at its expense, a replacement Deliverable or Service for further review or Acceptance Tests; (c) set-off from the Charges to the extent WSP determines the Deficiencies for the Service or Deliverable have not been corrected and provide Acceptance for the applicable Service or Deliverable; or (d) after completion of the process set forth in this Section ‎7.3 and providing Notice of default to Contractor, terminate this Contract in whole or in part as described in Section 22.2.
		3. After Acceptance of a Deliverable, including but not limited to the Hosting Services, WSP shall, with input from Contractor, determine whether the Deliverableor Service, as applicable, is ready for Cutover. Contractor shall put the Deliverable or Service into Production after WSP gives Contractor Notice that the Deliverable or Service is ready for Cutover. Contractor shall put the System and Hosting Services into Production in the Pilot after WSP gives Contractor Notice that the System and Hosting Services are ready for Cutover. Contractor shall put the System and Hosting Services into Production in Deployment in other locations after WSP gives Contractor Notice that the System and Hosting Services are ready for Go-Live after Acceptance of the Pilot. The terms of Sections 7.1-7.4 shall apply to the Pilot which will be subjected to Acceptance Tests in a Production environment.
	4. Protection From Damage.

 Contractor shall continuously protect all Deliverables and backups therefor prior to their receipt by WSP and while in Contractor’s possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of Contractor in connection with the Deliverables. Contractor shall ship all Deliverables purchased pursuant to this Contract, FOB WSP’s destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of Contractor, its subcontractors and carriers prior to their receipt by WSP, Contractor and its insurers, if any, shall relieve WSP of responsibility for all risks of loss or damage thereto, unless such loss or damage are caused by the negligence or misconduct of WSP. After WSP is in receipt of a Deliverable, the risk of loss or damage shall be borne by WSP, except loss or damage attributable to Contractor’s acts or omissions.

* 1. Delivery.

 Contractor shall provide to WSP Services and Deliverables pursuant to this Contract on or before the applicable Service or Delivery Dates. All such Services and Deliverables made pursuant to this Contract must be complete. Contractor shall deliver hard copy and electronic versions, when required, of the Deliverables in formats agreed to by the parties.

* 1. Interpretation of Deliverables.

 In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance from the WSP Project Manager, the RFP, the Response, and any future amendments to this Contract, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with WSP’s reasonable judgment and in favor of the latest WSP‑approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the Specifications or a DED for a Service or Deliverable without the written consent of the WSP Project Manager.

* 1. Representation.

 By submitting a Deliverable or delivering a Service, Contractor represents and warrants that it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications, obligations, and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable or Service, WSP represents only that it has reviewed the Deliverable or Service and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

* 1. Source Code.
		1. Contractor shall provide WSP with a copy of the Custom Software Source Code and updated associated technical Documentation for the Custom Software: (i) upon Acceptance of each Phase; (ii) when Contractor delivers or implements an Enhancement to a Phase during the term; (iii) as described in the Work Plan; and (iv) at other times during the Project and Maintenance Services as requested by WSP.
		2. Contractor shall provide such Source Code and Documentation at no additional cost on magnetic media in a format acceptable to WSP.
	2. Knowledge Transfer.

 Contractor shall demonstrate and provide information to staff designated by WSP about the functions and operations of all Services and Deliverables in accordance with the RFP Specifications, Contractor’s Response, subsequent amendments, other parts of the Contract, and as otherwise agreed to by the parties.

1. Licenses.
	1. Grants.

Contractor hereby grants to WSP a nonexclusive license: (a) to use and access the Contractor Technology, System and Services, in whole and in part, for supporting the internal operations of WSP and Processing the Data; and (b) grant Users the right to use and access the System and Services, in whole or in part.

* 1. Term.

The licenses hereunder are granted as of the Delivery Date of the date of first access to or delivery of the Contractor Technology, System, and Services and continue until expiration of the Term or earlier termination of the Agreement, subject to Section 21.9.3.

* 1. Title.

Contractor and its suppliers hold all right, title and interest in the Contractor Technology and otherSoftware (except for Custom Software that will be owned by WSP).

* 1. Documentation.

Contractor shall provide Documentation required for submittal for use in electronic format compatible with Microsoft Corporation’s then‑generally available Office products. There shall be no additional charge for the Documentation or Enhancements or updates thereto, in whatever form provided. Contractor’s Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, Maintenance and installation Documentation on a web site, Contractor must still provide electronic versions of the Documentation to fulfill the obligations set forth in this section. Contractor may also provide such information on CD‑ROM. Contractor grants WSP a nonexclusive, right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge during the term of the Contract.

* 1. Copies.

WSP will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Contractor Technology provided to WSP.

1. WSP Ownership.

 WSP shall own all right, title and interest in and to WSP Confidential Information, WSP’s intellectual property, and the Deliverables. Title to all Deliverables provided by Contractor to WSP shall pass to and vest in WSP upon Acceptance of the applicable Deliverable, unless otherwise provided in the Contract. Title to other Work Products shall pass to and vest in WSP upon the Delivery Date of the applicable Work Product. Contractor shall take all actions necessary and transfer ownership of such Deliverables to WSP upon their Acceptance and such other Work Products on their Delivery Dates. As between the parties, all Work Products, including without limitation Custom Software (except for the Contractor Technology and Third-Party Software, which for the purposes of this Section of the Contract shall not be owned by WSP) and Data, shall be deemed works made for hire of WSP for all purposes of copyright law, and copyright shall belong solely to WSP. Contractor hereby assigns all right, title and interest in and to such Work Products to WSP. Contractor shall, at the expense of WSP, assist WSP or its nominees to obtain copyrights, trademarks, or patents for all such Work Products in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents in and to such Work Products. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the work, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

1. Implementation.
	1. Implementation.

 Contractor shall complete Implementation according to timelines agreed upon between WSP and Contractor based on the RFP and Response, all applicable Exhibits to this Contract, the Work Plan, Change Orders, and any subsequent amendments agreed upon between the parties pursuant to this Contract.

* 1. Training.

 Contractor shall provide necessary Training in accordance with the RFP and Response, all applicable Exhibits to this Contract, the Work Plan, Change Orders, and any subsequent amendments agreed upon between the parties pursuant to this Contract so as to be able to effectively test or utilize Software and Services prior to Contractor’s provision of such Software and Services. WSP and Contractor shall agree in writing upon Training Services and timelines.

* 1. Conversion.

Contractor shall participate in and perform Services for Conversion as described in the RFP, the Response, and the Conversion Plan Deliverables and with the Work Plan.

1. Guaranty.
	1. Submission.

Within 10 Days of the Effective Date,Contractor shall provide WSP with a Guaranty in the form of Exhibit F, which is attached hereto and incorporated by this reference, executed by the ultimate parent company of its organization, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Contractor shall take all actions necessary to ensure that, if Contractor is acquired by or merges with another party or there is otherwise a change in Control of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way, then the ultimate parent company of that other party shall execute the Guaranty within ten Days of such acquisition, merger or change in Control.

* 1. Failure to Comply.
		1. Failure to comply with the obligations in this Section by Contractor shall entitle WSP to exercise its available remedies at law, in equity, and under this Contract. In addition, any such acquisition, merger, divestiture, spin-out, spin-off, or other change in Control of Contractor shall be null and void under this Contract, and WSP shall have the right to rescission of this Contract. Contractor also agrees that such failure supports a finding by the Director of the Department of Enterprise Services that Contractor has violated Contract provisions of a character sufficiently serious to justify Debarment under RCW 39.26.200.
1. Warranties.
	1. Deliverables and Services.
		1. Contractor represents and warrants that each Deliverable and Service, including without limitation the System and Hosting Services, shall meet WSP, federal, and other applicable Specifications as provided herein following its Acceptance by WSP. Contractor shall in accordance with Exhibit B repair or replace each of the Services and Deliverables that does not meet applicable Specifications as provided herein at no additional charge. If a Deliverable includes any products provided by third parties, such as Third-Party Software, Contractor shall fully cooperate with and coordinate the work with such third parties and WSP to promptly repair and replace the Deliverables at no additional charge.
		2. Contractor also represents that it has and warrants that it shall have the capability and capacity to produce the Deliverables it has agreed to provide to WSP, that it shall secure all Third-Party Software licenses necessary to provide the Deliverables in accordance with the terms of the Contract, and that each Deliverable will be implemented into Production and supported by Contractor to meet the requirements in the Contract. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to Third-Party Software for Contractor to meet this representation and warranty, Contractor shall provide such Software licenses and Deliverables at no additional charge.
		3. Contractor represents and warrants that:
			1. It shall perform all Services required pursuant to this Contract in a professional manner, with high quality, knowledge and experience in business and systems integrations, maintenance, support and operations;
			2. It shall give highest priority to the performance of Services;
			3. The Services shall comply with the Performance Standards;
			4. Time shall be of the essence in connection with performance of the Services thereto; and
			5. Contractor shall immediately correct Services which are not in compliance with such representations and warranties at no cost to WSP.
	2. Intellectual Property Rights.
		1. Contractor warrants that it is the owner of the Work Products that are to be transferred and assigned to WSP in accordance with Section 9 or otherwise has the right to grant to WSP the licenses (including but not limited to licenses to Third-Party Software) described herein without violating any rights of any third party.
		2. Contractor represents that, as of the Effective Date, there is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Contractor to WSP hereunder.
		3. Contractor warrants that the Work Products shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right.
		4. Contractor hereby represents and warrants to WSP that Contractor is the owner of the Contractor Technology licensed hereunder or otherwise has the right to grant to WSP the licensed rights to the Contractor Technology provided by Contractor through this Contract without violating any rights of any third party worldwide and that WSP’s exercise of the licenses 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. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology infringes any patents or copyrights, or misappropriates trade secrets or other rights of any third party, and (ii) Contractor has no actual knowledge that the Contractor Technology infringes upon any patents, copyrights, trade secrets or other rights of any third party. WSP shall receive prompt written notice of each notice or claim of patent or copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Contractor or Technology delivered under this Contract.
	3. Date/Time Compliance Warranty.
		1. Contractor warrants that the System and Hosting Services and all data‑related output or results produced by the Services or Deliverables: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by WSP that may deliver date records from the Software, or interact with date records of the Software.
		2. Contractor shall immediately repair or replace each of the Deliverables and Services in breach of such representations and warranties at no additional charge to WSP.
	4. Unauthorized Code and Self Help Code.

