TECHNOLOGY CONTRACT for Software as a Service

City of Seattle
CONTRACT FOR

This contract is adopted by City Purchasing Policy for Software as a Service (SaaS) solutions. SaaS is defined as software applications hosted by the vendor where the City does not take ownership of the software and is instead purchasing access to the application via the Internet.

Only the Buyer can authorize a change to the Contract form. The Project Manager is advised to review the Contract with the Buyer for an understanding of the protections and obligations of the Contract.

Certain items shall be non-negotiable in all aspects due to legal requirements and /City policy, including but not limited to:
1. No advance payment
2. Schedule of deliverables and payments tied to a schedule
3. Payment requires Project Manager approve of deliverables
4. City right to terminate the contract upon failure or non-appropriation.
5. Insurance coverage as specified by Risk Management
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TECHNOLOGY CONTRACT

City of Seattle
CONTRACT FOR

This Contract is made and entered into by and between City of Seattle ("City"), a Washington municipal corporation; and _____ (Address: --)**,** a corporation of the State of _____, and authorized to do business in the State of Washington.

      Vendor Business:
      Name of Representative:
      Vendor Address:
      Vendor Phone:
      Vendor Fax:
      Vendor e-mail:

      WHEREAS, the purpose of this contract is to _____; and

      WHEREAS, Vendor was selected as a result of a Request for Proposal process initiated
            _____20___ required by Seattle Municipal Code since costs are anticipated to exceed
            $44,000 in value; and

      WHEREAS, funds for this purpose are authorized through the City of Seattle annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the Statement of Work contained herein, as attached and made a part hereof, the City and Vendor mutually agree as follows:

1. Term of Contract

> Contract Term - Note to RFP Coordinator and Project Manager: Required. Match to the language you have in the RFP, with any specific dates or negotiated agreements reflected. <u>Specify the effective date</u>, duration and extensions of the Contract. The default standard is also for an "automatic renewal," where the contract continues automatically until we officially terminate it.

      The term of this contract shall be for a period of three (3) years effective from_____.
      Continuous one-year extensions shall continue thereafter for System and Hosted Services. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew.

2. Survivorship

> Term - Note to RFP Coordinator and Project Manager: Required. This section provides for certain contract provisions to remain in full force and effect after the Contract's expiration.

      All purchase transactions and deliverables executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extensions 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, Warranties, Section Headings, Incorporated Documents and Order of Precedence, Publicity, Review of Vendor Records, Indemnification, Dispute Resolution and Limitations of Liability, shall survive the termination of this Contract

3. Statement of Work

Vendor shall provide the products services and tasks as described in the Contract attachments. The Statement of Work may also be termed "work" herein.

4. Expansion Clause

This contract may be expanded as mutually agreed, if such expansion is approved in writing by the Buyer from the City Purchasing Office of the Department of Finance and Administrative Services, City of Seattle. No other City employee is authorized to make such written notices. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition, and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Certain Work Orders or changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, change in design and specifications that does not expand the work beyond the limits provided for above, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

5. Work Order Process

The Vendor shall furnish all Systems and Hosted Services goods and services ("Deliverables") pursuant to work orders issued under this Contract. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Vendor shall furnish all Systems and Hosted Services Deliverables specified in the Work Order in an aggregate, single, complete transaction and not as separate items. For each work order under this Contract, Vendor shall commence work upon issuance of a notice to proceed by the City. Work orders under this Contract may be generated by the City under the following conditions:

5.1.   The Work Order is within the scope of the original solicitation and contract or is within the allowed conditions for expansions under Section 4 (Expansion Clause) above;

5.2.   The City issues a request to change quantities of any deliverable;

5.3.   The City orders additional custom features, modifications, or interfaces for the hosted system prior to or after the acceptance period.

5.4.   The City chooses to host the system internally.

For any subsequent work order(s) requested by either party, the Vendor shall submit a detailed proposal for the change. The Vendor shall analyze, record, estimate and submit to the City, for its approval, the proposed scope for the changed or new work, a work schedule, and a rate or price adjustment for completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed, the Vendor shall implement the change or

additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order by giving Vendor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Vendor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Vendor's Proposal.

The Vendor shall not proceed unless authorized by a mutually agreed upon amendment. Such extra work shall be in compliance with Section 4 (Expansion Clause) and shall be authorized in writing only by the City Purchasing Buyer, Department of Finance and Administrative Services. Any costs incurred due to the performance of extra work will not be reimbursed until or unless an amendment is agreed upon.

The City does not guarantee utilization of goods and services provided for in this Contract for which the City has not issued a work order(s).

6. Documentation

Vendor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then generally available Office products and printed format in accordance with the terms of this Contract. Upgrades and revisions to this Documentation shall be provided while Vendor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. 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 the City access to its web-based Documentation information.

The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation associated with the same.

7. Payment Procedures

Note to RFP Coordinator and Project Manager: Required section. This section provides invoicing and payment instructions. The assumption is that the Statement of Work that will be negotiated with the successful vendor will include a list of deliverables and payment schedule.

The Maximum Amount payable under this Contract shall be as set forth in Exhibit A, Statement of Work.

Vendor shall only invoice upon the City's approval of the deliverable and in a manner consistent with the payment schedule attached, if any. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. The aggregate amount represents the full and final amount to be paid by the City for all expenses incurred and incidentals necessary to complete the work. Any fees invoiced by vendor for late payment, if any, shall not exceed 1% per month.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Vendor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Invoices for hardware and software installed in City facilities and other work performed under this Contract shall be submitted, in writing to the City's Project Manager. Invoices shall include such information as prescribed in the Specifications or Statement of Work, and is necessary for the City to determine the exact nature of all expenditures and shall reference this Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Vendor.

