

Appendix B-Proposed Contract

Contract Number ***[KXXX]***

For

Vehicle Passenger/Occupancy Detection

between the

Washington State

Department of Transportation

and

[Vendor]

Effective Date: _____

[Add Effective Date]

CONTRACT NUMBER *[KXXX]*

for Vehicle Passenger/Occupancy Detection

PARTIES

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through the Department of Transportation, an agency of Washington State government (“WSDOT”) located at *[WSDOT address]*, and *[Vendor]*, a *[corporation/sole proprietor or other business form]* licensed to conduct business in the state of Washington (“Vendor”), located at *[Vendor address]* for the purpose of purchasing Software licenses and Product for Vehicle Passenger/Occupancy Detection.

RECITALS

The state of Washington, acting by and through WSDOT, issued a Request for Quotation and Qualifications RFQQ-2015-0521 dated May 21, 2015, (Exhibit A) for the purpose of purchasing Software licenses for Vehicle Passenger/Occupancy Detection in accordance with its authority under 4319 RCW and chapter 39.26 RCW.

[Vendor] submitted a timely Response to the WSDOT’s RFQQ-2015-0521 (Exhibit B).

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

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

NOW THEREFORE, WSDOT awards to *[Vendor]* this Software License Contract, the terms and conditions of which shall govern Vendor’s furnishing to WSDOT the Vehicle Passenger/Occupancy Detection Product and Services. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1 Definition of Terms

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

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

“**Acceptance Testing**” shall mean the process for ascertaining that the Software meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the WSDOT.

“**Business Days and Hours**” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“**Confidential Information**” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card

information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data.

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

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

“Department” shall mean the same as WSDOT.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the RFQQ-2015-0521.

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

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

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

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

“OCIO” shall mean the Washington State Office of the Chief Information Officer.

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

“Preexisting Materials” shall mean materials and know-how that are delivered under this Master Contract by Vendor to WSDOT, but that do not originate therefrom.

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

“Product(s)” shall mean any equipment or hardware (including any embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for its proper operation) supplied by Vendor, Software, and documentation provided by Vendor under the terms of this Contract. The term “Products” shall include Work Product, as defined below. .

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

“Proposal” shall mean Vendor's Proposal to WSDOT's RFQQ-2015-0521, Exhibit B hereto.

“Public Work” shall mean work, construction, alteration, repair, or improvement that is executed at WSDOT's cost and declared a “Public Work” by the WSDOT in the Order Document. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, and utilities construction. (See RCW [39.04.010](#))

“**RCW**” shall mean the Revised Code of Washington.

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

“**Records**” shall mean all books, records, documents and other evidence related to this Contract, including but not limited to Minority and Women’s Business Enterprise participation (if applicable, protections and use of WSDOT’s Confidential Information, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract, and appropriate books and records (including auditor work papers) documenting the Control Objectives.

“**Schedule A: Authorized Product and Price List**” shall mean the attachment to this Contract

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

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

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

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

“**Statement of Work**” or “**SOW**” shall mean a statement of the work to be accomplished by Vendor for a WSDOT under the terms and conditions of this Contract attached as Schedule B.

“**Term**” shall mean the period of time specified within a document that it will be in full force and effect and include, e.g., Initial Term, Renewal Term, and Statement of Work Term, as further defined in Section 2.

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

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

“**Work Product**” shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes,

techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

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

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

“WSDOT Contract Administrator” shall mean that person designated by WSDOT to administer this Contract on behalf of WSDOT.

Contract Term

2. Term

2.1. Term of Contract:

- a) This Contract’s initial term shall be for two (2) years, commencing upon the Effective Date.
- b) This Contract’s term may be extended by two (2) years, provided that the extensions shall be at WSDOT’s option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

3. Survivorship

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; License Grant; Software Ownership; Ownership/Rights in Data; Date Warranty; No Surreptitious Codes Warranty; Vendor Commitments, Warranties and Representations; Protection of WSDOT’s Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor’s Records; Patent and Copyright Indemnification; Vendor’s Proprietary Information; Disputes; and Limitation of Liability**, and shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

4.1 The total amount expended under this Contract shall not exceed [____] dollars [\$ ____] .

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

5 Advance Payment Prohibited

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

6 Taxes

6.1 WSDOT will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.

6.2 Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

7. Invoice and Payment

7.1. Vendor will submit properly itemized invoices to *Tolling* at XXX. Invoices shall provide and itemize, as applicable:

- a) WSDOT Contract number [KXXX];
- b) Vendor name, address, phone number, and Federal Tax Identification Number;
- c) Description of Software, including quantity ordered;
- d) Date(s) of delivery and/or date(s) of installation and set up;
- e) Price for each item, or Vendor's list Price for each item and applicable discounts;
- f) Maintenance charges;
- g) Net invoice Price for each item;
- h) Applicable taxes;

- i) Shipping costs;
 - j) Other applicable charges;
 - k) Total invoice Price; and
 - l) Payment terms including any available prompt payment discounts.
- 7.2. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement.
- 7.3. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement.
- 7.4. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimburseable, including WSDOTcription, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement.
- 7.5. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.6. WSDOT shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.
- 7.7. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 7.8. The WSDOT Contract number [KXXX] must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.9. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 7.10. If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Software or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

Vendor shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, WSDOT may charge Vendor one percent (1%) per month on the amount due, until paid in full.