 Contractor warrants to WSP that the Services, Deliverables, and Contractor Technology provided to WSP, under this Contract contain or shall contain no Unauthorized Code or Self Help Code. Contractor shall, in accordance with times in Exhibit B, repair or replace each of the Services, Deliverables, or Contractor Technology in breach of such warranty at no additional charge to WSP.

* 1. Power and Authority.

Contractor represents and warrants that it has the full power and authority to grant to WSP the rights described in this Contract without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.

* 1. Registration.

Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services, including without limitation the provisions of RCW 19.02.

* 1. Written Commitments.

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i)  Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor 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 WSP.

* 1. Legal and Regulatory Compliance.

Contractor represents and warrants that the Services and Deliverables shall comply with all applicable federal and State laws, regulations, codes, Standards and ordinances, including but not limited to changes thereto during the term. Charges for such ongoing compliance are included in Contractor’s Charges. In the event that any Services performed or any Deliverables provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, Standards or ordinances, it shall be the sole responsibility of Contractor to bring the Services and Deliverables into compliance at no additional cost to WSP.

* 1. Performance Standards.
		1. Contractor warrants that it shall maintain the System, in whole and in part, to meet the Performance Standards.
		2. Contractor and WSP will conduct tests for measuring and certifying the achievement of the Performance Standards as described in Exhibit B. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor’s performance of the System against the applicable Performance Standards. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards, and will be subject to audit by WSP. Contractor will provide WSP with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.
	2. Compatibility.

Contractor warrants that, if the Hosting Services or System, in whole or in part, are replaced or upgraded by Contractor with replacement or upgraded components provided by Contractor, or Contractor provides Custom Software Deliverables or Enhancements, the Custom Software shall be integrated into the rest of the Hosting Services and System and the upgraded, replaced, and modified Software shall operate with the rest of the Software, Equipment and Data in the System, including without limitation, Custom Software and Third-Party Software and Enhancements, and Hosting Services without loss of any Functions, as provided in the Specifications, and without Deficiencies. If WSP decides to produce Enhancements, Contractor shall, at no additional cost to WSP install and maintain the Hosting Services and System to operate in accordance with applicable Specifications and to be compatible with the Enhancements.

* 1. Non-Obsolescence.

Contractor represents and warrants that, except as provided in this Section, the Software and Equipment shall not become Obsolete during the term of this Contract. Contractor has included the cost of replacement of Obsolete Software and/or Equipment through planned Obsolescence by the applicable manufacturer and/or licensor in the Charges to be paid by WSP pursuant to the terms hereof. In the case that any such Software and/or Equipment becomes Obsolete during the term of this Contract, Contractor will replace the affected Software and/or Equipment with functionally equivalent Software and/or Equipment that is subject to maintenance and support by the applicable manufacturer and/or licensor without additional cost to WSP. Notwithstanding the foregoing, in the event Contractor is made aware of a manufacturer and/or licensor’s planned obsolescence after the term, Contractor will provide Notice thereof to the State.

* 1. Authorization.

Contractor represents and warrants that:

* + 1. Contractor is a [*name of state of incorporation*] Corporation, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
		2. The execution, delivery and performance of this Contract has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Contract and perform its obligations thereunder;
		3. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Contract; and
		4. Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor’s provision of telecommunications relay services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense.
	1. Ability to Perform.

Contractor represents and warrants that:

* + 1. Contractor has the financial resources to fund the capital expenditures required under the Contract without advances by WSP or assignment of any payments by WSP to a financing source;
		2. Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and
		3. Contractor’s methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by phase, stage, segment, or cost objective in order to support Change Order accounting.
	1. DISCLAIMERS.

WARRANTIES EXPRESSLY MADE IN THIS CONTRACT ARE CONTRACTOR’S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

1. Operations and Maintenance Services.
	1. General Responsibilities.

Contractor shall provide Services as described in this Section ‎13 as Maintenance Services at Charges described in Exhibit A. Contractor’s Service responsibilities shall include but not be limited to the following in operating and maintaining the System and Hosting Services:

* + 1. Promptly repair in accordance with Exhibit B or replace the System or Hosting Services, or any portion thereof, that has Deficiencies;
		2. Maintain the System and Hosting Services in accordance with the Specifications and terms of this Contract;
		3. Execute on‑line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies, subject to WSP’s security and administrative requirements;
		4. Provide these Services 24-hours a day, Monday through Sunday, unless otherwise agreed to by the parties in writing; and
		5. Coordinate with WSP all tasks related to correcting Deficiencies connected with the System, Hosting Services and other Deliverables.
	1. Inquiry and Assistance.

Contractor shall from Monday through Sunday, 6:00 a.m. – 7:00 p.m., Pacific Time, within the times described in Exhibit B of receiving an inquiry from WSP related to the provision of the Hosting Services and System, respond to the inquiry with the following, as applicable:

* + 1. Responses to questions relating to the Hosting Services and System, including without limitation isolating problems to the Services, Data or Equipment;
		2. The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;
		3. Corrections and repairs of errors, problems or Deficiencies with the System, to the extent technically feasible; and
		4. Clarification of Documentation.
	1. Database.

Within 15 days of the Effective Date and the end of each calendar quarter thereafter, Contractor shall maintain and make available online to WSP a database of all Change Requests, Deficiencies, other problems reported by WSP under Section 13.2 or known to Contractor in the Hosting Services and System. The database shall include, as a minimum, the following:

* + 1. Date and time Contractor was notified or an inquiry is made;
		2. Date and time of the inquiry response;
		3. Time spent for resolution of Deficiencies;
		4. Description of Deficiencies;
		5. Description of severity level of Deficiencies, e.g., emergency;
		6. Description of Deficiency resolution;
		7. Date and time of resolution; and
		8. Names and titles of Staff who who resolved the Deficiency.
	1. Enhancements.
		1. Contractor shall integrate into the System all Enhancements and associated Documentation that are provided as general releases to its other customers, specific changes to System components for other customers and integrated into the System, versions of the Software ported or migrated to new platforms, and new versions of the Software written in upgraded or new computer programming languages, in whole or in part as part of this Contract and the Charges. Such Documentation shall be adequate to inform WSP of the problems and Deficiencies resolved including any significant differences resulting from the Enhancement release which are known by Contractor. Contractor will provide its Certification that each such Enhancement has been tested and performs according to the Specifications before the Enhancement is implemented into System. Contractor agrees to correct corrupted Data and Deficiencies that may result from any Deficiency introduced by the Enhancement.
		2. In addition, Contractor shall produce such Enhancements as WSP requests at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Deficiency shall be provided to WSP at no additional cost and without the need for additional Change Orders.
		3. Contractor shall install all Enhancements in accordance with a Schedule mutually agreed to by the parties.
	2. Deficiency Reports.

Contractor shall provide to WSP, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors and Deficiencies known by Contractor to be in any version of the Proprietary Software and Third‑Party Software used by WSP, along with a schedule for resolution thereof. Deficiencies, problems, errors and bugs causing crashes or corruption of the Data shall be reported by Contractor to WSP within eight hours of their becoming known to Contractor.

* 1. Continuous Improvement.

Contractor must on an ongoing basis, as part of its total quality management process, identify, report to WSP, and implement ways to improve performance of the System and Services and identify and apply techniques and tools from other Contractor installations that would benefit WSP either operationally or financially.

1. Dispute Resolution.
	1. Good Faith Efforts.

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may terminate the dispute resolution negotiations.

* 1. Continued Performance.

Contractor and WSP agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract, and the parties will have the right to exercise their rights and remedies during the dispute resolution process.

