

**Contract Number K1537**  
for  
***CLR Analytics Loop Signature for Vehicle  
Classification***

between the

**Washington State**

**Department of Transportation**

and

**CLR Analytics Inc.**

**Effective Date:** \_\_\_\_\_

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# CONTRACT NUMBER K1537

## for CLR Analytics Loop Signature for Vehicle Classification

### PARTIES

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through the Department of Transportation, an agency of Washington State government (“WSDOT”) located at 7345 Linderson Way SW, Tumwater, WA 98501, and CLR Analytics Inc. (Vendor), a small business licensed to conduct business in State of California, at 52 Gardenhouse Way, Irvine, CA 92620 for the purpose of purchasing of VSign Smart Vehicle Classification system as well as providing supports and services to maintain the VSign system.

### RECITALS

The state of Washington, acting by and through the Washington State Department of Transportation (WSDOT) has determined that a sole source method for the VSign Smart Vehicle Classification system as well as providing supports and services to maintain the VSign system is: appropriate under RCW 39.26 in accordance with the Department of Enterprise Services (DES) standard and approval authority and the Office of Chief Information Officer’s Investment Standards.

DES Filing Requirements – the provisions of Chapter 39.26 RCW require WSDOT to file this sole source contract with DES for approval. No contract so filed is effective nor shall work commence under it until the DES has approved the filing.

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

NOW THEREFORE, WSDOT awards to Vendor this Contract, the terms, and conditions of which shall govern Vendor’s furnishing to WSDOT the VSign Smart Vehicle Classification system as well as providing supports and services to maintain the VSign system. This Contract is not for personal use.

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

#### 1. Definition of Terms

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

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

“**Acceptance Date**” shall mean the date upon which WSDOT Accepts the Software as provided in the section titled **Standard of Performance and Acceptance**; or, if there is no Acceptance Testing, Acceptance Date shall mean the date Vendor delivers the Products.

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

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

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes WSDOT, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data.

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

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

**“Department”** shall mean the same as WSDOT.

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

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

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

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

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

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

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

**“Product(s)”** shall mean any Vendor supplied equipment, Software, and documentation.

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

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

**“Schedule A: Statement of Work”** shall mean the attachment to this Contract that identifies the authorized Software and Services and Prices available under this Contract.

**“Schedule B: Cost Estimate”** shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

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

**“Software”** shall mean any software supplied by Vendor, the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where

provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

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

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

**“System”** shall mean the hardware, software, and communications provided under this Contract.

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

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

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

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

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

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

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

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

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

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



## Contract Term

### 2. Term

#### 2.1. Term of Contract for System Purchases

- a) This Contract will involve the purchase of System hardware, front-end Services, the recurrent Services, and the recurrent hardware maintenance. This Contract's initial purchase term shall be for two (2) years, commencing upon the Effective Date.
- a) This Contract's initial purchase term may be extended by four (4) additional one (1) year terms, provided that the extensions shall be at WSDOT's sole option and shall be affected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing. A failure to provide notice as stated herein will result in expiration of the Contract at the end of the term then in effect.

b)

#### 2.2. License Term—see Section 9, **License Grant**

### 3. Survivorship

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

## Pricing, Invoice and Payment

### 4. Pricing

- 4.1. The total amount expended under this Contract shall not exceed three hundred thousand (\$300,000.00) dollars.
- 4.2. Vendor agrees to provide the Products and Services at the Prices set forth in Schedule A. No other Prices shall be payable to Vendor for implementation of Vendor's Response.
- 4.3. WSDOT shall pay Vendor a front-end fee covering System hardware and front-end Services followed by annual fees covering the recurrent Services and recurrent hardware maintenance based on Schedule A.

- 4.4. Prices shall not be increased during the initial 2-year term of the Contract.
- 4.5. If Vendor reduces its Prices for any of the hardware, Software or Services during the term of this Contract, WSDOT shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the WSDOT Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.6. WSDOT shall reimburse Vendor for travel and other expenses as identified in this Contract, or as authorized in writing, in advance by WSDOT in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoc.htm>). Vendor shall provide a detailed itemization of expenses, including WSDOT description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

## **5. Advance Payment Prohibited**

No advance payment shall be made for the Software and Services furnished by Vendor pursuant to this Contract. Maintenance payments, if any, may be made on an annual basis at the beginning of the year.

## **6. Taxes**

- 6.1. WSDOT will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## **7. Invoice and Payment**

- 7.1. Vendor will submit properly itemized invoices to Marchelle Lee at PO Box 47380, Tumwater, WA 98501 or MPDadmin@WSDOT.Wa.gov. Invoices shall provide and itemize, as applicable:
  - a) WSDOT Contract number K1537;
  - b) Vendor name, address, phone number, and Federal Tax Identification Number;
  - c) Description of Software, including quantity ordered;
  - d) Date(s) of delivery and/or date(s) of installation and set up;
  - e) Price for each item, or Vendor's list Price for each item and applicable discounts;
  - f) Maintenance charges;
  - g) Net invoice Price for each item;
  - h) Applicable taxes;
  - i) Shipping costs;
  - j) Other applicable charges;
  - k) Total invoice Price; and
  - l) Payment terms including any available prompt payment discounts.

- 7.2. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including WSDOT description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. (see subsection 4.6 above)
- 7.3. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.4. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 7.5. The WSDOT Contract number K1537 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.6. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 7.7. If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Software or receipt of Vendor's properly prepared invoice, whichever is later.