9. Prevailing Wages.

Vendor shall comply with all applicable State and Federal laws, regulations, requirements, and procedures pertaining to prevailing wages, including but not limited to those established by the Washington State Department of Labor and Industries, including but not limited to those detailed in forth in Schedule C.

Software License

10. License Grant

- 10.1. Vendor grants to WSDOT a non-exclusive, perpetual *[site-wide, irrevocable, transferable – use terms as applicable]* license to use the Software and related documentation according to the terms and conditions of this Contract.

11. Software Ownership

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

12. Use of Vendor's Software

- 12.1. SaaS Services will be provided for the number of concurrent WSDOT and named WSDOT specified by WSDOT in a Statement of Work. WSDOT will have access to the SaaS Services 24 hours per day, 7 days per week, except for interruptions by reason of maintenance or downtime beyond Vendor's reasonable control. WSDOT shall have the right to replace one named User with another.
- 12.2. WSDOTs shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software or SaaS Services; provided, however, that WSDOTs shall have the right to disassemble reverse compile, reverse engineer or otherwise translate the Software and SaaS Services for purposes of creating interoperable computer programs.
- 12.3. WSDOT will not transmit or share identification or password coWSDOT to persons other than authorized WSDOT or in any way permit it the misuse of such coWSDOT in order to circumvent the intended and granted access to and use of the Software and SaaS Services.

13. Ownership/Rights in Data

- 13.1. WSDOT and Vendor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by WSDOT. Vendor is hereby commissioned to create the Work Product. Work Product incluWSDOT, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, WSDOTigns, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership incluWSDOT the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 13.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to WSDOT the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 13.3. Vendor shall execute all documents and perform such other proper acts as WSDOT may deem necessary to secure for WSDOT the rights pursuant to this section.
- 13.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of WSDOT. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or SubVendors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

13.5. Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to WSDOT with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise WSDOT at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. WSDOT shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. WSDOT shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

14. Software Specifications

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

15. Data Storage, Transmission and Archive

All WSDOT data must be stored and transmitted within the contiguous United States of America only. No offshore data transmission (e.g., for support services) or storage (e.g., data center, hosted site or backup, disaster recovery or other locations) will be permitted.

16. No Surreptitious Code Warranty

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

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

16.3. As used in this Contract, “Unauthorized Code” means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to

disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

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

17. Software Documentation

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

18. CONTRACT BOND (PERFORMANCE AND PAYMENT BOND)

- 18.1. Vendor shall provide to WSDOT an executed Contract Bond(s) in the amount of eighty percent (80%) of the total Price of installation Work within ten (10) Business Days after Notice to Proceed. Vendor shall provide said Contract Bond each year the Contract is extended. The Contract Bonds, also covering state sales tax, shall:

- 18.2. be signed by an approved surety (or sureties) that (1) is registered with the Washington State Insurance Commissioner, and (2) appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;

- 18.3. guarantee that the surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure: (1) of Vendor or any of the employees or Subcontractors to faithfully perform the Work in accordance with the Contract, and (2) of Vendor or any Subcontractors to pay all laborers, mechanics, Subcontractors, material persons, or any other person who provides supplies or provisions for carrying out the Work.

- 18.4. WSDOT may require sureties or surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the surety or sureties to be inadequate, it may, upon written demand, require Vendor to furnish additional surety to cover any remaining Work. Until the added surety is furnished, Work will stop.

- 18.5. Upon the request of any person or entity appearing to be a potential beneficiary of Contract Bond covering payment of obligations arising under this Contract, Vendor shall promptly furnish a copy of the Contract Bond or shall permit a copy to be made.

Vendor's Responsibilities

19. Shipping and Risk of Loss

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

20. Delivery

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

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

21. Security

While on WSDOT premises, Vendor, its agents, employees, and SubVendors shall conform in all respects with any and all of WSDOT's physical, fire, safety, and other security regulations.

21.1. Facility Access

Vendor understands that WSDOT's building entrances may be controlled for access. In the event Vendor performs any work at WSDOT's buildings, Vendor agrees to become familiar with WSDOT's building and security policies, and further agrees to observe and comply with all WSDOT's building and security policies or procedures.

Vendor understands that in order to obtain access to WSDOT's premises, Vendor may have to be issued a security badge by WSDOT. Vendor shall provide certain personal information, including valid government-issued photo identification, prior to obtaining a

security badge when required by WSDOT. Vendor further understands that WSDOT will collect and retain such personal information for so long as the SOW is in effect and such individual(s) has access to the premises. WSDOT reserves the right to conduct background checks and deny an application for a security badge. Failure of Vendor to comply with WSDOT's security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to WSDOT's facilities. Upon the earlier of termination of the SOW, or suspension or termination of access to WSDOT's facilities, Vendor shall return all security badges.