1. Changes.
	1. Changing Government Programs and Services.
		1. The parties acknowledge that government programs and services supported by this Contract will be subject to continuous change during the term of this Contract. Contractor has provided for or will provide for adequate resources to reasonably accommodate such changes, subject to the Change Order process of this Section 15.
		2. The Parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable Federal and/or State laws, regulations, policies, guidelines or Standards that affect the performance of the Services and the System.
	2. Issuance of Change Requests.

WSP may, at any time by a written Change Request, request changes within the scope of this Contract. Such changes may include, without limitation, revisions to Deliverables or Services.

* 1. Contractor Response to Changes and Change Requests.

Contractor shall respond in writing within 10 days of receiving a Change Request, advising WSP of any cost and Schedule impacts. When there is a cost impact, i.e., increase or decrease in Charges, Contractor shall advise WSP in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and WSP personnel needed to effect this change.

* 1. Agreement on Change Order.

**.** The Contractor Project Manager and the WSP Project Manager shall negotiate in good faith and in a timely manner as to the price for and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Contract shall be modified accordingly. The parties will execute a formal Contract amendment for any Change Order that increases or decreases the Maximum Amount. Change Orders and such Contract amendments must be executed by the WSP Chief or his or her designee in writing. Contractor will promptly incorporate all Change Orders affecting the Services and Deliverables into applicable System Documentation. In no event shall the Charges be increased nor shall the Schedule be extended in a Change Order to correct errors or omissions in the Response. Deficiency corrections shall be provided to WSP at no additional cost and without the need for additional Change Orders.

* 1. Disagreement.

If federal or state laws, rules, regulations, policies, Standards or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Contract, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Contract and any appropriate Change Orders. If WSP submits to Contractor a Change Request to comply with such laws, rules, regulations, policies or guidelines and if the parties are unable to reach an agreement in writing within 15 days of Contractor’s response to such a Change Request, the WSP Project Manager may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and Schedule which shall be included in the resulting Change Order, subject to Contractor’s right to appeal the WSP Project Manager’s determination of the price and/or Schedule to the dispute resolution process under Section 14. If Contractor appeals the WSP Project Manager's determination of the price and/or Project Schedule to the dispute resolution process under Section 144, WSP shall pay for such work up to the price determined by the WSP Project Manager until all amounts in such price are expended, after which Contractor shall continue performing such work until completion of the dispute resolution process related to this Change Order. Nothing in this Section 15.5 shall in any manner excuse Contractor from proceeding diligently with the Contract as changed by the Change Order.

* 1. Termination.

If Contractor fails or refuses to perform its Services pursuant to a Change Order, Contractor shall be in material breach of this Contract, and WSP shall have the right to terminate the Contract for such a breach in accordance with Section 22.1.

* 1. Contractor Submission of Change Request.

Contractor may also submit a Change Request to WSP to propose changes that should be made within the scope of this Contract. Any such Change Request shall include a price summary and Schedule impacts. WSP will attempt to respond to such Change Requests from Contractor within 20 days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Contract shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the WSP Project Manager will be deemed to have rejected the requested Change Request.

* 1. Changes Initiated by Contractor.
		1. Contractor must provide WSP with Notice and a description of all Contractor-initiated changes to the System or Hosting Services, for any change that might affect or impact WSP; the Notice must be 60 Days in advance when feasible and must include any known impacts the changes might have to WSP. If the change is determined by WSP to have an adverse impact when tested by WSP, Contractor shall not implement the change in the System without WSP’s advance written consent. If the change is determined by WSP to have had an adverse impact after Contractor has implemented the change, Contractor shall, at no cost to WSP, promptly remove the change and/or correct the change which has had an adverse impact.
		2. Except for emergencies, Contractor must notify WSP 60 Days prior to non-remedial Changes to the System or Hosting Services. Contractor will provide an opportunity for WSP testing and analysis of State systems and procedures. Non-remedial changes with impact on WSP will be implemented at a time agreed upon with WSP.
		3. Contractor shall absorb all costs associated with Contractor initiated changes to the System and Hosting Services.
	2. Update Key Documents.
		1. Contractor shall maintain and update as required the key design and operational manuals as a result of System or Hosting Services changes. These updates that are made to one of the following documents and that describe the process of how the System or Hosting Services are used will be completed and provided to WSP within 30 Days of implementation of the System or Hosting Services change, and the other documents will be updated every six months. Contractor shall send WSP an e-mail or other electronic broadcast, which includes a summary description of such System or Hosting Services change, at least 20 Days prior to the change going to testing and at least 10 Days prior to implementation of the change. If feasible and when requested by WSP, Contractor shall provide some or all of the updated Documentation to WSP prior to implementing System and operational changes into production.
		2. The key Documentation includes: [to be negotiated based on the Response].
	3. Pricing for Change Requests.
		1. Contractor shall perform Services on Change Requests on a time and materials, not-to-exceed basis. Contractor shall base prices for Change Requests on the reasonable number of Staff hours, fixed labor categories plus any other reasonable expenses needed to affect the Change at rates presented in Exhibit A.
		2. Pricing documents submitted for approval of WSP must include a breakdown of costs by Staff hours and any other expenses.
1. Subcontractors.
	1. Permission Required.
		1. Contractor may, with prior written permission from the WSP Project Manager, enter into subcontracts with third parties for its performance of any part of Contractor’s duties and obligations. Subject to the other provisions of this Section 16.1, WSP expressly consents to Contractor’s use of the Subcontractors designated in its Response for the provision of the Services specified in the Response.
		2. Any such Subcontractor approval for providing a Service, a Deliverable or a Change Order may be rescinded in WSP’s sole discretion.
	2. Contractor Responsibility.
		1. Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to WSP for any breach in the performance of Contractor’s duties. In addition, Contractor’s use of any Subcontractor shall not cause the loss of any warranty from Contractor. WSP has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Contract. All subcontracts will be made in writing and copies provided to WSP upon request. For purposes of this Contract, Contractor agrees to indemnify, defend, and hold WSP harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Contractor’s Subcontractors, their agents, or employees. At WSP’s request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.
		2. For any Subcontractor, Contractor shall:
			1. Be responsible for Subcontractor compliance with the Contract and the subcontract terms and conditions; and
			2. Ensure that the Subcontractor follows WSP’s reporting formats and procedures as specified by WSP.
			3. Include in the Subcontractor’s subcontract substantially similar terms as are provided in Sections 3.7, 4.5 – 4.9, 8.1, 8.2, 8.4, 9, 12.8, 18, 19, 22.9.3.1, 23.16, and 23.20 of this Contract.
		3. Upon expiration or termination of this Contract for any reason, WSP and/or the State will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with WSP.
2. Additional Rights and Remedies.
	1. Liquidated Damages.
		1. The parties agree that any delay or failure by Contractor to timely perform its obligations under in the Work Plan and in accordance with the Performance Standards may interfere with the proper and timely delivery of the System, to the loss and damage of WSP. Further, WSP will incur major costs to maintain the functions that would have otherwise been performed by Contractor. Contractor must meet the due date for Acceptance of each Deliverable, as indicated in the Statement of Work or Work Plan. Contractor’s Status Reports will provide information on progress toward meeting these Deliverable dates. In the event Contractor fails to meet the due date for Acceptance of a Deliverable, WSP shall assess $1,000 per day beginning from five business days after the Deliverable Acceptance date in the Work Plan until the date each Deliverable receives Acceptance from WSP. The parties understand and agree that such liquidated damages are enforceable compensatory damages, and that Contractor shall not claim at any time during and after the term that such damages are unenforceable. If Contractor makes such claims, WSP shall have the right to exercise its remedies in the Contract, at law and in equity, including but not limited to rescission of the Contract. Contractor also agrees that such failure supports a finding by the Director of the Department of Enterprise Services that Contractor has violated Contract provisions of a character sufficiently serious to justify Debarment under RCW 39.26.200. This Section refers to the dates in the Work Plan, and other dates as agreed to by the parties under this Contract.
		2. The parties acknowledge and agree that Contractor could incur liquidated damages for more than one failure to perform of a Service or Deliverable if Contractor fails to timely perform its obligations by each date.
		3. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WSP may have under this Contract for Contractor’s breach of this Contract, including without limitation, WSP’s right to terminate this Contract, and WSP shall be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its obligations under this Contract. However, WSP will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.
		4. Amounts due WSP as liquidated damages may be deducted by WSP from any money payable to Contractor under this Contract, or, if any liquidated damages remain on termination, WSP may bill Contractor as a separate item therefor and Contractor shall promptly make such payments.
	2. Withholding Payments.

WSP shall have the right to withhold any and all payments due to Contractor, if Contractor fails to perform its obligations under the Contract, without penalty or work stoppage by Contractor, until Contractor cures its failures to perform.

* 1. Reductions in Payments Due.

Amounts due WSP by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set‑off by WSP from any money payable to Contractor pursuant to this Contract.

* 1. Substitute.