## **8. Overpayments to Vendor**

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

## **Software License**

### **9. License Grant**

- 9.1. Vendor grants to WSDOT a non-exclusive, transferable per-site licenses to use the System and its related software and documentation according to the terms and conditions of this Contract.
- 9.2. WSDOT may modify any Vendor's Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, Vendor Software will be removed from the derivative work and, at WSDOT's option, either WSDOT destroyed or returned to Vendor. In such situations, WSDOT retains a license only to use the Software in the derivative work.
- 9.3. WSDOT will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Vendor or Software owner.
- 9.4. WSDOT may copy each item of Software to a network.
- 9.5. WSDOT will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. WSDOT may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. WSDOT may use backup or archival copies of the Software, without

reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. WSDOT may make these backup or archival copies available to the disaster recovery site(s)' employees who require use of the Software in order to assist WSDOT with disaster recovery exercises. WSDOT agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when WSDOT's facilities, or any portion thereof, are inoperable due to emergency situations.

- 9.6. Freedom of Use. Vendor understands that WSDOT may provide information processing services to other agencies of state government and other tax-supported entities. Vendor further understands that WSDOT or other agencies of state government and other tax-supported entities may provide services to the public through Internet applications. Software delivered hereunder may be used in the delivery of these services. Vendor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

## **10. Software Ownership**

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

## **11. Ownership/Rights in Data**

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

## **12. Software Specifications**

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

### **13. Compliance with Standards**

- 13.1. Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Vendor to conform to applicable industry standards..
- 13.2. Vendor represents that it has made its best effort to design, develop, produce the Software to meet the Software quality assurance practices and will maintain its quality assurance practices during the term of this Contract.
- 13.3. VSign will always use the AI vehicle classification library approved by the state. When a new library becomes available, CLR will need to present its performance via a before-after comparison study using the data collected and processed at the VSign sites. The new library can only be deployed if the state approves it.
- 13.4. When the state finds the VSign system is not able to provide acceptable performance at VSign sites by meeting the state's validation criteria and/or misclassifying some important types of vehicles, the state and CLR will work together to address the issue. The state will collect video data at VSign sites and CLR will review the video data to further evaluate the VSign performance and find reasons. If the issue is related to the VSign, CLR will fix system settings and calibrate site-specific parameters to bring it to work properly. If the issue is related to some new or unique vehicles traveling in the state, there will be a need to customize the approved VSign AI library. In this case, CLR will provide an estimate of the cost for the customization. CLR provides the following two levels of staff for the AI library customization service. The data analytics staff has a rate of \$100 and the AI algorithm developer staff has a rate of \$150.
- 13.5. To perform library customization, CLR will first make a decision if the VSign sites with video data are appropriate based on loop sensor performance and the quantity of the vehicle types in question shown at the study sites. There might be a need to collect data from multiple sites.
- 13.6. The cost of AI library customization varies based on the complexity. CLR will provide an estimate based on the needs. For example, AI library customization can be as simple as adding some unique vehicles (such as some new FHWA class 13 vehicles). Under this case, tier 1 customization is needed, which involves the processing of 2000 vehicles. 6 hours of data analytics staff and 24 hours of the AI algorithm developer staff will be needed, which is equivalent to a total cost of \$3,600. A relatively complicated AI library customization typically involves the modification of the AI libraries of multiple FHWA classes. Under this case, tier 2 customization may be needed, which involves the processing of 8000 vehicles. 24 hours of data analytics staff and 80 hours of the AI algorithm developer staff will be needed, which is equivalent to a total cost of \$14,400

### **14. Date Warranty**

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by WSDOT that may deliver date records from the Software, or interact with date records of the Software (“Date Warranty”). In the event a Date Warranty problem is reported to Vendor by WSDOT and such problem remains unresolved after three (3) calendar days, at WSDOT’s discretion, Vendor shall send, at Vendor’s sole expense, at least one (1) qualified and knowledgeable representative to WSDOT’s premises.

This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on WSDOT's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless WSDOT from and against any and all harm, injury, damages, costs, and expenses incurred by WSDOT arising out of said breach.

## **15. Physical Media Warranty**

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

## **16. No Surreptitious Code Warranty**

- 16.1. Vendor warrants to WSDOT that no licensed copy of the Software provided to WSDOT contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Vendor further warrants that Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict WSDOT's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to WSDOT under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 16.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
- 16.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 16.4. Vendor will defend WSDOT against any claim, and indemnify WSDOT against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

## **17. Reauthorization Code Required**

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

## **18. Software Documentation**

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

## **Vendor's Responsibilities**

### **19. Shipping and Risk of Loss**

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

### **20. Delivery**

- 20.1. Vendor shall deliver the Products ordered pursuant to this Contract on or before the Delivery Date. For any exception to this Delivery Date, Vendor must notify WSDOT and obtain prior approval in writing. Time is of the essence with respect to delivery and Vendor may be subject to liquidated damages and/or termination of an order or of this Contract and/or other damages available under law for failure to deliver on time.
- 20.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from WSDOT, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the WSDOT's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of WSDOT for all deliveries made hereunder.
- 20.3. Vendor shall maintain a web site from which WSDOT may download the Software. Such web site shall be of a design approved by both Vendor and WSDOT prior to this Contract's execution. Vendor shall not change such web site without the prior written consent of



WSDOT. Time is of the essence with respect to delivery and Vendor may be subject to termination of this Contract and/or other damages available under law for failure to maintain an operable web site.