Payment does not constitute whole or partial acceptance; City acceptance of the System shall only occur by formal written notice to that effect

Overpayments to Vendor.   The City may credit erroneous payments or overpayments against amounts invoiced by Vendor. If the City does not take such credits, Vendor shall promptly, but in all cases within 30 days, refund to the City the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Vendor is not entitled.

Credits. Any credits due the City under this Contract may be applied against Vendor's invoices with appropriate information attached, upon giving of Notice required herein, if any, by the City to Vendor.

Increases.
Vendor shall not increase the Maximum Amount due from the City under this Contract for all Goods, Services and Deliverables, Purchase Prices, or other Charges during the Initial Term of this Contract except as otherwise specifically described in this Contract. Vendor may increase its Hosted Service Charges at the end of the Initial Term for each Renewal Term, upon 90 days prior Notice to the City. Such Charges shall be increased no more than [insert percentage] % per Renewal Term. If the Charges are increased, then, notwithstanding anything to the contrary contained herein, the City may upon 30 days prior Notice to Contractor, terminate this Contract in accordance with Section 39, Termination.

7.1. Advance Payment Prohibited

Note to RFP Coordinator and Project Manager: Required. This section specifies that all payments must be made after the delivery of services. The City cannot issue payment prior to the performance of work, per the Washington State Constitution, Article VIII, Section 5, "Credit Not to be Lended."

If Software maintenance and support Services are being paid for as a yearly program, ensure that the price and program are sufficiently described in the Contract and pricing schedule to ensure payment is not a violation of the advance payment prohibition.

The City does not accept requests for early payment, down payment or partial payment, unless the Bid or Proposal Submittal specifically allows such pre-payment proposals or alternates within the bid process. Maintenance, subscriptions may be paid up to one year in advance provided that should the City terminate early, the amount paid shall be reimbursed to the City on a prorated basis; all other expenses are payable net 30 days after receipt and acceptance of satisfactory compliance.

7.2. Travel

Note to RFP Coordinator and Project Manager: Required section. This section outlines the City's travel policies with respect to travel expenses incurred by vendors and paid by the City.

If certain travel is pre-approved by the City, the City will compensate travel expenses not to exceed actual travel costs given the following limitations. Vendor and the City shall determine the need for on-site presence and the City shall pre-approve travel. Vendor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- **Meals**: Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.
- **Lodging**: Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts

detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently at 50.0 cents a mile).
- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).
- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

The City will reimburse the Vendor <u>at actual cost </u>for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

7.3. Disputed Work

Notwithstanding all above, if the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may require Vendor to correct such work prior to The City payment. In such event, the City will provide to Vendor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Vendor does not provide a sufficient remedy, The City may retain the amount equal to the cost to The City for otherwise correcting or remedying the work not properly completed.

8. Taxes, Fees and Licenses

8.1.   Taxes: Where required by state statute, ordinance or regulation, Vendor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, The City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Vendor shall be made for federal excise taxes and The City agrees to furnish Vendor with an exemption certificate where appropriate.

8.2.   Fees and Licenses: Vendor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Vendor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Vendor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Vendor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

8.3.   Vendor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

9. Timely Completion

9.1.   Time is of the Essence: The City has an immediate need to implement the System and/or Software and equipment for the management and operation of the City. Therefore, time is of the essence in all matters relating to this Contract

9.2.	Liquidated Damages

For this contract, a delay in the Vendor's completion of work would seriously affect the public safety and the governmental operations of the City. A statement of liquidated damages is in the contract to be signed by the winning vendor, using a calculated assessment of liquidated damages. Compensation payable to the Vendor for delayed performance of work identified as a milestone event under this Contract shall be reduced by _____ Dollars____ ($ _____) per calendar day for each and every day (or portion thereof) after the scheduled milestone date set forth in the Contract that performance and completion of such work is delayed.

Neither the provisions of this subsection nor their application or implementation shall limit the City's right to pursue any other remedy available to it in law or at equity under this Contract. The City shall have the right to assess Liquidated Damages as calculated by the City given the provision above, as a deduction from any payments due to the Vendor.

10. License for Use

The Vendor grants to the City a nonexclusive license to use, access to use and access the System and Hosted Services in whole or in part for supporting the internal operations of the City_____ (Project Mgr. should cite Dept./Division/Section/Function) The licenses hereunder are granted as of the earlier of the date of first access or delivery of the Vendor Technology, Deliverables, System, and Hosted Services and continue until the City returns or ceases to use and access the Vendor Technology, Deliverables, System and Hosted Services.

11. Escrow

When Code Escrow makes sense for the City	When it doesn't
The application is so specialized that there aren't	We don't posses skills in the components that

other competitors to migrate to, and building the application isn't feasible in the timeframe that would be allowed.	comprise the architecture.
We have evaluated architecture & environment of the hosted application and we currently support the components (it is a close match to our environment), or it is easy to duplicate.	Internal hosting would depend on acquiring a number of additional 3rd party license costs etc (e.g. database licenses)
Documentation needed to get the application running in house is both complete and is clear enough to understand.	Would have to create an entire complex environment from scratch
Continued use of the hosting company the vendor uses, and using the hardware & 3rd party software the application is running on is an option.	Time to create the end-to-end application environment outweighs the time to start fresh with new vendor
We are planning on eventually bringing the application in-house.	Enough competitors exist such that it is likely we would take the data and migrate it to a different vendor should the current vendor no longer support the application.