If, in the reasonable judgment of WSP, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within 30 days of receipt of Notice from WSP, and the default is capable of being cured by WSP or by another resource without unduly interfering with continued performance by Contractor, WSP may, without prejudice to any other remedy it may have, provide or procure the Deliverables or Services reasonably necessary to cure the default , in which event Contractor shall reimburse WSP for the reasonable cost of the Deliverables or Services in default. In addition, Contractor must cooperate with WSP in allowing WSP to cure the default.

* 1. Performance Standards.

If any Deliverable, including but not limited to the System, fails to meet its Performance Standards during the term and while Contractor is providing Operations or Maintenance Services, Contractor shall modify, reconfigure, upgrade or replace Hosting Services or System components, including but not limited to Software and Equipment at no additional cost to WSP in order to provide a solution that complies with such Performance Standards.

* 1. Suspension for Convenience.

WSP shall have the right at any time to order the Services or Deliverables of Contractor fully or partially stopped for its own convenience for up to 45 consecutive days. Contractor will receive Notice of the reasons for such an order. Contractor shall have the right to submit claims in accordance with the terms of Section 23.5, as a result of stop work orders issued under this Section.

* 1. Right to Assurance.

 If WSP, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, WSP may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at WSP's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

* 1. Corrective Action Plans.
		1. WSP Request for Corrective Action Plan. WSP may require Contractor to submit to WSP a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Deficiency or breach or prior to assessment of a liquidated damage.
		2. Scope of the Corrective Action Plan. The Corrective Action Plan required by WSP under this Section must provide:
			1. Contractor’s detailed explanation of the cause or reasons for the cited Deficiency or breach;
			2. Contractor’s assessment or diagnosis of the cause of the cited Deficiency or breach; and
			3. Contractor’s specific proposal to cure or resolve the Deficiency or breach.
		3. Submission and Approval of Corrective Action Plan. The Corrective Action Plan must be submitted within ten business days following the request for the Corrective Action Plan by WSP or another date acceptable to WSP. The Corrective Action Plan shall be subject to the written approval by WSP.
		4. Contractor Responsibility for Performance. Notwithstanding Contractor’s submission and WSP’s acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all Performance Standards and compliance with all other obligations under this Contract. Further, WSP’s acceptance of a Corrective Action Plan under this Section shall not:
			1. Excuse Contractor’s prior performance;
			2. Relieve Contractor of its duty to comply with performance standards; or
			3. Prohibit WSP from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.
1. Insurance.
	1. Liability and Auto Insurance.

Contractor shall, at its sole cost and expense, obtain, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A‑, Class VII or better, in the most recently published edition of Best’s Reports. Contractor shall include WSP, its boards, agencies, contractors, offices, employees, agents and volunteers as additional insureds in Contractor’s liability insurance policy obtained hereunder. If Contractor fails to buy and maintain the insurance coverage described in this Section 18, WSP may terminate this Contract under Section 22.1 (Termination for Contractor’s Material Breach). The minimum acceptable limits shall be as indicated below:

* + 1. 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;
		2. 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;
		3. Employers Liability insurance covering the risks of Contractor’s employees’ bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;
		4. Umbrella policy providing excess limits over the primary policies in an amount not less than $3 million;
		5. Professional Liability Errors and Omissions, with coverage of not less than $1 million per claim/$2 million general aggregate; and
		6. Crime Coverage of not less than $1 million single limit per occurrence and $2 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; and
		7. Cyber-security insurance, with coverage of not less than $1 million per occurrence/$2 million general aggregate, that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.
	1. Worker’s Compensation Coverage.

Prior to performing Services under this Contract, Contractor shall provide or purchase worker's compensation 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.  WSP will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Contract. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, WSP may deduct the amount of premiums and any penalties owing from the amounts payable to Contractor under this Contract and transmit the same to the responsible State agency.

* 1. Subcontractors.

Contractor 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 Contractor’s liability or responsibility.

* 1. Premiums.

Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such liability insurance policies provided for WSP pursuant to this Section shall expressly provide therein that WSP be named as additional insured, and that it shall not be revoked by the insurer until 30 days’ Notice of intended revocation thereof shall have first been given to WSP by such insurer.

* 1. Cancellation.

Contractor’s insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days’ written Notice has been given to WSP, attention WSP Project Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 18. Contractor’s insurance policies shall not be reduced in scope without WSP’s prior written consent.

* 1. Insurance Documents.

Contractor shall furnish to WSP copies of policies of all required insurance within 10 business days of the date of announcement of the Apparent Successful Bidder, and copies of renewal certificates of all required insurance within 30 days after the renewal date. Contractor shall submit the certificates of coverage to the WSP Project Manager at an address designated in writing by WSP. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section and shall be executed by a duly authorized representative of each insurer. The Certificate of Insurance for each required policy shall reference the WSP Contract Number for the Contract. Failure to provide these documents shall be grounds for immediate termination or suspension of this Contract by WSP for material breach. Contractor is not required to submit to WSP copies of Certificates of Insurance for personal automobile insurance required of the Contractor’s employees and volunteers under this Contract.

* 1. Increased Coverage.

WSP is to be notified by Contractor immediately if any aggregate insurance limit as required in this Contract is exceeded. In such event, additional coverage must be purchased to meet requirements.

* 1. Cross‑Liability.

All insurance provided by Contractor under this Contract 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.

* 1. General.

By requiring insurance, the State of Washington and WSP do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor’s liability under the indemnities and reimbursements granted to the State and WSP in this Contract.

**18.10 Subrogation.**

Contractor agrees to waive all rights of subrogation against WSP, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Contract.

**18.11 Extended Coverage.**

 For Professional Liability Errors and Omissions coverage under Section 18.1.5, Contractor shall continue such coverage for at least five years beyond the expiration or termination of this Contract. The Retroactive Date must be shown and must be before the Effective Date or the beginning of work on the Contract, whichever is earlier. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the Effective Date, Contractor must purchase “extended reporting” coverage for a minimum of five years after expiration or termination of the Contract, whichever is earlier.

**18.12 Employees and Volunteers.**

 Insurance required of Contractor under the Contract shall include coverage for the acts and omissions of Contractor’s employees and volunteers.

1. Confidential Information and Proprietary Information.
	1. Protection Obligations.
		1. Access and Protection.

 During the term of the Contract, Contractor and WSP will have access to and become acquainted with each party’s Confidential Information and Proprietary Information. Except for disclosure pursuant to Section 19.1.2, WSP and Contractor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this Section 19.1.1, maintain (a) all Confidential Information of the other party in strict confidence, and (b) all Proprietary Information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 19.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and State law and regulation and this Section 19.1.1, the other party’s Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract. Except for disclosures pursuant to Section 19.1.2 below, each party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 19.1.1 with respect to the Proprietary Information and Confidential Information. Contractor shall only release such WSP Confidential Information or WSP Proprietary Information to employees, agents or Subcontractors’ employees, agents or contractors who have signed a statement as found in Exhibit G and the Nondisclosure Agreement in Exhibit I. In addition to the requirements expressly stated in this Section 19.1.1, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of WSP that relates to the safeguarding or disclosure of information relating to the Services performed by Contractor under this Contract, including without limitation the terms of the Response.

* + 1. Public Record.

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

* + 1. Security Requirements.

 Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of WSP (which security standards, practices, and procedures of WSP shall have been provided to Contractor in writing) and which the other party may establish from time‑to‑time, with respect to information and materials which come into each party’s possession and to which such party gains access under this Contract. Such information and materials include without limitation all Proprietary Information and Confidential Information. While on WSP’s premises, Staff shall conform in all respects with physical, fire, computer system, network or other WSP security requirements.

* 1. Audit.

 WSP reserves the right to monitor, audit or investigate Contractor’s use of WSP Confidential Information collected, used, or acquired by Contractor under this Contract. Such monitoring, auditing or investigative activities may include without limitation the System performance reporting and billing databases.

* 1. Return.

Subject to record retention laws and to WSP’s rights under Section 8.1, Section 8.2 and Section 8.4, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party’s Confidential Information and Proprietary Information, including copies thereof.

* 1. Unauthorized Disclosures or Uses.
		1. Contractor shall immediately report to WSP any and all unauthorized disclosures or uses of WSP’s Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of WSP’s Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to WSP. If Contractor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, WSP shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.
		2. WSP will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor’s Confidential Information or Proprietary Information of which WSP is aware or has knowledge. WSP acknowledges that any publication or disclosure of Contractor’s Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Contractor. If WSP should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.
	2. Nondisclosure of Other WSP Information.

The use or disclosure by Contractor of any WSP information not necessary for, or directly connected with, the performance of Contractor’s responsibility with respect to Services or Deliverables is prohibited, except upon the express written consent of WSP.

* 1. Exceptions.

The following information shall not be considered Confidential Information for the purposes of this Contract: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

* 1. Survival.

The provisions of this Section shall remain in effect following the termination or expiration of this Contract.