## **21. Security**

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

### **21.1. Facility Access**

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

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

### **21.2. Remote Access to Network.**

Vendor understands that in order to obtain remote access to WSDOT's Local Area Network (LAN), email, or supported computing environments through a remote access connection ("Remote Access"), Vendor must comply with WSDOT's Remote Access policy and any other applicable policies or procedures. Vendor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by WSDOT.

### **21.3. System Security**

Vendor acknowledges and understands that it may be required to access purchaser's computer networks in performing an SOW and that in providing such access to Vendor, WSDOT places special confidence and trust in Vendor. Vendor acknowledges and understands that any access granted by WSDOT to its computer networks shall be

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

#### 21.4. Security Incident Response

If Vendor becomes aware of any breach, including but not limited to unlawful access to any WSDOT data stored on or at Vendor's equipment or facilities, or unauthorized access to such equipment or facilities, which may result in loss, disclosure, or alteration of WSDOT data (each a "Security Incident"), Vendor will take the following actions:

- Notify WSDOT of the Security Incident immediately following discovery;
- Investigate the Security Incident and provide Purchaser with detailed information about the Security Incident:
- Take steps to mitigate the effects and to minimize any damage or loss resulting from the Security Incident and Provide cooperation and assistance to WSDOT in fulfilling its mitigation, investigation, and notification obligations under applicable law or regulation, including assisting third parties retained by WSDOT for such purposes.
- Permit WSDOT to conduct, with reasonable prior written notice, under reasonable time, place and manner conditions, pursuant to appropriate confidentiality and technical restrictions, and at its own expense, an audit of Solution Provider's systems, policies and procedures relevant to the security and integrity of WSDOT data.

If a Security Incident is found to be the result of Vendor's failure to take reasonable security precautions, including, but not limited to, adoption and enforcement of a technology security policy, Vendor will assume complete responsibility for notifying affected individuals as directed by WSDOT

#### 21.5. Safety

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

## **22. Standard of Performance and Acceptance**

- 22.1. This section establishes a Standard of Performance that must be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Software and any Software that is modified by or with the written approval of Vendor after having been Accepted.
- 22.2. The Standard of Performance for Software is defined in Schedule A..
- 22.3. The Acceptance Testing period shall be thirty (30) calendar days starting from the day after the Software is installed and Vendor certifies that Software is ready for Acceptance Testing. WSDOT will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 22.4. In the event the Software does not meet the Standard of Performance during the initial period of Acceptance Testing, WSDOT may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after ninety (90) calendar days the Software still has not met the Standard of Performance WSDOT may, at its option: (i) declare Vendor to be in breach of this Contract and terminate this Order or this Contract; or, (ii) at the sole option of WSDOT, demand replacement Software from Vendor at no additional cost to WSDOT; or, (iii) continue the Acceptance Testing for an additional thirty (30) calendar days. WSDOT's option to declare Vendor in breach and terminate this Order or this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 22.5. Software shall not be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first WSDOT Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from WSDOT to Vendor.

## **23. Warranty**

Vendor warrants that the Software and Hardware shall be in good operating condition and shall meet WSDOT requirements for a period of two (2) years, the Warranty Period. This Warranty Period begins the first day after the Acceptance Date. Vendor shall replace all Software and Hardware that are defective or not performing in accordance with the Specifications, at Vendor's sole expense.

## **24. Software Upgrades and Enhancements**

Vendor shall:

- 24.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;

- 24.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to WSDOT; and
- 24.3. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software with other Software products.

## **25. Software Maintenance and Support Services**

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

In addition, Vendor shall provide the following Services:

- 25.1. Help Desk Services. Vendor shall provide Help Desk Services for reporting errors and malfunctions and trouble shooting problems. Vendor's Help Desk Services shall be via telephone lines or email. Vendor's Help Desk Services shall include but are not limited to the following Services:
  - a) Assistance related to questions on the use of the subject Software;
  - b) Assistance in identifying and determining the causes of suspected errors or malfunctions in the Software;
  - c) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
  - d) Information on errors previously identified by WSDOT and reported to Vendor and detours to these where available; and
  - e) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
- 25.2. On-line Support. Vendor may execute on-line diagnostics from a remote Vendor location solely to assist in the identification and isolation of suspected Software errors or malfunctions.
- 25.3. Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by WSDOT of identified errors or malfunctions in the Software, Vendor will either:
  - a) Provide WSDOT with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform WSDOT of the problem resolved and any significant operational differences resulting from the correction that is known by Vendor, or
  - b) Provide WSDOT with a written response describing Vendor's then-existing diagnosis of the error or malfunction and generally outlining Vendor's then-existing plan and timetable, subject to WSDOT's approval, for correcting or working around the error or malfunction.

- 25.4. On-Call Support. If a problem occurs that significantly impacts WSDOT's usage of the System and remains unidentified or unresolved after WSDOT has utilized the detour or code correction prescribed by Vendor pursuant to subsection 26.1 or 26.3 above, Vendor will dispatch a qualified representative to the system location during Business Days and Hours. This representative shall have the qualifications necessary to provide:
- a) Advice and assistance in diagnosis and identification of Software errors or malfunctions.
  - b) On-site consultation on correction or detour of identified errors or malfunctions.
- 25.5. When Vendor performs Services pursuant to this Contract that require the use of WSDOT's equipment, WSDOT agrees to make the equipment available at reasonable times and in reasonable time increments, and in no event will WSDOT charge Vendor for such use.
- 25.6. Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor at no additional cost to WSDOT. Such releases shall be licensed to WSDOT pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform WSDOT of the problems resolved including any significant differences resulting from the release that are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then-current unaltered release of Software applicable to the computer system.