21.2. System Security

Vendor acknowledges and understands that it may be required to access Purchase's computer networks in performing an SOW and that in providing such access to Vendor, WSDOT places special confidence and trust in Vendor. Vendor acknowledges and understands that any access granted by WSDOT to its computer networks shall be limited, restricted and conditioned upon Vendor's compliance with certain policies and practices. Vendor warrants that it will perform all work for or on behalf of WSDOT in full compliance with OCTO security policies, standards, and guidelines, and any other security documents and best practices provided by WSDOT ("Security Policies"). Vendor agrees that the Security Policies shall serve as the standard for network security and warrants that it shall exercise its best efforts to comply with the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, Self Help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of WSDOT's network, system or data. Vendor staff may be required by WSDOT to complete a certain minimum level of security awareness training coursework depending on the skill and experience levels required by WSDOT. Minimum expectations and recommended coursework are set forth here: <http://ofm.wa.gov/ocio/policies/documents/141.pdt>:

21.3. Safety

Vendor shall observe and comply with WISHA and OSHA regulations, all applicable safety and environmental laws and regulations, and all of WSDOT's rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including but not limited to physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

22. Facility and Site Security

While on WSDOT's premises, Vendor, its agents, employees, or Subcontractor shall conform in all respects with physical, fire, or other security regulations.

Delivery of Vendor's Proposed Solution must comply with the Washington State Office of the Chief Information Officer IT Security Policy 141 and IT Security Standards 141.10. <http://ofm.wa.gov/ocio/policies/documents/141.10.pdf>

The Proposed Solution must pass the w3.org validator test (<http://vwww.w3.org/QA/Tools/>) and be compatible with federally regulated accessibility standards (Section 508, <http://www.section508.gov/>).

All data transfers must be encrypted using 128bit (or higher) SSL for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be signed by a trusted third party. No self-signed certificates will be considered.

The Proposed Solution must provide data recovery capability that adheres to the OCIO Disaster Recovery and Business Resumption Standard 151.10, at a minimum: <http://ofm.wa.gov/ocio/policies/documents/151.10.pdf>

23. Installation

Vendor agrees to provide installation as set forth in Schedule B, Scope of Work, in accordance with the requirements set forth in Exhibit A, RFQQ.

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

24. Standard of Performance and Acceptance

- 24.1. This section establishes a Standard of Performance that must be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Product and any Product that is modified by or with the written approval of Vendor after having been Accepted.
- 24.2. The Standard of Performance for a Product is defined as a one hundred percent (100%), Effectiveness Level during the Acceptance Testing period set forth below.
- 24.3. The Effectiveness Level for a Product is the percentage of time in a month that the Product is functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Product by the sum of the Operational Use Time plus the Product Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for a Product is defined as the total time the Product would normally be used. Product Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of a Product Failure. Product Failure is defined as a malfunction in the Equipment or Software that prevents the accomplishment of the intended function(s) of the Product.
- 24.4. Downtime for each incident shall start from the time that Vendor knew or reasonably should have known of the Product Failure, or WSDOT makes a bona fide attempt to contact Vendor's designated representative at the prearranged contact point,

whichever occurs earlier, until the Product is returned to fully operational status in conformance with its Specifications. During periods of Product Failure downtime, WSDOT may use operable Products when such action does not interfere with repair of the inoperable Product.

- 24.5. The Acceptance Testing period shall be thirty (30) calendar days starting from the day after the Product is installed and Vendor certifies that the Product is ready for Acceptance Testing. WSDOT will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 24.6. In the event the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, WSDOT may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after ninety (90) calendar days the Product still has not met the Standard of Performance WSDOT may, at its option: (1) declare Vendor to be in breach of this Contract and terminate this Order or this Contract; or, (2) demand replacement Product from Vendor at no additional cost to WSDOT; or, (3) continue the Acceptance Testing for an additional thirty (30) calendar days Vendor shall pay all costs related to the preparation and shipping for Product returned pursuant to this section. WSDOT's option to declare Vendor in breach and terminate this Order or this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 24.7. No Product shall be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first WSDOT Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from WSDOT to Vendor.
- 24.8. Monthly Performance Monitoring. Throughout the warranty period and the initial and subsequent maintenance terms of this Contract, WSDOT shall monitor the Product to ensure that it conforms to the Standard of Performance established in this **Standard of Performance and Acceptance** section. Should the Product fail to operate in conformance with the Standard of Performance for any thirty (30) calendar days period, Vendor shall take corrective action as directed by WSDOT and, if the Product is Equipment, credit WSDOT a portion of the maintenance fees paid as provided in subsection **Error! Reference source not found.** of the **Equipment Maintenance** section.

25. Software Warranty

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

26. Equipment Warranty

- 26.1. Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of one (1) year, the Equipment Warranty Period, commencing upon the first day after the Acceptance Date.
- 26.2. During the Warranty Period, Vendor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Vendor's expense. Any defective Equipment shall be repaired or replaced for WSDOT so that it conforms to the Specifications.
- 26.3. Vendor agrees that all warranty service provided hereunder shall be performed by manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to WSDOT any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.
- 26.4. WSDOT agrees that Vendor will not be liable for any damages caused by the WSDOT's actions or failure of WSDOT to fulfill any of its responsibilities for site installation.
- 26.5. **THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.**

27 Software Upgrades and Enhancements

Vendor shall:

- 27.1 Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 27.2 Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to WSDOT; and
- 27.3 Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.

28 Maintenance and Support Services

Vendor agrees to provide Maintenance and Support Services as set forth in Schedule B, Scope of Work, in accordance with the requirements set forth in Exhibit A, RFQQ.