11.1 Source Code Escrow Package Definition. The term "Source Code Escrow Package" shall mean:
   a. A complete copy in machine-readable form of the source code and executable code of the licensed Software;
   b. A complete copy of any existing design documentation and user documentation and/or
   c. Complete instructions for r compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

11.2   Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to Escrow Agent, provided that Vendor, City and Escrow Agent shall first enter into a supplementary escrow agreement as attached. Vendor and City shall use best efforts to enter into such an escrow agreement as soon as possible after the Effective Date of this Contract, but not later than 30 days after the Effective Date of this Contract.

11.3   Delivery of New Source Code into Escrow. If during the term of this Contract, term of license, or term of maintenance and support, Vendor provides City with a maintenance release or upgrade version of the licensed Software, Vendor shall within then (10) Business Days deposit with Escrow Agent a Source Code Escrow Package for the maintenance release or upgrade version and give city notice of such delivery.

11.4   Verification of Source Code Escrow Package. At its option and expense, City may request that the completeness and accuracy of any Source Code Escrow Package be verified.
   a.   Such verification may be requested once per Source Code Escrow Package.
   b.   Such verification will be conducted by Escrow Agent, or upon at least ten (10) Business Days' prior notice to the Vendor, by another party ("verifier") acceptable to Vendor, after full disclosure to Vendor of information reasonably requested by Vendor about Verifier.
   c.   Prior to conducting the verification, Verifier shall first execute a confidentiality agreement prepared by Vendor that precludes Verifier from disclosing any information to City about the Source Code Escrow Package other than whether

the Source Code Escrow Package was found to be complete and accurate.

    d.   Unless otherwise agreed at the time by Vendor and City, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification. At its discretion, Vendor may designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. Verifier will be City's sole representative at the verification.

    e.   Verifier is solely responsible for the completeness and accuracy of the verification. Neither the Escrow Agent, if different from the Verifier, nor Vendor shall have any responsibility or liability to City for any incompleteness or inaccuracy of any verification.

11.5   Escrow Fees. All fees and expenses charged by Escrow Agent will be borne by Vendor.

11.6   Release Events for Source Code Escrow Packages. The Source Code Escrow Package may be released from escrow to City, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events:"

    a.   Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for business or assets, or becomes subject to any proceeding under any bankruptcy or solvency law, whether domestic or foreign;

    b.   Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or

    c.   Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or

    d.   Vendor has voluntarily or otherwise discontinued support of the Software or fails to support the Software in accordance with its warranties and maintenance obligations.

11.7   Release Event Procedures. If City desires to obtain the Source Code Escrow Package from Escrow Agent:

    a.   City shall comply with the procedures set forth in the Escrow Agreement to document the occurrence of the Release Event;

    b.   City shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the Contract section titled Vendor's Proprietary Information;

    c.   If release is temporary, City shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and

    d.   City shall promptly, fully, and completely respond to any and all requests for information from Vendor concerning City's use or contemplated use of the Source Code Escrow Package.

12. Software Upgrades and Enhancements

> Note to RFP Coordinator and Project Manager: Optional section. This section establishes conditions for upgrade, downgrade, trade-ins etc., for exchange of Software. Delete, edit or modify as appropriate to the purchase. Delete Items 12.3 and 12.4 if there is no intention to bring the hosted application in house during the contract period and no software escrow.

Vendor shall:

12.1. 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 web

browsers;

12.2.Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.; and

12.3.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 City

12.4.Unless otherwise mutually agreed to in writing, Vendor shall maintain any and all Third-party Software products at their most current version or no more than one version back from the most current version and at no additional charge. However, Vendor shall not maintain any Third-party Software versions, including one version back, if any such version would prevent the City from using any functions, in whole or in part, or would cause Deficiencies in the System. If implementation of an upgrade to a Third-party Software product requires personnel in addition to the Staff proposed in the Response for the Hosted Services, the City and Vendor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, any additional Charges to be paid by the City for such upgrade. Any additional costs that are charged by a Third-party Software manufacturer for an upgrade to a Third-party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by Vendor.

13. Warranties

Note to RFP Coordinator and Project Manager: Required section. This section warrants the System and/or the Software, warrants that it does not contain unauthorized codes, and that the Vendor is the proper owner of the Software and/or has unrestricted rights to license it to Purchaser.

a.   Deliverables. Vendor represents and warrants that each Deliverable shall meet and conform to its applicable Specifications as provided herein following its Acceptance and during the Term. Vendor also represents and warrants that the System and Hosted Services, in whole and in part, shall operate in accordance with the Detailed System Design Deliverables, the Performance Standards, the other Acceptance Criteria, the Documentation, and this Contract following their Acceptance and during the Term.

b.   Hosted System Services. Vendor represents and warrants that: (a) It shall perform all Services required pursuant to this Agreement in a professional manner, with high quality, (b) It shall give the highest priority to the performance of the Services, (c) Time shall be of the essence in connection with performance of the Services for Deliverables. Vendor shall immediately re-perform Services which are not in compliance with such representations and warranties at no cost to the City.

13.1.Warranty Against Planned Obsolescence
The Vendor warrants that the products and services proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Vendor further warrants that, in the event that a major change in hardware, software, or operating system occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Vendor, the Vendor shall provide the City with a replacement hardware, software, or operating system(s) that continues the full functionality of the systems, at no extra cost to the City.

13.2.No Surreptitious Code Warranty Note: if external use new, if internal use old.

13.2.1 Vendor warrants to the City that the System, Hosted Services and Vendor Technology provided to the City under this Contract contain or shall contain no Self-help Code or any Unauthorized Code. Vendor further warrants that Vendor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict the City's use of or access to the Software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to the City under this Contract.