1. Indemnifications.
	1. Intellectual Property.
		1. Contractor shall, at its expense, defend, indemnify, and hold harmless WSP and its employees, officers, directors, contractors and agents, and the State from and against any third‑party claim or action against WSP which is based on a claim that the Hosting Services or any Work Product or any part thereof under this Contract infringe a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriate a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys’ fees) and expenses caused by or arising from such claim. WSP shall promptly give Contractor notice of any such claim. WSP agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor’s written consent.
		2. In case the Hosting Services or Work Products, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of WSP’s rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for WSP the right to continue using the Hosting Services or Work Products; (ii) modify the Hosting Services or Work Products to comply with the Specifications and to not violate any intellectual property rights; (iii) or retract or retrieve any or all Work Products upon receipt of notice from WSP and refund the Charges for each such Work Product, as applicable. Notwithstanding anything to the contrary herein, the refunds that are provided under this Section are not included under the amounts of the direct damages limits set forth in Section 21.3.
		3. However, Contractor shall not be liable to the extent claims of misappropriation of infringement arise from Contractor’s compliance with any designs, Specifications or written instructions of WSP after providing Notice to WSP of the possibility of infringement claims from third parties and Contractor could not have avoided such claims through alternative products, or from modifications made by any party other than Contractor.
	2. General.

* + 1. Contractor shall, at its expense, indemnify, defend, and hold harmless WSP, its employees, officers, directors, contractors and agents, and the State from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys’ fees, and expenses from any:
			1. claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors;
			2. a breach or alleged breach of its obligations in Section 19;
			3. any claim, action, suit or judgment to the extent caused by or arising from Contractor’s failure to provide and maintain reasonable administrative, physical and technical safeguards consistent with applicable industry standards to appropriately protect the confidentiality and integrity of WSP Data; and
			4. all costs, liabilities, fees, damages, actions, claims, penalties, fines, sanctions, or disallowances arising from or caused by Contractor’s violation of any federal or State laws, rules, regulations, policies or guidelines.
		2. WSP shall promptly give Contractor notice of such claim. WSP agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor’s written consent.
	1. Waiver of Statutory Immunity.

Contractor intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO WSP.

1. Damages Disclaimers and Limitations.
	1. WSP’s Disclaimer of Damages.

WSP shall not be liable, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT for consequential, incidental, indirect, or special damages.

* 1. WSP’s Limitation of Liability.

IN NO EVENT SHALL WSP’S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

* 1. Contractor’s Limitation of Liability.

 EXCEPT AS PROVIDED IN section 21.5, IN NO EVENT SHALL CONTRACTOR’S AGGREGATE LIABILITY TO WSP UNDER THIS CONTRACT, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT.

* 1. Contractor’s Disclaimer of Damages.

EXCEPT AS PROVIDED IN SECTION 21.5, CONTRACTOR shall not be liable, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT for consequential, incidental, indirect, or special damages.

* 1. Exceptions to Contractor’s Limitation of Liability and Disclaimer of Damages.

CONTRACTOR’S LIMITATION OF LIABILITY IN SECTION 21.3 AND disclaimer of damages in section 21.4, shall not apply to:

* + 1. DAMAGES, EXPENSES, COSTS, LIABILITIES, CLAIMS OR ACTIONS SUBJECT TO OR COVERED BY CONTRACTOR’S INDEMNIFICATION OBLIGATIONS (INCLUDING THOSE IN SECTIONS 4.3.6, SECTION 15.3, SECTION 20 AND SECTION 23.33.2);
		2. DAMAGES, EXPENSES, COSTS, LIABILITIES, CLAIMS OR ACTIONS SPECIFIED IN THE SECTIONS ENTITLED TERMINATION FOR REJECTION OF DELIVERABLES (SECTION 22.2), TERMINATION REMEDIES (SECTION 22.5.1), RECORDS RETENTION AND ACCESS REQUIREMENTS (SECTION 4.7) AND INTELLECTUAL PROPERTY (SECTION 20.1.2).
1. Termination.
	1. Termination for Contractor’s Material Breach.

If Contractor materially breaches this Contract, then WSP shall give Contractor written Notice of such breach. Contractor will correct the breach within 30 days of receipt of such Notice. If the breach is not corrected, this Contract may be terminated immediately, in whole or in part, by Notice from WSP to Contractor. The option to terminate shall be at the sole discretion of WSP.

* 1. Termination for Rejection of Deliverables.

If Contractor is unable to correct Deficiencies in a Deliverable or Service pursuant to Section 7.3, WSP shall have the right to immediately terminate this Contract, in whole or in part, immediately or at such other time indicated in a Notice of termination without penalty or liability to WSP, with such a termination being deemed a termination due to the material breach of Contractor hereunder, and return the Deliverable, if applicable, to Contractor, and other Deliverables in WSP’s judgment. If WSP terminates this Contract under this Section, Contractor shall, within 20 days thereafter, refund to WSP all payments made to Contractor for the returned Deliverable and Services rendered therefor and other Deliverables in WSP’s judgment, in whole or in part.

* 1. Termination for Conflict of Interest.

WSP may terminate this Contract under Section 22.1 (Termination for Contractor’s Material Breach) by Notice to Contractor if WSP 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.

* 1. Termination for WSP’s Nonpayment.

Except to the extent WSP is exercising its remedies and subject to the application of Section 3.7, if WSP fails to pay Contractor undisputed, material Charges when due under the Contract and fails to make such payments within 90 days of receipt of Notice from Contractor of the failure to make such payments, Contractor may, by giving Notice to WSP, terminate this Contract as of a date specified in the Notice of termination. Contractor shall not have the right to terminate the Contract for WSP’s breach of the Contract except as provided in this Section.

* 1. Termination Remedies.
		1. In the event of termination of this Contract by WSP under Sections 22.1‑22.3, WSP shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Contract on the open market and, subject to the provisions of Section 21.3, Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference for the period which would have remained in the Contract term if not for termination between the original Contract Charges for the Services and Deliverables and the replacement costs of such Services and Deliverables acquired from another vendor; and (ii) if applicable, all administrative costs related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.
		2. If it is determined for any reason the failure to perform is not within the Contractor’s control, fault, or negligence, the termination by WSP under Sections 22.1‑22.3 shall be deemed to be a termination for convenience under Section 22.6.
	2. Termination for Convenience.
		1. In addition to its other rights to terminate, WSP may terminate this Contract, in whole or in part for WSP’s convenience, by 30 days’ Notice to Contractor. Invocation of Section 22.7 (Termination for Withdrawal of Authority), or Section 22.8 (Termination for Non-allocation of Funds), shall be deemed a termination for convenience.
		2. During this 30‑day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on WSP from such winding down and cessation of Services. If this Contract is so terminated, WSP shall be liable only for payment in accordance with the terms of this Contract for Services satisfactorily rendered prior to the effective date of termination.
		3. In case of such termination for convenience, WSP will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by WSP, amounts for Services which were provided in accordance with the terms of the Contract prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the rates agreed upon between the parties to this Contract, but such costs shall be no greater than the final Charges for each Deliverable. In addition, WSP agrees to compensate Contractor for reasonable and necessary costs that were incurred by Contractor on this Project, as a result of WSP’s termination for convenience, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary Project‑related expenses, subject to WSP’s reasonable judgment and the availability of State and federal funds (if applicable) and receipt of supporting documentation from Contractor.
	3. Termination for Withdrawal of Authority.

In the event that the authority of WSP and all other State agencies 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, WSP may terminate this Contract under Section 22.6 (Termination for Convenience), in whole or in part. This Section shall not be construed so as to permit WSP to terminate this Contract in order to acquire similar Services from a third party.

* 1. Termination for Non-allocation of Funds.

If funds are not allocated to continue this Contract in any future period as described in Section 3.7, WSP may terminate this Contract under Section 22.6 (Termination for Convenience). WSP will not be obligated to pay any further Charges for Services or Charges for such future period, but WSP shall make payments for Services and Deliverables as provided in Section 22.6.3, subject to WSP’s availability of funding therefor. WSP agrees to notify Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to WSP in the event this Section shall be exercised.

* 1. Termination and Expiration Procedure.
		1. Upon termination or expiration of this Contract, WSP, in addition to any other rights provided in this Contract, may require Contractor to deliver to WSP any Property, including but not limited to Deliverables and Data, for such part of this Contract as has been terminated.
		2. After receipt of a Notice of termination or expiration, as applicable, and except as otherwise directed by WSP, Contractor shall:
			1. Stop work under this Contract on the date, and to the extent specified, in the Notice;
			2. Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
			3. As soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WSP to the extent required, which approval or ratification shall be final for the purpose of this Section;
			4. Complete performance of such part of this Contract as shall not have been terminated by WSP;
			5. Take such action as may be necessary, or as the WSP Project Manager may direct, for the protection and preservation of the Property related to this Contract which is in the possession of Contractor and in which WSP has an interest;
			6. Transfer title to WSP and deliver in the manner, at the times, and to the extent directed by the WSP Project Manager, any Property which is required to be furnished to WSP and which has been accepted or requested by WSP; and
			7. Provide written certification to WSP that Contractor has surrendered to WSP all such Property.
		3. Upon the expiration or the termination of this Contract for any reason, WSP’s rights to Services and/or Data will be as follows:
			1. Upon expiration of the Contract or Contractor’s receipt of notice of termination of the Contract by WSP, Contractor will in accordance with instructions provided by WSP provide any turnover assistance Services or data necessary to enable WSP or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. Within ten days of receipt of the Notice of termination or ten days prior to and again on expiration of the Contract, Contractor shall provide, in machine readable form, a then-up‑to‑date, usable copy of the Data in a format specified by WSP and a copy of all documentation needed by WSP to utilize the Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to WSP.
			2. WSP shall pay the Contractor for any resources utilized in performing such transition assistance at the rates in Exhibit A. If WSP terminates the Project or this Contract under Sections 22.1 ‑ 22.3, then WSP will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages WSP may have otherwise accrued as a result of such termination.
		4. Notwithstanding anything contained herein to the contrary, in the event this Contract is terminated by WSP under Sections 22.1, 22.2 21.3, 21.7, or 21.8, WSP shall have the option to continue the use and operation of the System and Services for a period of not more than 365 days after the effective date of termination or expiration of this Contract in order to identify and complete the transition to alternative software products and services.
1. General Conditions.
	1. Anti‑Trust Violations.