27 Vendor Commitments, Warranties and Representations

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

28 Training

Vendor agrees to provide training as set forth in Schedule B, Scope of Work, in accordance with the requirements set forth in Exhibit A, RFQQ.

29 Protection of WSDOT's Confidential Information

29.1 Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes WSDOT, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or SubVendors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSDOT's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or SubVendors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

29.2 Immediately upon expiration or termination of this Contract, Vendor shall, at WSDOT's option: (i) certify to WSDOT that Vendor has destroyed all Confidential

Information; or (ii) return all Confidential Information to WSDOT; or (iii) take whatever other steps WSDOT requires of Vendor to protect WSDOT's Confidential Information.

29.3 Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records.**

29.4 WSDOT reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

29.5 Violation of this section by Vendor or its SubVendors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contract Administration

30 Legal Notices

30.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid by electronic mail, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:

[Vendor]

Attn:

[Vendor address]

Phone:

E-mail:

To WSDOT at:

State of Washington

Department of Transportation

Attn: WSDOT Contract Administrator

310 Maple Park Ave. SE 2B1

Olympia, WA 98504-7408

Phone: (360) 705-7548

E-mail: missildj@wsdot.wa.gov

30.2 Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

30.3 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

31 Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax:

E-mail:

32 WSDOT Project Manager

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

Tyler Patterson
401 Second Ave South
Seattle, WA 98110

206.716.1134

Pattert@wsdot.wa.gov

33 Section Headings, Incorporated Documents and Order of Precedence

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

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

- m) Schedules A, B and C
- n) WSDOT [RFX] dated [date];
- o) Vendor's Response to *WSDOT [RFX]* dated *[date]*;
- p) The terms and conditions contained on WSDOT's purchase documents, if used; and
- q) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Software to WSDOT.

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

- r) Applicable federal and state statutes, laws, and regulations;
- s) Sections of this Contract;
- t) Schedule A; [include other Schedules, if appropriate]
- u) WSDOT [RFX] dated [date];
- v) Vendor's Response to *WSDOT [RFX]* dated *[date]*;
- w) The terms and conditions contained on WSDOT's order documents, if used; and
- x) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Software to WSDOT.

34 Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

35 Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by WSDOT and Vendor Contracting Officers. Only WSDOT Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of WSDOT.

36 Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent Vendor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any

claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

37 Governing Law

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

38 SubContractor

Vendor may, with prior written permission from WSDOT Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employee, or violations of the **Patent and Copyright Indemnification, Protection of WSDOT's Confidential Information, Ownership/Rights in Data, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors their agents or employees. The **Patent and Copyright Indemnification, Protection of WSDOT's Confidential Information, Ownership/Rights in Data, Software Ownership, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

39 Assignment

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

39.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve WSDOT of any of its duties and obligations hereunder.

40 Publicity

- 40.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.
- 40.2 Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

41 Review of Vendor's Records

- 41.1 Vendor and its SubVendors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 41.2 All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its SubVendors.
- 41.3 Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 41.4 It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

General Provisions

42 Patent and Copyright Indemnification

42.1 Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's use of the Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial WSDOTign, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:

- a) Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide WSDOT a refund. In the case of Product, Vendor shall refund to WSDOT its depreciated value. No termination charges will be payable on such returned Product, and WSDOT will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by WSDOT shall be refunded by Vendor.

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

- c) Vendor's compliance with any designs, specifications or instructions of WSDOT;
- d) Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or
- e) Use of the Product in a way not specified by Vendor; unless the claim arose against Vendor's Product independently of any of these specified actions.

43. Save Harmless

Vendor shall defend, indemnify, and save WSDOT harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractor, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save WSDOT harmless shall not be eliminated or reduced by any alleged concurrent WSDOT negligence.

44. Insurance

- 44.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance WSDOTribed in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.
- 44.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - b) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - c) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
 - d) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 44.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- 44.3 For Professional Liability Errors and Omissions coverage , Vendor shall:
- (i) provide an extended reporting period of six (6) years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for WSDOT's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to WSDOT, in the amount of \$75,000, during the initial and any subsequent terms of this Contract and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of

credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by WSDOT (the beneficiary) of a written demand therefor.

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

45 Industrial Insurance Coverage

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

46. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

47. Uniform Commercial Code (UCC) Applicability

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

48. Antitrust Violations

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by WSDOT. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

49. Compliance with Civil Rights Laws

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

50. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

51. 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.

52. Treatment of Assets

- 52.1. Title to all property furnished by WSDOT shall remain in WSDOT. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in WSDOT pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the “property” is Vendor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in WSDOT.
- 52.2. Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved by WSDOT, be used only for the performance of this Contract.
- 52.3. Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor’s negligence or that results from Vendor’s failure to maintain and administer that property in accordance with sound management practices.
- 52.4. Upon loss or WSDOT destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT thereof and shall take all reasonable steps to protect that property from further damage.
- 52.5. Vendor shall surrender to WSDOT all WSDOT property prior to completion, termination, or cancellation of this Contract.
- 52.6. All reference to Vendor under this section shall also include Vendor’s employees, agents, or SubVendors.