13.2.2 Vendor shall defend the City against any claim, and indemnify and hold harmless the City against any loss or expense arising out of any breach of this warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

13.3. Title Warranty and Warranty against Infringement

Vendor hereby warrants and represents to City that Vendor is the owner of the Vendor Technology, Hosted Services and System licensed hereunder or otherwise has the right to grant to the City, the licensed rights to the Vendor Technology, Hosted Services, and System provided by Vendor through this Agreement without violating any rights of any third party 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 Vendor Technology, System or Hosted Services infringe or misappropriate any patents, copyrights, or trade secrets of any third party, and (ii) the Vendor Technology, System and Hosted Services do not infringe upon or misappropriate any patents, copyrights, trade secrets or any other intellectual property rights of any third party. The City shall receive prompt Notice of each notice or claim of copyright infringement or infringement or misappropriation of other intellectual property right worldwide received by Vendor with respect to the Vendor Technology, Hosted Services, or System delivered under this Agreement.

Vendor shall, at its expense, defend, indemnify, and hold harmless the City and its employees, officers, directors, contractors and agents from and against any claim or action against the City which is based on a claim that any Deliverable or Service any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Vendor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. The City shall promptly give Vendor notice of any such claim. . In the event a final injunction or order is obtained against the City's full use of the Deliverables/Services/System or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, Vendor shall, as mutually agreed upon and at Vendor's expense:

a. procure for the City the right to continue full use of the Hosted System; or
b. replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the Deliverables/Services/System conforms with applicable Statement of Work); or
c. if the product was purchased and the actions described in item (1) or (2) of Section 11.4, are not practicable, refund the full purchase price and remain liable for all damages suffered by the City as a result of the loss of the infringing product and any other continued utility of which to the City is adversely affected by the removal of the infringing product, and hold the City harmless from any further liability therefor under any applicable Order, Settlement, or other Contract.

In no event shall the City be liable to Vendor for any lease, rental, service, or maintenance

payments after the date, if any, that the City is no longer legally permitted to use the Hosted Services because of such actual or claimed infringement.

No settlement that prevents the City from continuing to use the Hosted Service, other products or Software documentation as provided in this Contract shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

13.4. No Liens

The Vendor warrants that Vendor is authorized to provide full use of the Hosted Services to the City as provided herein and that such Hosted Services is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Hosted Services without interruption by Vendor or any other person making a claim under or through the Vendor or by right of paramount title.

13.5. Maintenance Services Warranty

The Vendor warrants that, in performing the services under This Contract, the Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, Statement of Work, configurations, standards, function and requirements, which appear in this Contract and in the Vendor's response to the City's Request for Proposal. Errors or omissions committed by the Vendor in the course of providing Services shall be remedied by the Vendor at its own expense.

13.6. Equipment Warranty

> This will only apply if there is hardware necessary to connect to City equipment in order to access the services.

The Vendor warrants and represents that the Equipment provided to meet the requirements of the Statement of Work shall be free from all defects, shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in the Vendor's Proposal and the City's RFP during the contract term. Vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function as required herein.

13.7. Merchantability and Fitness Warranty

Vendor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in the City's RFP and the Vendor's response to the City's RFP.

13.8. Warrant of Compliance with Applicable Law

a. Vendor warrants that the System and Hosted Services shall comply with all applicable federal, State and local laws, regulations, codes and ordinances. Contractor warrants that, throughout the Term of this Agreement, the System and Hosted Services shall comply with changes to and new applicable federal, State and local laws, regulations, codes and ordinances.

b. Vendor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

13.9. Written Commitments.
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 a material breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes but is not limited to: (i) Purchase Prices, Charges, 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 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 the City.

13.10.   Survival of Warranties and Representations
The representations and warranties of the Vendor made pursuant to this Contract shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Contract.

13.11.   Warranty Services and Hosted Services.

Note to RFP Coordinator and Project Manager: A SaaS application is likely to evolve over the term of a contract as the vendor adds new functionality. Unlike an application which we purchase and host internally we generally have little control over when we are migrated to a new version. If the design of the new version runs slower for the City, or if the load on the hosted application increases dramatically due to other customers, we could see a negative impact on system response time through no fault of our own. If the SaaS application supports a business process that has either availability or response time thresholds which if exceeded cause a business process problem, then specifying availability and/or system performance service levels in either a Statement of Work or a Service Level Agreement is recommended. Additionally, should certain provisioning activities such as the creation of a system administrator only be able to be performed by the vendor, and that activity be considered time critical (e.g. to meet a deadline or provide additional backup staff in case of an emergency), then maximum provisioning time should be included in the SLA.

General Responsibilities. The Vendor warrants the hosted service for the term of this agreement. During the Warranty Periods, Vendor shall provide Services as described below in this Section as the Warranty Services at no additional cost to correct Deficiencies in the System and Hosted Services and to repair and maintain the System and Hosted Services in accordance with the Specifications. Vendor shall perform these Warranty Services after the Warranty Periods and during Hosted Services at Charges described in Exhibit A, Statement of Work. Vendor's Warranty Service responsibilities shall include but not be limited to the following while assisting THE CITY in operating and maintaining the System and Hosted Services:

13.12.1   Promptly repair or replace the System and Hosted Services, or any portion thereof, that has Deficiencies;

13.12.2   Maintain the System and Hosted Services in accordance with the Specifications and terms of this Agreement and meet all availability and system performance service levels as specified in the Statement of work and/or Service Level Agreement.(SLA) In the event the Hosted System requires failover activities, then the Vendor shall be responsible for continuance of the Hosted System and the City shall not be subject additional costs unless otherwise specified in this agreement

13.12.3   Upon request by the City, re-perform any Service that fails to meet the requirements of this Contract at no additional cost;

13.12.4 Coordinate with the City all tasks related to correcting problems and Deficiencies connected with the Software or the Equipment.