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

* 1. Assignment.

Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, or change the Control of the Contract without the prior written consent of WSP, provided that any permitted assignment, transfer, delegation or change in Control shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment, transfer, delegation or change in Control affect any remedies available to WSP that may arise from any breach of the provisions of this Contract or representations or warranties made herein including but not limited to, rights of setoff. WSP may assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the consent of Contractor. Any attempted assignment, transfer, change of Control or delegation in contravention of this Section of the Contract shall be null and void. In addition, WSP shall have the right to exercise any of its remedies in the Contract, at law and in equity for any attempted assignment, transfer, change in Control or delegation in contravention of this Section, including but not limited to recovery of its damages resulting therefrom, and termination or rescission of the Contract. Contractor also agrees that such an action supports a finding by the Director of the Department of Enterprise Services that Contractor has violated Contract provisions of a character sufficiently serious to justify Debarment under RCW 39.26.200. This Contract shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

* 1. Attorneys’ Fees and Costs.

If any mediation, arbitration or litigation is brought to enforce, or arises out of, the Contract or any term, clause, or provision hereof, each party shall be responsible for its necessary fees, costs, attorneys' fees, and expenses for services rendered, as well as subsequent to judgment in obtaining execution thereof.

* 1. Authority.

Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

* 1. Binding Effect.

Each party agrees that the Contract binds it and each of its employees, agents, independent contractors, and representatives.

* 1. Claims.

Contractor must submit claims against WSP within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from expiration or termination of the Contract. No claims shall be allowed unless Notice of such claim has been given within the above‑described time period. Such claims must be submitted to the WSP Project Manager or his or her designee by Contractor in the form and with the certification prescribed by the WSP Project Manager or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against WSP shall be, except as provided in Sections 19.4.2 and 22.4, Contractor’s sole and exclusive remedy in the event that WSP breaches this Contract.

* 1. Compliance With Civil Rights Laws.

During the performance of this Contract, Contractor shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part by WSP under Section 22.1 (Termination for Contractor’s Material Breach), and Contractor may be declared ineligible for further contracts with WSP.

* 1. Compliance With Health and Safety Related Laws.

Contractor will at all times comply with all applicable worker’s compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State shall not be responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract (except to the extent such claims were caused by the State’s negligent acts or omissions).

* 1. Conflicts Between Documents; Order of Precedence.

In the event that there is a conflict between the documents comprising the Contract, the following order of precedence shall apply:

* + 1. Applicable federal and State laws, regulations and policies;
		2. The terms and conditions in the body of this Contract;
		3. Change Orders;
		4. Exhibit A (Charges, Payments, Key Personnel, Deliverables, and Standards);
		5. Exhibit B (Performance Standards );
		6. Exhibit D (Work Plan and Assumptions);
		7. Exhibit E (Software);
		8. Exhibit F (Guaranty);
		9. Exhibit G (Contractor Waiver);
		10. Exhibit H (Contractor Instruction Sheet for Fingerprint Background Checks);
		11. Exhibit I (Nondisclosure Agreement);
		12. The Specifications (except as otherwise listed below);
		13. The Work Plan;
		14. Other Deliverables;
		15. The RFP;
		16. Exhibit C (Revisions to the Response);
		17. The Response; and
		18. All Contractor publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to WSP and used to affect the sale of Deliverables and Services to WSP.
	1. Conflicts of Interest.
		1. Contractor, by entering into the Contract with WSP to perform or provide work, Services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, Services or materials required to be performed and/or provided under the Contract and that it shall not employ any person or agent having any such interests. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to WSP and take action immediately to eliminate the conflict or to withdraw from the Contract, as WSP may require.
		2. During the term of this Contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with Contractor fully performing its obligations under this Contract.
		3. Additionally, Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of WSP. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor’s fully performing his/her obligations to WSP under the terms of the Contract, without the prior written approval of WSP.
		4. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to WSP a full disclosure statement setting forth the relevant details for WSP’s consideration and direction.
	2. Contractor Certification Regarding Ethics.

Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.

* 1. Contractor Commitments, Warranties, and Representations.

Any written commitment by the Contractor within the scope of this Contract shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and shall render the Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by the Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by the Contractor in its response to the solicitation resulting in the Contract or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid used to effect sale to WSP.

* 1. Cooperation.

The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Contract.

* 1. 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.

* 1. Covenant Against Contingent Fees.
		1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.
		2. In the event of breach of this Section by Contractor, WSP shall have the right to either annul this Contract without liability to WSP, or, in WSP’s discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.
	2. Debarment and Suspension.

Contractor certifies and represents to WSP that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts. Contractor certifies and warrants that it shall not contract with a Subcontractor that is so debarred or suspended. Contractor also shall include the above requirement in any and all subcontracts into which it enters. Contractor shall immediately notify WSP if, during the term of this Contract, Contractor becomes debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded by any federal or State department or agency from participating in transactions. WSP may immediately terminate this Contract by providing Contractor Notice if Contractor becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal or State department or agency from participating in transactions during the term hereof.

* 1. Drug-Free Workplace.

Contractor shall maintain work places as free as possible from the dangerous effects of alcohol and other drugs. Further, Contractor shall provide an opportunity for recovery to any employee whose use of alcohol and/or drugs has produced a dependency harmful to his/her work performance.

* 1. Entire Agreement; Acknowledgement of Understanding.

WSP and Contractor acknowledge that they have read the Contract and the attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, WSP and Contractor agree that the Contract and the Exhibits are the complete and exclusive statement of the Contract between the parties relating to the subject matter of the Contract and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 12.7.

* 1. Force Majeure.

Neither Contractor nor WSP shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

* 1. Governing Law.

This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts of Thurston County, Washington. Contractor accepts the personal jurisdiction of such courts.

* 1. Headings.

The headings throughout the Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

* 1. Independent Status of Contractor.

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

* 1. Licensing Standards.

Contractor shall comply with all applicable WSP, other State, and federal licensing requirements and standards necessary in the performance of this Contract.

* 1. Lobbying Activities.

Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101‑121 (31 U.S.C. § 1352) and any implementing regulations.

* 1. Modifications and Amendments.
		1. 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 an authorized representative of each of Contractor and WSP.
		2. Only the individuals authorized by the WSP Chief or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract on behalf of WSP. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding until made in writing and signed by the WSP Chief or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein.
		3. Contractor shall notify WSP of the names of individuals who have authority to bind Contractor to modifications to the Contract and of the limits of such authority at the time Contractor submits its Response and at such other times as required.
	2. Non-waiver.

Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Contract shall not be deemed a waiver of any such right, power, or privilege under the Contract. Any waivers granted by WSP for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that WSP’s pursuit or non-pursuit of a remedy under this Contract for Contractor’s breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that WSP may have at law or equity for any other occurrence of the same or similar breach nor estop WSP from pursuing such remedy.

* 1. Notice of Delay.

When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within five business days, give notice thereof, including all relevant information with respect thereto, to the other party.

* 1. Notices.
		1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first‑class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and e‑mail 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 Contractor at:**

**Mailing Address**

**Telephone:**

**Fax:**

**E‑mail**:

To **WSP** at:

Washington State Patrol

WSP Grants and Contracts Manager

Budget and Fiscal Services

P.O. Box 42602

Olympia, WA 98504-2602

**Telephone:** 360-596-4052

**Fax:** 360-596-4077

**E‑mail**: simon.tee@wsp.wa.gov

With a copy to:

WSP Project Manager/ITD Division Administrator

Information Technology Division

P.O. Box 42646

Olympia, WA 98504-2646

**Telephone:** 360-596-4905

**Fax:** 360-596-4077

**E‑mail**: robert.marlatt@wsp.wa.gov

* + 1. Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.
	1. Publicity.

The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by WSP and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the WPS Project Manager all advertising, sales promotion, and other publicity matters relating to this Contract wherein WSP’s name is mentioned or language used from which the connection of WSP’s name therewith may, in WSP’s judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of WSP. Contractor shall not in any way contract on behalf of or in the name of WSP. Nor shall Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of WSP.