53. Vendor’s Proprietary Information

Vendor acknowledges that WSDOT is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor’s Proprietary Information, WSDOT will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

Disputes and Remedies

54. Disputes

- 54.1. In the event a bona fide dispute concerning a question of fact arises between WSDOT and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 54.2. The initiating party shall reduce its WSDOT description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
- 54.1.1. If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- 54.1.2. The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- 54.1.3. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

55. Attorneys' Fees and Costs

- 55.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 55.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

56. Non-Exclusive Remedies

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

57. Failure to Perform

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

58. Limitation of Liability

58.1 The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA, Termination for Default, and Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

58.2 Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, WSDOT, or their respective SubVendors.

58.3 If delays are caused by a SubVendor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.

58.4 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

59. Termination for Default

- 59.1 If either WSDOT or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. WSDOT reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by WSDOT to terminate the Contract.
- 59.2 In the event of termination of this Contract by WSDOT, WSDOT shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to WSDOT resulting from Vendor's breach. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.
- 59.3 If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 59.4 This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

60. Termination for Convenience

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

61. Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion,

WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

62. Termination for Conflict of Interest

WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

63. Termination Procedure

- 63.1 In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.
- 63.2 Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 63.3 Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received and Accepted by WSDOT, provided that in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.
- 63.4 Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, WSDOT may charge interest on the amounts due at one percent (1%) per month until paid in full.

64. Covenant Against Contingent Fees

- 64.1 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.

Schedule A

Product and Price List

COMPENSATION AND PAYMENT MILESTONES FOR GUARANTEED PILOT SITES

The total compensation to the Contractor under this SOW shall not exceed the lump sum amount of ##### (\$###,###). This lump sum price shall include all applicable taxes.

WSDOT shall pay the Contractor in accordance with the Payment and Milestone Schedule shown below for the Work actually performed by Vendor and accepted by WSDOT.

Payment and Milestone Schedule

Milestone and Pricing Table – Vehicle Passenger Detection System

Milestone	Qualifying Event	Guaranteed Date	Payment Amount
Milestone 1: Installation Readiness	<ul style="list-style-type: none"> • Notice to Proceed • Draft, Ongoing, and Final Project Schedule • Draft and Final Installation Plan • Draft and Final Tuning and Performance Verification Plan 		
Milestone 2: System Installation, Tuning, and Verification*	<ul style="list-style-type: none"> • Draft and Final Site Validation Reports 	July 31, 2015	
Milestone 3: System Acceptance	WSDOT Approval of the following: <ul style="list-style-type: none"> • Draft and Final System Acceptance Report • Draft and Final Maintenance Plan 	November 30, 2015	
Ongoing Maintenance and Operations Support	<ul style="list-style-type: none"> • Monthly Maintenance Report 	Monthly (include annual cost in the submitted cost table)	
Potential Sites and Site	<ul style="list-style-type: none"> • To be agreed upon by WSDOT and Contractor 	N/A	N/A

Relocation	prior to work effort.		
------------	-----------------------	--	--

*Milestone 2 – System Installation, Tuning, and Verification is considered Public Works and will be subject to prevailing wage requirements.

Schedule B

Scope of Work

Vehicle Passenger/Occupancy Detection System Scope of Work and Deliverables

1 OVERVIEW

This SOW will enable WSDOT to collect information about the number of passengers in each vehicle automatically and accurately through the use of computer equipment and cameras installed at multiple locations. This SOW is for the installation, tuning, and testing of a system to quantify the number of occupants / passengers in a vehicle.

2 LOCATIONS

2.1 Guaranteed pilot locations include:

2.1.1 I-405 NB – MP 25.9

2.1.2 I-405 SB – MP 25.1

3 PROJECT ADMINISTRATION

3.1 The Contractor shall conduct weekly project update meetings for the purpose of coordination, reporting, and resolving issues. Contractor responsibilities shall include creating agendas, taking minutes, and tracking action items. These meetings may be held via teleconference unless otherwise requested by WSDOT on specific occasions

3.2 The Contractor shall submit a Draft and Final Project Schedule and updates to the project schedule bi-weekly through System Acceptance.

4 SYSTEM INSTALLATION PREPARATION

4.1 The Contractor shall prepare a draft and final Installation Plan that includes roles and responsibilities, detailed description of the Work, a safety plan, and other relevant specifics of their installation.

4.2 The Contractor shall prepare a draft and final Tuning and Performance Verification Plan. The documentation shall include a description of the methods, results, and an interpretation in enough detail to define and establish a repeatable test.

4.3 The Contractor shall prepare a draft and final System Acceptance Test Plan. The documentation shall include a description of the approach, testing methods, and potential test scripts necessary to demonstrate and validate operational performance of the system as a whole.

4.4 WSDOT will review and provide comments to the Contractor within five (5) business days after receipt of draft documents. Deliverables shall not be considered Final until WSDOT has provided full approval.

4.5 The Contractor shall demonstrate installation readiness, including completion and acceptance of the above deliverable plans, to WSDOT's satisfaction prior to the initiation of any roadside installation activities. Payment of Milestone 1 will be tied to WSDOT's final acceptance of Installation Readiness.

