

Contract Number [K###]

Draft Date December 1, 2016

For

Toll Back Office System Replacement

Between the

Washington State Department of Transportation

and

[Vendor Name TBD]

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CONTRACT

This Contract number [Number TBD] for Toll Back Office System Replacement (Contract), is made and entered into by and between the Washington State Department of Transportation (WSDOT), an agency of the State of Washington, and [Vendor Name TBD], a (TBD) company, licensed to do business in the State of Washington (Vendor).

ARTICLE I. RECITALS

1.1 WSDOT currently provides customer service toll collection for its roadway toll facilities under three separate contracts. The in-roadway toll collection system for State Route 16 Tacoma Narrows Bridge is provided under *UCO 3854, Toll System Operations Agreement for Tacoma Narrows Bridge Project*, dated December 21, 2005, also known as *K613 (K613)*. The in-roadway toll collection systems for State Route 520 Bridge, Interstate 405 Express Toll Lanes, and State Route 167 High Occupancy Toll Lanes are provided under *Contract Number K637 for Roadway Toll Systems Supply, Installation, and Maintenance*, dated June 20, 2012 (**K637**). The toll collection information collected by the in-roadway systems is electronically transmitted to a third vendor WSDOT contracts with to perform the back office system function (hardware, software, and services that interface with the in-roadway toll facility to process toll transactions) and the customer service center function (toll collection customer account management system and services that are integrated with and supported by the back office system). This third contract is *Contract Number K397 for Establishing and Operating a Statewide Tolling Customer Service Center*, dated December 22, 2009 (**K397**).

1.2 The Washington State Legislature directed WSDOT to issue a request for proposal for a new tolling customer service toll collection system in Laws of 2016, Chapter 14, Section 209(8)(b). Pursuant to this legislative directive, WSDOT commenced a multi-step procurement process that involves two separate procurements: First, the procurement of the back office system; and second, the procurement of the customer service center. This Contract is a result of the back office procurement process.

1.3 WSDOT commenced the procurement of the back office system by issuing *Request for Qualification, RFQ-2016-0901(R), Washington State Good To Go! Back Office System offered by the Washington State Department of Transportation*, dated September 1, 2016 (**RFQ**) under which WSDOT established a short-list of vendors qualified to design, develop, implement, operate, and maintain a new back office system to replace the existing back office system provided under K397.

1.4 The RFQ was followed by *Request for Proposal, RFP-2016-1201, Washington Good to Go! Back Office System offered by the Washington State Department of Transportation*, dated December 1, 2016 (**RFP**) under which WSDOT solicited proposals from the vendors, who were short-listed under the RFQ process, to design, develop, implement, operate, and maintain the new back office system that will replace the existing system provided under K397.

1.5 Vendor submitted a proposal responsive to the RFP. WSDOT evaluated all properly submitted proposals to the RFP and selected the proposal of Vendor.

1.6 WSDOT and Vendor have negotiated this Contract pursuant to WSDOT's express reservations of all rights available to it by law in administering the RFP, including but not limited to the right to negotiate with a proposer without being bound by any provisions in its proposal. WSDOT finds that the terms and conditions negotiated pursuant to such reservation of rights, and as set forth in this Contract, are within the scope of the RFP and remain more advantageous to WSDOT than those in any other proposal received in response to the RFP. In addition, WSDOT has determined that entering into this Contract with Vendor will meet WSDOT's needs and will be in WSDOT's best interest.

1.7 At the time of execution of this Contract by Vendor, the work contemplated to be performed by Vendor under this Contract may be unfunded and may not be funded in the future. As such, the commencement of any work under this Contract is contingent upon WSDOT's receipt of funding for the project.

1.8 WSDOT is authorized to enter into this Contract under the authority delegated to it by the Director of the Washington State Department of Enterprise Services pursuant to RCW 39.26.090, and as detailed in the Director's delegation letter dated September 1, 2016, and Ch. 47.56 RCW.

NOW, THEREFORE, in consideration of the covenants contained herein and for the other goods and valuable consideration, the receipt and adequacy of which are hereby acknowledged, WSDOT and Vendor agree as follows.

**ARTICLE II. DEFINITIONS; PURPOSE;
ALTERNATE PURCHASE METHODS NOT PRECLUDED**

2.1 Definitions.

All capitalized terms and abbreviations used in this Contract but not expressly defined herein, have the respective meanings set forth in Appendix 1 to the RFP.

2.2 Purpose.

The purpose of this Contract is to define the legal obligations of WSDOT and Vendor with regard to Vendor's design, development, implementation, testing, operation, and maintenance of a new Back Office System to replace the existing system provided under K397. This new System will provide back office support to WSDOT's statewide *Good To Go!* toll operations, combining two distinct but integrated subsystems: (a) the Operational Back Office where toll transactions are created; and (b) the Commercial Back Office for account management, billing, and customer information storage, maintenance, and access. Additionally, the purpose of this Contract is to define the legal obligations of WSDOT and Vendor with regard to: Vendor's provision of a Project Office Space; the integration into the new Back Office System of additional WSDOT Roadway Toll Systems, the Washington State Ferries, and other fee charging facilities such as parking, which will be at WSDOT's sole discretion; the ongoing

Vendor coordination and support of the operations of the Customer Service Center, which vendor WSDOT is procuring under separate contract; and the provision of a Data Warehouse, which will be at WSDOT's sole discretion.

2.3 Alternate Purchases and Methods Not Precluded.

This Contract shall neither oblige nor preclude WSDOT from purchasing products or services of any kind from any source, including Vendor, for any other project, system, operation, contract, or other concern of WSDOT except as defined by SOW(s) originally included with, or amended to, this Contract.

ARTICLE III. CONTRACT STRUCTURE

3.1 Overview

It is anticipated the scope of work covered by this Contract will evolve as the Work progresses, technology and market offerings evolve, and as changes take place in systems with which the Back Office System will interact. Accordingly, WSDOT has structured the Contract Documents in a way to allow flexibility under a single procurement while avoiding duplication of generally applicable terms and conditions. This process is accomplished through the execution of Statements of Work and Work Packages, as further detailed herein.

3.2 General Terms. The general terms applicable to all Work performed under this Contract are set forth in the main body of this Contract, and any Amendments or Change Orders thereto.

3.3 Statements of Work (SOW). WSDOT has segmented the Work into six (6) defined SOWs, with the option to add other segments of Work through the execution of new SOWs to engage the Vendor to perform additional Work that are within the scope of the RFP and Contract. The initial six (6) SOWs are attached to this Contract as **Exhibits A-F**, and are further described **Section 6.2**.

3.4 Work Packages. Each SOW may include a series of Work Packages. Work Packages are identifiable sub-segments of Work, the sum of which constitute the scope of work under a single SOW.

ARTICLE IV. TERM AND EXTENSIONS

4.1 Term. Upon execution of this Contract by both parties, the parties are bound to the terms and conditions herein subject to the term provisions as follows:

4.1.1 Term Pending Project Funding. The parties expressly acknowledge that the Work to be performed under this Contract is contingent upon WSDOT obtaining funding for the Project and that Vendor is prohibited from performing any of the Work until and unless WSDOT issues the initial Notice to Proceed to Vendor to commence Work under SOW 1. The Contract term pending Project funding shall terminate upon the earlier occurrence of the following:

4.1.1.1 In the event the Project is funded, upon WSDOT's issuance of the initial Notice to Proceed to Vendor to commence Work under SOW 1; or

4.1.1.2 In the event the Project remains unfunded for two (2) consecutive State legislative sessions following Contract execution, upon written notice of either party to the other party that it desires to terminate this Contract.

4.1.2 Initial Term. In the event WSDOT issues the initial Notice to Proceed to Vendor to commence Work under SOW 1, as provided in **Section 4.1.1.1**, the initial term of this Contract shall be six (6) years, commencing upon the date of WSDOT's issuance of said initial Notice to Proceed to Vendor, unless terminated early as provided elsewhere herein.

4.2 Extensions. At its sole option, WSDOT may extend the operation and maintenance phase of this Contract for up to six (6) additional one-year terms or a combination thereof. The term may be further extended upon the mutual written agreement of the parties.

ARTICLE V. PRICE; TAXES; INVOICE; PAYMENT

5.1 Price.

5.1.1 General. Vendor agrees to provide the Services and Deliverables under this Contract at the Prices and in accordance with the Pricing and Delivery Schedules stated in the applicable SOWs and **Exhibit I - Labor Rates**, as applicable, as may be modified by written amendments thereto.

5.1.2 No Advance Payment. No advance payment shall be made for the Deliverables and Services furnished by Vendor pursuant to this Contract.

5.1.3 Pricing During Extension Periods. If WSDOT elects to exercise any optional Contract extension, the Vendor may annually request (in writing) that the monthly Maintenance and Operations Prices listed in **Exhibit B -- SOW 2** be adjusted by WSDOT based on the CPI-W Index for the Seattle-Tacoma-Bremerton, Washington area. The adjustment shall be determined by comparing the July CPI-W index for the most current year with the July CPI-W index of the previous year. Any annual adjustment increase shall be capped at 5.0%.

5.1.4 Change Order Pricing. Where applicable, Vendor agrees to perform Change Orders at the billing rates set forth in the Pricing and Delivery Table set forth in the applicable SOW. If WSDOT issues a Change Order subsequent to Fiscal Year xx that includes any of the price elements listed in the applicable Pricing and Delivery Tables, the respective listed price(s) shall be adjusted by WSDOT based on the CPI-W Index for the Seattle-Tacoma-Bremerton, WA area. The adjustment shall be determined by comparing the July CPI-W index for the fiscal year in which the Change Order is executed with the July 20xx CPI-W index. Any adjustment increase shall be capped at 10.0% annually.

5.1.5 Price Warranty. Vendor warrants that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the prices, terms, warranties, and benefits presently being offered by Vendor to any governmental entity purchasing substantially similar Products and Services and quantity under similar terms. If,

during the term of this Contract, Vendor shall enter into contracts with any governmental entity providing greater benefits or more favorable terms, prices and warranties than those provided by this Contract, or reduces prices for any of the Products or Services during the term, Vendor shall be obligated to provide the same to WSDOT for subsequent purchases made under this Contract.

5.1.6 System Modifications. For the term of this Contract, Vendor shall supply any System Modification generally made available to customers as such System Modifications become available. Vendor agrees to provide such System modifications pursuant to terms, warranties, and prices that are comparable to or better than the terms, warranties, and prices then being offered by Vendor to any other governmental entity purchasing the same quantity under similar conditions.

5.2 Taxes.

5.2.1 WSDOT will pay sales and use tax, if any, during the life of this Contract, as may be required by Washington State law. The Vendor shall collect from WSDOT retail sales tax in the amount required by law, if any, and pay such tax to the Washington State Department of Revenue. 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.

5.2.2 Prior to commencing Work, 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.

5.2.3 All payments accrued by Vendor on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

5.3 Invoice; Payment.

5.3.1 Payments made by WSDOT to Vendor are full compensation for all labor, Deliverables, and Services. No additional compensation will be available, except by executed amendments to this Contract through an Amendment or Change Order.

5.3.2 Payments of invoices shall be made in accordance with the Milestones and payment terms set forth in the applicable SOW.

5.3.3 Vendor shall submit properly itemized invoices to the WSDOT Invoicing representatives identified in **Exhibit G** in hard copy duplicate and email an electronic copy of each invoice (.pdf). Vendor shall submit Operation and Maintenance invoices no more than once per month. Invoices shall provide and itemize, as applicable, the following items and include a certification by Vendor that the Services were performed or Deliverables produced as specified under the Contract:

- 5.3.3.1** WSDOT Contract number [Number TBD], SOW and NTP numbers;
- 5.3.3.2** Vendor name, address, phone number, and Federal Tax Identification Number;
- 5.3.3.3** Description of Deliverables and/or Services, including quantity delivered;
- 5.3.3.4** Date(s) of delivery, acceptance and/or completion as appropriate;
- 5.3.3.5** Net invoice Price for each item and Deliverable Number;
- 5.3.3.6** Applicable taxes;
- 5.3.3.7** Other applicable charges;
- 5.3.3.8** Total invoice Price; and
- 5.3.3.9** Payment terms.

5.3.4 WSDOT may withhold from Vendor's payment on an invoice any amounts which are in dispute or which Vendor owes WSDOT under this Contract, provided that WSDOT notify Vendor in writing upon review of the invoice and explain the basis for withholding payment, and subject to WSDOT's exercise of its other rights and remedies.

5.3.5 Amounts due WSDOT by Vendor, including but not limited to Liquidated Damages or other damages, or claims for damages, may be deducted or set-off by WSDOT from any money payable to Vendor pursuant to this Contract.

5.3.6 Timely and consistent performance is of the essence in this Contract. If Vendor fails to perform any Work or obligation outlined in the Contract, Change Order, or Amendment for any reason other than Force Majeure, including but not limited to a protest or dispute, WSDOT may withhold any payments due under the Contract. Where the Work is to be performed monthly, the payment may be withheld until the task is properly performed and no back payment for unperformed tasks will be due.

5.3.7 Retainage.

5.3.7.1 WSDOT shall retain 10% of the Price for each Deliverable payment during Development and Implementation Phases 1 and 2 (Retainage).

5.3.7.2 Vendor may submit an invoice following System Acceptance of all Deliverables and Services in Development and Implementation Phase 1. WSDOT will pay Vendor fifty percent (50%) of the Retainage for Development and Implementation Phase 1 within thirty (30) Calendar Days following receipt by WSDOT of a properly completed invoice.

5.3.7.3 Vendor may submit an invoice following System Acceptance of all Deliverables and Services in Development and Implementation Phase 2. WSDOT will pay Vendor fifty percent (50%) of the Retainage for Development and Implementation Phase 2 within thirty (30) Calendar Days following receipt by WSDOT of a properly completed invoice.

5.3.7.4 Vendor may submit an invoice following Final System Acceptance. WSDOT will pay Vendor all remaining Retainage within thirty (30) Calendar Days following receipt by WSDOT of a properly completed invoice.

5.3.8 Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.

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

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

5.3.11 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 (\$1.00). 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 Product or Service, or receipt of Vendor's properly prepared invoice, whichever is later.

5.3.12 In the event an overpayment is made to Vendor under this Contract, Vendor shall refund to WSDOT the full amount of any such erroneous payment or overpayment within thirty (30) Calendar Days of the date of the written notice of such erroneous payment or overpayment, as issued by WSDOT. If Vendor fails to refund the erroneous payment or overpayment within that thirty (30) Calendar Day period, WSDOT may charge late payment fees as set forth in **Section 19.6** herein. The provisions in this Section shall survive the expiration or termination of this Contract.

ARTICLE VI. SCOPE OF WORK; STATEMENTS OF WORK; TIME IS OF THE ESSENCE

6.1 Scope of Work General

6.1.1 The scope of work for this Contract is multi-segmented, with the detailed terms and conditions of each segment set forth in a Statement of Work, which together with the general terms and conditions set forth in the main body of this Contract, combine to establish the overall scope of work for this Project.

6.1.2 Vendor shall furnish all Products, cables and connections, installation, integration, testing, labor, personnel, transportation, materials, storage, tools, supplies, permits, software, licenses, equipment, warranties, reports, documentation, and other Services necessary to and supply and implement, on a turnkey basis, a fully functional Back Office System fully meeting the SOWs issued by WSDOT under this Contract. Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of the Work.

6.2 Statements of Work (SOW)

6.2.2 Initial SOWs. WSDOT has segmented the Work into six (6) defined SOWs, with the option to add other segments of Work through the execution of new SOWs to engage the Vendor to perform additional Work that are within the scope of the RFP and Contract. The initial six (6) SOWs are as follows:

6.2.2.1 SOW 1 - Development and Implementation. The initial Work to design, develop, install, implement, and test the System and integrate into the System the existing SR 520 Bridge, I-405 Express Toll Lanes, SR 167 High Occupancy Toll Lanes, the SR 16 Tacoma Narrows Bridge, and SR 99 Tunnel Roadway Toll Systems and the provision of Project Office Space is detailed in SOW 1, attached as **Exhibit A**.

6.2.2.2 SOW 2 - Operation and Maintenance. The Work to operate, maintain, and support the System is detailed in SOW 2, attached as **Exhibit B**.

6.2.2.3 SOW 3 – WSF Integration. The Work to integrate into the System the Washington State Ferry toll collection system is detailed in SOW 3, attached as **Exhibit C**.

6.2.2.4 SOW 4 – I-405 Integration. The Work to integrate into the System the I-405 Express Toll Lane System from Bellevue to Renton Roadway Toll System, is detailed in SOW 4, attached as **Exhibit D**.

6.2.2.5 SOW 5 – SR 167 Integration of Image-Based Transactions. The Work to design, develop, test and implement the integration of image-based transactions between the System and the SR 167 Roadway Toll Facility, is detailed in SOW 5, attached as **Exhibit E**.

6.2.2.6 SOW 6 – System Enhancements. **TBD – shall be detailed in Exhibit F.**

6.2.3 Additional System Integration. For each new Roadway Toll System and other fee charging facilities such as parking WSDOT elects to have Vendor integrate into the System under this Contract, WSDOT will issue a new SOW. Each such SOW will amend the Contract and be attached as a new Exhibit to the Contract.

6.2.4 SOW Termination. Each SOW may be terminated in accordance with the termination provisions of **Article XVIII** of this Contract, the termination provisions of the SOW, or as mutually agreed in writing by the parties. In any event, each SOW shall terminate concurrent with the termination of this Contract for whatever reason.

6.2.5 Compensation and Payment Milestones. Vendor shall be compensated for the Work performed in accordance with the terms of this Contract and the applicable SOW, which SOW shall further detail the Payment and Milestone Schedule.

6.2.6 Notices to Proceed. Notices to Proceed (NTP) are required before Vendor commences any segment or sub-segment of Work. Each SOW will require one or more NTPs to authorize the Work it details. An NTP may authorize only selected Work Packages defined within the corresponding SOW without authorizing other Work Packages. Vendor shall

not commence Work on any segment of sub-segment of Work until and unless the WSDOT Project Manager has issued a written NTP to Vendor for the applicable Work Package.

6.3 Time is of the Essence.

Time is of the essence for this Contract. Failure to meet the Guaranteed Dates for the Milestones as set forth in Appendix 2 to the RFP, and the applicable SOW may result in the assessment of Liquidated Damages as set forth in **Section 19.9** herein.