## **26. Equipment Warranty**

- 26.1. Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of two (2) years, the Warranty Period, commencing upon the first day after the Acceptance Date.
- 26.2. During the Warranty Period, Vendor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Vendor's expense. Any defective Equipment shall be repaired or replaced for WSDOT so that it conforms to the Specifications.
- 26.3. Vendor agrees that all warranty service provided hereunder shall be performed by manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to WSDOT any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.
- 26.4. Vendor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Vendor's Help Desk Services shall be accessible via e-mail or via one or more telephone lines.
- 26.5. WSDOT agrees that Vendor will not be liable for any damages caused by the WSDOT's actions or failure of WSDOT to fulfill any of its responsibilities for site installation.

- 26.6. THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

## **27. Equipment Maintenance**

At the expiration of the Warranty Period set forth in the section titled **Equipment Warranty**, Vendor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

- 27.1. Vendor shall keep the Equipment in good operating condition or restore it to good working order in accordance with the Specifications or, upon WSDOT's prior written approval, to current standards.
- 27.2. WSDOT field technician will work with Vendor to perform field maintenance work. Vendor provides assistance remotely via telephone calls or online meetings. WSDOT shall provide Vendor access to the Equipment if Vendor needs to perform on-site maintenance service.
- 27.3. Preventive Maintenance. Vendor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor-supplied information WSDOT shall develop and provide to Vendor in writing the schedule within which Vendor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to WSDOT within or contiguous with remedial maintenance.
- 27.4. There shall be no additional maintenance charges for:
- a) Preventive maintenance, regardless of when performed;
  - b) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
  - c) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools, or other required material; or
  - d) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.

## **28. Vendor Commitments, Warranties and Representations**

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

## 29. Training

- 29.1. At the time of installation, Vendor shall provide one (1) day of remote or online training. Continuous customer support and additional on-site training is available at an additional cost as per Schedule A. Such training shall, at a minimum, include orientation and familiarization training on the Software and be sufficiently thorough to instruct WSDOT's staff in the use of the Software.
- 29.2. The starting date of the training will be as agreed by the parties.
- 29.3. WSDOT shall have the right, so long as the Software licensed or purchased hereunder is in use by WSDOT, to give instruction to WSDOT's personnel in all courses WSDOT described above without charge, using materials supplied by Vendor. Such use by WSDOT of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation or infringement upon any patent, copyright, or other proprietary right of Vendor. Vendor grants to WSDOT the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

## 30. Protection of WSDOT's Confidential Information

- 30.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or SubVendors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSDOT's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or SubVendors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 30.2. Immediately upon expiration or termination of this Contract, Vendor shall, at WSDOT's option: (i) certify to WSDOT that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSDOT; or (iii) take whatever other steps WSDOT requires of Vendor to protect WSDOT's Confidential Information.
- 30.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.

- 30.4. WSDOT reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 30.5. Violation of this section by Vendor or its SubVendors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## Contract Administration

### 31. Legal Notices

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

**To Vendor at:**

*CLR Analytics Inc..*

**Attn: Lianyu Chu – CEO/President**

52 Gardenhouse Way, Irvine, CA 92620

Phone: (949) 864-6696

Fax:

E-mail: lchu@clr-analytics.com

**To WSDOT at:**

State of Washington

*[WSDOT]*

**Attn: Stacy Scott**

**310 Maple Park Ave SE**

*Olympia, WA 98504*

Phone: (360) 705-6269

Fax:

E-mail: scotts@wsdot.wa.gov

- 31.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 31.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

### 32. Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT’s account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor’s Account Manager will be the principal point of contact for WSDOT concerning Vendor’s performance under this Contract.



Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager: Lianyu Chu – CEO/President

Address: 52 Gardenhouse Way, Irvine, CA 92620

Phone: (949) 864-6696

Fax:

E-mail lchu@clr-analytics.com

### **33. WSDOT Project Manager**

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

### **34. Section Headings, Incorporated Documents and Order of Precedence**

- 34.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 34.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
  - a) Schedules A,
  - b) The terms and conditions contained on WSDOT's purchase documents, if used; and
  - c) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations, and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Software to WSDOT.
- 34.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
  - a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract;
  - c) Schedule A;
  - d) The terms and conditions contained on WSDOT's order documents, if used; and
  - e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations, and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Software to WSDOT.

### **35. Entire Agreement**

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

### **36. Authority for Modifications and Amendments**

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

### **37. Independent Status of Vendor**

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

### **38. Governing Law**

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

### **39. SubVendors**

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

### **40. Assignment**

40.1. With the prior written consent of WSDOT Contracting Officer, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available

to WSDOT that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.

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

#### **41. Publicity**

- 41.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.
- 41.2. Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.
- 41.3. Vendor and its SubVendors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 41.4. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its SubVendors.
- 41.5. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 41.6. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

#### **42. Review of Vendor's Records**

- 42.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's

Business Enterprise participation, protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

- 42.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 42.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 42.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

## **General Provisions**

### **43. Patent and Copyright Indemnification**

- 43.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's use of the Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:
  - a) Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
  - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 43.2. If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide WSDOT a refund. In the case of Product, Vendor shall refund to WSDOT its depreciated value. No termination charges will

be payable on such returned Product, and WSDOT will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by WSDOT shall be refunded by Vendor.