5 SYSTEM INSTALLATION, TUNING AND VERIFICATION

- 5.1 The contractor shall procure, assemble, install, configure, tune and verify the operation of two (2) vehicle passenger detection systems at WSDOT specified locations on the I-405 Corridor.
- 5.2 WSDOT will provide traffic control at agreed upon times and locations to support lane closures, as specified in a prior section.
- 5.3 The contractor shall connect to the existing WSDOT provided electrical system.
- 5.4 The contractor shall connect to the existing WSDOT provided communication system and validate connectivity and ability to connect remotely, support WSDOT interactive use of the system, and transmit and receive data as required by system specifications and data and reports agreed upon with WSDOT.
- 5.5 The contractor shall independently tune and verify each vehicle passenger detection system installed, and provide a written certification of the completion of each site for WSDOT review and acceptance. Payment of Milestone 2 will be tied to WSDOT's final acceptance of documented notices.
- 5.6 The contractor shall prepare a draft and final Site Validation Report for each installed site.

6 SYSTEM ACCEPTANCE

- 6.1 Upon completion of all installations and tuning, the Contractor shall prepare and deliver a draft and final System Acceptance Report. Payment of Milestone 3 will be tied to WSDOT's final acceptance of this report, including demonstrated and WSDOT validated achievement of the 95% system accuracy requirement.
- 6.2 The Contractor shall provide WSDOT with independent system access necessary for review and validation of system performance statistics included in the report, prior to acceptance and payment of Milestone 3.

7 MAINTENANCE AND OPERATIONS

Upon System Acceptance the Contractor shall provide Maintenance and Operations services for all hardware and software delivered under this contract for up to 24 months. Maintenance responsibilities may be shared by WSDOT and the Contractor, if agreed upon.

- 7.1 The Contractor shall submit a Draft and Final Maintenance Plan. The Maintenance Plan shall include details of how maintenance activities will be performed including seasonal tuning of the equipment and a schedule of showing what activities will be performed and when each tuning will be performed.

- 7.2 WSDOT will provide routine field maintenance and support as discussed and agreed upon with the contractor. This may include camera and strobe cleaning, camera and strobe adjustments, or system hardware reboots as specified by the contractor.
- 7.3 The Contractor shall provide routine remote monitoring and maintenance on a monthly basis to ensure that the system accuracy continues to meet the performance requirements.
- 7.4 The Contractor shall only provide onsite in-person support if requested in writing by WSDOT, including agreement on the schedule and potential costs and travel expenses prior to the work.
- 7.5 The Contractor shall invoice WSDOT monthly for any maintenance performed during the previous month. Payment requests shall be accompanied by a Maintenance Report documenting any maintenance activities, labor hours, labor expenses, and travel expenses incurred during the previous month.

8 SITE RELOCATION

- 8.1 WSDOT reserves the option to relocate the system to other roadway facility sites, if needed. Should WSDOT choose to relocate, the Contractor shall provide remote assistance. If on-site assistance is requested in writing by WSDOT, the Contractor shall provide the assistance and be reimbursed for travel costs.
- 8.2 Once relocation is completed the contractor shall retune in accordance with the final Tuning and Performance Verification Plan and provide a System Performance Report.
- 8.3 The contractor shall submit a site relocation invoice that includes relocation activities, labor hours, labor expenses, and travel expenses incurred as a result of the relocation and system Tuning and Performance Verification.

9 SYSTEM REQUIREMENTS

- 9.1 Availability: The entire system shall be fully operational and collecting data 95.0% of the time, provided power is available at the cabinets.
- 9.2 Accuracy: The system shall accurately determine the number of vehicle occupants for 95.0% of the vehicles in the Express Toll Lanes.

10 DATA REPORTING, RETENTION, SHARING

- 10.1 The contractor shall make the data available to WSDOT in comma-separated values (text) 24 hours per day, seven days per week. WSDOT will provide a drop site for data to be uploaded to every 2 hours (or equivalent alternative).
- 10.2 The system shall have the ability to automatically redact any images collected by the system, or to provide unredacted images, at WSDOT's discretion.
- 10.3 WSDOT and the Contractor will review and mutually agree upon the results prior to publishing or reporting the data provided by the system outside of WSDOT Toll Division staff.

11 WARRANTY PERIOD

- 11.1 The contractor shall warrant the any Software is in good operating condition; free of malicious software, viruses, and spy ware.
- 11.2 The contractor shall fix or replace all Software that is defective or not performing in accordance with the performance requirements contained herein.
- 11.3 The contractor shall provide warranty repairs or replacements for any hardware component which is defective or fails for 12 months after system acceptance. Any failures or defects occurring after the initial warranty period shall be replaced at WSDOT's cost.
- 11.4 The contractor shall provide to WSDOT two copies of all manufacturer warranties prior to System Acceptance. Warranty materials shall be neatly bound and include information that ties it to the covered part.

12 TRAFFIC CONTROL

- 12.1 WSDOT will provide traffic control services in accordance with the traffic control plans developed by the WSDOT and in accordance with WSDOT's 2009 Work Zone Traffic Control Guidelines for in-lane Work required in this SOW.
- 12.2 The Contractor shall work with WSDOT to reduce the amount of traffic control required to complete the Work under this SOW. Modifications to field equipment should be conducted remotely when possible.
- 12.3 The Contractor shall request traffic control seven (7) Business Days prior to needing a shoulder or lane closures.
- 12.4 WSDOT will provide the following traffic control:
 - a. 2 SB 405 shoulder closures
 - b. 2 NB 405 shoulder closures
- 12.5 At its sole discretion, WSDOT may adjust the dates and hours of the provided traffic control.