ARTICLE VII. GUARANTEE DATES

7.1 Guaranteed Dates.

Vendor shall provide the stated Deliverable by the Guaranteed Dates for each Milestone, as provided in the SOW 1 Payment and Milestone Schedule. The Guaranteed Dates shall be used as a basis for WSDOT's assessments of Incentives and Liquidated Damages, as provided in Section 19.9 herein.

7.2 Adjustment to Guaranteed Dates.

7.2.1 WSDOT-Caused Delay.

7.2.1.1. In the event Vendor believes WSDOT has not performed the WSDOT obligations in this Contract in a timely manner such that WSDOT's delay causes a corresponding delay in Vendor achieving Phase 1 Go Live or Phase 2 Go Live by the Guaranteed Dates set forth in SOW 1, Vendor shall notify WSDOT of the such delay in writing within ten (10) Business Days of the date Vendor knew or should have reasonably known under the circumstance of WSDOT or its contractor's alleged delay.

7.2.1.2 If WSDOT concurs with Vendor that its action or inactions caused a delay to Vendor achieving the Go Live Guaranteed Date(s), then WSDOT will establish a new Go Live Guaranteed Date, as applicable, and provide a response within three (3) Business Days of receipt of Vendor's notice submitted pursuant to **Section 7.2.1.1** above. The new Go Live Guaranteed Date, as applicable, shall be established by Change Order amending the applicable SOW and the Payment and Milestone Schedule set forth in the applicable SOW.

7.2.1.3 If WSDOT does not concur with Vendor that its actions or inactions caused a delay to Vendor achieving the Guaranteed Date(s) for Go Live, as applicable, Vendor shall comply with Disputes and Remedies process in **Article XIX** of this Contract. Failure to comply with said process shall result in the Vendor waiving its right to seek either additional time or compensation.

7.2.1.4 Vendor shall continue its performance of the Work in accordance with the Payment and Milestone Schedule set forth in SOW 1 pending resolution of any dispute under this Section.

7.2.1.5 Vendor shall keep full and complete records supporting the alleged WSDOT-caused delay of Go Live, and shall permit WSDOT to have access to those

records and any other records as may be deemed reasonably necessary by WSDOT to assist in evaluating Vendor's claim.

7.2.2 Vendor-Caused Delay. No adjustment in any Guaranteed Date will be made if the delay in Vendor's performance of the Work was caused by the of the acts, errors, or omissions of the Vendor; provided, that WSDOT may adjust a Guaranteed Date, if at its sole option and discretion WSDOT determines it is in the best interest of the State to do so; further provided, that any such adjustments may be subject to additional conditions as deemed appropriate by WSDOT.

ARTICLE VIII. CHANGE ORDERS

8.1 Change Orders.

8.1.1 WSDOT reserves the right to authorize and/or require changes in the Work within the general scope of an SOW pursuant to a Change Order. Such changes shall not invalidate the Contract nor release the surety, and the Vendor agrees to perform the Work as altered. Among others, these changes may include:

8.1.1.1 Deleting any part of the Work,

8.1.1.2 Adding new Work,

8.1.1.3 Otherwise modifying the scope of the Work,

8.1.1.4 Altering facilities, equipment, materials, Services provided by WSDOT, and

8.1.1.5 Ordering the Vendor to speed up or delay the Work.

8.1.2 If WSDOT determines that a change in the Work directed by WSDOT increased or decreased the Vendor's costs or time required for performance of the Work, WSDOT will make an equitable adjustment, excluding the loss of anticipated profits, to the Contract. The equitable adjustment will be by agreement with the Vendor. However, if the parties are unable to agree, WSDOT will determine the amount of the equitable adjustment and adjust the time as WSDOT deems appropriate. Extensions of time will be allowed only for that period equal to the time WSDOT determines the Critical Path was delayed. WSDOT's decision concerning equitable adjustment and extension of time shall be final.

8.1.3 The Vendor shall maintain concurrent time and materials records for all Work performed which it believes constitutes extra Work pending issuance of a Change Order or resolution of any dispute in accordance with **Article XIX** below.

8.1.4 The Vendor shall proceed with WSDOT-directed changes in the Work upon receiving:

8.1.4.1 A written Change Order and NTP approved by WSDOT, or

8.1.4.2 A written order from WSDOT before actually receiving the written Change Order.

8.1.5 The Vendor shall obtain written consent of the surety or sureties if WSDOT requests such consent.

ARTICLE IX. BONDS

9.1 Bonds.

9.1.1 Design, Installation, and Testing Work. The Vendor shall supply a separate Performance Bond for each SOW in the amount of fifty percent (50%) of the total Price for the design, development, installation, and testing of the Work covered by the applicable SOW. Vendor shall provide said Performance Bond for the System covered by SOW 1 prior to the Effective Date of this Contract. For each and every other SOW, Vendor shall provide the applicable Performance Bond prior to WSDOT issuing the initial Notice to Proceed for said SOW.

9.1.2 Maintenance and Operations. As a condition to obtaining Final System Acceptance, Vendor shall provide a separate Maintenance and Operations Bond for the System in the amount of (100%) of the total Price for the initial Maintenance and Operations Term (four (4) years commence upon the date of WSDOT's written issuance of the Development and Implementation Phase 1 System Acceptance). Vendor shall renew each Maintenance and Operations Bond at the time of each one-year extension, if any, of the Maintenance and Operations Term for all aspects of the entire System.

9.1.3 Bond Requirements. Each Bond shall:

9.1.3.1 Be in substantially the same form as attached hereto as **Exhibit H Performance Bond and/or Maintenance and Operations Bond.**

9.1.3.2 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;

9.1.3.3 Be conditioned upon the faithful performance of the Contract by Vendor within the designated time periods;

9.1.3.4 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 the applicable SOW, 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.

9.2 WSDOT may require sureties or surety companies on a Performance Bond and/or Maintenance and Operations Bond secured under this Contract for the System to 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.

9.3 Upon the request of any person or entity appearing to be a potential beneficiary of a Performance Bond and/or Maintenance and Operations Bond covering payment of obligations arising under this Contract, Vendor shall promptly furnish a copy of the applicable Performance Bond and/or Maintenance and Operations Bond or shall permit a copy to be made.

ARTICLE X. PERSONNEL

10.1 Vendor Personnel.

10.1.1 Vendor shall provide Key Project Personnel to perform the Work under this Contract. Key Project Personnel shall be assigned to each SOW for the duration of the applicable SOW. The Key Personnel shall be dedicated to the Project at the appropriate level of involvement based on their role/function as agreed to by WSDOT in the Vendor's approved project schedule.

10.1.2 All contact information for the Key Project Personnel for the Contract shall be as provided in **Exhibit G**.

10.1.3 Substitution of Vendor Key Project Personnel

10.1.3.1 The individuals listed in **Exhibit G** are designated to serve as Vendor Key Project Personnel for each SOW and are expected to remain dedicated throughout the entire major phase of Work or the completion of their assigned tasks within the major phase of Work as per the approved SOW Project Schedule.

10.1.3.2 No substitutions of Vendor Key Personnel will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, resignation from the Vendor or its Subcontractor or as otherwise approved by the WSDOT Project Manager. In any of these events, substitutions will be allowed only when the WSDOT Project Manager specifically agrees to the substitution in writing. Vendor shall promptly notify WSDOT of the unavailability of a Vendor Key Personnel for any period longer than fifteen (15) Calendar Days.

10.1.3.3 All proposed substitutes of personnel must have qualifications at least equal to that of the person initially listed in Section 9.1.2 above. The resumes of the current individual listed in the above table shall become the minimum requirement for qualifications for successor personnel. All proposed substitutes must have educational qualifications and work experience equal to or better than the individual being replaced. It is Vendor's responsibility to establish the substitute personnel meets these minimum qualifications.

10.1.3.4 All requests for substitutions must provide a detailed explanation of the circumstances necessitating the proposed substitutions, a resume of the proposed substitute signed by the proposed substitute, a copy of the official resume of the previous individual for comparison purposes, and any other information requested by the

WSDOT Project Manager that he/she deems necessary to decide the evaluate the proposed substitution. Vendor shall provide additional information, as may subsequently be requested by the WSDOT Project Manager. WSDOT shall be allowed to interview replacements, if WSDOT so desires. WSDOT may, in its sole discretion, accept or reject any proposed substitute.

10.1.3.5 Upon WSDOT's approval of a Key Project Personnel substitute for this SOW, the change in the contact information and the effective date of such staff replacement shall be by written Amendment to **Exhibit G** of the Contract.

10.1.3.6 It is expressly understood and agreed that nothing herein does or is intended to relieve the persons filling the Key Project Personnel listed herein from direct responsibility for the fulfillment of the terms and conditions of this SOW and the other Contract Documents.

10.2 WSDOT Personnel.

10.2.1 WSDOT shall provide to Vendor timely and reasonable access to appropriate WSDOT personnel, contractors, and consultants as necessary for Vendor to perform the requirements of this Contract.

10.2.2 The WSDOT Project Manager will be the principal contact for Vendor concerning the Work under this Contract. The WSDOT Project Manager information is provided in **Exhibit G**. WSDOT may assign an SOW Project Manager to be the principal contact for Vendor concerning the Work under the applicable SOW. In the event WSDOT assigns an SOW Project Manager, the SOW Project Manager information will be provided in **Exhibit G**.

ARTICLE XI. VENDOR'S RESPONSIBILITIES

11.1 Prompt Work.

Vendor warrants that it is available to perform the Work within the time specified in this Contract. Vendor will begin Work promptly and will perform the Work in a continuous and diligent manner, and Vendor shall not interrupt the Work except as may be provided under this Contract.

11.2 Qualified Workers.

Vendor shall be responsible to ensure that all of its employees and Subcontractor employees are properly trained, certified, or licensed as appropriate and are properly qualified by education and experience to perform the Work. Vendor shall avoid understaffing the Work or shuffling personnel assigned.

11.3 Site Security.

Vendor shall conform in all respects with physical, fire, or other security regulations, including but not limited to Washington State Office of the Chief Information Officer standards and guidelines. Vendor shall take reasonable precautions to ensure that the property is secure from unauthorized intruders, vandalism or any other unlawful activity.

11.4 Coordination and Cooperation.

11.4.1 Vendor shall cooperate with WSDOT, WSDOT contractors, and other vendors, if any, in an attempt to see that the Work is properly performed on schedule and in accordance with the requirements of the applicable SOW. Vendor shall collaborate with any other WSDOT vendor and coordinate its Work with the work of such other vendor(s), if any, which could affect the Work, and Vendor shall proceed in such manner as not to interfere or delay the progress of the work as a whole.

11.4.2 If any part of Vendor's Work depends, for proper execution or results, upon the work of any other WSDOT vendor(s), Vendor shall inspect and immediately report in writing to WSDOT any defects in the work of such other vendor that renders it unsuitable for such proper execution or results. Failure of Vendor to do so shall constitute its acceptance of the other vendor's work as fit and proper for the reception of Vendor's Work, except as to defects that may develop in the other vendor's work after the execution of Vendor's Work.

11.4.3 In cases of disagreement or disputes between Vendor and any other vendor that could delay or interfere with Vendor's Work due to the failure to collaborate and cooperate, or which cannot be resolved between Vendor and the others involved, Vendor shall give immediate written notice to WSDOT specifying in detail the disagreement or dispute.

11.4.4 Notwithstanding the existence of a defect, dispute, or disagreement between WSDOT and Vendor, Vendor shall diligently and without interruption proceed with the Work at such rates of progress to complete the Work on time, to the extent able under the circumstances and without incurring additional costs or expenses.

11.5 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.

11.6 Compliance Requirements.

11.6.1 Vendor shall comply with all applicable Laws and Regulations, and all applicable nondiscrimination laws and regulations, including but not limited to: Title VI, Non-Discrimination, Title 49 C.F.R., Part 21 and Title VII of the Civil Rights Act; 42 U.S.C. § 12101 et seq., the Americans with Disabilities Act; 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, Vendor may be declared ineligible for further SOWs under this Contract and other contracts with WSDOT.

11.6.2 Vendor shall comply with all applicable WSDOT tolling policies, procedures, and business rules.

11.6.3 The Project shall comply with all applicable State information technology policies, procedures, and practices, and any amendments thereto, including but not limited to the Washington State Office of the Chief Information Officer IT Security Policy 141, IT Security Standards 141.10 and IT Security Guidelines Policy 402-G2.

11.7 WSDOT Access and Inspection.

At all times under this Contract, WSDOT shall have free and unrestricted access to the Vendor's facilities for monitoring, inspection, testing, observation and other purposes, and Vendor shall cooperate with WSDOT with respect thereto. WSDOT shall perform its inspections and reviews in compliance with Vendor's safety and security procedures, and shall endeavor to conduct any such inspection in a manner causing minimum interference with Vendor's activities. No inspection, review or failure to inspect shall relieve Vendor from duties or obligations hereunder.

11.8 Ambiguities.

11.8.1 Vendor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of WSDOT any conflicts or ambiguities contained therein. Vendor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, said documents shall not be interpreted or construed against the person who prepared them and instead other rules of interpretation and construction shall be used.

11.8.2 WSDOT's final answers to the questions posed during the procurement process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

11.9 Data Security and Confidentiality.

11.9.1 Vendor shall provide systems and procedures to securely maintain toll account and travel records as confidential and belonging to WSDOT and shall only use data obtained from the Project for WSDOT intended purposes. Vendor shall not disclose Data except by express direction from WSDOT.

11.9.2 Vendor shall immediately notify WSDOT of any request for information relating to toll accounts or travel record or photos of any kind and direct any requests to the WSDOT Program Manager.

11.9.3 Should Vendor receive a court order or subpoena, Vendor shall:

11.9.3.1 Immediately notify the person, or law enforcement officer furnishing the subpoena or court order that per RCW 46.63.160(6)(d), the information is owned and protected by WSDOT and direct the person or officer to issue the order or subpoena to WSDOT;

11.9.3.2 Vendor shall also immediately provide the original order or subpoena to the WSDOT Project Manager for follow up action.

11.9.4 Vendor is solely responsible and liable for ensuring that the terms and conditions set forth in this section are incorporated into any supplier or subcontracting relationships with other entities for Work related to this Contract

11.9.5 This provision shall survive the termination of this Contract.

11.10 Protection of Confidential Information.

11.10.1 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 or prohibited from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW, *Public Records Act* or other state or federal statutes.

11.10.2 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, Health Care data, 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. Confidential Information also includes Personal Information which is defined in RCW 42.56.590 as an individual's first name or first initial and last name in combination with any one or more of the following data elements: Social security number; Driver's license number or Washington identification card number; or Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

11.10.3 Vendor agrees and shall to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without WSDOT's express written consent.

11.10.4 Use of Confidential Information shall be consistent with State and Federal law related to such use.

11.10.5 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.

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

11.11 Security Requirements

The Vendor acknowledges and agrees that it is responsible for ensuring that security requirements are implemented and maintained for the Project.

11.11.1 Safeguarding Confidential Information. Vendor represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information does and will comply with all applicable Federal, State and data protection laws, as well as all other applicable regulations and directives.

11.11.2 Vendor shall implement administrative, physical and technical safeguards to protect Confidential Information that are no less rigorous than accepted industry practices, as well as and the current State of Washington Office of the Chief Information Officer (OCIO) IT Security Standards (OCIO 141.10) relating to Securing Information Technology Assets Standards, and shall ensure that all such safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

11.11.3 Vendor shall have a documented communication plan regarding breach notification including notification to the State of Washington Chief Information Officer (CIO) and State Chief Information Security Officer (CISO) per State of Washington Office of the Chief Information Officer (OCIO) IT security Incident Communications Policy (OCIO Policy No. 143).

11.11.4 In the event of a data breach the Vendor shall be responsible for following all protocols related to notification which shall be at the individual claimant level. Further the Vendor shall provide, at a minimum, two (2) years of identity tracking for each individual whose data has been breached or may have been breached.

11.12 Delivery Schedule.

Vendor shall provide a delivery schedule as set forth in the applicable SOW.

ARTICLE XII. SUBCONTRACTING

12.1 Vendor may, with prior written permission from the WSDOT Project Manager, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. Vendor certifies that it shall not contract with a Subcontractor that is debarred or suspended. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties or obligations. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor; provided, that Subcontractors shall not have the right to amend this Contract or make any other commitment on behalf of Vendor or that are binding on Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employees, or violations of applicable Sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees.

12.2 Vendor is solely responsible and liable for ensuring that the applicable terms and conditions set forth in this Contract are incorporated into any partnering or subcontracting

relationships with other entities for Work related to this Contract. Liability includes management responsibility and quality assurance for Work performed and financial responsibility for payments to and by partner organizations or Subcontractor to others.

12.3 For Work to be performed for WSDOT, WSDOT reserves the right to reject any of Vendor's employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by Vendor.

12.4 In the event any of Vendor's subcontracted employees are identified as a Key Project Personnel in this Contract, Vendor shall take all necessary steps to assure that said Vendor's subcontracted employees are available and assigned to the Work as long as said employees are subcontracted by Vendor.

12.5 Any contracts made by the Vendor with a Subcontractor shall include the following affirmative statement: That WSDOT is an intended third party beneficiary of the contract; that the Subcontractor has no agreement with WSDOT; and that WSDOT shall be indemnified by the Vendor for any claim presented by the Subcontractor.

12.6 At WSDOT's request, Vendor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing Subcontractor and, when appropriate, substitute another Subcontractor.

12.7 Upon expiration or termination of the Contract for any reason, WSDOT will have the right to enter into direct contracts with any of the Subcontractors. Vendor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct contracts with WSDOT.

ARTICLE XIII. TREATMENT OF ASSETS

13.1 Title to all property furnished by WSDOT under this Contract shall remain with WSDOT.

13.2 Upon Final System Acceptance and final payment, title to all Deliverables as required in the applicable SOW, including but not limited to the System, Product, system design documents, and data collected by the System shall pass to, vest in, and belong to WSDOT. Upon such payment and Final System Acceptance, Vendor shall convey to WSDOT good title to such System, Product, and Software System Documentation, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. As used in this Section, if the System, Product, or Software System Documentation is Vendor's or a third party's Intellectual Property, only the applicable license, not title, is passed to and vested in WSDOT.

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

13.4 WSDOT will have all ownership rights in its Confidential Information including Customer Data, its Proprietary Information, and its Intellectual Property.

13.5 Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor’s acts or activities, or that results from Vendor’s failure to maintain and administer that property in accordance with sound management and security practices.

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

13.7 Vendor shall surrender to WSDOT all WSDOT property prior to settlement upon completion, termination, or cancellation of the applicable SOW and/or this Contract.