13.12.5 Inquiry Assistance. Contractor shall respond to inquiries from the City, and with the following, as applicable:

13.12.5.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

13.12.5.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

13.12.5.3 Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent technically feasible; and

13.12.5.4 Clarification of Documentation.

14. Enhancements.

Vendor shall provide the City with all Enhancements and associated documentation that are provided as general releases to the Software, in whole or in part, as part of the Hosted Services. Such Documentation shall be adequate to inform the City of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor warrants that each such Enhancement general release shall be tested and perform according to the Specifications. Vendor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement at no cost to the City.

Enhancements to correct any Deficiency shall be provided to the City at no additional cost and without the need for a Work Order.

Should the Vendor not be able to correct the hosted system so that it complies with the specifications in the Statement of Work and/or Service Level Agreement, to the City's reasonable satisfaction in a timely manner, the City may terminate this Contract and Section 39 of this Contract shall be executed.

15. Ownership of Deliverables

Except for the licensed System Software and its related documentation, all data and work products produced under 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 the City.

The City shall own all right, title and interest in and to the City's Confidential Information (defined in Section 34 and Appendix_____Non-Disclosure Agreement, (Reference the Appendix only if optional Non-Disclosure Agreement is used). the City's intellectual property, and the City's Property. To the extent Vendor produces any Data, Vendor shall take all actions necessary and shall transfer ownership of the Data to the City following its development. The Data shall be deemed City of Seattle work made for hire for all purposes of copyright law, and copyright shall belong solely to the City. In the event that any such work is adjudged to be not a work made for hire, Vendor agrees to assign and hereby assigns all copyright in such work to the City. Vendor shall, assist the City or its nominees to obtain copyrights, trademarks, or patents for all such works. The Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States copyrights and to transfer or cause to transfer to the City right, title and

interest in and to such works.

16. Protection of Persons and Property

16.1. Person
The Vendor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

16.2. Property
The Vendor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Vendor's performance or failure of performance under this Contract.

16.3. No Smoking
The Vendor shall not allow any employee of the Vendor or any sub or agent thereof to smoke inside any City facility.

17. Contract Notices, Deliverable Materials and Invoices Delivery
Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:
"RFP Coordinators name"
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by any other company, it must be addressed to:
"RFP Coordinators name"
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone:
Fax:
E-Mail:

Project work, invoices and communications shall be delivered to the City Project Manager:
City of Seattle
Attention:

18. Security

Remedies under section 16.4 will vary based on the business process and data the SaaS application is providing and the risk to the City of non-compliance with the Security policy.   Remedies could range from requiring a fix within a specified period of time, or terminating the remainder of the contract.

18.1.   The Vendor shall provide the City with a copy of Vendor's Information Security Policy on request. Vendor's policy should be similar in scope and include controls similar to the City's Information Systems Security Policy included below and also located at: http://www.seattle.gov/informationsecurity/pdf/ISSP-Web.pdf.

ISSP-Web.pdf

Vendor shall provide to the City an attestation by an objective third party, stating that the application has been tested for common security vulnerabilities as articulated by the "OWASP Top-10". These include sql injection, cross-site scripting, cross-site request forgery, and others. See www.owasp.org for details. This testing must be performed at the expense of the vendor and by an objective third party

The attestation may be simply an executive summary of the technical report, stating that the application has been tested against the aforementioned standard, and found to be free of security defect...

The City may require the Vendor re-test the Hosted System if there are significant changes such as addition of functionality, structural or architecture changes, or the addition of infrastructure components.

The City retains the right to audit the Hosted System at its cost. The Vendor shall assist the City in performing the audit. If the results of the audit show that the Hosted System is out of compliance with ISSP, then the vendor shall_____ (Project Manager should specify remedies here.)

19. Vendor Authorizations

Vendor represents and warrants that:

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

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

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

19.4.   Vendor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of the Services. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense. Vendor must maintain any certifications that were specified as a minimum requirement in the selection process. If during the period of the contract, a new certification is established as a minimum requirement for similar applications, the vendor shall, within a reasonable time, obtain that certification.

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

20. Ability to Perform

Vendor represents and warrants that:

20.1.   Vendor has and shall continue to have the financial ability, by itself or through a line of credit or other financial support, to provide THE CITY with at least six months of Services, including Hosted Services during any period of this Contract, without reimbursement for the Services or expenses;

20.2.   Vendor has and shall continue to have the financial resources to fund the capital expenditures required under this Contract without advances by THE CITY or assignment of any payments by THE CITY to a financing source;

20.3.   Each subcontractor providing a substantial amount of the Services under this Contract has and shall continue to have the financial resources to carry out its duties under this Contract; and

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

20.5.   Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

21. Inspection

Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Vendor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

22. Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non-Discrimination

22.1.   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. 1201 et seq; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination.

22.2.   Fair Contracting Practices Ordinance: Vendor shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

22.3.   In accordance with Seattle Municipal Code Chapter 20.42, Vendor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the Statement of Work required for this Contract. Vendors shall actively solicit subcontracting bids from sub as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Vendors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of The City, Vendor shall promptly furnish evidence of the Vendor's compliance with these requirements.

22.4.   If upon investigation, the Director of Executive Administration finds probable cause to

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believe that the Vendor has failed to comply with the requirements of this Section, the Vendor shall notified in writing. The Director of Executive Administration shall give Vendor an opportunity to be heard, after ten calendar days' notice. If, after the Vendor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Vendor, pending compliance by the Vendor with the requirements of this Section.

22.5. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Vendor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Vendor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

23. Equal Benefits

23.1. Compliance with SMC Ch. 20.45: The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Vendor provides to its employees with spouses. At The City's request, the Vendor shall provide complete information and verification of the Vendor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at http://cityofseattle.net/contract/equalbenefits/.