13 PROJECT DELIVERY

The project shall be delivered in the following sections of work, with associated payment items :

- (a) Milestone 1: Installation Readiness
- (b) Milestone 2: System Installation, Tuning, and Verification Test
- (c) Milestone 3: System Acceptance

- (d) Ongoing Monthly Maintenance and Operations
- (e) Site Relocation

14 EQUIPMENT AND MATERIALS

14.1 The Contractor shall conduct all Work necessary to meet the requirements of the contract as contained herein, unless explicitly identified.

14.2 WSDOT will supply the following Work items:

- Traffic Control for agreed upon lane closures to support system installation
- Existing Electrical Infrastructure
- Existing Communication Infrastructure
- RS 900 and/or patch panel installed by WSDOT in coordination with the Contractor

Schedule C

Public Works and Prevailing Wage Terms and Conditions

Additional Terms and Conditions

Public Works and Prevailing Wage

This CONTRACT is subject to chapter 39.04 RCW, Public Work, and all applicable state statutes, including, but not limited to chapter 39.12 RCW, Prevailing Wage. The requirements Vendor must comply with include, but are not limited to, the following:

1.1. Contractor Registration

Vendors doing construction trade work in the Washington State are required to have a valid L&I Contractor Registration License in accordance with RCW 18.27.020 and RCW 19.28.420, as applicable.

Please visit the Washington State Labor and Industries website below for more information on contractor license registration requirements.

<http://www.lni.wa.gov/TradesLicensing/Contractors/HowReg/default.asp>

1.2. Employment Security Department Registration

Vendors doing construction trade work in Washington State are required to have a valid Employment Security Number issued by the Washington State Employment Security Department in accordance with RCW 50.12.070.

Please visit the Washington State Employment Security Department website for more information on registration requirements.

<http://www.esd.wa.gov/uitax/newbusiness/register-your-business.php>

1.3. Prevailing Wage

This CONTRACT is subject to the minimum wage requirements of chapter 39.12 RCW and to chapter 49.28 RCW (as amended or supplemented). On Federal-aid projects, Federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in Exhibit D of this CONTRACT. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in the CONTRACT Provisions.

The Vendor and any Subcontractors required by chapter 39.12 RCW, WAC 296-127-010, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by chapter 39.12 RCW or the DBRA. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in this CONTRACT, WSDOT does not imply that the Vendor will find labor available at those rates. The Vendor shall be responsible for any amounts above the minimums that will actually have to be paid. The Vendor shall bear the cost of paying wages above those shown in CONTRACT.

In the event the Project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Vendor shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law. In the event the Project involves both highway work and building work, Exhibit D-2 may list a Federal wage and fringe benefit rate for the highway work and a separate Federal wage and fringe benefit rate for the building work. The area in which the worker is physically employed shall determine which Federal wage and fringe benefit rate shall be used to compare against the State wage and fringe benefit rate.

If employing labor in a class not listed in Exhibit C on a State funded project only, the Vendor shall request a determination of the correct wage and benefits rate for that class and locality from the L & I Industrial Statistician and provide a copy of those determinations to the WSDOT Project Manager and WSDOT Contract Administrator.

The Vendor shall ensure that any Subcontractor that falls under the provisions of chapter 39.12 RCW because of the definition "Contractor" in WAC 296-127-010 complies with all the requirements of chapter 39.12 RCW.

The Vendor shall be responsible for compliance with the requirements of the DBRA and chapter 39.12 RCW by all Subcontractors engaged in any part of the Work necessary to complete the CONTRACT. Therefore, should a violation of this subsection occur by any Subcontractor that is providing Work or materials for completion of this CONTRACT whether directly or indirectly responsible to the Vendor, WSDOT will take action against the Vendor, as provided by the provisions of the CONTRACT, to achieve compliance, including but not limited to, withholding payment on the CONTRACT until compliance is achieved.

In the event WSDOT has an error (omissions are not errors) in the listing of the hourly minimum rates for wages and fringe benefits in this CONTRACT, the Vendor and any Subcontractor that is required to pay prevailing wages, shall be required to pay the rates as determined to be correct by the Washington State Department of Labor and Industries (or by the U.S. Department of Labor when that agency sets the rates). A written CONTRACT to CONTRACT will be prepared to ensure that this occurs. WSDOT will reimburse the Vendor for the actual cost to pay the difference between the correct rates and the rates included in this CONTRACT, subject to the following conditions:

1. The affected Vendor relied upon the rates included in this CONTRACT to prepare its Quote and certifies that it did so;
2. The allowable amount of reimbursement will be the difference between the rates listed and rates later determined to be correct plus only appropriate payroll markup the

employer must pay, such as, social security and other payments the employer must make to the Federal or State Government;

3. The allowable amount of reimbursement may also include some overhead cost, such as, the cost for bond, insurance, and making supplemental payrolls and new checks to the employees because of underpayment for previously performed Work; and
4. Profit will not be an allowable markup.

Vendors that anticipated, when they prepared their Proposals, paying a rate equal to, or higher than, the correct rate as finally determined will not be eligible for reimbursement.