13.8 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XIV. CONTRACT MANAGEMENT AND ADMINISTRATION

14.1 Notices.

14.1.1 Except as provided in **Section 14.2**, any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses as follows:

To Vendor at:

[Vendor contract administrator’s street and mailing address(es)]

To WSDOT at:

State of Washington
Department of Transportation
Attn: Jennifer Charlebois
401 2nd Avenue S, Suite 300
Seattle, WA 98104

14.1.2 The notice address and/or addressee as provided herein may be changed by written notice given as provided above.

14.1.3 Vendor agrees to accept service of process at the address provided herein, or any modifications thereto; Provided, that such address is located in the State of Washington. Otherwise, the Vendor designates the Secretary of State of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

14.1.4 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.

14.1.5 Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

14.1.6 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Contract is served upon 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; provided that, such cooperation does not require WSDOT to expend funds.

14.1.7 The provisions in this Article shall survive the expiration or termination of this Contract.

14.2 WSDOT Contract Administrator.

WSDOT shall appoint a WSDOT Contract Administrator for this Contract who is designated as the WSDOT employee to administer and facilitate the amendment/Change Order or termination of this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Contract Administrator assigned to this Contract. In addition, WSDOT shall update the applicable SOW with the replacement contact information and the effective date of the replacement. The Contract Administrator information is provided in **Exhibit G**.

14.3 Contracting Officers.

WSDOT and Vendor shall each designate a person to whom signatory authority to contractually bind their respective organizations has been delegated in writing. The Contracting Officers information is provided in **Exhibit G**.

ARTICLE XV. INTELLECTUAL PROPERTY

15.1 Vendor Intellectual Property.

With respect to Vendor Intellectual Property, Vendor shall, at the time of Contract execution, grant to WSDOT a non-exclusive, perpetual, and irrevocable license to use Vendor Intellectual Property as provided in the License attached to this Contract as **Exhibit K**. To the extent the terms of the License conflict with the terms of the Contract, the terms of the Contract shall take precedence.

15.2 Third Party Software.

For any third party Software used by Vendor under this Contract, Vendor shall provide WSDOT with all rights necessary to enable WSDOT to legally use said third party Software for the purposes and duration of this Contract including Licenses in all Third Party Software used for the Project which shall be passed to and vested in WSDOT as stated in **Section 13.2**.

15.3 Software Enhancements and Modifications.

15.3.1 Software Enhancements. The Vendor shall supply at no additional cost during the term of this Contract:

15.3.1.1 Updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of Hardware:

15.3.1.2 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

15.3.1.3 Interface modules that are developed by Vendor for interfacing the Software to other Software products.

15.3.2 Software Modifications. Vendor agrees to supply Software Modifications required by WSDOT per the specifications in the RFP, any additional specifications set forth in Vendor's Proposal, the specifications set forth in Vendor's Product documentation, as such document may be modified by mutual written amendment by the parties. Upon written amendment/Change Order, additional Software Modifications may be added under this Contract which expand, alter, or add to the Work required to be performed by Vendor. Vendor agrees to provide such Software Modifications pursuant to terms, warranties, and prices that are comparable to or better than the terms, warranties, and prices then being offered by Vendor to any other governmental entity purchasing the same quantity under similar conditions.

15.4 Vendor's Software Warranty and Representations.

15.4.1 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 right to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide.

15.4.2 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.

15.4.3 Vendor represents and warrants that: 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 that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

15.5 Software Code Escrow.

15.5.1 Establishment of Escrow. WSDOT and Vendor acknowledge that certain technical data, including source code and Software System Documentation, constitutes information which, if subject to public disclosure, would deprive Vendor of commercial value, but to which WSDOT must be ensured use of the Escrow Material as described in **Section 15.5.4**. Accordingly, within ten (10) Business Days of the Effective Date an escrow shall be established for such technical data. All Escrow Material shall be provided to the software escrow repository, escrow agent. The parties agree to cooperate in establishing mutually acceptable escrow instructions. Vendor shall select the escrow agent, subject to approval by WSDOT, which shall not be unreasonably withheld.

15.5.2 Deposit into Escrow. Concurrent with the opening of the escrow, Vendor shall deposit the System source code with the escrow agent. Vendor thereafter shall deposit with the escrow agent all modifications and Enhancements of or to the Escrowed Material promptly following the delivery to WSDOT of such modifications and Enhancements; provided that Vendor shall not be required to make more than one deposit per calendar quarter. Vendor shall bear the costs of preparing and depositing the Escrowed Material.

15.5.3 Title. Title to all Vendor Intellectual Property in the Software shall remain with Vendor, subject to the rights and licenses granted to WSDOT by and in accordance with this Contract and the Escrow Agreement, attached as **Exhibit L**.

15.5.4 Use of Released Escrowed Material. At the time the escrow agent turns over to WSDOT the Escrowed Material, WSDOT shall have the right and license to use the Escrowed Material solely in order to effectively use or provide use of the Software as permitted in the Software Licenses and/or in this Contract, as applicable.

15.5.5 Costs of Escrow. Vendor shall pay any and all fees incurred with the escrow agent with respect to the Escrow Agreement, except as otherwise set forth therein.

15.5.6 Termination of Escrow. The Escrow Agreement shall not terminate during the term of this Contract except by mutual written agreement by WSDOT and Vendor and only upon securing a new escrow agreement upon the same or better terms as the Escrow Agreement.

15.6 Intellectual Property Indemnification.

15.6.1 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 Products within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:

15.6.1.1 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; and

15.6.1.2 Cooperates with Vendor in connection with the defense of the claim and all related settlement negotiations; Provided, that such assistance shall not require WSDOT to expend funds.

15.6.2 If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If a court enjoins use of the Product and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and refund to WSDOT an amount equal to one hundred fifty percent (150%) of the amount WSDOT paid to Vendor for the Product. No termination charges will be payable on such returned Product. Further, in the event the Product has been installed less than one (1) year, Vendor shall refund all costs paid by WSDOT to Vendor associated with the initial installation.

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

15.6.3.1 Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or

15.6.3.2 Use of the Product in a way not specified by Vendor.

15.6.4 Vendor retains liability for any claim of infringement that arises against Vendor's Product independently of any of the actions specified in **Section 15.6.3**.

15.7 Rights to Data.

WSDOT owns and retains all rights to the data generated by the Project. It is not intended and nothing herein shall be construed as granting Vendor any rights to or use of such data. Customer Data and other Data produced, compiled or used by the CSC and/or the Vendor shall be owned by WSDOT and may not be used except as authorized within this Contract, and Data may not be disclosed to third parties without express permission of WSDOT and as authorized by law.

15.8 Survival.

The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XVI. REPRESENTATIONS AND WARRANTIES

16.1 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 shall constitute a breach of this Contract and shall render Vendor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Vendor includes: (a) Prices, discounts, and options committed to remain in force over a specified period of time; and (b) any warranty or representation made by Vendor in this Contract, 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 this Contract, or used to effect the sale to WSDOT.

16.2 Products.

16.2.1 Deliverables. Vendor represents and warrants that each Deliverable, including without limitation the System, shall meet its requirements and function without Deficiency for the duration of this Contract.

16.2.2 Software. Vendor represents and warrants the following for the benefit of WSDOT for the duration of this Contract:

16.2.2.1 The Software shall function during the duration of this Contract without Deficiency;

16.2.2.2 The Software and each module component and function thereof, shall be capable of operating fully and correctly on the System; and

16.2.2.3 Use of the Software with the System will not infringe or misappropriate any patent, copyright, trade secret, or other intellectual property or proprietary rights of others.

16.2.3 Hardware. Vendor represents and warrants the following for the benefit of WSDOT for the duration of the Contract:

16.2.3.1 The Hardware is free from defects in materials and workmanship and that the Hardware shall function during the term to the applicable requirements; and

16.2.3.2 The Hardware shall be capable of operating fully and correctly with and as part of the System.

16.2.4 Vendor represents and warrants that the System, in whole and in part, whether Hardware, firmware, Software and interfaces, which performs any date/time data stamp or recognition function, calculation or sequencing will provide accurate date/time data, including leap year and daylight savings time calculations.

16.2.5 Vendor shall promptly repair or correct any Deficiency in each Product and shall provide module level exchange on any defective Hardware part. Vendor shall provide next day delivery of such parts, unless otherwise agreed to in writing by WSDOT.

16.3 Services.

16.3.1 Vendor represents and warrants that:

16.3.1.1 It shall perform all Services required pursuant to this Contract in a professional manner, with high quality, and in accordance with the Requirements;

16.3.1.2 It shall give priority to the performance of the Services; and

16.3.1.3 Time shall be of the essence in connection with performance of the Services.

16.3.2 Where Vendor Services are not in compliance with the representations and warranties herein, Vendor shall take immediate steps to correct Deficiencies and where appropriate re-perform Services which are not in compliance with such representations and warranties. Any correction and/or re-performance will be at no cost to WSDOT.

16.4 No Surreptitious Code.

Vendor warrants to WSDOT that the Software provided to WSDOT under this Contract contain or shall contain neither Self-Help Code nor any Unauthorized Code. Vendor further warrants that Vendor shall 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 the Software, data, or Hardware, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to WSDOT under this Contract.

16.5 Authorization.

Vendor represents and warrants that:

16.5.1 Vendor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

16.5.2 The execution, delivery and performance of this Contract has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Contract and perform its obligations under this Contract;

16.5.3 Vendor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Vendor will conduct business in connection with this Contract; and

16.5.4 Vendor has obtained all licenses, certifications, permits, and authorizations necessary to deliver the Deliverables and perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of the Services or delivery of the Deliverables. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense.

16.6 Ability to Perform.

Vendor represents and warrants that:

16.6.1 Vendor has the financial resources to fund the capital expenditures required under the Contract without advances by WSDOT or assignment of any payments by WSDOT to a financing source;

16.6.2 Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and

16.6.3 Vendor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by phase, stage, segment, or cost objective in order to support Change Order accounting.

16.7 Covenant Against Contingent Fees.

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. In the event Vendor breaches this Section, WSDOT shall have the right to either immediately terminate or annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

16.8 OSHA/WISHA.

Vendor represents and warrants that its Deliverables and Services are designed and manufactured to meet the current Federal and State safety and health regulations. Vendor agrees to indemnify and hold WSDOT harmless from all damages assessed against WSDOT as a result of the failure of the Deliverables and Services furnished under this Contract to so comply.

16.9 Survival. The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XVII. INDEMNITY; INSURANCE

17.1 Indemnification.

17.1.1 To the extent allowed by law, Vendor, its successors and assigns (the "Indemnitor"), will protect, save, hold harmless, and defend WSDOT, the State, its elected and

appointed officials and officers, its departments, agencies, boards, commissions, authorized agents, and employees (the “**Indemnitee**”), from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Indemnitor, its agents, contractors, subcontractors, or employees, arising out of, or in connection with, its acts or activities or the acts or activities of the Indemnitor and its agents, contractors, Subcontractors, or employees, including but not limited to any costs or attorneys' fees. The obligations in this paragraph shall not include such claims, costs, damages, or expenses to the extent caused by the acts of the Indemnitee or its authorized agents, contractors, Subcontractors, or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent acts of: (a) the Indemnitor, its agents, contractors, subcontractor, or employees, and (b) the Indemnitee, its agents, contractors, subcontractors, or employees, or involves those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts of Indemnitor’s agents, contractors, Subcontractors, and employees.

17.1.2 Vendor specifically assumes potential liability for actions brought by Vendor’s own employees against WSDOT and, solely for the purpose of this indemnification and defense, Vendor specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

17.1.3 WSDOT specifically assumes potential liability for actions brought by WSDOT’s own employees against Vendor and, solely for the purpose of this indemnification and defense, WSDOT specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

17.1.4 The indemnification provisions in this Section shall survive the expiration or termination of this Contract.

17.2 Insurance.

17.2.1 Vendor shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this Section. Vendor shall acquire and maintain in effect such insurance from an insurance carrier or carriers licensed to conduct business in the State 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.

17.2.2 The minimum acceptable annual limits, coverages, and deductibles shall be as indicated below, for each of the following categories: **TBD**

ARTICLE XVIII. TERMINATION

18.1 Termination for Default.

18.1.1 The violation of any term or condition of this Contract, or the failure to fulfill in a timely and proper manner any requirement in this Contract by either party shall constitute a default of this Contract.

18.1.2 Except as otherwise provided herein, in the event of a default by either party, the aggrieved party may temporarily suspend or terminate this Contract without penalty or further liability, except as expressly provided herein, upon not less than thirty (30) Calendar Days prior written notice to the defaulting party; Provided, that the defaulting party has failed to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by the aggrieved party, if the defaulting party is diligently working to cure the default. If the parties cannot agree on the appropriate cure or cure period, then the parties shall follow the disputes and remedies process in **Article XIX** of this Contract. If there is no dispute as to the appropriate cure or cure period and the default is not cured within the cure period, the aggrieved party may immediately terminate this Contract by giving written notice to the defaulting party. The option to terminate shall be at the sole discretion of the aggrieved party.

18.1.3 In the event of a Vendor default involving repair, replacement, maintenance, or training, or technical support services, WSDOT may terminate this Contract without penalty or further liability except as expressly provided herein, upon not less than the length of time specified in the notice of default; Provided, that Vendor has failed to cure such default within the period specified in the notice of default, or such longer period, as may be reasonably determined by WSDOT, if Vendor is diligently working to cure the default. If the default is not cured within the cure period, WSDOT may immediately terminate this Contract by giving written notice to Vendor. The option to terminate shall be at the sole discretion of WSDOT.

18.1.4 In the event of a Vendor default, WSDOT reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds: (a) during the investigation of the alleged Vendor default; (b) pending corrective action by Vendor of a default; or (c) pending a decision by WSDOT to terminate this Contract.

18.1.5 In the event of termination of this Contract by WSDOT for a Vendor default, WSDOT shall have the right to procure the Products and Services on the open market and Vendor shall be liable for all costs, expenses, and damages incurred by WSDOT for such default and termination, 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) all administrative costs directly related to the replacement of this Contract, including but not limited to costs of competitive bidding, mailing, advertising, applicable fees, charges, or penalties, and WSDOT staff and consultant time costs; and (iii) any other costs to WSDOT resulting from Vendor's default and the termination of this Contract for such default. 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.

18.1.6 In the event of termination of this Contract by Vendor for a WSDOT default, WSDOT shall be liable for payments required by the terms of this Contract for Products received and accepted and for Services received by WSDOT prior to the effective date of termination, and for all Vendor incurred costs and non-cancelable commitments made by Vendor on WSDOT's behalf prior to the date of termination for default.

18.1.7 Waiver or acceptance of any default of the terms of this Contract by WSDOT shall not operate as a release of Vendor's responsibility for any prior or subsequent default.

18.1.8 If Vendor defaults on any provision in this Contract three (3) times within a six (6) month period, the third default shall be deemed "non-curable" and this Contract may be terminated by WSDOT on not less than thirty (30) Calendar Days written notice.

18.2 Termination by WSDOT.

18.2.1 WSDOT may terminate this Contract in whole or in part, without penalty or further liability as follows:

18.2.1.1 In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Contract and prior to normal completion, WSDOT may terminate this Contract, in whole or in part, by seven (7) Calendar Day's written notice to Vendor. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

18.2.1.2 In the event funding to WSDOT from State, Federal, or other sources is withdrawn, reduced or limited in any way after the Effective Date and prior to normal completion, WSDOT may terminate this Contract by seven (7) Calendar Days written notice to Vendor;

18.2.1.3 In the event funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may at its option terminate this Contract by seven (7) Calendar Days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

18.2.1.4 In the event WSDOT determines, after due notice and examination, that Vendor 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 WSDOT may terminate this Contract by written notice. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue under the Termination for Default Section;

18.2.1.5 In the event a receiver is appointed to take possession of Vendor's assets, Vendor makes a general assignment for the benefit of creditors, or Vendor becomes insolvent or takes or suffers action under the Bankruptcy Act, WSDOT may terminate this Contract immediately by written notice;

18.2.1.6 In the event WSDOT determines that it is in the best interest of the State to terminate this Contract, WSDOT may terminate this Contract by thirty (30) Calendar Days written notice: Provided, that in the event of an emergency, as determined by WSDOT, WSDOT may terminate this Contract immediately.

18.2.2 If this Contract is terminated pursuant to this **Section 18.2**, WSDOT is liable for payments required by the terms of this Contract for Products received and for which Acceptance has been given, and for Services received by WSDOT prior to the effective date of termination, and for those Vendor incurred costs and non-cancelable commitments made by Vendor on WSDOT's behalf prior to the date of termination.

18.3 Termination Procedure.

18.3.1 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.

18.3.2 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 or Products specifically produced or acquired for the performance of such part of this Contract as has been terminated.

18.3.3 Vendor shall provide a termination cost proposal to WSDOT within thirty (30) Calendar days of notification of termination delineating proposed Vendor incurred costs as described in **Section 18.2.2**. WSDOT and Vendor shall reach agreement on final termination costs. Failure to reach agreement shall be a dispute within the meaning of **Article XIX. Protests, Disputes and Remedies** Section of this Contract.

18.3.4 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 pay such amounts within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 19.6** herein.

18.4 Transition Support

18.4.1 Upon expiration or termination of this Contract for any reason (including a WSDOT event of default) Vendor shall confer and cooperate with WSDOT to determine the activities required in order to terminate in a safe and orderly manner and to allow the transition without interruption of Services performed by Vendor hereunder to a replacement vendor, subsequent operator, or WSDOT as applicable. If termination is due to a WSDOT default, Vendor's obligations under this provision are conditioned upon satisfactory arrangements

for payment, all then outstanding obligations, and reasonable compensation for future services required to be provided by Vendor.

18.4.2 Vendor will provide Services as necessary including but not limited to those provided in Vendor's Business Continuity Plan and as necessary to enable WSDOT or its designee to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself. If termination is due to a WSDOT default, Vendor's obligations under this provision are conditioned upon satisfactory arrangements for payment, all then outstanding obligations, and reasonable compensation for future services required to be provided by Vendor.

18.4.3 Within ten (10) days of receipt of the notice of termination, Vendor shall provide, in machine-readable form, an up-to-date, usable copy of the Data in a format as required by WSDOT and a copy of all documentation needed by WSDOT to utilize the Data. Vendor will ensure that all consents or approvals to allow Vendor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties. Vendor will supply necessary information at time cutover including web portal content, security and video data. If termination is due to a WSDOT default, Vendor's obligations under this provision are conditioned upon satisfactory arrangements for payment, all then outstanding obligations, and reasonable compensation for future services required to be provided by Vendor.