* 1. Remedies.

Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

* 1. Severability.

If any term or condition of this Contract or the application thereof to any person(s) or circumstances 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.

* 1. Sovereign Immunity.

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by WSP or the State of Washington of any immunities from suit or from liability that WSP or the State of Washington may have by operation of law.

* 1. Subpoena.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Contract is served upon Contractor or WSP, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and WSP further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for WSP.

* 1. Survival.

All Services performed and Deliverables delivered pursuant to the authority of this Contract are subject to all of the terms, conditions, price discounts and rates 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 Sections 3.9, 3.11, 4.7-4.8, 7.1, 8.1, 8.2, 8.4, 9, 17.1, 17.2, 17.3, 18 - 21, 22.5, 22.6.3, 22.9, and 23, and Exhibit F, and Exhibit I shall survive the termination of this Contract.

* 1. UCC Applicability.

Except to the extent the Sections of this Contract are clearly inconsistent, this Contract shall be governed by the Uniform Commercial Code as set forth in Title 62A RCW. To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Contract and the Uniform Commercial Code, the terms and conditions of this Contract shall take precedence and shall prevail unless otherwise provided by law.

* 1. 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 hereto.

The parties hereto, having read this Contract in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| WASHINGTON STATE PATROLBy: Printed Name: Title: Date:  |  | CONTRACTOR: By: Printed Name: Title: Date:  |
|  |  |  |
| APPROVED AS TO FORM:ATTORNEY GENERAL’S OFFICEBy: Printed Name: Title: Date:  |  |  |

1. CHARGES, PAYMENTS, KEY STAFF, DELIVERABLES AND STANDARDS

**1. Charges.** Contractor shall charge WSP the Charges as indicated in the tables in Section 2 and Section 3 of this Exhibit A. **[This section is subject to the terms in the Response and negotiations]**

**2. Deliverables and Charges**

| **Phase** | **Deliverable [This list is subject to change based on the Deliverables in the Response and negotiations]** | **Charges** | **Payment Events** |
| --- | --- | --- | --- |
| **Project Initiation & Planning Phase** |   |  |  |
|  | Project Charter |  |  |
|  | Project Management Plan |  |  |
|   | Quality Management Plan |  |  |
|   | Resource Management Plan |  |  |
|   | Risk Management Plan |  |  |
|   | Issues Management Plan |  |  |
|  | Work Plan |  |  |
| **Scope Baseline & Solution Specification Phase** |  |  |  |
|  | Concept of Operations & Scope Baseline <<application name>> |  |  |
|  | Architecture Solution Specification |  |  |
|  | Database Solution Specification |  |  |
|  | Technology Infrastructure Specification |  |  |
|  | Technology Infrastructure Deployment Plan |  |  |
|  | Solution Specification – By Module <<application name>> |  |  |
|  | Interface Solution Specification <<application name>> |  |  |
|  | Solution Customization/Configuration Phase Plan |  |  |
|  **<<application name>>Application Development Phase** |  |  |  |
|  | System Implementation Plan |  |  |
|  | User Acceptance Test Plan |  |  |
|  | Acceptance Criteria |  |  |
|  | User Acceptance Testing Environment  |  |  |
|  | The SAK Tracking System  |  |  |
|  | The Hosting Services |  |  |
|  | The Pilot |  |  |
|  | The Deployment Completed in accordance with the Contract Terms |  |  |
|  | Data Conversion Plan |  |  |
|  | Data Migration Specification |  |  |
|  | Data Dictionary |  |  |
|  | Converted Data  |  |  |
|  | Business Integration Plan |  |  |
|  | System Documentation |  |  |
|  | User Documentation |  |  |
|  | Concept of Operations |  |  |
|  | Business Operations Training |  |  |
|   | Business Application Training |  |  |
|  | Technical Specifications |  |  |
|  | Operations Guide |  |  |
|  | System Technical Support Documentation |  |  |
|  | Message Format Reference Documentation |  |  |
|  | Knowledge Transfer Session |  |  |
|  | Technical Operations Training |  |  |
| **Project Monitoring & Control Phase** |  |  |  |
|  | Risk Register |  |  |
|  | Issue Register |  |  |
|  | Deliverable Register |  |  |
|  | Weekly Status Report |  |  |
|  | Monthly Steering Committee Report |  |  |
|  | Project Closeout Report |  |  |

 **3. Services Charges**

|  |  |  |  |
| --- | --- | --- | --- |
| **Response Section** | **Services [This list is subject to change based on the Services in the Response and negotiations]** | **Charges** | **Payment Events** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**4. Payment Events.** Contractor shall have the right to issue invoices in the amounts noted above in Sections 2 and 3 of Exhibit A as provided in Section 3.6 of the Contract. WSP shall pay invoices in accordance with Section 3.1 of the Contract.

**5. Maximum Charges.** The Maximum Amount shall be $\_\_\_\_\_\_\_\_\_\_\_\_ and amounts added by Change Orders. [The final number will be determined in negotiations]

**6. Rates.**

**7. Key Personnel.** Key Personnel shall include the following:

**8. Standards.** Standards for Software compliance include but are not limited to the following Standards listed below in this Section 8. In the event of a conflict between any of the Standards, the Standard which is most protective of the security of WSP and its Data shall supersede other Standards.

8.1 Federal Bureau of Investigation (FBI), including but not limited to:

8.1.1 National Crime Information Center (NCIC),

8.1.2 Interstate Identification Index (III)

8.1.3 National Instant Criminal Background Check System (NICS)

8.2 Criminal Justice Information Services (CJIS)

8.3 Other federal agency standards

8.4 Office of Chief Information Officer, Washington State (OCIO)

8.4.1 1000-G1 - State Guidelines – Accessibility to Information Technology for Individuals with Disabilities

8.4.2 141 – Securing Information Technology Assets – 141.10 – Securing Information Technology

1. PERFORMANCE STANDARDS, AND ESCALATION PROCEDURE

**I. Performance Standards**

|  |  |  |
| --- | --- | --- |
|  | Deliverables | Contractor must meet the due date for Acceptance of each Deliverable, as indicated in the Work Plan. Contractor’s Status Reports will provide information on progress toward meeting these Deliverable dates. |
|  | Change Request Management | Contractor shall provide monthly status reports of System Change Requests identifying the status of all outstanding System Change Requests and resulting Change Orders made or agreed upon by WSP, including those closed since the last report. The Change Request Management status monthly report will include Change Request date, planned completion date, activity priority status, activity status, and actual completion date. |
|  | Change Request Management | Comprehensive and accurate Change Orders from Contractor to all WSP Change Requests including proposed solution, cost and time frames, must be delivered to WSP within [30] days of receipt of a WSP Change Request. Contractor shall promptly notify WSP of when Contractor has received the Change Request, which shall then commence the 30 day response timeframe |
|  | System Acceptance | Contractor must receive Acceptance of the System from WSP no later than the Acceptance Date in the Work Plan |
|  |  Turnover Deliverable | Nine months prior to the end of the Contract term, Contractor must receive Acceptance for and implement a Turnover Plan covering the possible turnover of System and operation activities to either the State or a successor contractor. The Turnover Plan must be a comprehensive Deliverable detailing the proposed schedule, activities, and resource requirements associated with the turnover tasks |
|  | Compliance with Other Contract Provisions | The RFP includes Performance Standards which are not listed in the table in Exhibit B. WSP shall have the right to notify Contractor of its failures to meet these additional Performance Standards, request a Corrective Action Plan, designate a date by which Contractor must provide a Corrective Action Plan and designate a period of time in which the Contractor must remedy the failure to meet the Performance Standard. Contractor shall provide a Corrective Action Plan within the time period designated by WSP, fulfill the obligations regarding Corrective Action Plans in the Contract, and remedy the failure within the time period designated by WSP  |
|  | System Maintenance | WSP will determine the severity level assigned to a Deficiency. **Level 1 - Emergency** - System no longer functions. * Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.
* Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 clock hours.
* Performance Standard for correction of Deficiency associated with System component is 24 clock hours.

**Level 2 - Disabled, No Workaround** – A business function or System component does not work as required, and no acceptable workaround is available or a workaround that is acceptable to WSP is not available. * Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.
* Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 clock hours.
* Performance Standard for correction of Deficiency associated with System component is 48 clock hours.

**Level 3 - Disabled, Workaround** – A business function or System component does not work as required, but a workaround that is acceptable to WSP is available. * Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.
* Performance Standard for reporting recommended resolution and estimated fix date/time for all system components is 2 clock hours.
* Performance Standard for correction of Deficiency associated with System component is three business days.

**Level 4 - Minor - Non-critical**, but having a negative effect on one or more business functions or System components. * Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.
* Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 4 business days.
* Performance Standard for correction of problem associated with System component is 15 business days.