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

#### **44. Save Harmless**

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

#### **45. Insurance**

- 45.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance WSDOT described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.
- 45.2. The minimum acceptable limits shall be as indicated below, with a deductible not to exceed \$500 for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
  - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
  - c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident,
  - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- 45.3. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; Vendor shall pay premiums on all insurance policies. Such insurance policies shall name WSDOT as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number *K1537* and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to WSDOT by the insurer.
- 45.4. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 45.5. Vendor shall include all SubVendors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each SubVendor. SubVendor(s) shall comply fully with all insurance requirements stated herein. Failure of

SubVendor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

- 45.6. Vendor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WSDOT's sole option, result in this Contract's termination.
- 45.7. By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

#### **46. Licensing Standards**

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

#### **47. OSHA/WISHA**

Vendor represents and warrants that its Products, when shipped, are designed, and manufactured to meet then 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 Products furnished under this Contract to so comply.

#### **48. Uniform Commercial Code (UCC) Applicability**

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

#### **49. Antitrust Violations**

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

## **50. Compliance with Civil Rights Laws**

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

## **51. Severability**

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

## **52. Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

## **53. Treatment of Assets**

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

## **54. Vendor's Proprietary Information**

Vendor acknowledges that WSDOT is subject to chapter 42.17 RCW and that this Contract and related records, which may include software, shall be a public record as defined in chapter 42.17



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

## Disputes and Remedies

### 55. Disputes

In the event a dispute arises under this Contract, it shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

- 55.1. In the event a bona fide dispute concerning a question of fact arises between WSDOT and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 55.2. The initiating party shall reduce its WSDOTcription of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 55.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 55.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 55.5. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

- 55.6. If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided WSDOT pays Vendor the amount WSDOT, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

## **56. Attorneys' Fees and Costs**

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

## **57. Non-Exclusive Remedies**

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

## **58. Failure to Perform**

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

## **59. Limitation of Liability**

- 59.1. The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA**, **Termination for Default**, and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 59.2. Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, WSDOT, or their respective SubVendors.
- 59.3. If delays are caused by a SubVendor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on

comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.

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

## **Contract Termination**

### **60. Termination for Default.**

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

### **61. Termination for Convenience**

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

## **62. Termination for Withdrawal of Authority**

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

## **63. Termination for Non-Allocation of Funds**

If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

## **64. Termination for Conflict of Interest**

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

## **65. Termination Procedure**

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



**Approved as to Form**

State of Washington

Office of the Attorney General

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

Assistant Attorney General

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Contractor Information
Contractor's UBI Number:
Minority or Woman Owned Business Enterprise
Yes _____ No
(Certification Number)

**Statement of Work**  
**to**  
**Contract Number K1537**  
**for**  
**CLR Analytics Loop Signature for Vehicle Classification**

This Statement of Work (SOW) is made and entered by and between Washington State Dept. of Transportation (Purchaser), acting by and through the Transportation Data, GIS, and Modeling Group (TDGMG), under Multimodal Planning and Data Division, an agency of Washington State Government located at 7345 Linderson Way SW, and CLR Analytics Inc. (Vendor), a small business licensed to conduct business in State of California, at 52 Gardenhouse Way, Irvine, CA 92620, for the purpose of purchasing of VSign Smart Vehicle Classification system as well as providing supports and services to maintain the VSign system. This SOW incorporates by reference the terms and conditions of Contract Number K1537 in effect between the Purchaser and Vendor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Vendor agree as follows:

**1. Introduction or Scope of Project**

This contract is for the deployment of CLR VSign systems, which involves the installation of new VSign sites and provision of the VSign system service, support, and maintenance.

The VSign® Smart Vehicle Classification system is a cost-effective vehicle classification solution that uses inductive loop sensors with Inductive Loop Signature (ILS) and Artificial Intelligence (AI) technologies. The ILS technology upgrades the existing loop detection infrastructure and generates a waveform that is correlated to the physical properties of a traversing vehicle. The waveform, which is referred to as vehicle signature, is utilized by the VSign system to classify a vehicle and measure its speed using AI techniques. The VSign system has the following unique characteristics which no other similar competitive product possesses.

- Use of one single loop for vehicle classification and speed measurement
- Have a sensor health monitoring module to track loop sensor performance and report sensor issues, which help solve data issues from the root, and thus improve data quality
- No construction needed if using existing loop infrastructure
- Less maintenance, construction, and material cost
- Proven solution worked under both free-flow and congested traffic condition and with multiple lanes per direction
- Working with existing classification system / hardware from PEEK, Diamond Traffic Products, and IRD
- Customizable vehicle classification scheme to meet local needs

- Customizable and scalable solutions with cloud and on-premises server options
- Patented technology to interpret the high-resolution inductive loop signature data using Artificial Intelligence. System performance will be improved with more knowledge adding into it.

WSDOT/TDGMG have tested the VSign Smart Vehicle Classification system for the last two-year period and trained the system to understand various unique types of vehicles at multiple locations on WA State highways using Artificial Intelligence and Machine Learning algorithms. It's proven that the expertise of the vendor and their product take advantages of individual unique loop signature for each vehicle to classify them according to FHWA requirements. Also, CLR was the first Vendor to have commercial product in loop signature technology and Caltrans, Colorado, and Alaska have installed this system all over these states.