23.2. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:

23.3. Require the Vendor to pay actual damages for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Contract; or

23.4. Terminate the Contract; or

23.5. Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or

23.6. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

24. General Legal Requirements

24.1. General Requirement: Vendor, at no expense to The City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.

24.2. Licenses and Similar Authorizations: Vendor, at no expense to The City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

24.3. Performance Standard. All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

25. Changes to City Programs.

25.1. The parties acknowledge that the City programs supported by this Contract may be subject to continuous change during the term of this Contract. Except as provided in this Section, Vendor has provided for or will provide for adequate resources, to reasonably accommodate such changes. Should Vendor be unable to accommodate those changes, the City has the right to terminate the contract.

25.2. The parties also acknowledge that the Vendor was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal and/or State laws, regulations, policies, or guidelines that affect the performance of the Services and System.

25.3. In keeping with the City reliance on the Vendor's knowledge, experience and expertise, the Vendor will be responsible for identifying changes in applicable federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or the City's use of the Services or Deliverables. The Vendor must timely notify the City of such changes and must work with the City to identify the impact of such changes on how the City uses the Services or Deliverables.

25.4. Noncompliance. The Vendor will be responsible for any fines, penalties, or disallowances imposed on the City or Vendor arising from any noncompliance with the laws, regulations, policies, and guidelines that affect the Services or Deliverables that are to be provided or that have been provided by the Vendor, its Subcontractors or agents.

26. Indemnification

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

27. Insurance

Except as specified otherwise, Vendor shall obtain at time of award and maintain in force, minimum coverages and limits of liability of insurance specified below. If the Vendor fails to obtain or maintain these coverages, the City may withdraw its intent to award. All costs are borne by the Vendor.

27.1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Contract maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:

27.1.1. Commercial General Liability (CGL) insurance, including:
- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability

with minimum limits of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:

$1,000,000   Personal/Advertising Injury

$1,000,000   each accident/disease/employee Stop Gap/Employer's Liability

27.1.2. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of $1,000,000 CSL.

27.1.3. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

27.1.4. Professional Liability Errors and Omissions, with coverage of not less than $1 million per occurrence/$2 million general aggregate.

27.2.   CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.

27.3.   NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 27.1 are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.

27.4.   MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.

27.5.   SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.

27.6.   EVIDENCE OF COVERAGE. Prior to performance of any scope of work under this Contract, Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.

28. Review of Vendor Records

Note to RFP Coordinator and Project Manager: Required section. This section requires Vendor to maintain books, records, and documents to reflect Vendor's compliance with Contract requirements and all direct and indirect costs expended in the performance of the Contract for potential audit. This is stipulated by State Law, as is the required minimum of 6 years.

Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of City'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 six (6) years from the date of expiration or termination of this Contract whichever is later.

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 City's Contract Administration and/or the Office of the Auditor and federal officials so authorized by law, rule, regulation or

contract, when applicable, at no additional cost to the City. During this Contract's term, Vendor shall provide access to these items at a mutually agreeable time and place. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

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 City's review unless the cost or any material issue under this Contract is calculated or derived from these factors.

29. Independent Contractor

The relationship of Vendor to The City by reason of this Contract shall be that of an independent Vendor. This Contract does not authorize Vendor to act as the agent or legal representative of the City for any purpose whatsoever. Vendor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of The City or to bind The City in any manner or thing whatsoever.

It is the intention and understanding of the Parties that Vendor shall be an independent Vendor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Vendor shall not be deemed to convert this Contract to any employment contract. It is recognized that Vendor may or will be performing professional Work during the term for other parties and that The City is not the exclusive user of the Work that Vendor will provide.

30. Assignment and Subcontracting

Neither part shall assign or subcontract any of its obligations under this Contract without mutual written consent, which shall not be granted or withheld without reasonable cause. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

31. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

32. No Gifts or Gratuities.

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans,

entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Vendor. Promotional items worth less than $25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

33. Current and Former City Employees, Officers, and Volunteers.

Throughout the life of the contract, Contractor shall provide written notice to City Purchasing and the City Project Manager of any current or former City employees, officials or volunteers, that are working or assisting on solicitation of City business or on completion of the awarded contract. The Vendor must be aware of the City Ethics Code, Seattle Municipal Code 4.16 and advise Contractor workers as applicable.

34. Contract Workers with 1,000 Hours

Throughout the life of the Contract, Contractor shall provide written notice to City Purchasing and the City Project Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

35. Errors & Omissions: Correction

Vendor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, Statement of Work, and other services furnished by or on the behalf of the Vendor under this Contract. The Vendor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, Statement of Work, and/or other Vendor services immediately upon notification by The City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Vendor.

36. Data Storage and Retention

Vendor agrees to store and retain City data in accordance with City record retention requirements for the type of data being stored, or to work with the City to develop a plan to meet those requirements through alternate means.

37. Confidentiality

]Note to RFP Coordinator and Project Manager: Required section. This section clarifies the state laws regarding Public Disclosure and sets forth obligations towards proprietary or confidential information. This has been written with the Law Department. This should not be modified.   The first section talks about the City's legal obligation to disclose records held by the City even though vendors may consider those records to be confidential/proprietary. It explains the City's process in the event that records are requested and talks about the Vendor's obligation and process it must follow to defend its records that Vendor considers to be confidential/proprietary. The second section talks about materials/data the City provides to the Vendor for the hosted website. It describes the vendors obligation to protect the City's data. It addresses the City's concern that Vendor cannot move City data to a location without the City's permission. This allows the City an opportunity to make sure that the laws regarding the treatment of confidential data at the new location are sufficient to meet the City's needs. Section 34.2 defines some materials that the City considers to be confidential, but RFP Coordinator and Project Manager should review and revise to fit the particular requirement. Requiring Vendor to execute a Non-Disclosure

37.1. Vendor's Confidential Information:

37.1.1. The Vendor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Vendor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

37.1.2. If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Contractor. For materials that the Vendor has properly marked, the City may notify the Contractor of the request and postpone disclosure for ten business days to allow the Contractor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Contractor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Contractor's discretionary decision whether to file the lawsuit.