18.4.4 Immediately upon termination or expiration of the Contract, Vendor shall:

18.4.4.1 Assemble at its offices and make available for WSDOT or Vendor's successor all Subcontractor contracts or other agreements related to the execution of the Work and which are in effect immediately prior to termination or expiration;

18.4.4.2 Execute and deliver to WSDOT or such named successor, as applicable written assignments and assumptions agreements with respect to such related contracts or agreements; and

18.4.4.3 Terminate effective on the same date as the effective date of expiration or termination of this Contract such other related contracts or agreements as neither WSDOT nor such successor elects, at its discretion, to assume.

ARTICLE XIX. PROTESTS, DISPUTES AND REMEDIES

19.1 Protests

19.1.1 The Vendor accepts all requirements of a Change Order by:

19.1.1.1 Endorsing it;

19.1.1.2 Writing a separate acceptance; or

19.1.1.3 Not protesting in the way this Section provides.

19.1.2. A Change Order that is not protested as provided in this Section shall be full payment and final settlement of all claims for extensions of time and for all costs of any kind, including costs of delays, related to any Work either covered or affected by the change. By not protesting as this Section provides, the Vendor also waives any additional entitlement and accepts from WSDOT any written order (including directions, instructions, interpretations, and determinations).

19.1.3. If in disagreement with anything required in a Change Order, or any other written order from the WSDOT Project Manager, including any direction, instruction, interpretation, or determination by WSDOT, the Vendor shall:

19.1.3.1 Immediately give a signed written notice of protest to the WSDOT Project Manager before doing the Work;

19.1.1.2 Supplement the written protest within fourteen (14) Calendar Days with a written statement and supporting documents providing the following:

- (a) The date and nature of the protested order, direction, instruction, interpretation or determination;
- (b) A full discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents referenced to support the protest;
- (c) The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined; and
- (d) An analysis of the schedule showing the schedule change or disruption if the Vendor is asserting a schedule change or disruption; and

19.1.1.3 If the protest is continuing, the information required above shall be supplemented monthly until the protest is resolved.

19.1.4. Throughout any protested Work, the Vendor shall keep complete records of extra costs and time incurred. The Vendor shall permit WSDOT access to these and any other records related to the protested Work as determined by WSDOT.

19.1.5. WSDOT will evaluate all protests provided the procedures in this Section are followed. If WSDOT determines that a protest is valid, WSDOT will adjust payment for Work or time by an equitable adjustment. Extensions of time will be allowed only for that period equal to the time WSDOT determines that the Critical Path was delayed. No adjustment will be made for an invalid protest.

19.1.6. If WSDOT determines that the protest is invalid and the parties are not able to reach a negotiated resolution, WSDOT's final determination along with an explanation shall be provided in writing to the Vendor. If the Vendor does not accept WSDOT's determination, either party may refer the dispute to a Disputes Review Board. Unless otherwise

mutually agreed to by the parties, submittal of the dispute to a Disputes Review Board as provided in **Section 19.2** is a condition precedent to any further protest.

19.1.7. In spite of any protest, the Vendor shall proceed promptly with the Work as WSDOT orders.

19.1.8. By failing to follow the procedures of this Section, the Vendor completely waives any claims for protested Work.

19.2 Disputes Review Board.

19.2.1 General.

19.2.1.1 In order to assist in the resolution of disputes arising out of the Work of this project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the "Board." The Board is created as part of the disputes resolution process to be utilized when normal WSDOT-Vendor dispute resolution is unsuccessful.

19.2.1.2 The Board will consider disputes referred to it and furnish recommendations to WSDOT and the Vendor to assist in the resolution of the differences between them. The purpose of the Board response to such issues is to provide nonbinding findings and recommendations designed to expose the disputing parties to an independent view of the dispute.

19.2.1.3 The Board members will be especially knowledgeable in the type of work involved in the Project. At least one member of the Board shall have expertise in the interpretation of contracts and applicable law. The Board members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract.

19.2.1.4 No Board member shall have a financial interest in the Project of any nature, except for payments for services on the Board. No member shall have been employed by either party or an affiliate of either party within a period of two years prior to award of this Contract or during the term of this Contract; except that, service as a member of other disputes review boards on other contracts will not preclude a member from serving on the Board.

19.2.1.5 Vendor will compensate directly the fees and travel expense for all three members, plus pay all of the operating and administrative expenses of the Board. Vendor shall then invoice all of these costs to WSDOT, which shall reimburse Vendor for 50 percent of these costs on the next payment.

19.2.2 Selection of Disputes Review Board Members.

19.2.2.1 The Board shall consist of three members. WSDOT and Vendor shall each nominate four candidates to the Board member pool. After reviewing the candidates, WSDOT and Vendor shall (1) agree on three members to serve on the Board and (2) determine who is best capable of serving as the Board chairperson. All Board members shall be

neutrals and shall not be advocates for either WSDOT or Vendor. In the event that all three members were not selected from the initial pool of nominees, the process shall be repeated.

19.2.2.2 In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within thirty (30) Calendar Days.

19.2.3 Termination of Board Members.

19.2.3.1 Service of a Board member may be terminated at any time with not less than 30 Calendar Days' notice by (a) mutual written agreement between WSDOT and Vendor, or (b) resignation of the member.

19.2.3.2 Termination of a member will be followed by appointment of a replacement member as specified in **Section 19.2.2.2**.

19.2.4 Disputes Review Board Procedures

19.2.4.1 Promptly upon approval of the Board members and within the first sixty (60) Calendar Days after WSDOT's issuance of the initial NTP under SOW 1, WSDOT, Vendor and the individual Board members shall enter into an agreement ("**DRB Agreement**") that sets forth the Board's rules of operation and procedures to be followed for the Project. The agreement shall include the frequency of the Board's visits to the Project and its interactions with WSDOT and Vendor to keep abreast of the progress and potential disputes.

19.2.4.2 In developing the DRB Agreement, the parties shall take into consideration their respective duties and responsibilities set forth in the Contract Documents.

19.2.4.3 The parties may also consider the "**Suggested Administrative Procedures**" for the Board's rules of operation included in the **Exhibit M**. These procedures express, in general terms, the policy for the creation and operation of the Board.

19.2.4.4 Disputes, as used in this **Section 19.2** will refer only to protests properly submitted in accordance with **Section 19.1**. If WSDOT has determined the protest to be invalid and either Vendor or WSDOT has elected to refer the matter to the Board, then the Board shall consider the issue and provide recommendations concerning:

- (a) The interpretation of the Contract;
- (b) Entitlement to additional compensation or time for performance;
- (c) The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that: (1) the parties were not able to reach a resolution as to the amount of the equitable adjustment or time;

(2) the WSDOT Project Manager has made a unilateral determination of the amount of compensation for time; and (3) Vendor has protested WSDOT's unilateral determination; and

(d) Other subjects mutually agreed by WSDOT and Vendor to be a Board issue.

19.2.5 Procedure for Consideration of Disputes.

The procedure for consideration of disputes shall be as follows:

19.2.5.1 Once a determination has been made to submit a dispute to the Board, the Board members will be contacted and advised of the existence of the dispute. A hearing will be scheduled to be conducted at the next regular project visit or at such other time, as agreed to by the parties;

19.2.5.2 The Vendor and WSDOT shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of fifteen (15) Calendar Days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party;

19.2.5.3 After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract provisions and facts and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report; and

19.2.5.4 Within thirty (30) Calendar Days of receiving the Board recommendations, both WSDOT and the Vendor shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent arbitration or litigation.

19.2.6 DRB Process as a Condition Precedent to Arbitration or Litigation.

19.2.6.1 Submittal of a dispute to the Board will be a CONDITION PRECEDENT to the filing for arbitration or litigation in a court of law unless WSDOT and the Vendor mutually agree in writing to provide otherwise.

19.2.6.2 Unless otherwise noted, disputes and other matters in question between WSDOT and the Vendor that are not resolved will be decided in the Superior Court of Thurston County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between WSDOT and the Vendor.

19.3 Continuity of Service.

WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract.

19.4 Performance by WSDOT.

If Vendor defaults in the performance or observation of any covenant or agreement contained in this Contract, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) Calendar Days prior written notice, may direct Vendor to stop Work and may itself perform or cause to be performed such covenant or agreement. Such emergency shall include, but not be limited to, endangerment of life or the highway facility. Vendor shall reimburse WSDOT the entire cost and expense of such performance by WSDOT within thirty (30) Calendar Days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof. The provisions in this Section shall survive the expiration or termination of this Contract.

19.5 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; provided, that Vendor shall have no right to seek non-monetary relief in court with the exception of seeking injunctive relief to enjoin WSDOT from violating the terms of any license to Intellectual Property granted to WSDOT under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

19.6 Late Payment Fees.

If Vendor fails to make timely payment of any amounts due WSDOT under this Contract, at WSDOT's option, the delinquent sum shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by State law, whichever is greater; provided that if the highest rate allowable by State law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and Vendor agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks. Further, WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of Vendor's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Contract. When a delinquency exists, any payments received will be applied first to the late

payment charge and late payment fees, and next to the delinquent payment. The provisions in this Section shall survive the expiration or termination of this Contract.

19.7 Limitations on Vendor's Right to Rely

19.7.1 Vendor expressly acknowledges and agrees that WSDOT's rights under this Contract to review, comment on, inspect, approve, disapprove and/or accept a specific approach, proposal, plan, schedule, analysis, submittal, and/or design, among other things, submitted by the Vendor:

19.7.1.1 Exist solely for the benefit and protection of WSDOT;

19.7.1.2 Except for express contractual standards for Approval or disapproval set forth elsewhere in this Contract or the applicable SOW, do not create or impose upon WSDOT any standard or duty of care, contractual or non-contractual, toward Vendor, all of which are hereby disclaimed; and

19.7.1.3 May not be relied upon, nor may WSDOT's exercise or failure to exercise any such rights be relied upon, by Vendor in determining whether Vendor has satisfied the standards and requirements set forth in this Contract or the applicable SOW.

19.7.2 Regardless of WSDOT's exercise or failure to exercise any such rights and regardless of the issuance of an Acceptance, Vendor shall have an independent duty and obligation to, and shall not thereby be relieved in any way from its obligation to, and to design, construct, install, equip, operate, administer, maintain, renew, replace and manage the System in accordance with the standards and requirements set forth in this Contract and the applicable SOW.

19.7.3 No rights of WSDOT described in **Section 19.7.1** above, no exercise or failure to exercise such rights, no failure of WSDOT to meet any particular standard of care in the exercise of such rights, and no Acceptance shall:

19.7.3.1 Relieve Vendor of its indemnification obligations under this Contract;

19.7.3.2 Be deemed or construed to waive any of WSDOT's rights and remedies under this Contract; or

19.7.3.3 Be deemed or construed as any kind of representation or warranty, express or implied, by WSDOT.

19.7.4 Nothing in this **Section 19.7** shall be deemed or construed to waive any of Vendor's rights and remedies or any of the obligations of WSDOT under this Contract.

19.8 Limitation of Liability.

19.8.1 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 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 other conditions as are elsewhere agreed to herein between the parties. The damages specified in this Contract shall not be construed to be consequential, incidental, indirect, or special damages as that term is used in this Section.

19.8.2 Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the responsible party, or its agent, employee, contractor, or Subcontractor. 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.

19.8.3 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 or its agent, employee, contractor, or subcontractor's respective fault or negligence.

19.8.4 WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the WSDOT-owned property or WSDOT occupied buildings, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees pursuant to the terms of this Contract. Upon termination of this Contract, WSDOT or its agent may remove all personal property of Vendor remaining on said WSDOT property at Vendor's expense and dispose of it in any manner WSDOT deems appropriate. Vendor agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) Calendar Days of the date of the WSDOT's invoice.

19.8.5 The provisions in this Section shall survive the expiration or termination of this Contract.

19.9 Performance Measures, Liquidated Damages, and Incentives.

19.9.1 The purpose of Incentives and Liquidated Damages is to ensure alignment of Vendor and WSDOT goals and objectives. Incentives encourages and motivates the Vendor to exceed the Milestone schedule objectives while maintaining quality Deliverables while Liquidated Damages are an equitable representation of losses in situations where actual damages are difficult to ascertain.

19.9.2 Other than as a result of a Force Majeure event, any delay by Vendor in meeting the Guaranteed Date(s) as defined in an applicable SOW, any failure in providing the Maintenance and Operation Work as required in this Contract and the applicable SOW, or any other disruptions and impacts to WSDOT and the traveling public will interfere with the proper implementation and operation of the System and will result in losses and damage to WSDOT, the statewide tolling program, the individual toll facility funds, motor vehicle fund and the citizens of the State. Further, WSDOT will incur costs to maintain the functions that would otherwise

have been performed by Vendor. Except as provided in **Section 7.7.1** herein or other provisions of the Contract, WSDOT may assess the Vendor Liquidated Damages for failure(s) to perform as identified in **Exhibit J- Performance Measures, Liquidated Damages and Incentives**.

19.9.3 As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, WSDOT and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in **Exhibit J - Performance Measures, Liquidated Damages and Incentives** Tables, and the parties agree that Vendor shall pay such amounts as Liquidated Damages and not as a penalty.

19.9.4 The parties also acknowledge that Liquidated Damages may be withheld from Contract payments by WSDOT or charged to the Vendor at the discretion of WSDOT. Where the Work is to be performed monthly, the payment may be withheld until the Work is properly performed and no back payment for unperformed tasks will be due.

19.9.5 The parties acknowledge and agree that Vendor could incur Liquidated Damages for more than one Milestone if Vendor fails to timely perform its obligations. The assessment of Liquidated Damages shall not constitute a waiver or release of any other remedy WSDOT may have under this Contract for Vendor's default or breach of this Contract including without limitation the right to terminate as described herein.

ARTICLE XX. AUDITS AND RECORDS

20.1 Audit Requirements.

20.1.1 State/Federal Audits Supports (WSDOT Internal Auditor; External Audit Agencies). The Vendor shall provide services to support WSDOT's internal audit staff and external auditors, to meet all audit requirements. The Vendor shall provide all financial, transaction, and inventory records and reports to support auditing. The Vendor shall grant full access to its records, staff, data, systems, and other information for its tolling Deliverables and Services, to WSDOT's Internal Audit staff and external auditors.

20.1.2 Annual External Audits

20.1.2.1 General

20.1.2.1.1 The Vendor shall obtain and pay for the following annual audits to validate the System meets critical requirements. All of these audits will be conducted by a third party/external vendor, which is pre-approved by WSDOT and result in a written report. Initial audits will be required approximately one (1) year from the date of Phase 1 Go-Live, timing and scope determined by WSDOT. Subsequent annual audits will result in reports dated no later than June 30 of each year so that work may be relied upon by WSDOT external auditors and cover the April 1 – March 31 timeframe.

20.1.2.1.2 WSDOT has the authority to select objectives for any of the annual third party audits. WSDOT will receive a copy of the results of

the audits and have access to review and copy the audit firm's working papers and other official documents supporting the audit reports.

20.1.2.2 Performance Measures Audit. The Vendor shall obtain an annual attestation audit using AICPA agreed upon procedure requirements to verify the function of the performance measures described in Appendix 2 of the RFP. A WSDOT pre-approved third party will be used to validate the vendor's performance measure compliance and that the System has not degraded over time and still meets all performance measures as described in Exhibit J of the RFP. WSDOT has a right to approve and select the objectives to be included in this audit work.

20.1.2.3 PCI DSS Compliance Audit. The Vendor shall obtain a PCI DSS compliance audit which will result in a Report of Compliance as defined by PCI DSS from a qualified assessor pre-approved by WSDOT. As a part of Go Live requirements a Report of Compliance will be obtained from a qualified assessor pre-approved by WSDOT.

20.1.2.4 Information Technology Security Audit. The vendor shall obtain an audit by a WSDOT pre-approved vendor to validate compliance with applicable Washington State OCIO security requirements as documented in OCIO Standard No. 141.10, Securing Information Technology, and any amendments thereto. Applicable OCIO requirements will be established with WSDOT and based on OCIO approved testing requirements.

20.1.2.5 Internal Controls Audit. The vendor shall obtain an SOC 1 Type 2 and SOC 2 Type 2 audit as defined by the American Institute of Certified Public Accountants (AICPA) performed by a WSDOT pre-approved Certified Public Accounting firm. Whenever one of the SOC 1 annual audits has resulted in an Unqualified Opinion, subsequent audit work will only require SOC 2 Type 2 scoping. WSDOT has the right to approve and select the objectives to be included in this audit work.

20.2 Retention and Review of Vendor's Records.

20.2.1 Vendor shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to, 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 may retain records in an electronic format provided that they are well structured and indexed for easy reference and access. Vendor shall retain all such records for six (6) years after final payment. The six (6) year retention period begins when the Vendor received final payment. If any audit, litigation, or claim is started before the expiration of the six (6) year period, the records shall be retained until all audits, litigation, or claims involving the records have been resolved. 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 final payment under this Contract.

20.2.2 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 Contract Administrator, WSDOT Director of Internal Audit, the Office of the State Auditor, as well as federal officials so authorized by law, rule, regulation or contract, at no additional cost to

the WSDOT. During the term of this Contract, Vendor shall provide access to original records for examination, inspection, copying, or audit, at a location in Washington State. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor.

20.2.3 Vendor shall incorporate in its subcontracts this Section's records retention and review requirements.

20.2.4 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 Price, cost, or any other material issue under this Contract is calculated or derived from these factors.

20.3 Public Records.

20.3.1 Vendor acknowledges that WSDOT is subject to chapter 42.56 RCW, the Washington Public Records Act, and that this Contract is a public record as defined in therein. Any documents and records that are prepared by Vendor, its agents, contractors, Subcontractors, or consultants and delivered to WSDOT may also be determined to be public records under the Washington Public Records Act and as such may be subject to public disclosure. WSDOT recognizes that certain documents and records may contain proprietary information exempt from disclosure under the Washington Public Records Act, may constitute trade secrets as defined in RCW 19.108.010(4) and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the following provisions shall apply.

20.3.2 WSDOT shall immediately notify Vendor of such request and the date by which it anticipates producing the requested records.

20.3.3 Vendor must then assert in writing to WSDOT any claim that such records contain proprietary or confidential information that it believes is exempt from disclosure under the Washington Public Records Act or is subject to protection pursuant to Chapter 19.108 RCW or other State law so that WSDOT may consider such assertion in responding to the requestor.