WSDOT/TDGMG maintains a network of 162 PTRs, including 29 WIM sites to capture continuous classification traffic data for FHWA requirements. Of those continuous count stations, TDGMG has identified 14 locations that are difficult to maintain to capture accurate classification data due to the traffic volume and roadway geometric for traffic control. The current sensor configuration that TDGMG use to classify the vehicle includes two loop and one Piezo on each lane. By having not to install a Piezo along with loops will eliminate the needs of labor-intensive maintenance and save the department the cost of expensive piezo, and resources.

The Washington State Dept. of Transportation, TDGMG, will purchase all necessary equipment from CLR Analytics Inc. to install fourteen (14) new sites and potential additional sites as part of this project or subsequent phases.

To meet the WSDOT's traffic data collection and data analysis requirements, the VSign system shall meet the following requirements:

- Use the existing loops and work with either a single loop or dual loops per lane
- Utilize the existing traffic counter (minor hardware modification and firmware update are needed) if applicable
- Provide count, occupancy, speed, length, and vehicle classification data in the FHWA 13 vehicle classes and/or HPMS 7 vehicle classes under normal and congested traffic conditions
- Allow users to access the system and data through multiple user interfaces, including a web portal and secured FTP, and support data auto-poll
- Be capable of monitoring system operation and loop sensor performance continuously, detecting issues and alerting users automatically, and tuning system parameters remotely
- Be capable of upgrading VSign firmware remotely to improve system performance
- Implement a secured and connected Internet of Things (IoT) environment for data communication



- Capable of converting the existing VSign sites with the public cellular network to the use of Private cellular network and WSDOT Fiber network as needed and/or per the request from WSDOT.
- If WSDOT decides to use the private cellular network or fiber for data communication, CLR Analytics Inc. will work with WSDOT to create a VSign WSDOT jump server based on a Virtual Machine from WSDOT. The server will be used to bypass VSign data from VSign sites to the VSign Amazon central server.
- Maintain the VSign WSDOT jump server if applicable.

Vendor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- Provide VSign hardware components and VSign field software for each new site. Hardware components may include VSign Hub, I-Loop Duo cards, Phoenix counter (CLR Mod version), Ethernet switch, Web power switch, cellular modem (if applicable), and their accessories
- Provide system installation and setup services remotely and on-site.
- Provide cloud based VSign Smart Vehicle Classification service for existing and new sites
- Provide site maintenance service, or the so-called MaaS (Maintenance-as-a-service) service, remotely. The MaaS service involves the use of VSign data to determine issues with the sensors and hardware in the field and then perform a remote fix upon the receipt of the approval from WSDOT.
- Provide a replacement of VSign hardware components when they are found to be malfunctioning
- Provide VSign technical support, which involves supporting WSDOT staff for diagnosis and maintenance of VSign sites and responding to the technical questions from WSDOT
- Support the WSDOT staff to conduct vehicle classification data validation and explore whether there is a need to develop a customized classification library for WSDOT

WSDOT will own all data collected from the VSign system and allow CLR Analytics Inc. to access and use the data to improve the VSign product.

WSDOT Traffic Analysis Unit and Data Collection Unit shall work with CLR Analytics Inc. closely throughout the project.

WSDOT will identify the sites that will need to be upgraded to VSign.

WSDOT Data Collection Unit will be responsible for:

1. Preparing the VSign-compatible Phoenix counter by upgrading an existing counter's hardware and software if applicable.

2. Installing the VSign hardware components with remote assistance from CLR Analytics Inc. Conducting on-site maintenance per request by CLR Analytics Inc. . WSDOT Traffic Analysis Unit will be responsible for collecting, processing, and analyzing data from VSign sites, identifying any potential issues, and requesting CLR Analytics Inc. to fix issues as needed.

WSDOT may require CLR Analytics Inc. to be present on-site during the installation or for site diagnosis (CLR will be paid for this service based on its daily traveling rate). If CLR Analytics Inc. needs to work independently, CLR Analytics Inc. shall work with WSDOT Permit Offices to apply for the appropriate permit for all installation, maintenance, and removal work on VSign located within WSDOT right-of-way. WSDOT Permit Offices will work with CLR Analytics Inc. to issue applicable permits, provided CLR Analytics Inc. meets all WSDOT permit requirements and uses qualified staff and/or contractors. WSDOT will also provide periodical inspection and preventative maintenance.

## **2. Timeline and Period of Performance**

Subject to filing or approval requirements, the period of performance for this project will start on December 1<sup>st</sup>, 2022, and the work tasks are estimated to continue through December 30<sup>th</sup>, 2025. Purchaser has the right to extend or terminate this SOW at its sole discretion.

Under the provisions of chapter 39.26 RCW, this Contract is required to be filed with the Department of Enterprise Services (DES). No contract required to be so filed is effective, and no work shall be commenced, nor payment made, until ten (10) working days following the date of filing and, if required, until approved by DES. In the event DES fails to approve the Contract, the Contract shall be null and void.

No work shall be performed by Vendor until this SOW is executed by Vendor and Purchaser and is received by Vendor.