1.4. Posting Notices

In a location acceptable to the Washington State Department of Labor and Industries, the Vendor shall ensure the following is posted:

1. One copy of the approved “Statement of Intent to Pay Prevailing Wages” for the Vendor and any Subcontractor that falls under the provisions of chapter 39.12 RCW because of the definition of “Contractor” in WAC 296-127-010;
2. One copy of the prevailing wage rates for the project;
3. The address and telephone number of the Industrial Statistician for L&I (along with notice that complaints or questions about wage rates may be directed there); and
4. FHWA 1495/1495A “Wage Rate Information” poster if the project is funded with Federal-aid.

1.5. Disputes

If labor and management cannot agree in a dispute over the proper prevailing wage rates, the Vendor shall refer the matter to the Director of the Washington State Department Labor and Industries (or to the U.S. Secretary of Labor when that agency sets the rates). The Director’s (or Secretary’s) decision shall be final, conclusive, and binding on all parties.

1.6. Required Documents

On forms provided by the Industrial Statistician of Washington State Department Labor and Industries, the Vendor shall submit to the WSDOT Project Manager the following for itself and for each Subcontractor covered under chapter 39.12 RCW that provided Work and materials for the CONTRACT:

1. A copy of an approved “Statement of Intent to Pay Prevailing Wages” L&I’s form number F700-029-000. WSDOT will make no payment under this CONTRACT for the Work performed until this statement has been approved by L&I and a copy of the approved form has been submitted to the WSDOT Project Manager.
2. A copy of an approved “Affidavit of Prevailing Wages Paid,” L&I’s form number F700-007-000. WSDOT will not release to the Vendor any funds retained under RCW 60.28.011 until all of the “Affidavit of Prevailing Wages Paid” forms have been approved

by L&I and a copy of all the approved forms have been submitted to the WSDOT Project Manager.

The Vendor shall be responsible for requesting these forms from L&I and for paying any approval fees required by L&I.

Certified payrolls are required to be submitted by the Vendor to the WSDOT Project Manager, for the Vendor and all Subcontractors on all Federal-aid projects and, when requested in writing by the WSDOT Project Manager, on projects funded with only WSDOT funds. If these payrolls are not supplied within ten (10) Calendar days of the end of the preceding weekly payroll period for Federal-aid projects or within ten (10) Calendar days from the date of the written request on projects with only WSDOT funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the CONTRACT unless the WSDOT Project Manager approves an alternate method to identify the labor used by the Vendor to compare with the labor listed in this CONTRACT.

1.7. Audits

WSDOT may inspect or audit the Vendor's wage and payroll records as provided in Section 1.7.

1.8. Worker's Benefits

The Vendor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If any payment required by Title 50 RCW or Title 51 RCW is not made when due, WSDOT may retain such payments from any money due the Vendor and pay the same into the appropriate fund. Such payment will be made only after giving the Vendor fifteen (15) Calendar Days prior written notice of the WSDOT's intent to disburse the funds to the Washington State Department of Labor and Industries or Washington State Employment Security Department, as applicable. The payment will be made upon expiration of the fifteen (15) Calendar Day period if no legal action has been commenced to resolve the validity of the claim. If legal action is instituted to determine the validity of the claim prior to the expiration of the fifteen (15) Calendar Day period, WSDOT will hold the funds until determination of the action or written settlement agreement of the appropriate parties.

The Vendor shall include in the various items in their Proposal all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Vendor will not be entitled to any additional payment for: (1) failure to include such costs, or (2) determinations made by the U.S. Department of Labor or the Washington State Department of Labor and Industries regarding the insurance coverage.

The Public Works Contract Division of the Washington State Department of Labor and Industries will provide the Vendor with applicable industrial insurance and medical aid classification and premium rates. After receipt of a Revenue Release from the Washington State Department of Revenue, WSDOT will verify through the Department of Labor and Industries that the Vendor is current with respect to the payments of industrial insurance and medical aid premiums.

1.9. Retainage

Pursuant to Title 60.28 RCW, a sum of 5-percent of the monies earned by the Vendor will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW, and (2) the claims of any person arising under the CONTRACT.

Monies retained under the provisions of Title 60.28 RCW shall, at the option of the Vendor, be:

1. Retained in a fund by WSDOT, or
2. Deposited by WSDOT in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Vendor). Deposits are to be in the name of the Washington State Department of Transportation (WSDOT) and are not to be allowed to be withdrawn without WSDOT's written authorization. WSDOT will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Vendor as the interest accrues.

At the time the CONTRACT is executed the Vendor shall designate the option desired. The Vendor in choosing option (2) agrees to assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. WSDOT may also, at its option, accept a bond in lieu of retainage.

Release of the retainage will be made sixty (60) Calendar days following the Completion Date (pursuant to chapter 39.12 RCW and Title 60.28 RCW) provided the following conditions are met:

1. On CONTRACTs totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Vendor and all Subcontractors are on file with the WSDOT (RCW 39.12.040).
3. On CONTRACTS totaling more than \$35,000, a release has been obtained from the Washington State Employment Security Department.

4. On CONTRACTs totaling more than \$35,000, a release has been obtained from the Washington State Department of Labor and Industries.
5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Vendor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the WSDOT sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.