20.3.4 If Vendor fails to make such assertion within eight (8) Calendar Days after the date WSDOT notifies Vendor of its intended response, WSDOT shall have the right to make such disclosure.

20.3.5 If Vendor makes a timely assertion that the requested records contain proprietary or confidential information or trade secrets, WSDOT will allow Vendor an additional ten (10) Calendar Days for Vendor to seek judicial protection of the records pursuant to RCW 42.56.540. Such an action shall be at Vendor's expense. Should WSDOT elect to participate in any such action its own attorney's fees will be WSDOT's expense. If Vendor does not seek judicial protection of the records within ten (10) Calendar Days after notifying WSDOT of its belief that the records contain proprietary or confidential information or trade secrets, then WSDOT shall release the records to the requestor.

20.3.6 If prior to judicial consideration of a challenge by a requester, WSDOT in its sole discretion believes Vendor does not have a valid claim, it shall so notify Vendor no less than five (5) Calendar Days prior to the date WSDOT intends to make the disclosure to allow Vendor to take such action as it deems appropriate prior to disclosure. WSDOT will not make such a disclosure while an action to enjoin disclosure is pending under RCW 42.56.540.

20.3.7 If WSDOT denies a request for public records solely for reasons other than Vendor's assertion of proprietary or confidential information contained in records, Vendor has no responsibility for payment of any attorneys' fees or fines that may be imposed on WSDOT, nor for payment of WSDOT's attorneys' fees.

20.3.8 In the event Vendor believes that any documents or records subject to transmittal to or review by WSDOT under the terms of this Contract contains proprietary, trade secret or other materials that are exempt or protected from disclosure pursuant to applicable Laws and Regulations, Vendor shall identify and clearly mark such information prior to such transmittal or review. The provisions of this **Article XX** shall apply even though Vendor may fail to identify and clearly mark such information prior to transmittal or review.

20.4 Record Retention.

Vendor shall retain all business records in accordance with State of Washington General Record Retention Schedule as well as WSDOT Records Retention Schedules, as appropriate, to the types of records in question. Vendor shall take particular care to retain Customer Data as described in the appropriate WSDOT Records Retention Schedule.

20.5 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XXI. GENERAL

21.1 Recitals.

The Recitals set forth in **Article I** herein are hereby incorporated into this Contract.

21.2 Exhibits, Attachments, and SOWs.

All exhibits, attachments, SOWs, and documents referenced in this Contract are hereby incorporated into this Contract.

21.3 RFP and Proposal.

The RFP and Proposal and all exhibits, attachments, appendices, and documents referenced in therein are hereby incorporated into this Contract.

21.4 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.

21.5 Assignments.

21.5.1 Vendor may not assign this Contract without the prior written consent of WSDOT.

21.5.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington.

21.5.3 All subcontracts and vendor agreements of Vendor shall be assignable to WSDOT, and Vendor shall provide copies of all such subcontracts and vendor agreements to WSDOT within ten (10) Calendar Days of Vendor's assignment of this Contract.

21.6 Publicity.

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

21.6.2 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. Nothing herein shall preclude Vendor from citing the Work performed under this Contract in resumes or proposals for future work with WSDOT or other entities.

21.6.3 Either party may use the other party's name and logo (except for the State Seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

21.6.4 The provisions in this Article shall survive the expiration or termination of this Contract.

21.7 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 ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit, which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

21.8 Entire Agreement.

This Contract and all documents incorporated herein set forth the entire agreement between the parties with respect to the subject matter hereof, and any understandings, agreements, representations, or warranties not contained in this Contract or in a properly executed 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.

21.9 Amendments/Modifications

The Contract may be amended only by a written instrument duly executed by the parties or their respective successors or assigns. Only the WSDOT Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any provision, benefit or obligation of this Contract on behalf of WSDOT.

21.10 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 WSDOT Contracting Officer and the Vendor representative authorized to waive, modify, or delete such term or condition.

21.11 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.

21.12 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 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 would govern.

Unless otherwise required by law, 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.

21.13 Order of Precedence.

21.13.1 The Contract Documents are intended to be complementary and to describe and provide for a complete contract. Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

- 21.13.1.1** Federal and State law;
- 21.13.1.2** Contract Change Orders and/or Contract amendments;
- 21.13.1.3** The Contract;
- 21.13.1.4** Statements of Work amendments (applies to the individually amended SOW);
- 21.13.1.5** Statements of Work;
- 21.13.1.6** Contract Exhibits other than SOWs;
- 21.13.1.7** The RFP; and
- 21.13.1.8** The Proposal.

21.14 Uniform Commercial Code (UCC) Applicability.

21.14.1 Where applicable, this Contract shall be governed by applicable sections of the UCC as set forth in Title 62A RCW. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

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

21.15 Antitrust Violations.

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the purchaser. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods, Deliverables, 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. The provisions in this Section shall survive the expiration or termination of this Contract.

21.16 Attorneys' Fees and Costs.

In the event of any controversy, claim, or dispute arising out of this Contract, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

21.17 Contract Execution.

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

21.18 Counterparts.

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

The remainder of this page intentionally left blank.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title
[Vendor Name TBD]

Signature

Print or Type Name Date

APPROVAL AS TO FORM:

Title

Assistant Attorney General

Exhibit A

Statement of Work 1

Back Office System Development and Implementation (Phases 1 and 2)

STATEMENT OF WORK NO. 1

For

WSDOT Toll Back Office System Replacement

Back Office System Development and Implementation (Phases 1 and 2)

This Statement of Work No. 1 (SOW) for the WSDOT Toll Back Office System Replacement project is made and entered into by and between the Washington State Department of Transportation, an agency of the State of Washington (WSDOT), and *[Vendor Name TBD]*, licensed to do business in the State of Washington (Vendor).

I. RECITALS

1.1 WSDOT and Vendor are parties to Contract [Number TBD], dated _____, for Toll Back Office System Replacement (Contract).

1.2 The Contract allows WSDOT, at its discretion, to issue Statements of Work under which Vendor shall supply, install and maintain a Toll Back Office System (System).

1.3 Pursuant to the terms of the Contract, WSDOT has elected to have Vendor: design, develop, install, implement, and test the System; integrate into the System the existing SR 520 Bridge, I-405 Express Toll Lanes, SR 167 High Occupancy Toll Lanes, the SR 16 Tacoma Narrows Bridge, and SR 99 Tunnel Roadway Toll Systems; and provide Project Office Space.

NOW, THEREFORE, Vendor and WSDOT agree to the following SOW for the Toll Back Office System:

II. DEFINITIONS; PURPOSE; TERM AND CONDITIONS

2.1 Definitions.

All capitalized terms used herein but not defined herein have the respective meanings set forth in the Contract Documents or, if not defined in the Contract Documents or in this SOW, have their ordinary and usual meaning. All section and exhibit references herein are to the sections and exhibits of the Contract or if so designated, to the Appendices to the RFP, unless otherwise stated.

2.2 Purpose.

The purpose of this SOW No. 1 is to direct Vendor to complete all of the necessary design, develop, installation, implementation, and testing of the System; integrate into the System the existing SR 520 Bridge, I-405 Express Toll Lanes, SR 167 High Occupancy Toll Lanes, the SR 16 Tacoma Narrows Bridge, and SR 99 Tunnel Roadway Toll Systems; and provide Project Office Space.

2.3 Terms and Conditions.

The terms and conditions applicable to the Work performed under this SOW are set forth in the Contract Documents and this SOW. In the event of a conflict in the provisions of the Contract Documents and this SOW, the conflict will be resolved in accordance with the Order of Precedence as set forth in Section 21.13 of the Contract.

III. TERM

3.1 The term of this SOW shall commence _____ and terminate the earlier of WSDOT's written Final System Acceptance or the termination of the Contract.

3.2 Vendor shall not commence Work under this SOW until WSDOT has issued the initial written Notice to Proceed (NTP) to Vendor.

3.3 In no event shall the term of this SOW exceed the term of the Contract, or any extensions thereto.

3.4 This SOW may be terminated in accordance with the termination provisions of the Contract or as mutually agreed in writing between the parties. In any event, this SOW shall terminate concurrent with the termination of the Contract.

3.5 Guaranteed Dates and Milestones may be further detailed in NTPs used to release specific Work Packages.

IV. SCOPE OF WORK

4.1 Deliverables.

4.1.1 In accordance with the requirements in the Contract Documents, Vendor shall perform the Work and provide the Services and Products, and generally meet the intents and specific scope, deliverables, and requirements defined in the RFP.

4.1.2 Vendor shall furnish all Products, cables and connections, installation, integration, testing, labor, personnel, transportation, materials, storage, tools, supplies, permits, licenses, equipment, warranties, reports, documentation, and other Services necessary to supply and implement, on a turnkey basis, a fully functional Back Office System in accordance with the Contract Documents. Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of the Work.

4.2 Time is of the essence.

Time is of the essence for this SOW. Failure to meet the Guaranteed Dates for the Key Milestones as set forth in Contract **Exhibit J -- Performance Measures, Liquidated Damages and Incentives** may result in the assessment of Liquidated Damages as set forth in Section 19.9 of the Contract and Article V of this SOW, at WSDOT's discretion.

V. INCENTIVES AND LIQUIDATED DAMAGES

Incentives and Liquidated Damages applicable under this SOW shall be in accordance with Section 19.9 of the Contract and Contract **Exhibit J – Performance Measures, Liquidated Damages and Incentives**.

VI. BONDS

6.1 Vendor shall provide to WSDOT an executed Performance Bond for the Work covered by this SOW in accordance with the requirements in **Article VIII** and **Exhibit H** of the Contract.

6.2 The Performance Bond for the design, installation and testing Work shall be in the amount of fifty percent (50%) of the total Price for the Work covered by this SOW, which amount is _____ (\$_____). WSDOT to release and return the Performance Bond to Vendor upon Final System Acceptance.

6.3 Vendor shall provide the Performance Bond for this SOW to WSDOT prior to the Effective Date of the Contract. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to the receipt of the required Contract Bond.

VII. INSURANCE

7.1 Vendor shall acquire and maintain in full force and effect the insurance required in Section 17.2 of the Contract.

7.2 Vendor shall provide copies of certificates of all insurance required for this SOW to WSDOT prior to the Effective Date of the Contract. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to WSDOT's receipt of the required certificates of insurance.

VIII. PRICE AND PAYMENT TERMS

8.1 The pricing for the Work performed under this SOW shall be determined in accordance with the Price tables set forth herein.

8.2 WSDOT shall pay Vendor in accordance with the Price tables herein for the Work actually performed by Vendor and for which WSDOT has Accepted.

8.3 Payment and Milestone Schedule and Price table for Development and Implementation Work:

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount
Project Initiation	1	<i>WSDOT Approval of the Following</i>	TBD	
		WSDOT Partnering Plan		
		Initial Project Schedule		
		Project Management Plan		
		Web-based Project Collaboration Env		
		Quality Management Plan		
		Security Plan		
		Subcontractor Management Plan		
		Master Test Plan		
		Work Place Safety Plan		
		Project Office Space		
		CSC Operator Partnering Plan		
		<i>Subtotal - Project Initiation</i>		\$ -
Preliminary Design	2	<i>WSDOT Approval of the Following</i>	TBD	
		Software Development Plan		
		Installation Plan		
		Requirements Traceability Matrix (Structure/format)		
		Initial Core Team Training		
		Configuration Management Plan		
		System Architecture		
		Organizational Change Management Plan		
		Communication Plan		
		System Requirements Documents (SRD):		
		OBOS		
		CBOS		
		Accounting and Financial Reporting		
		Training Plan:		
		Data Migration Plan		
		<i>Subtotal - Preliminary Design</i>		\$ -
Final Design	3	<i>WSDOT Approval of the Following</i>	TBD	
		Disaster Recovery Plan (DRP)		
		Interface Control Documents:		
		Bundle A		
		Bundle B		
		Bundle C		
	Test Procedures			
		Bundle A		

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount
		Bundle B		
		Bundle C		
		Data Migration Specifications		
		System Detailed Design Document (SDDD)		
		Subtotal - Final Design		\$ -
Procurement	4	WSDOT Approval of the Following	TBD	
		Procurement Plan		
		Hardware and Software Installed and Accepted		
		Bundle A		
		Bundle B		
		Bundle C		
		Third Party Hardware Manuals		
		Third Party Software Manuals		
	Subtotal - Procurement		\$ -	
Installation and Testing	5	WSDOT Approval of the Following	TBD	
		Customer Website		
		Wireframes		
		Visual design mock-ups		
		Security certification by independent firm		
		Accessibility certification by independent firm		
		Test Reports		
		Component Acceptance Test Report		
		Factory Acceptance Test Report		
		Hardware Production Test Report		
		Integration and Commissioning Test Report		
		Security Test Report		
		Performance Test Report		
		Disaster Recovery Testing		
		User Acceptance Test Report		
		Operations Test Report		
		Data Migration Preparations:		
		Development and Unit Testing Report		
		Trial Migration Test Report		
		Full Migration Test Report		
		Transition Plan		
		Successful completion of PCI Audit		
		Successful completion of OCIO Audit		
	Successful completion of SOC1 and SOC2 Audit			
	System Administration Manual			
	Post Go-Live Support Plan			

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount
		Maintenance Provisions:		
		Maintenance Plan		
		Maintenance and Service Manuals		
		Maintenance Online Management System (MOMS) solution		
		KPI Dashboard		
		Subtotal - Installation and Testing		\$ -
Training	6	WSDOT Approval of the Following	TBD	
		Training Courseware and Training Materials		
		Training Pilot Walkthrough		
		User Acceptance Test Training		
		Train the Trainers Course(s) Completed		
		End-User Training Completed		
		Readiness Plan		
		Updated Training Materials Post Go-Live		
	Subtotal - Training		\$ -	
Production Cut-Over	7	WSDOT Approval of the Following	No Later Than 12/1/2018	
		Go-Live Report		
		System Release Notes		
		Hardware and Software Inventory		
		Subtotal - Production Cut-over		\$ -
Phase 1 Acceptance	8	WSDOT Approval of the Following	No Later Than 2/1/2019	
		Phase Acceptance (Letter of Request) - Release of 50% of Phase 1 retainage		\$ -
Total - Phase 1				\$ -

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount
Final Design	3	WSDOT Approval of the Following	TBD	
		Interface Control Documents:		
		Bundle A		
		Bundle B		

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount				
		Bundle C Test Procedures Bundle A Bundle B Bundle C System Detailed Design Document (SDDD) Updated for Phase 2 <i>Subtotal - Final Design</i>		\$ -				
Procurement	4	<i>WSDOT Approval of the Following</i> Hardware and Software Installed and Accepted Bundle A Bundle B Bundle C Third Party Hardware Manuals Third Party Software Manuals <i>Subtotal - Final Design</i>	TBD	\$ -				
		<i>WSDOT Approval of the Following</i> Test Reports Component Acceptance Test Report Factory Acceptance Test Report Hardware Production Test Report Integration and Commissioning Test Report Security Test Report Performance Test Report Regression Test Report Disaster Recovery Testing User Acceptance Test Report Operations Test/Parallel Test Report Transition Plan Trip Building Annual Plan System Administration Manual - Phase 2 Update Post Go-Live Support Plan - Update for Phase 2 Maintenance Provisions: Maintenance Plan - Phase 2 Update Maintenance and Service Manuals - Phase 2 Updates <i>Subtotal - Installation and Testing</i>			TBD	\$ -		
		<i>WSDOT Approval of the Following</i> Training Courseware and Training Materials Training Pilot Walkthrough User Acceptance Test Training Train the Trainers Course(s) Completed					TBD	\$ -

Milestone	Project Sequence	Qualifying Event	Guaranteed Date	Payment Amount
		End-User Training Completed		
		Readiness Plan		
		Updated Training Materials Post Go-Live		
		Subtotal - Training		\$ -
Production Cut-Over	7	WSDOT Approval of the Following	No Later Than 12/1/2020	\$ -
		Go-Live Report		
		System Release Notes		
		Hardware and Software Inventory Updated		
		Subtotal - Production Cut-Over		
Phase 2 Acceptance	8	WSDOT Approval of the Following	No Later Than 2/1/2020	\$ -
		Phase 2 Acceptance (Letter of Request) - Release of 50% of Phase 2 retainage		
		Subtotal - Phase 2 Acceptance		
Final Acceptance	9	WSDOT Approval of the Following	No Later Than 8/1/2020	\$ -
		Release Remaining Retainage from Phase 1 and Phase 2 after Six (6) Months of Continuous Production Operation within KPI Compliance		
		Subtotal - Final Acceptance		
Total - Phase 2				\$ -
Total - Development & Implementation SOW				\$ -

8.5 Any modification to the Price Tables and Payment and Milestone Schedule shall be done by written Change Order.

IX. STAFFING

9.1 Vendor Staffing

9.1.1 The Vendor Key Project Personnel for this SOW are: Project Executive, Quality Assurance Executive, Project Manager, Quality Assurance Manager, Lead System Architect, Operational Back Office Lead, Customer Relationship Management Lead, Accounting System Lead, Customer Website Development Lead, Organizational Change Management Lead, System Interface Developer, and Testing Manager. These Key Project Personnel are further described in Appendix 2 to the RFP.

9.1.2 The individuals listed in Exhibit G to the Contract shall fulfill the Vendor Key Project Personnel for this SOW.

9.1.3 The contact information for the Vendor Key Project Personnel is set forth in Exhibit G to the Contract.

9.1.4 The substitution of Vendor Key Project Personnel shall be in accordance with Section 10.1.3 of the Contract.

9.2 WSDOT Key Project Personnel

The names and contact information for the WSDOT Key Project Personnel for this SOW are as set forth in Exhibit G to the Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

APPROVAL AS TO FORM:

Assistant Attorney General

Exhibit B

Statement of Work 2

Back Office System Operation and Maintenance

STATEMENT OF WORK NO. 2

For

WSDOT Toll Back Office System Replacement

Back Office System Operation and Maintenance Services

This Statement of Work No. 2 (**SOW**) for the WSDOT Toll Back Office System Replacement project is made and entered into by and between the Washington State Department of Transportation, an agency of the State of Washington (WSDOT), and *[Vendor Name TBD]*, licensed to do business in the State of Washington (Vendor).

I. RECITALS

1.1 WSDOT and Vendor are parties to Contract [Number TBD], dated _____, for Toll Back Office System Replacement (Contract).