## **3. Compensation and Payment**

Purchaser shall pay Vendor an amount not to exceed \$300,000.00 total for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Invoices for hardware components will be sent upon receipt of equipment. Annual VSign Service and Hardware and Server Maintenance renewal will be billed on the day of the installation, starting from year 2. Invoices are payable by check 30 days upon receipt. Options required by purchaser are listed in detail. Vendor's compensation for services rendered shall be based on Vendor's Prices as set forth in the Contract's Schedule, *Authorized Services and Equipment List* as follows:

- (1) One-time: a Front-End Cost
- (2) Recurrent: Annual Maintenance Cost (starting from Year 2)

	A	B	C	D	E	F	G	H	I	J	K	L
1		# of Lanes	# of Sites	Front-End Cost		Annual Maintenance Cost						
2	VSign Product			Unit Price	Total Front-End Cost	VSign Service		Hardware Maintenance*		Cellular Data Service		Total Annual Cost
3						Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
4	VSign-S4D_Cell	4	3	\$ 8,514.00	\$ 25,542.00	\$2,460.00	\$ 7,380.00	\$ 265.00	\$ 795.00	\$ 480.00	\$1,440.00	\$ 9,615.00
5	VSign-S6D_Cell	6	4	\$ 10,779.00	\$ 43,116.00	\$2,820.00	\$11,280.00	\$ 265.00	\$ 1,060.00	\$ 480.00	\$1,920.00	\$ 14,260.00
6	VSign-S7D_Cell	7	1	\$ 11,639.00	\$ 11,639.00	\$3,000.00	\$ 3,000.00	\$ 285.00	\$ 285.00	\$ 480.00	\$ 480.00	\$ 3,765.00
7	VSign-S8D_Cell	8	4	\$ 12,299.00	\$ 49,196.00	\$3,180.00	\$12,720.00	\$ 285.00	\$ 1,140.00	\$ 480.00	\$1,920.00	\$ 15,780.00
8	VSign-S9D_Cell	9	1	\$ 13,359.00	\$ 13,359.00	\$3,360.00	\$ 3,360.00	\$ 285.00	\$ 285.00	\$ 480.00	\$ 480.00	\$ 4,125.00
9	VSign-S10D_Cell	10	1	\$ 14,019.00	\$ 14,019.00	\$3,540.00	\$ 3,540.00	\$ 285.00	\$ 285.00	\$ 480.00	\$ 480.00	\$ 4,305.00
10	VSign Jump Server (work with Fiber)			\$3000-10000	\$ -							
11	SubTotal				\$ 156,871.00		\$41,280.00		\$ 3,850.00		\$6,720.00	\$ 51,850.00
12	15% VSign Service Discount (Starting from Year 2)						\$ (6,192.00)					\$ (6,192.00)
13	Total				\$ 156,871.00							\$ 45,658.00
14												
15	*: use Year 2-3 pricing here for budget purpose.											

The one-time front-end cost covers the cost to purchase and install a new VSign system based on the number of loops at the site. For example, a VSign-S4D system is needed for a site with 8 loops. A VSign system includes:

- (1) VSign IoT Hardware, which includes the following hardware components: a VSign Hub and its accessories (typically including a serial-USB adapter and Ethernet cables), a web power switch (or web din relay for solar sites), and an industrial Ethernet/USB Connection Package for I-Loop Duo;
- (2) Phoenix Counter, which is the traffic counter used by WSDOT and can generate vehicle signatures for VSign through software and/or hardware upgrades. It is an optional item. Alternatively, I-Loop Duo cards are recommended being utilized at ITS cabinets where there are input files. I-Loop Duo cards provide 5+ times higher vehicle signature resolution than the Phoenix counter;
- (3) VSign Package, which includes system installation and setup service (covering remote site installation assistance, site parameter configuration and refinement, and central server setup), and the discounted first year VSign service.

Optional hardware components, which include

- Cellular modem LX60 with 2-Ethernet ports (\$491),
- Sierra 2in1 LTE Panel outdoor Antenna (\$48), and
- A Card Rack with build-in Power Supply (\$950)

The recurrent (Annual Maintenance)cost includes VSign service/software subscription for double loop configuration, hardware maintenance, and unlimited cellular data with restricted public IP. The annual maintenance cost is dependent on the system configuration and the number of counting lanes. The system with the double-loop configuration offers better performance and system reliability. The detailed benefits include: (1) provide more accurate speed measurements (although VSign provides good single-loop speed as well); (2) allow to use either of them for data reporting and change to the use of another loop when one loop is failing; (3) identify failing loops via VSign's loop sensor health monitoring module and then schedule loop reinstallation well in advance to avoid system downtime.

The system with double-loop configuration is slightly more expensive than the single-loop configuration. For example, VSign-S4D handles 4 counting lanes at an annual cost of \$2100 under the single-loop configuration while VSign-S4D handles 4 counting lanes at an annual cost of \$2460 under the double-loop configuration.

Additional optional services and cost include the following:

- (1) \$3000-\$20000 on-time fee for jump server configuration, testing, and deployment. This cost is depending on the complexity of the setup. WSDOT provides Virtual Machine and local storage. A typical site-site VPN between AWS and WSDOT network will be configured. WSDOT can access data via a local network drive.
- (2) on-call support packages cost; \$3000 for 20 hours, \$5000 for 50 hours, and \$10000 for 100 hours.
- (3) onsite support/troubleshooting/installation - \$1600/day.
- (4) programming services - \$150/hour.
- (5) non-programming services - \$100/hour.
- (6) system training/tutorial - \$150/hour.

Due to the impacts of the global supply chain shortage, contractor reserves the right to apply an 10% escalation rate to additional fund added to this contract during the 3-year contract term.