**Level 5 - Cosmetic** - Non-critical and non-impacting to one or more business functions or System components. * Performance Standard for responding to Deficiency call is 30 minutes, includes acknowledging Deficiency, logging Deficiency in the Problem Report database and providing a ticket/tracking number to the caller.
* Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 5 business days.
* Performance Standard for correction of Deficiency associated with System component located at Contractor site is 30 business days.
* Performance Standard for correction of Deficiency associated with System component is 30 business days.
 |
|  | Security Management Notice and Mitigation | Contractor shall notify the WSP Project Manager within one hour following the identification of any potential or actual major or minor incident, including any breach, any attack, or the introduction of any disabling device, related to the System. Contractor shall take corrective action to mitigate the potential or actual major or minor security incident within two hours following the identification of each potential or actual Security Incident.All potential or actual Security Incidents identification times shall be documented within the Security Report. Contractor shall provide Equipment or Software metrics to support the potential or actual Security Incidents identification time. Contractor shall also report the notification time of notifying the WSP Project Manager. Within the Security Report, Contractor shall document the correct action taken to mitigate the potential or actual Security Incidents. Contractor shall also provide Equipment or Software metrics to support the potential or actual Security Incidents correct action mitigation.Once an event has been confirmed to have an impact on security, the event is classified as a Security Incident |
|  | Security Management Report | Contractor shall provide a written report and assessment within 12 hours following the identification of the minor security incident regarding all actions taken concerning each identified minor security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the WSP Project Manager of the security incident. Contractor shall provide a high level and summary analysis in two hours and a written report and assessment within eight hours following the identification of the major security incident regarding all actions taken concerning each identified major security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the WSP Project Manager of the security incident.Contractor shall provide a written report and assessment regarding all actions taken concerning each identified security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the WSP Project Manager of the security incident. Each security incident shall be categorized according to criticality as either minor or major. * For a minor security incident, which causes limited loss of Confidential Information, integrity, protection, and/or availability of the System to organizational operations, organizational assets, or individuals, this report and assessment shall be provided within 12 hours following the identification of the minor security incident.
* For a major security incident, which causes serious or catastrophic loss of Confidential Information, integrity, protection, and/or availability of the Systems to organizational operations, organizational assets, or individuals, this report and assessment shall be provided within eight hours following the identification of the major security incident.

The WSP Project Manager, in his sole discretion, may require Contractor to update this report and assessment on an hourly or daily basis depending on criticality, status, and possible impact to WSP.  |
|  | System and Hosting Services Availability  | Every System and Hosting Services component must have Availability for WSP in accordance with Specifications 99.99% of the time 24 hours/day, seven days per week for both the <<application name>><<application name>> applications |
|  | System and Hosting Services Performance – Response Times | Contractor must meet the following response time Performance Standards for the System and Hosting Servicesfor up to 5500 customers connected via the ACCESS switch, and 85 – 90 customers connected in <<Divison>>, supporting an average of 135,000 transactions per day:Record Inquiry Search Response Time: The time elapsed from receipt of the transaction by the Contractor from the switch vendor at the network demarcation point until the Contractor completes delivery of the transaction to the switch vendor at the demarcation point must not exceed 1 seconds 95% of the time for any inquiry by State staff.Record Create, Update, Delete Response Time: The elapsed time from receipt of the transaction by the Contractor from the switch vendor at the network demarcation point until the Contractor completes delivery of the transaction back to the switch vendor at the demarcation point must not exceed 2 seconds 95% of the time for any create, update, or delete transactions |
|  | System and Hosting Services Performance Response Times <<application name>> User Interface Transactions | Contractor must meet the following response time Performance Standards for the System and Hosting Services for up to 85 – 90 customers connected via the WSP Network in <<Divison>>, using the User Interface for the <<application name>> application during core business hours (7am – 6pm M-F Pacific Time).Record Inquiry Search Response Time: The time elapsed from the time the customer submits the transaction until the result displays must not exceed 2 second 95% of the time for any inquiry.Record Create, Update, Delete Response Time: The elapsed time from the customer submitting the transaction until the confirmation or subsequent action appears on the screen must not exceed 3 seconds 95% of the time for any create, update, or delete transactions. |

**II. Contract Performance Escalation Procedure**

Contractor’s frontline representation for the State of Washington is \_\_\_\_\_\_. All issues or concerns related to the Contract from WSP should first contact\_\_\_\_\_\_\_\_\_\_\_\_\_. In the event that \_\_\_\_\_\_\_\_\_\_ is not available, \_\_\_\_\_\_\_\_\_(\_\_\_\_\_\_\_\_\_ Manager) will be next person to contact.  Finally, if \_\_\_\_\_\_\_\_\_is not available, \_\_\_\_\_\_\_, ( [title]\_\_\_), is the next in command. It is Contractor’s primary goal to be available to insure all concerns are addressed in a timely matter. Successors shall be named by Contractor for the contacts as needed. Contractor shall provide updated contact information for individuals identified in Contractor’s escalation procedure.

1. REVISIONS TO THE RESPONSE
2. WORK PLAN AND ASSUMPTIONS
3. SOFTWARE

**The Software shall be as described in the Response.**

 **EXHIBIT F**

GUARANTY

In consideration of the execution by the Washington State Patrol (“WSP”) of the Contract dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017(the “Contract”) with \_\_\_\_\_\_\_\_, Inc. (“Affiliate”), \_\_\_\_\_\_\_\_\_\_, Inc. (“Parent”) unconditionally and irrevocably guarantees to the WSP, on the terms and conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

 If Affiliate fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Affiliate failed or refused to complete, or be considered to be in breach of the Contract to the same extent as Affiliate, pursuant to the terms and conditions of the Contract.

 Parent agrees that it shall not be necessary for the WSP, or its successors or assigns to exercise their rights against Affiliate, before proceeding to enforce their rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by the WSP affecting Affiliate’s rights or obligations under the Contract; (c) notice of any breach or claim of breach by Affiliate; and (d) the benefit of suretyship defenses generally.

 Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

 Notices to Parent shall be sent to the address set forth below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, INC.

By:

Printed Name:

Title:

Address:

Date:

EXHIBIT G
CONTRACTOR WAIVER

I authorize the recipient of this document to furnish the Washington State Patrol (WSP) with any and all information needed to determine whether I may be granted access to facilities or technologies of the WSP: my work records; my military service records; and any criminal history information. Information of a confidential or privileged nature shall also be included in this request. Your reply will be used to assist the Washington State Patrol in determining my qualifications for access to facilities or technologies of the WSP. I understand my rights under Title 5, United States Code, Section 552a, the Privacy Act of 1974, and waive these rights with the understanding that the information furnished will be used only for determining my prospective access to facilities or technologies of the WSP.

**To be completed by the applicant:**

For and in consideration of being considered to have access to facilities or technologies of

|  |  |  |
| --- | --- | --- |
| the WSP, I |       | , agree to indemnify and |

hold harmless the agency and/or person to whom this document has been presented; for myself, my heirs, assigns, or other successors in interest and do hereby release and forever discharge the State of Washington, the WSP, its officers, agents, employees, agencies, and departments from any and all liability for all existing and future claims, damages, and causes of action of any nature whatsoever which I may have or which may inure to me as a result of the acts or omissions of WSP based upon this process and the information requested. I understand that should information of a serious nature arise during the process of determining my qualifications for access to facilities or technologies of the WSP, such information may be turned over to the proper authorities. I also understand that because of confidentiality, security, and the integrity of the WSP process, I will not be provided any information obtained during this process, including the reasons for denial of access, should the process result in such denial.

|  |
| --- |
|       |
| Print Name (First, Middle, Last) |
|       |
| Other names you have been known by, including prior marriage or nickname |
|       |       |       |       |
| Address | City | State | Zip Code |
|       |       |
| Social Security Number | Date of Birth |
|  |       |
| Signature | Date |

*\*A photocopy of this information shall be as valid as the original. This form is valid for the period that access is granted to facilities or technologies of the Washington State Patrol.*

**EXHIBIT H**
CONTRACTOR INSTRUCTION SHEET FOR FINGERPRINT BACKGROUND CHECKS



**EXHIBIT I**
NONDISCLOSURE AGREEMENT

Nondisclosure Agreement

for

Contract Number 0000

NONDISCLOSURE AGREEMENT

As an employee, agent or Subcontractor of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_., I acknowledge that some of the material and information that may come into my possession or knowledge in connection with Washington State Patrol Contract Number \_\_\_\_\_\_\_\_ (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.

I agree 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 it known to any other party without the Washington State Patrol's express written consent or as provided by law. I agree to release such information or material only to employees or Subcontractors who have signed a Nondisclosure Agreement substantially the same as this Nondisclosure Agreement. I also agree to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, my employment with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_., or the contractual relationship with the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_if I am a subcontractor, I shall surrender any and all Confidential Information in my possession to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for its disposition according to the terms of the Contract.

I understand that I am subject to all applicable state and federal laws, rules, and regulations, including RCW 10.97, violation of which may result in criminal prosecution.

FBI CJIS SECURITY ADDENDUM CERTIFICATION

I hereby certify that I have read and am familiar with the contents of (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the Policy and Reference Manual; (4) the CJIS Security Policy; and (5) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties.

I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Employee or Subcontractor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date