1.2 The Contract allows WSDOT, at its discretion, to issue Statements of Work under which Vendor shall supply, install and maintain a Toll Back Office System (System).

1.3 Pursuant to the terms of the Contract, WSDOT has elected to have Vendor provide the Back Office System Operation and Maintenance Services under the Contract.

NOW, THEREFORE, Vendor and WSDOT agree to the following SOW for the Toll Back Office System:

II. DEFINITIONS; PURPOSE; TERM AND CONDITIONS

2.1 Definitions.

All capitalized terms used herein but not defined herein have the respective meanings set forth in the Contract Documents or, if not defined in the Contract Documents or in this SOW, have their ordinary and usual meaning. All section and exhibit references herein are to the sections and exhibits of the Contract or if so designated, to the Appendices to the RFP, unless otherwise stated.

2.2 Purpose.

The purpose of this SOW No. 2 is to direct Vendor to provide Operation and Maintenance Services for the Back Office System.

2.3 Terms and Conditions.

The terms and conditions applicable to the Work performed under this SOW are set forth in the Contract Documents and this SOW. In the event of a conflict in the provisions of the

Contract Documents and this SOW, the conflict will be resolved in accordance with the Order of Precedence as set forth in Section 21.13 of the Contract.

III. TERM AND EXTENSIONS

3.1 The term of this SOW shall commence upon WSDOT's written issuance of Development and Implementation Phase 1 System Acceptance (Commencement Date) and terminate the earlier of the fifth anniversary date of the Commencement Date or the termination of the Contract.

3.2 At its sole option, WSDOT may extend the term of this SOW for up to six (6) additional one-year terms or a combination thereof.

3.3 Vendor shall not commence Work under this SOW until WSDOT has issued the initial written Notice to Proceed (NTP) to Vendor.

3.4 In no event shall the term of this SOW exceed the term of the Contract, or any extensions thereto.

3.5 This SOW may be terminated in accordance with the termination provisions of the Contract or as mutually agreed in writing between the parties. In any event, this SOW shall terminate concurrent with the termination of the Contract.

3.6 Guaranteed Dates and Milestones may be further detailed in NTPs used to release specific Work Packages.

IV. SCOPE OF WORK

4.1 Deliverables.

4.1.1 In accordance with the requirements in the Contract Documents, Vendor shall perform the Work and provide the Services and Products, and generally meet the intents and specific scope, Deliverables, and requirements defined in RFP.

4.1.2 As detailed in the Contract Documents, the Vendor shall: Provide all Products and Services to support and maintain and operate the System, including, but not limited to, any LAN and WAN network equipment; provide all preventive, unscheduled and corrective maintenance without any degradation in performance and service of the System; perform maintenance activities without affecting or with minimal effect on the CSC Operations whenever possible; and ensure that all System administration and preventive maintenance functions like Software and firmware upgrades, server patch updates are performed at regular and scheduled periods for optimal System performance.

4.2 Time is of the essence.

Time is of the essence for this SOW. Failure to meet the Guaranteed Dates for the Key Milestones as set forth in Contract **Exhibit J -- Performance Measures, Liquidated Damages and Incentives** may result in the assessment of Liquidated Damages as set forth in Section 19.9 of the Contract and Article V of this SOW, at WSDOT's discretion.

V. INCENTIVES AND LIQUIDATED DAMAGES

Incentives and Liquidated Damages applicable under this SOW shall be in accordance with Section 19.9 of the Contract and Contract **Exhibit J – Performance Measures, Liquidated Damages and Incentives**.

VI. BONDS

6.1 Vendor shall provide to WSDOT an executed Performance Bond for the Work covered by this SOW in accordance with the requirements in **Article VIII** and **Exhibit H** of the Contract.

6.2 As a condition to obtaining Final System Acceptance, Vendor shall provide a separate Maintenance and Operations Bond for the System in the amount of (100%) of the total Price for the initial Maintenance and Operations Term (four (4) years commence upon the date of WSDOT's written issuance of the Development and Implementation Phase 1 System Acceptance). Vendor shall renew each Maintenance and Operations Bond at the time of each one-year extension, if any, of the Maintenance and Operations Term for all aspects of the entire System.

6.3 Vendor shall provide the Performance Bond for this SOW to WSDOT prior to the Phase 1 System Acceptance. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to the receipt of the required Performance Bond.

VII. INSURANCE

7.1 Vendor shall acquire and maintain in full force and effect the insurance required in Section 17.2 of the Contract.

7.2 Vendor shall provide copies of certificates of all insurance required for this SOW to WSDOT prior to the Commencement Date of the SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to WSDOT's receipt of the required certificates of insurance.

VIII. PRICE AND PAYMENT TERMS

8.1 The pricing for the Work performed under this SOW shall be determined in accordance with the Price tables set forth herein.

8.2 WSDOT shall pay Vendor in accordance with the Price tables herein for the Work actually performed by Vendor and for which WSDOT has Accepted.

8.3 Payment and Milestone Schedule and Price table for Operation and Maintenance Work:

O&M Contract Year	Anticipated Start Of Year	Base Annual Price	Total Annual Cost of Operations & Maintenance Services	
0	6/30/2017	\$ 0	\$	-
1	2/1/2019	\$ -	\$	-
2	6/1/2018	\$ -	\$	-
3	6/1/2019	\$ -	\$	-
4	6/1/2020	\$ -	\$	-
Total: Initial Term			\$ -	-

O&M Contract Year	Anticipated Start Of Year	Base Annual Price	Total Annual Cost of Operations & Maintenance Services	
5	6/1/2021	\$ -	\$	-
6	6/1/2022	\$ -	\$	-
7	6/1/2023	\$ -	\$	-
8	6/1/2024	\$ -	\$	-
9	6/1/2025	\$ -	\$	-
10	6/1/2026	\$ -	\$	-
Total: Extended Term			\$ -	-

8.4 Any modification to the Price Tables and Payment and Milestone Schedule shall be done by written Change Order.

IX. STAFFING

9.1 Vendor Staffing

9.1.1 The Vendor Key Project Personnel for this SOW are: Project Executive, BOS Support Team Project Leader, Functional Lead, Lead Developer, and Systems Engineer.

9.1.2 The individuals listed in Exhibit G to the Contract shall fulfill the Vendor Key Project Personnel for this SOW.

9.1.3 The contact information for the Vendor Key Project Personnel is set forth in Exhibit G to the Contract.

9.1.4 The substitution of Vendor Key Project Personnel shall be in accordance with Section 10.1.3 of the Contract.

9.2 WSDOT Key Project Personnel

The names and contact information for the WSDOT Key Project Personnel for this SOW are as set forth in Exhibit G to the Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

APPROVAL AS TO FORM:

Assistant Attorney General

Exhibit C
Statement of Work 3

Washington State Ferries Integration

STATEMENT OF WORK NO. 3

For

WSDOT Toll Back Office System Replacement

Washington State Ferries Integration

This Statement of Work No. 3 (**SOW**) for the WSDOT Toll Back Office System Replacement project is made and entered into by and between the Washington State Department of Transportation, an agency of the State of Washington (WSDOT), and *[Vendor Name TBD]*, licensed to do business in the State of Washington (Vendor).

I. RECITALS

1.1 WSDOT and Vendor are parties to Contract [Number TBD], dated _____, for Toll Back Office System Replacement (Contract).

1.2 The Contract allows WSDOT, at its discretion, to issue Statements of Work under which Vendor shall supply, install and maintain a Toll Back Office System (System).

1.3 Pursuant to the terms of the Contract, WSDOT has elected to have Vendor integrate the Washington State Ferries into the System to allow Washington State Ferries customers with a valid *Good To Go!* Pass and a valid account to apply their prepaid balance to ferry tolls.

NOW, THEREFORE, Vendor and WSDOT agree to the following SOW for the Toll Back Office System:

II. DEFINITIONS; PURPOSE; TERM AND CONDITIONS

2.1 Definitions.

2.1.1 All capitalized terms used herein but not defined herein have the respective meanings set forth in the Contract Documents or, if not defined in the Contract Documents or in this SOW, have their ordinary and usual meaning. All section and exhibit references herein are to the sections and exhibits of the Contract or if so designated, to the Appendices to the RFP, unless otherwise stated.

2.1.2 For the purposes of this SOW, the following terms shall have the meanings as provided below:

“Final System Acceptance” shall mean

{ Add additional defined terms, as needed }

2.2 Purpose.

The purpose of this SOW No. 3 is to direct Vendor to integrate into the System the Washington State Ferries toll system.

2.3 Terms and Conditions.

The terms and conditions applicable to the Work performed under this SOW are set forth in the Contract Documents and this SOW. In the event of a conflict in the provisions of the Contract Documents and this SOW, the conflict will be resolved in accordance with the Order of Precedence as set forth in Section 21.13 of the Contract.

III. TERM AND EXTENSIONS

3.1 The term of this SOW shall commence upon execution of this SOW by WSDOT (Commencement Date) and terminate the earlier of Final System Acceptance or the termination of the Contract.

3.2 Vendor shall not commence Work under this SOW until WSDOT has issued the initial written Notice to Proceed (NTP) to Vendor.

3.3 In no event shall the term of this SOW exceed the term of the Contract, or any extensions thereto.

3.4 This SOW may be terminated in accordance with the termination provisions of the Contract or as mutually agreed in writing between the parties. In any event, this SOW shall terminate concurrent with the termination of the Contract.

3.5 Guaranteed Dates and Milestones may be further detailed in NTPs used to release specific Work Packages.

IV. SCOPE OF WORK

4.1 Deliverables.

4.1.1 In accordance with the requirements in the Contract Documents, Vendor shall perform the Work and provide the Services and Products, and generally meet the intents and specific scope, Deliverables, and requirements defined in the RFP and this SOW.

4.1.2 As detailed in the Contract Documents, the Vendor shall develop, test, operate and maintain automated electronic interfaces with Washington State Ferries facilities and back office to support acceptance of the *Good To Go!* transponder as a method of payment for ferry fares.

4.2 Time is of the essence.

Time is of the essence for this SOW. Failure to meet the Guaranteed Dates for the Key Milestones as set forth in Contract **Exhibit J -- Performance Measures, Liquidated Damages**

and Incentives may result in the assessment of Liquidated Damages as set forth in Section 19.9 of the Contract and Article V of this SOW, at WSDOT's discretion.

V. INCENTIVES AND LIQUIDATED DAMAGES

Incentives and Liquidated Damages applicable under this SOW shall be in accordance with Section 19.9 of the Contract and Contract **Exhibit J – Performance Measures, Liquidated Damages and Incentives**.

VI. BONDS

6.1 Vendor shall provide to WSDOT an executed Performance Bond for the Work covered by this SOW in accordance with the requirements in **Article VIII** and **Exhibit H** of the Contract.

6.2 The Performance Bond for the Work shall be in the amount of _____ percent (xx%) of the total Price for the Work covered by this SOW, which amount is _____ (\$_____). WSDOT to release and return the Performance Bond to Vendor upon Final System Acceptance.

6.3 Vendor shall provide the Performance Bond for this SOW to WSDOT upon execution of this SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to the receipt of the required Performance Bond.

VII. INSURANCE

7.1 Vendor shall acquire and maintain in full force and effect the insurance required in Section 17.2 of the Contract.

7.2 Vendor shall provide copies of certificates of all insurance required for this SOW to WSDOT prior to the Commencement Date of the SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to WSDOT's receipt of the required certificates of insurance.

VIII. PRICE AND PAYMENT TERMS

8.1 The pricing for the Work performed under this SOW shall be determined in accordance with the Price tables set forth herein.

8.2 WSDOT shall pay Vendor in accordance with the Price tables herein for the Work actually performed by Vendor and for which WSDOT has Accepted.

8.3 Payment and Milestone Schedule and Price table for _____ Work:

Prices for Procurement by Vendor - Software, Hardware, etc.				
Item	\$ / Unit	Units	Qty	Price
	\$ -	Each	0	\$ -
	\$ -	Each	0	
Totals for Hardware, Software, and Licenses				\$ -

Prices for Vendor Labor				
Position	Rate, \$/Hour	Units	Hours	Price
Program Manager	\$ -	Hours	0	\$ -
Project Manager	\$ -	Hours	0	\$ -
IT Manager	\$ -	Hours	0	\$ -
Data Architect	\$ -	Hours	0	\$ -
Business Analyst	\$ -	Hours	0	\$ -
Software Developer	\$ -	Hours	0	\$ -
Software Quality Analyst		Hours		
Software Team Lead		Hours		
Software Technical Manager		Hours		
Program Planner / Scheduler		Hours		
Technical Writer		Hours		
Database Administrator		Hours		
System Administrator		Hours		
System Trainer		Hours		
Web Developer		Hours		
Totals for Labor				\$ -
Total Price for this Modification:				\$ -

8.4 Any modification to the Price Tables and Payment and Milestone Schedule shall be done by written Change Order.

IX. STAFFING

9.1 Vendor Staffing

9.1.1 The Vendor Key Project Personnel for this SOW are: *{insert titles}*.

9.1.2 The individuals listed in Exhibit G to the Contract shall fulfill the Vendor Key Project Personnel for this SOW.

9.1.3 The contact information for the Vendor Key Project Personnel is set forth in Exhibit G to the Contract.

9.1.4 The substitution of Vendor Key Project Personnel shall be in accordance with Section 10.1.3 of the Contract.

9.2 WSDOT Key Project Personnel

The names and contact information for the WSDOT Key Project Personnel for this SOW are as set forth in Exhibit G to the Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

APPROVAL AS TO FORM:

Assistant Attorney General

Exhibit D
Statement of Work 4

Interstate 405 Express Toll Lanes Between Bellevue to Renton Integration

STATEMENT OF WORK NO. 4

For

WSDOT Toll Back Office System Replacement

Interstate 405 Express Toll Lanes System Between Bellevue and Renton Integration

Roadway Toll System

This Statement of Work No. 4 (**SOW**) for the WSDOT Toll Back Office System Replacement project is made and entered into by and between the Washington State Department of Transportation, an agency of the State of Washington (WSDOT), and [*Vendor Name TBD*], licensed to do business in the State of Washington (Vendor).

I. RECITALS

1.1 WSDOT and Vendor are parties to Contract [Number TBD], dated _____, for Toll Back Office System Replacement (Contract).

1.2 The Contract allows WSDOT, at its discretion, to issue Statements of Work under which Vendor shall supply, install and maintain a Toll Back Office System (System).

1.3 Pursuant to the terms of the Contract, WSDOT has elected to have Vendor integrate the new Interstate 405 Express Toll Roadway Toll System located between State Route 167 in Renton and Northeast 6th Street in Bellevue into the System.

NOW, THEREFORE, Vendor and WSDOT agree to the following SOW for the Toll Back Office System:

II. DEFINITIONS; PURPOSE; TERM AND CONDITIONS

2.1 Definitions.

2.1.1 All capitalized terms used herein but not defined herein have the respective meanings set forth in the Contract Documents or, if not defined in the Contract Documents or in this SOW, have their ordinary and usual meaning. All section and exhibit references herein are to the sections and exhibits of the Contract or if so designated, to the Appendices to the RFP, unless otherwise stated.

2.1.2 For the purposes of this SOW, the following terms shall have the meanings as provided below:

“Final System Acceptance” shall mean

{ Add additional defined terms, as needed }

2.2 Purpose.

The purpose of this SOW No. 4 is to direct Vendor to integrate into the System the new Interstate 405 Express Toll Roadway Toll System located between State Route 167 in Renton and Northeast 6th Street in Bellevue.

2.3 Terms and Conditions.

The terms and conditions applicable to the Work performed under this SOW are set forth in the Contract Documents and this SOW. In the event of a conflict in the provisions of the Contract Documents and this SOW, the conflict will be resolved in accordance with the Order of Precedence as set forth in Section 21.13 of the Contract.

III. TERM AND EXTENSIONS

3.1 The term of this SOW shall commence upon execution of this SOW by WSDOT (Commencement Date) and terminate the earlier of Final System Acceptance or the termination of the Contract.

3.2 Vendor shall not commence Work under this SOW until WSDOT has issued the initial written Notice to Proceed (NTP) to Vendor.

3.3 In no event shall the term of this SOW exceed the term of the Contract, or any extensions thereto.

3.4 This SOW may be terminated in accordance with the termination provisions of the Contract or as mutually agreed in writing between the parties. In any event, this SOW shall terminate concurrent with the termination of the Contract.

3.5 Guaranteed Dates and Milestones may be further detailed in NTPs used to release specific Work Packages.

IV. SCOPE OF WORK

4.1 Deliverables.

4.1.1 In accordance with the requirements in the Contract Documents, Vendor shall perform the Work and provide the Services and Products, and generally meet the intents and specific scope, Deliverables, and requirements defined in the RFP and this SOW.

4.1.2 As detailed in the Contract Documents, the Vendor shall design, develop, test and implement integration between the System and the Roadway Toll System application for the new Interstate 405 toll facility located between State Route 167 in Renton and Northeast 6th Street in Bellevue. The OBOS will receive transactions from the Interstate 405 Bellevue to Renton Roadway Toll System application and will package these transactions into trips for posting to customer accounts within the CBOS.

4.2 Time is of the essence.

Time is of the essence for this SOW. Failure to meet the Guaranteed Dates for the Key Milestones as set forth in Contract **Exhibit H -- Performance Measures, Liquidated Damages and Incentives** may result in the assessment of Liquidated Damages as set forth in Section 19.9 of the Contract and Article V of this SOW, at WSDOT's discretion.

V. INCENTIVES AND LIQUIDATED DAMAGES

Incentives and Liquidated Damages applicable under this SOW shall be in accordance with Section 19.9 of the Contract and Contract **Exhibit H – Performance Measures, Liquidated Damages and Incentives**.

VI. BONDS

6.1 Vendor shall provide to WSDOT an executed Performance Bond for the Work covered by this SOW in accordance with the requirements in **Article VIII** and **Exhibit J** of the Contract.

6.2 The Performance Bond for the Work shall be in the amount of _____ percent (xx%) of the total Price for the Work covered by this SOW, which amount is _____ (\$_____). WSDOT to release and return the Performance Bond to Vendor upon Final System Acceptance.

6.3 Vendor shall provide the Performance Bond for this SOW to WSDOT upon execution of this SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to the receipt of the required Performance Bond.

VII. INSURANCE

7.1 Vendor shall acquire and maintain in full force and effect the insurance required in Section 17.2 of the Contract.

7.2 Vendor shall provide copies of certificates of all insurance required for this SOW to WSDOT prior to the Commencement Date of the SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to WSDOT's receipt of the required certificates of insurance.