No travel expenses are expected from the Vendor. However, the Vendor can be hired for on-site installation assistance & training. In this case, the cost for this service is \$1600 per day in the field including travel expenses.

#### **4. Vendor Staff, Roles, and Responsibilities**

Lianyu Chu – CEO/President – [lchu@clr-analytics.com](mailto:lchu@clr-analytics.com)

Lianyu Chu will be the point of contact for site selection, equipment selection, ordering, technical inquiries regarding hardware and software, and training for installation and fleet management.

#### **5. Purchaser Staff, Roles, and Responsibilities**

Norene Pen- Multimodal Planning Division Assistant Director - [PenN@wsdot.wa.gov](mailto:PenN@wsdot.wa.gov)

Norene is responsible for final decision on equipment package purchases, and any matters related to the execution of this agreement.

Janarthanan, Natarajan (Jana) –Manager, TDGMG Travel Data & Analysis Branch Manager – [JanartN@wsdot.wa.gov](mailto:JanartN@wsdot.wa.gov)

Jana will be responsible for implementation of details of this contract agreement. If Nghia is not available for purchasing of equipment Jana will be the point of contact.

Nghia Chau- TDGMG Travel Data & Analysis Field Operations Manager –  
ChauN@wsdot.wa.gov

Nghia will be responsible for purchasing of the equipment and working with the vendor on the installation and troubleshoot the equipment.

## **6. Additional Terms and Conditions Specific to this SOW**

Any changes to this Contract, services to be performed, or in the deliverables, must be agreed upon by both parties, in writing and signed by both parties.

The parties hereto, in the performance of this Contract, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates of one another. 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.

The Vendor shall maintain all books, records, documents, data, and other evidence relating to this Contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Vendor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by WSDOT, personnel duly authorized by WSDOT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved

IN CONSIDERATION

### **1. CONFLICT OF INTEREST**

WSDOT may terminate this Contract, by written notice to the Vendor, if it is found after examination that there is a violation by Vendor of the Executive Conflict of Interest Act, Chapter 42.18 RCW; the Code of Ethics for Public Officers and Employees, Chapter 42.22 RCW; or any other similar statute involving the Vendor in the procurement of or performance under this Contract.

In the event this Contract is terminated as provided above, WSDOT shall be entitled to pursue the same remedies against the Vendor as it could pursue in the

event of a breach of this Contract by the Vendor. The rights and remedies of WSDOT provided by this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

2. SAVE HARMLESS

The Vendor shall defend, protect and hold harmless the state of Washington, the Agency, or any employees thereof, from and against all claims, suits or actions arising from the Vendor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark or trade name through use or reproduction of material of any kind.

The Vendor specifically assumes potential liability for action brought by the Vendor's own employees against the State and solely for the purpose of this indemnification and defense, the Vendor specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

3. LICENSING

The Vendor agrees to comply with all state licensing standards and any standards or criteria established by WSDOT to assure quality services.

4. 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 the written consent of both parties.

5. NONDISCRIMINATION

During the performance of this Contract, the Vendor shall comply with all federal and state nondiscrimination laws, regulations, and policies.

6. OWNERSHIP OF WORK PRODUCT

Printed materials produced by the Vendor in connection with the work provided for under this Contract are and will remain the property of the WSDOT unless a transfer of ownership is otherwise agreed upon in writing by the parties.

7. USE OF WSDOT FACILITIES

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

The Vendor shall be responsible for any loss or damage to property of WSDOT which results from willful misconduct or lack of good faith on the part of the Vendor, or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to WSDOT in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to, any WSDOT property, the Vendor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect that property from further damage.

The Vendor shall surrender to WSDOT all property of WSDOT prior to settlement upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of his employees, agents, or sub-Vendors.

#### 8. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the WSDOT Contracting Officer.

The request for a dispute hearing must be in writing; state the disputed issues; state the relative positions of the parties; state the Vendor's name, address, and contract number; and be mailed to the WSDOT Contracting Officer and WSDOT Contract Administrator and within three (3) business days after the parties agree that they cannot resolve the dispute.

The other party shall send a written answer to the statement to the other parties involved within five (5) business days.

WSDOT's Contracting Officer shall review the written statements and reply to the parties involved within ten (10) business days. The Director may extend this period if necessary, by notifying the parties.

The parties may agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

#### 9. CONTRACT TERMINATION AND CANCELLATION

TERMINATION FOR DEFAULT - If either party violates any of these terms and conditions or fails to fulfill its performance obligations pursuant to the Statement of Work, then the aggrieved party will give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within fifteen (15) business days. If the failure or violation is not corrected, this

Contract may be terminated immediately by written notice from the aggrieved party to the other party.

TERMINATION FOR CONVENIENCE - When it is in the best interest of Purchaser, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar days written notice to Vendor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract or any Statement of Work for Services received and accepted by Purchaser prior to the effective date of termination.

TERMINATION FOR WITHDRAWAL OF AUTHORITY- In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

TERMINATION FOR NON-ALLOCATION OF FUNDS- If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

ELECTIVE TERMINATION - Either party may terminate this Contract with ten (10) business days notice without penalty.

Upon termination of this Contract, WSDOT will pay any charges for services rendered pursuant to this Contract and prior to any such termination.

## 10. CONTRACT EXECUTION

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

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



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

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

CLR ANALYTICS INC.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date