37.1.3. In order to request that material not be disclosed until receipt of notification of a public disclosure request, you must identify the specific materials and citations very clearly on the City Vendor Questionnaire that you believe are exempt from disclosure. The City will not withhold material for notification if the Contractor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Vendor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

37.1.4. If the Contractor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Contractor is deemed to have authorized releasing the record.

37.1.5. If the Contractor does not submit a request within the Vendor Questionnaire, the Contractor is deemed to have authorized releasing any and all information submitted to the City.

37.1.6. Notwithstanding the above, the Contractor must not take any action that would affect (a) the City's ability to use goods and services provided under this Contract or (b) the Contractor's obligations under this Contract.

37.1.7. The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

37.2. City's Confidential Information:

37.2.1. The following are hereby designated to be the City's Confidential Information: the City's Data (including , but not limited to records, files, forms, documents, and other data regardless of format), meta-Data either described or embedded in the Data and City documents, City employee information including but not limited to names, address, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, and such other Confidential information as may be designated by the City to the Vendor.

37.2.2. Except for disclosure of the City's Confidential Information to the City in order to comply with RCW 42.56, the Vendor shall maintain all Confidential Information of the City in strict confidence, at least to the same extent as it protects the confidentiality of its own

confidential information of like kind, but in no event with less than reasonable care.

37.2.3. Vendor shall not at any time use, publish, sell, reproduce or disclose any Confidential Information, except for disclosure to the City in order to comply with RCW 42.56 and except to authorized officers, employees, contractors and agents requiring such information under confidentiality requirements in accordance with Appendix ____Non-Disclosure Agreement.(Optional) The use or disclosure by Vendor of any City information not necessary for, or directly connected with, the performance of Vendor's responsibility with respect to Services is prohibited except upon the express written consent of the City.

37.2.4. The Vendor shall take all steps necessary, including without limitation oral and written instructions to all authorized officers, employees, contractors and agents to safeguard the City's Confidential Information in accordance with applicable federal and State law and regulation and this Contract against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract including <mark>Appendix____Non</mark>-Disclosure Agreement.

37.2.5. The Vendor, and its officers, employees, contractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of the City with respect to information and materials which come into the Vendor's possession

37.2.6. The Vendor shall not move the City's confidential information to another geographical location without the City's written permission.

37.2.7. The City reserves the right to monitor, audit or investigate Vendor's use of the City's Confidential Information collected, used, or acquired by Vendor under this Contract.

37.2.8. The Vendor shall immediately report to the City any and all unauthorized disclosures or uses of the City Confidential Information of which it or its officers, employees, employees, contractors and agents is aware or has knowledge. The Vendor acknowledges that any publication or disclosure of City Confidential Information to others may cause immediate and irreparable harm to the City. If the Vendor should publish or disclose such Confidential Information to others without authorization, the City shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

37.2.9. The use or disclosure by Contractor of any City information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of the City

38. Publicity

<mark>Note to RFP Coordinator and Project Manager: This section establishes that the Vendor will not use any advertising, sales, promotion, or other publicity materials in which the City's name is specifically stated, implied or can be inferred, without the City's consent.</mark>

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Vendor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Manager or his/her designee.

39. Inter-local Agreement Act

<mark>Note to RFP Coordinator and Project Manager: Optional section. This section allows other public agencies to also use this contract. You may delete as appropriate to the purchase and/or the preference</mark>

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.

40. Background Checks

SCL needs this language in its contracts to ensure that if the occasion arose, they could enforce background checks compliant to NERC. This language may also be appropriate for hosted systems where the City is transferring potentially sensitive data to the vendor. Buyer and Project Manager should review the project and edit this language as it may be appropriate for the project.

The City may require background/criminal checks during the term of the Contract for essential City purposes. The City does not intend to request background checks/verifications unless essential in the opinion of the City. For example: For hosted systems, and similar services, due to the confidential nature of the information and materials which will be accessible to Vendor, the City, may also conduct a reference check, background/criminal check on Vendor Staff (which may include officers, employees, subcontractors and agents).to be used to provide the Services. The City reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks, background checks, or additional sources of information. Note that, in particular, Seattle City Light has regulatory requirements promulgated by organizations with jurisdiction over Seattle City Light, which require any contract worker that has access to certain locations/systems/data ("SCL Designated Access") to undergo a background/criminal check before that worker can have authorized cyber or authorized unescorted physical access to those locations/systems/data. The requirements apply to all Vendor workers and mandate an appropriate Personnel Risk Assessment and security awareness training as directed by Seattle City Light.

This section covers background/criminal checks for Vendor workers before they work on certain City tasks, systems and/or locations, to include the discovery and verification of criminal convictions and civil findings. The City may, at its option, determine that only a criminal history check will be performed. This section also covers the requirements if cyber security training is required.

If the City notifies the Vendor to undergo background/criminal checks or cyber security training for vendor workers, the following shall apply.

40.1. GENERAL REQUIREMENTS

40.1.1. The City shall alert the Vendor that the contract task is "High Security" at the time the work request is made to the Vendor or as soon as practical thereafter.
40.1.2. Should the Vendor believe it cannot meet these obligations by the scheduled work start dates, the Vendor may seek mutual agreement to a revised start date, or if none is reached, decline the work.
40.1.3. The City may require that any Vendor worker receiving SCL Designated Access undergo a background/criminal history check and receive appropriate cyber security training. The Seattle Police Department (SPD) shall conduct all criminal history checks for Seattle Police Department services.
40.1.4. The Vendor shall provide a list of names, specified identification information (social security number, birth date and address) and a release signed by the worker for the City to perform a background/criminal history check. Vendor must provide the information to the

City before any worker will receive be cleared for work. The list must be submitted at a date mutually agreed upon.