VIII. PRICE AND PAYMENT TERMS

8.1 The pricing for the Work performed under this SOW shall be determined in accordance with the Price tables set forth herein.

8.2 WSDOT shall pay Vendor in accordance with the Price tables herein for the Work actually performed by Vendor and for which WSDOT has Accepted.

8.3 Payment and Milestone Schedule and Price table for _____ Work:

Prices for Procurement by Vendor - Software, Hardware, etc.				
Item	\$ / Unit	Units	Qty	Price
	\$ -	Each	0	\$ -
	\$ -	Each	0	
Totals for Hardware, Software, and Licenses				\$ -

Prices for Vendor Labor				
Position	Rate, \$/Hour	Units	Hours	Price
Program Manager	\$ -	Hours	0	\$ -
Project Manager	\$ -	Hours	0	\$ -
IT Manager	\$ -	Hours	0	\$ -
Data Architect	\$ -	Hours	0	\$ -
Business Analyst	\$ -	Hours	0	\$ -
Software Developer	\$ -	Hours	0	\$ -
Software Quality Analyst		Hours		
Software Team Lead		Hours		
Software Technical Manager		Hours		
Program Planner / Scheduler		Hours		
Technical Writer		Hours		
Database Administrator		Hours		
System Administrator		Hours		
System Trainer		Hours		
Web Developer		Hours		
Totals for Labor				\$ -
Total Price for this Modification:				\$ -

8.4 Any modification to the Price Tables and Payment and Milestone Schedule shall be done by written Change Order.

IX. STAFFING

9.1 Vendor Staffing

9.1.1 The Vendor Key Project Personnel for this SOW are: *{insert titles}*.

9.1.2 The individuals listed in Exhibit G to the Contract shall fulfill the Vendor Key Project Personnel for this SOW.

9.1.3 The contact information for the Vendor Key Project Personnel is set forth in Exhibit G to the Contract.

9.1.4 The substitution of Vendor Key Project Personnel shall be in accordance with Section 10.1.3 of the Contract.

9.2 WSDOT Key Project Personnel

The names and contact information for the WSDOT Key Project Personnel for this SOW are as set forth in Exhibit G to the Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

APPROVAL AS TO FORM:

Assistant Attorney General

Exhibit E
Statement of Work 5

SR 167 Integration of Image-Based Transactions

STATEMENT OF WORK NO. 5

For

WSDOT Toll Back Office System Replacement

SR 167 Integration of Image-Based Transactions

This Statement of Work No. 5 (SOW) for the WSDOT Toll Back Office System Replacement project is made and entered into by and between the Washington State Department of Transportation, an agency of the State of Washington (WSDOT), and *[Vendor Name TBD]*, licensed to do business in the State of Washington (Vendor).

I. RECITALS

1.1 WSDOT and Vendor are parties to Contract [Number TBD], dated _____, for Toll Back Office System Replacement (Contract).

1.2 The Contract allows WSDOT, at its discretion, to issue Statements of Work under which Vendor shall supply, install and maintain a Toll Back Office System (System).

1.3 Pursuant to the terms of the Contract, WSDOT has elected to have Vendor to develop and implement the integration of image-based transactions between the BOS application and the Roadside Toll System application for the State Route 167 high occupancy toll (HOT) lanes toll facility.

NOW, THEREFORE, Vendor and WSDOT agree to the following SOW for the Toll Back Office System:

II. DEFINITIONS; PURPOSE; TERM AND CONDITIONS

2.1 Definitions.

2.1.1 All capitalized terms used herein but not defined herein have the respective meanings set forth in the Contract Documents or, if not defined in the Contract Documents or in this SOW, have their ordinary and usual meaning. All section and exhibit references herein are to the sections and exhibits of the Contract or if so designated, to the Appendices to the RFP, unless otherwise stated.

2.1.2 For the purposes of this SOW, the following terms shall have the meanings as provided below:

“Final System Acceptance” shall mean

{ Add additional defined terms, as needed }

2.2 Purpose.

The purpose of this SOW No. 5 is to direct Vendor to develop and implement the integration of image-based transactions between the BOS application and the Roadside Toll System application for the State Route 167 HOT lanes toll facility.

2.3 Terms and Conditions.

The terms and conditions applicable to the Work performed under this SOW are set forth in the Contract Documents and this SOW. In the event of a conflict in the provisions of the Contract Documents and this SOW, the conflict will be resolved in accordance with the Order of Precedence as set forth in Section 21.13 of the Contract.

III. TERM

3.1 The term of this SOW shall commence upon execution of this SOW by WSDOT (Commencement Date) and terminate the earlier of Final System Acceptance or the termination of the Contract.

3.2 Vendor shall not commence Work under this SOW until WSDOT has issued the initial written Notice to Proceed (NTP) to Vendor.

3.3 In no event shall the term of this SOW exceed the term of the Contract, or any extensions thereto.

3.4 This SOW may be terminated in accordance with the termination provisions of the Contract or as mutually agreed in writing between the parties. In any event, this SOW shall terminate concurrent with the termination of the Contract.

3.5 Guaranteed Dates and Milestones may be further detailed in NTPs used to release specific Work Packages.

IV. SCOPE OF WORK

4.1 Deliverables.

4.1.1 In accordance with the requirements in the Contract Documents, Vendor shall perform the Work and provide the Services and Products, and generally meet the intents and specific scope, Deliverables, and requirements defined in the RFP and this SOW.

4.1.2 As detailed in the Contract Documents, the Vendor shall design, develop, test and implement the integration of image-based transactions between the BOS application and the RTS application for the State Route 167 HOT lanes toll facility. The OBOS will receive image transactions from the State Route 167 RTS application and will package these transactions into trips for posting to customer accounts within the CBOS.

4.2 Time is of the essence.

Time is of the essence for this SOW. Failure to meet the Guaranteed Dates for the Key Milestones as set forth in Contract **Exhibit H -- Performance Measures, Liquidated Damages and Incentives** may result in the assessment of Liquidated Damages as set forth in Section 19.9 of the Contract and Article V of this SOW, at WSDOT's discretion.

V. INCENTIVES AND LIQUIDATED DAMAGES

Incentives and Liquidated Damages applicable under this SOW shall be in accordance with Section 19.9 of the Contract and Contract **Exhibit H – Performance Measures, Liquidated Damages and Incentives**.

VI. BONDS

6.1 Vendor shall provide to WSDOT an executed Performance Bond for the Work covered by this SOW in accordance with the requirements in **Article VIII** and **Exhibit J** of the Contract.

6.2 The Performance Bond for the Work shall be in the amount of _____ percent (xx%) of the total Price for the Work covered by this SOW, which amount is _____ (\$_____). WSDOT to release and return the Performance Bond to Vendor upon Final System Acceptance.

6.3 Vendor shall provide the Performance Bond for this SOW to WSDOT upon execution of this SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to the receipt of the required Performance Bond.

VII. INSURANCE

7.1 Vendor shall acquire and maintain in full force and effect the insurance required in Section 17.2 of the Contract.

7.2 Vendor shall provide copies of certificates of all insurance required for this SOW to WSDOT prior to the Commencement Date of the SOW. In no event shall the Notice to Proceed with any of the Work covered by this SOW be issued prior to WSDOT's receipt of the required certificates of insurance.

VIII. PRICE AND PAYMENT TERMS

8.1 The pricing for the Work performed under this SOW shall be determined in accordance with the Price tables set forth herein.

8.2 WSDOT shall pay Vendor in accordance with the Price tables herein for the Work actually performed by Vendor and for which WSDOT has Accepted.

8.3 Payment and Milestone Schedule and Price table for _____ Work:

Prices for Procurement by Vendor - Software, Hardware, etc.				
Item	\$ / Unit	Units	Qty	Price
	\$ -	Each	0	\$ -
	\$ -	Each	0	
Totals for Hardware, Software, and Licenses				\$ -

Prices for Vendor Labor				
Position	Rate, \$/Hour	Units	Hours	Price
Program Manager	\$ -	Hours	0	\$ -
Project Manager	\$ -	Hours	0	\$ -
IT Manager	\$ -	Hours	0	\$ -
Data Architect	\$ -	Hours	0	\$ -
Business Analyst	\$ -	Hours	0	\$ -
Software Developer	\$ -	Hours	0	\$ -
Software Quality Analyst		Hours		
Software Team Lead		Hours		
Software Technical Manager		Hours		
Program Planner / Scheduler		Hours		
Technical Writer		Hours		
Database Administrator		Hours		
System Administrator		Hours		
System Trainer		Hours		
Web Developer		Hours		
Totals for Labor				\$ -
Total Price for this Modification:				\$ -

8.4 Any modification to the Price Tables and Payment and Milestone Schedule shall be done by written Change Order.

IX. STAFFING

9.1 Vendor Staffing

9.1.1 The Vendor Key Project Personnel for this SOW are: *{insert titles}*.

9.1.2 The individuals listed in Exhibit G to the Contract shall fulfill the Vendor Key Project Personnel for this SOW.

9.1.3 The contact information for the Vendor Key Project Personnel is set forth in Exhibit G to the Contract.

9.1.4 The substitution of Vendor Key Project Personnel shall be in accordance with Section 10.1.3 of the Contract.

9.2 WSDOT Key Project Personnel

The names and contact information for the WSDOT Key Project Personnel for this SOW are as set forth in Exhibit G to the Contract.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

[Vendor Name TBD]

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

APPROVAL AS TO FORM:

Assistant Attorney General

Exhibit F

Statement of Work 6

System Enhancements

[TBD]

Exhibit G

Contact Information

EXHIBIT G**WSDOT Contract Number:** KXXXX**Contracting Officers***Only the Contract Signature Authority identified below is authorized to bind WSDOT.*

<u>WSDOT CONTRACTING OFFICER</u>	Name Patty Rubstello Company Name WSDOT Toll Division Company Street Address: 401 2 nd Avenue S, Suite 300 Seattle, WA, 98104 Phone Number (206) 464-1299 <u>EMAIL ADDRESS: RUBSTEP@WSDOT.WA.GOV</u>
<u>VENDOR CONTRACTING OFFICER</u>	Name Company Name Company Street Address City, State, Zip Phone Number <u>EMAIL ADDRESS:</u>

Washington State Department of Transportation

Contract / Project Manager:	Name Jennifer Charlebois Company Name WSDOT Toll Division Company Street Address: 401 2 nd Avenue S, Suite 300 Seattle, WA, 98104 Phone Number (206) 716-1106 Email Address CharleJ@wsdot.wa.gov
Contract Administrator Mailing Address:	Name: Rick Naten Company Name: WSDOT Administrative Contracts Office Company Mailing Address: PO Box 47408, Olympia, WA 98504-7408 Phone Number: (360) 705-7741 Email Address: AdminContracts@wsdot.wa.gov
Contract Administrator Physical Address:	Name: Rick Naten Company Name: WSDOT Administrative Contracts Office Company Street Address: 310 Maple Park Ave SE, 2B1, Olympia, WA 98501-2348 Phone Number: (360) 705-7741 Email Address: AdminContracts@wsdot.wa.gov
Invoicing	Washington State Department of Transportation ATTN: WSDOT Toll Division Finance 401 2nd Avenue South, Suite 300 Seattle, WA 98104 Email: wilsonKR@wsdot.wa.gov

	And Name: Project Manager in applicable SOW Washington State Department of Transportation Company Street Address City, State, Zip Phone Number Email Address
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SOW #1 – Design and Implementation Phase
Washington State Department of Transportation:

SOW 1 Project Manager	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
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Vendor: XXXX

Project Executive:	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Quality Assurance Executive	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Project Manager	Name Company Name Company Street Address City, State, Zip Phone Number Email Address

Quality Assurance Manager	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Lead System Architect	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Operational Back Office Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Customer Relationship Management Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Accounting System Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Customer Website Development Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Organizational Change Management Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address

System Interface Developer	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Testing Manager	Name Company Name Company Street Address City, State, Zip Phone Number Email Address

SOW #2 – Operations and Maintenance

Washington State Department of Transportation:

SOW 2 Project Manager	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
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Vendor:

Project Executive:	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
BOS Support Team Project Leader	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
Functional Lead	Name Company Name Company Street Address City, State, Zip Phone Number Email Address

Lead Developer	Name Company Name Company Street Address City, State, Zip Phone Number Email Address
System Engineer	Name Company Name Company Street Address City, State, Zip Phone Number Email Address

Exhibit H

**PERFORMANCE BOND AND/OR MAINTENANCE AND OPERATIONS
BOND TEMPLATE**

Exhibit H

Performance Bond and/or Maintenance and Operations Bond Template

[COMPANY LOGO]	[NAME OF BOND]	NAME OF INSURANCE COMPANY NAME OF HOME OFFICE AND LOCATION
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KNOW ALL BY THESE PRESENTS, That we, _____ (called Principal), as Principal, and [NAME OF INSURANCE COMPANY] a [TYPE OF BUSINESS] corporation of Washington (called Surety), as Surety, are held and firmly bound unto the State of Washington (called Obligee) in the sum of _____ dollars (\$ _____) for the payment whereof Principal and Surety bind themselves, their legal representatives, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a written contract dated _____, 20__ with Obligee for Contract Number _____, dated _____, 20__, for Roadway Toll Systems Design, Installation, and Testing Work between the Washington State Department of Transportation (WSDOT) and _____, a copy of which Contract is hereto annexed and made a part of hereof as fully as if set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall faithfully perform such Contract and pay all persons who have furnished labor or material for use in or about the improvement and shall indemnify and save harmless Obligee from all costs and damage by reason of Principal's default or failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Surety hereby waives notice of any alteration, extension or forbearance as to any of the terms of the Contract other than the terms of payment thereunder, made or extended by Obligee or Principal.

NO RIGHT OF ACTION shall accrue upon or by reason hereof to, or for the use or benefit of, anyone other than the Obligee herein named.

NO SUIT, ACTION OR PROCEEDING by the Obligee to recover on this bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

Signed and sealed this _____ day of _____, 20__.

[NAME OF PURCHASER]

By: _____
Principal

[NAME OF INSURANCE COMPANY]

By: _____
Attorney-in-Fact

Exhibit I
Labor Rates

EXHIBIT I

All rates provided herein are fully burdened, reflecting the raw rate, overhead, and mark up.

Labor Rates

Ref No	Position	Rate, \$/Hour
1	Project Executive	
2	Quality Assurance Executive	
3	Project Manager	
4	Quality Assurance Manager	
5	Lead System Architect	
6	Operational Back Office Lead	
7	Customer Relationship Management Lead	
8	Accounting Systems Lead	
9	Customer Website Development Lead	
10	Organizational Change Management Lead	
11	System Interface Developer	
12	Testing Manager	
13	Technical Lead	
14	Data Architect	
15	Business Analyst	
16	Software Developer	
17	Software Quality Analyst	
18	Software Team Lead	
19	Software Technical Manager	
20	Program Planner / Scheduler	
21	Technical Writer	
22	Database Administrator	
23	System Administrator	
24	Trainer	
25	Web Developer	

Exhibit J

**PERFORMANCE MEASURES, LIQUIDATED DAMAGES, AND
INCENTIVES**

The Incentives and Liquidated Damages detailed below shall apply to the Development and Implementation and Maintenance and Operations Statements of Work.

1. Liquidated Damages for Development and Implementation

1.1 Milestones and Deliverables

Milestones are comprised of groupings of Deliverables itemized in the Price Proposal in Appendix 5. The Milestones and Deliverables for the Development and Implementation of the Project are set forth in Exhibit A - Statement of Work 1 to the Contract. Milestones listed in Tables 1, 2 and 3 below qualify for Incentives or Liquidated Damages. This is subject to modification, as discussed below.

1.2 Schedule and Baselines

The initial Payment and Milestone Schedule and Guaranteed Dates used as a basis for Incentives and Liquidated Damages during the Development and Implementation of the Project are set forth in Exhibit A - Statement of Work 1 to the Contract.

Guaranteed Dates are the approved dates included and defined in the Contract by which each Milestone within the Development and Implementation phased sequence is required to be met and accepted by WSDOT. The Guaranteed Dates for the final Milestones necessary to achieve or be assessed Incentives or Liquidated Damages are the Phase 1 Go Live, Phase 2 Go-Live, and Final System Acceptance. A Deliverable that does not meet the stated requirements or expectations stated in the Contract Documents will be considered not to have been achieved and subsequently can prevent a Milestone from being completed.

1.3 Incentives and Liquidated Damages for Early and Late Deliveries

WSDOT will assess Incentives and Liquidated Damages for the following Milestones delivered before or after their Guaranteed Dates at escalating amounts:

- Go-Live Phase 1
- Go-Live Phase 2
- Final System Acceptance

Table 1 Incentive and Liquidated Damages Rates for Milestones: Go-Live Phase 1

Ref	Measurement	Target Performance	Actual Performance	Incentive Rate, per Week	Liquidated Damages Rate, Per Week
A	Milestone Go-Live Phase 1	In accordance with the approved Guaranteed Dates.	Weeks 1-2	\$50,000	\$50,000
			Weeks 3-4	\$100,000	\$100,000
			Weeks 5-6	\$140,000	\$140,000

*Partial weeks rounded to nearest whole week, where up to two Business Days rounded down and more than two Business Days rounded up.

** Incentives Guaranteed Date for Go-Live Phase 1 capped at \$580,000.00.

***Liquidated Damages Guaranteed Date for Go-Live Phase 1 capped at \$580,000.00.

Table 2 Incentive and Liquidated Damages Rates for Milestones: Go-Live Phase 2

Ref	Measurement	Target Performance	Actual Performance	Incentive Rate, per Week	Liquidated Damages Rate, Per Week
B	Milestone Go-Live Phase 2	In accordance with the approved Guaranteed Dates.	Weeks 1-2	\$20,000	\$20,000
			Weeks 3-4	\$35,000	\$35,000
			Weeks 5-6	\$50,000	\$50,000

*Partial weeks rounded to nearest whole week, where up to two Business Days rounded down and more than two Business Days rounded up.

** Incentives Guaranteed Date for Go-Live Phase 2 capped at \$210,000.00.

***Liquidated Damages for Guaranteed Date for Go-Live Phase 2 capped at \$210,000.00.

Table 3 Incentive and Liquidated Damages Rates for Milestones: Final System Acceptance

Ref	Measurement	Target Performance	Actual Performance	Liquidated Damages Rate, Per Week
C	Milestone Final System Acceptance	In accordance with the approved Guaranteed Dates.	Weeks 1-2	\$5,000
			Weeks 3-4	\$15,000
			Weeks 5-6	\$25,000

*Partial weeks rounded to nearest whole week, where up to two Business Days rounded down and more than two Business Days rounded up.

** Incentives Guaranteed Date for Go-Live Phase 2 capped at \$90,000.00.

***Liquidated Damages for Guaranteed Date for Go-Live Phase 2 capped at \$90,000.00.

1.4 Special Incentives for System Stability

WSDOT will assess Incentives and Liquidated Damages for initial System Stability relative to - Milestones. System Stability shall be indicated by 2 continuous Calendar Weeks without a Severity 1 Error. Beginning 1 day after Go-Live Phase 1 and 1 day after Go-Live Phase 2; WSDOT will assess Incentives and Liquidated Damages for System Stability at escalating amounts, relative to this date Incentive rates are:

- Go-Live Phase 1

Table 4 Incentive and Liquidated Damages Rates for Stability Milestone Go-Live Phase 1

Ref	Measurement	Actual Performance	Incentive Rate, per Week (cumulative)	Liquidated Damages Rate, per Week
D	Weeks without a Severity 1 Error	Weeks 1-2	\$20,000	\$5,000
		Weeks 3-4	\$15,000	\$10,000
		Weeks 5-6	\$10,000	\$15,000
		Weeks 7-8	\$5,000	\$20,000

*Partial weeks rounded to nearest whole week, where up to two Business Days rounded down and more than two Business Days rounded up.

** Incentives - Guaranteed Date for Go-Live Phase 1 capped at \$100,000.00.

***Liquidated Damages for Guaranteed Date for Go-Live Phase 1 capped at \$100,000.00.

- Go-Live Phase 2

Table 5 Incentive and Liquidated Damages Rates for Stability Milestone Go-Live Phase 2

Ref	Measurement	Actual Performance	Incentive Rate, per Week	Liquidated Damages Rate, per Week
E	Weeks without a Severity 1 Error	Weeks 1-2	\$20,000	\$5,000
		Weeks 3-4	\$15,000	\$10,000
		Weeks 5-6	\$10,000	\$15,000
		Weeks 7-8	\$5,000	\$20,000

*Partial weeks rounded to nearest whole week, where up to two Business Days rounded down and more than two Business Days rounded up.

** Incentives Guaranteed Date for Go-Live Phase 2 capped at \$100,000.00.

***Liquidated Damages for Guaranteed Date for Go-Live Phase 2 capped at \$100,000.00.

1.5 Accumulation of Incentives and Liquidated Damages

Incentives and Liquidated Damages for the Development and Implementation phase of the Project will accumulate as a single amount. This final net amount is settled following WSDOT's formal, Final System Acceptance of the BOS. If the net amount is positive, WSDOT will pay Vendor the full amount. If the net amount is negative, it will be deducted from WSDOT's payment(s) to Vendor.

2. Liquidated Damages for Operations and Maintenance

2.1 Compliance with Contract, Regulations, and Audits

Operations and Maintenance payments are withheld if WSDOT determines Vendor is not fully complying with the terms and requirements of the Contract Documents.

In addition to any penalties or charges imposed by the credit card institutions for PCI noncompliance, the Vendor shall pay any direct damages incurred by WSDOT per occurrence in addition to any cost of remediation, including customer communication and credit fraud protection for affected customers.

2.2 BOS System Availability

System Availability requirements are set forth in the RFP, Appendix 2 at Section 18.12. These requirements are tabulated in Table 6 below. Liquidated Damages may, at WSDOT discretion, be assessed monthly as a percentage of the Monthly Operations and Maintenance charges due the Vendor:

Table 6 Liquidated Damages Rates for System Availability, Monthly Basis

Ref	Availability Measurement	Measurement Methodology	Target Performance	Actual Performance (Monthly)	LD, % of Monthly O&M Price
F	BOS availability during peak hours, 7AM – 7PM	Vendor shall report system availability utilizing system-monitoring tools via the Monthly Operations Report. NOTE: Where Monthly BOS System Availability (Ref. F and G) measurements overlap, the higher of the Liquidated Damages assessed are not cumulative.	99.9% availability	99.9% or higher	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0%	1.5%
				<99% to >=98%	5.0%
				< 98%	10.0%
G	Overall availability of BOS System	Vendor shall report system availability utilizing system-monitoring tools via the Monthly Operations Report. NOTE: Where Monthly BOS System Availability (Ref. F and G) measurements overlap, the higher of the Liquidated Damages assessed are not cumulative	99.8% availability	99.8% or higher	0%
				< 99.8% and >= 99.5%	0.5%
				<99.5% to >=99.0%	1.5%
				<99% to >=98%	5.0%
				< 98%	10.0%
H	Availability of phone system and IVR during peak hours (if in scope), 7:00 a.m. – 7:00 p.m.	Vendor shall report system availability utilizing system-monitoring tools via the Monthly Operations Report..	99.9% availability	99.9% or higher	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0%	1.5%
				<99% to >=98%	5.0%
				< 98%	10.0%
I	Availability of customer web-site	Vendor shall report system availability utilizing system-monitoring tools via the Monthly Operations Report..	99.9% availability	99.9% or higher	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0%	1.5%
				<99% to >=98%	5.0%
				< 98%	10.0%
J	Availability of system interfaces	Vendor shall report system availability utilizing system-monitoring tools via the Monthly Operations Report..	99.9% availability	99.9% or higher	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0%	1.5%
				<99% to >=98%	5.0%
				< 98%	10.0%
K	CBOS system performance (CSR User Interface)	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Provide a minimum of 4-second response time	95% or >	0%
				< 95% and >= 94.5%	0.05%
				<94.5% to >=94.0%	1.5%

			for CSR CBOS functions 95% of the time	<94% to >=93%	5%
				< 93%	10%

*Approved outages for maintenance are not counted against the system availability calculations.

2.3 BOS System Functionality

WSDOT will assess Liquidated Damages for failure to meet BOS System Functionality as set forth in Tables 7-11 below. This section concentrates on accuracy and timeliness, and responsiveness including:

- Processing of transactions
- Accurate and timely transaction processing
- Timely identification, communication and remediation of system failures
- Mean Time to Repair – Severity 1, 2, and 3 issues as defined in RFP, Appendix 2 at Section 25.9.

Table 7 Liquidated Damages Rates for System Functionality

Table 1. Ref	Table 2. Functionality Measurement	Table 3. Measurement Methodology	Table 4. Target Performance	Table 5. Actual Performance on a Monthly Basis	Table 6. LD, % of Monthly O&M Price
Table 7. L	Table 8. Human acknowledgement of System Issues	Table 9. Vendor shall report on help desk ticket system issues and confirmation of acknowledgements in the Monthly Operations Report	Table 10. Within 30 minutes of notification via help desk ticket system	Table 11. Quantity of occurrences over 30 minutes	Table 12. 0.25% per occurrence
Table 13. M	Table 14. Mean Time to Repair – Severity 1 issues	Table 15. Vendor shall report on help desk ticket system issues and confirmation of acknowledgements in the Monthly Operations Report	Table 16. Within 8 hours of notification	Table 17. 8 hours or less	Table 18. 0%
				Table 19. Between 8 and 9 hours	Table 20. 2%
				Table 21. 9 or more hours	Table 22. 10%
Table 23. N	Table 24. Mean Time to Repair – Severity 2 issues	Table 25. Vendor shall report on help desk ticket system issues and confirmation of acknowledgements in the Monthly Operations Report	Table 26. Within 24 hours of notification	Table 27. 24 hours or less	Table 28. 0%
				Table 29. Between 24 and 30 hours	Table 30. 2%
				Table 31. 30 or more hours	Table 32. 10%
Table 33. O	Table 34. Mean Time to Repair – Severity 3 issues	Table 35. Vendor shall report on help desk ticket system issues and confirmation of acknowledgements in the Monthly Operations Report	Table 36. Within 5 days of notification	Table 37. 5 days or less	Table 38. 0%
				Table 39. Between 5 and 7 days	Table 40. 1%
				Table 41. 7 or more days	Table 42. 2%

2.4 Accurate and Timely Transaction Processing by the OBOS

Table 8 Liquidated Damages Rates for Accurate and Timely Transaction Processing - OBOS

Ref	Functionality Measurement	Measurement Methodology	Target Performance	Actual Performance on a Monthly Basis	LD, % of Monthly O&M Price
P	Transponder transactions	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Post transponder transactions within 12 hours of receipt from lane system(s) – (Post Trip Building process)	99.9% or >	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0% =	1.5%
				<99% to >=98%	5%
				< 98%	10%
Q	Identification of registered vehicle owner	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Transmit requests for registered vehicle owner information within 12 hours of identification of license plate information	99.9% or >	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0% =	1.5%
				<99% to >=98%	5%
				< 98%	10%
R	Pay by Plate Transactions	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Post pay by plate transactions within 24 hours of identification of the plate through image review (system or manual)	99.9% or >	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0% =	1.5%
				<99% to >=98%	5%
				< 98%	10%
S	Process responses from DOL	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Following the response from the DOL request the system will, within 12 hours, process the transaction to an account or specify an exception	99.9% or >	0%
				< 99.9% and >= 99.5%	0.5%
				<99.5% to >=99.0% =	1.5%
				<99% to >=98%	5%
				< 98%	10%
T	Image review system performance	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Provide five-second response time for image review functions at least 95% of the time	95% or >	0%
				< 95% and >= 94.5%	0.05%
				<94.5% to >=94.0%	1.5%
				<94% to >=93%	5%
				< 93%	10%

* WSDOT will utilize Monthly Operational Reports provided by Vendor to monitor Functionality Measurements metrics

Table 9 Liquidated Damages Rates for Trip Building Assembly and Correctness – OBOS Phase 2

Ref	Functionality Measurement	Measurement Methodology	Target Performance	LD, Rate of Monthly O&M Price
U	Trip Building Correctness Trip Building Assembly, Annual Audit	Statistically valid sample required as defined in approved Annual Audit Plan. Verification Tests performed by Vendor and verified for quality and accuracy by 3rd party.	Assemble at least 95% of transactions into Trip Transactions with at least 99.5% accuracy.	50% reduction of monthly O&M payment until corrected
V	Trip Building Assembly, ad hoc sample	Tests performed by Vendor and verified for quality and accuracy by WSDOT.	Assemble at least 95% of transactions into Trip Transactions with at least 99.5% accuracy.	50% reduction of monthly O&M payment until corrected

Table 10 Liquidated Damages Rates for OCR Accuracy and Confidence – OBOS Phase 2

Ref	Functionality Measurement	Measurement Methodology	Target Performance	LD, Rate of Monthly O&M Price
X	OCR Result	Statistically valid sample required as defined in approved Annual Audit Plan. Verification Tests performed by Vendor and verified for quality and accuracy by 3rd party.	99% of Trip Transactions with an OCR confidence rating allowing the transaction to bypass human image review shall include correct plate result including characters, type, and jurisdiction	25% reduction of monthly O&M payment until corrected

* Liquidated Damages Rates for OCR Accuracy and Confidence not to exceed 50% of total monthly O&M Price

2.5 Accurate and Timely Transaction Processing by the CBOS

Table 11 Liquidated Damages Rates for Accurate and Timely Transaction Processing - CBOS

Ref	Functionality Measurement	Measurement Methodology	Target Performance	Actual Performance on a Monthly Basis	LD, % of Monthly O&M Price
Y	Account Auto Replenishment	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Auto replenish customer account within one hour of reaching low balance threshold	Penalty assessed per monthly occurrence	\$100
Z	Improper payment processing	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	No improper payment processing (over charging credit card, bank acct (via ACH), improper drawing down of account causing improper replenishment)	Penalty assessed per monthly occurrence	\$100
AA	General ledger reconciliation	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Reconciliation must occur nightly between the CBOS and the WSDOT GL (TRAINS)	Penalty assessed per monthly occurrence	\$2,500
BB	Posting Payments and Deposits to Bank	Vendor will report accuracy and timeliness processing issues via the Monthly Operations Report.	Post appropriate bank transactions within 12 hours of entry into CBOS by CSC Operator staff	Penalty assessed per monthly occurrence	\$100

End of Exhibit

Exhibit K

SOFTWARE LICENSE (FOR VENDOR PROPRIETARY SOFTWARE)

Exhibit L
Software Escrow Agreement

Exhibit M

DRB “Scope of Work” and “Suggested Administrative Procedures”

Exhibit M

DRB “Scope of Work” and “Suggested Administrative Procedures”

GUIDELINES FOR DISPUTES REVIEW BOARD

Scope of Work

The Scope of Work of a Disputes Review Board (“Board”) includes, but is not limited to, the following items of work:

Board Consideration of Disputes or Claims: Upon request by either WSDOT or the Vendor to review a dispute the Board shall convene to review and consider the issue. Both WSDOT and the Vendor shall be given the opportunity to present their evidence at these meetings. The time and location of Board meetings shall be determined by WSDOT, the Vendor, and the Board. It is expressly understood that Board members are to act impartially and independently in the consideration of facts and conditions surrounding any written appeal presented by WSDOT or the Vendor and that the recommendations concerning any such appeal are advisory.

Procedures: Prior to any hearing involving a contract dispute, the board will meet with WSDOT and the Vendor to establish the rules and procedures that will govern the Board’s participation in the Project as set forth in the contract. In establishing the rules and procedures, the parties may consider the Suggested Administrative Procedures included in this Appendix. The board may establish any internal rules and procedures not covered in the Agreement with WSDOT and the Vendor. The Board’s recommendations resulting from its consideration of a dispute shall be furnished in writing to WSDOT and the Vendor. The recommendations shall be based on the contract provisions and the facts and circumstances involved in the dispute.

Furnishing Documents: WSDOT shall furnish to the Board three copies of the Contract and other documents which are or may become pertinent to the activities of the Board. The Vendor shall furnish to the Board three sets of documents which are or may become pertinent to the activities of the Board, except documents furnished by State.

Site Visits: Board members may visit the Project Site to keep abreast of installation activities and to develop a familiarity of the Work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed upon between WSDOT, the Vendor, and the Board.

Suggested Administrative Procedures

Objective

The principal objective of the Board is to assist in the resolution of disputes which would otherwise be likely submitted to litigation processes. If this objective is achieved, such disputes can be resolved promptly, with minimum expense and disruption to the administration and performance of the Work. It is not intended for WSDOT or the Vendor to default on their normal responsibility to amicably and fairly settle their differences by indiscriminately assigning

them to the Board. It is intended that the mere existence of the Board will encourage WSDOT and the Vendor to resolve potential disputes without resorting to appeal procedure. But the machinery for prompt and efficient action will already be in place if a dispute develops which is serious enough to warrant the Board's review.

Responsibility of the Board

The Board will render findings and recommendations on disputes between the Vendor and WSDOT arising from the Contract. Primarily the Board will consider claims and disputes involving interpretation of the Contract, delays, acceleration of the Work, scheduling, classification of extra Work, changed conditions, changes and the like. During its regular meetings the board will encourage the settlement of differences at the job level.

The Board will refrain from giving any official advice or consultative services to either party. The individual Board members will act in a completely independent manner and will have no consultative or business connections with either party. During routine meetings of the Board as well as during formal hearings Board members should refrain from expressing opinions on matters under dispute or potential dispute. Opinions of Board members expressed in private sessions should be kept strictly confidential.

The post of Chairman shall typically reside with the Board member chosen to perform this role. However, the role may be delegated to another member from time-to-time.

Regular Construction Progress Meetings

The frequency of regular meetings will be set by agreement of the Board, WSDOT and the Vendor, consistent with design and installation activities and matters under consideration and dispute. Each meeting will consist of a round table discussion and may include a field inspection of the Work being performed. The round table discussion will be conducted by a member of WSDOT's staff and will be attended by personnel from WSDOT and the Vendor. The agenda will generally be as follows:

- Meeting opened by Chairman of the Board.
- Remarks by WSDOT's representative.
- A description by the Vendor of Work accomplished since the last meeting, the current status of the Work, the schedule, and a forecast for the coming period.
- An outline, by the Vendor, of potential problems with a description.
- An outline, by WSDOT's representative, of the status of the Work as WSDOT views it.
- A brief description, by the Vendor or WSDOT, of potential claims or disputes, which have surfaced since the last meeting.
- A summary, by the Vendor, WSDOT or the Board, of the status of past disputes and claims.

WSDOT will prepare minutes of all regular meetings and circulate them for revision and approval by all concerned.

If held the field inspection will cover all active segments of the Work, the Board being accompanied by both WSDOT and Vendor personnel.

Handling of Written Appeals

When the Board receives a written appeal, it shall first reach agreement with the parties on a time to conduct the hearings. The decision shall be tempered by the desires and needs of WSDOT and the Vendor. If the matter is not urgent, it may be scheduled for the time of the next regular visitation to the Project Site. For an urgent matter the Board should meet at its earliest convenience.

The Board may also request that written documentation concerning the dispute be sent to each individual member for study before the hearing begins. A party furnishing written documentation to the Board must furnish copies of such information to the other party before the hearing begins. For hearing on disputes, the Board shall designate one of their members to act as Chairperson. WSDOT and the Vendor shall have a representative at all hearings.

The claimant will discuss the dispute followed by the other party. Each party will then be allowed one or more rebuttals until all aspects are thoroughly covered. Each time a person testifies, the Board members may ask questions, seek clarification, or request further data. The Board may request from either party documents or information that would assist the Board in making its findings and recommendations, including, but not limited to, documents used by the Vendor in preparing the bid for the Project. A refusal by a party to provide information requested by the Board may be considered by the Board in making its findings and recommendations. In large or complex issues, one or more additional hearings may be necessary in order to consider all the evidence presented by both parties.

During open hearings, no Board member should express an opinion concerning the merit of any facet of the dispute. By the same token, all Board deliberations should be conducted in private, with all individual views kept strictly confidential.

After the hearings are concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent contract provisions and facts and circumstances involved in the dispute.

The Board should make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report. Although both parties should place weight upon the Board's recommendations, they are not binding. Either party may appeal a recommendation to the Board for reconsideration. However, if the Board's recommendations do not resolve the dispute, all records, and written recommendations, including any minority reports, may be admissible as evidence in any subsequent litigation.

Miscellaneous

It is not desirable to adopt hard and fast rules for the functioning of the Board. The entire procedure should be kept flexible so that it can adapt to changing situations. The Board should initiate, with the other parties' concurrence, new rules or modifications to old ones whenever this is deemed necessary.

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