40.1.5. The City will conduct a background check using either the Seattle Police Department or any agency with whom the City selects. The City will review the resultant background/criminal history check results. The City shall notify the Vendor of acceptance or rejection of personnel in a timely manner.   The City will perform the background check at City cost.

40.1.6. For workers rejected by the City, the Vendor will submit to the City alternative names for background checks. Vendor will submit those names promptly, as mutually agreed upon between the Vendor and the City.

40.1.7. The Vendor has responsibility to obtain City approval for a sufficient quantity of personnel to provide adequate coverage during the contract term.   The City may allow the Vendor to submit a greater number of individuals for background checks and approval than is necessary to accomplish the contract tasks, in order to assure adequate coverage for the contract work (i.e. receive authorization for back-up crew members in the event of an absence by a scheduled crew member).

40.1.8. Notwithstanding the schedules and responsibilities herein, the City and the Vendor may need to consider individuals for emergency replacement in the event a worker cannot perform or is terminated. In such event, the City may allow the Vendor to submit additional names in anticipation of such future need.

40.1.9. The City shall not unreasonably withhold approval of such individuals, although the City is not under the obligation to accept individuals that would otherwise be rejected as not suitable.

40.1.10.   The Background/Criminal check must be renewed every four years for vendor workers. If the worker was required by the City to undergo a background check and/or cyber security training, the Vendor must likewise notify the City when that worker approaches four years. This notice to the City must be no less than sixty (60) days before the end of the four-year period. At that time, to comply with appropriate regulatory requirements, the City may require another background check/criminal.

40.1.11.   The Vendor shall provide to the City, no less than eight (8) hours from when the status change becomes effective, notice of any Vendor worker who is: (i) reassigned or no longer requires Designated Access to perform the contract tasks, or (ii) terminated by the Vendor for any reason. In no case shall such notice be greater than eight (8) hours.

40.1.12.   The Vendor shall immediately notify the City Project Manager to report if a worker has a change in criminal history or background status. The City may initiate a new background/criminal check for this or other cause during the term of the worker's access to the City.

40.1.13.   For furniture moves, on the day(s) of service, at the job site, the Crew Chief is to submit the names of those present at the job site to the City Building Service Manager. The City Project Manager is responsible for rejecting any individuals that have not been approved by the City. Should such a rejection result in a failure by the Vendor to meet the Vendor obligations for a crew of sufficient size to complete the move, the Vendor assumes all resulting liabilities and damages in accordance with the contract and all terms and conditions.

40.2.   CYBER TRAINING REQUIREMENTS
The City may require that any Vendor worker receive appropriate cyber security training. Such workers must receive cyber security training once each year they work under the contract.

40.3.   ROUTINE ELEMENTS OF A BACKGROUND/CRIMINAL REPORT
Routine background/criminal history check reports shall include identity verification (e.g. social security number verification) and a search of records from any federal, state or county court in the United States, an international records search, and records of all convictions or releases from prison within the last ten (10) years.

40.4.   NON-ROUTINE ELEMENTS OF A BACKGROUND/CRIMINAL REPORT
40.4.1. The City may search for dependency actions.

40.4.2. The City may search for information on protection proceedings related to sex offender, assault, abuse, or exploitation of a minor, developmentally disabled person, or vulnerable adult, or domestic relations proceedings.

40.4.3. The City may search for additional information detail, as determined by the City, above and beyond the scope of a routine background/criminal history check as defined in Section C, General requirements.

40.4.4. If the required access for the worker is subject to NERC, the City will require all workers to undergo annual Cyber Security Training offered by Seattle City Light. The workers will be paid for the time they spend in such training. If this requirement applies, the City will require the Vendor to submit a list of such workers and their status of Cyber Training annually upon contract anniversary.

40.5. SECURITY ACCESS REQUIREMENTS

40.5.1. VENDOR USE OF PREMISES

40.5.1.1. Vendor workers shall have only limited use of the premises for work, storage, access, and equipment.

40.5.1.2. Material/equipment staging areas will be limited to floors and areas designated within the Scope of Work. Maintain clear access to site and building entrances.

40.5.1.3. Driveway use will be limited to loading and unloading only.

40.5.1.4. For furniture moves, the vendor shall be granted the use of up to two parking spaces in the Seattle Municipal Tower parking structure to be paid by the vendor. Arrangements for the use of these two spaces must be made through the Building Management. Other parking spaces in the structure are available at the regular rates. Special parking arrangements may be made through IMPARK Inc., the garage operator at 628-9042.

40.5.1.5. Restrooms may have restricted access, as appropriate to the Scope of Work.

40.5.1.6. All workers who must provide services or delivery at a SCL facility must obtain prior permission from SCL and make arrangements for an SCL escort while on the facility site.

40.5.2. RELATED REQUIREMENTS AND DOCUMENTS

40.5.2.1. All Vendor employees at the job site shall wear identification that is prominent and clearly marked, which clearly identifies the individual as an employee with the building services company.

40.5.2.2. When appropriate, Vendors will be issued a Departmental Identification/Access Badge, for the designated contract period, giving them access to the facility for which they require access. These Identification/Access Badges will be returned to the Department at the completion of the contract.

40.5.3. WORK AREA

40.5.3.1. Confine operations and storage to the designated work area. Maintain the work area and building clean and in an orderly manner.

40.5.3.2. Safety Procedures: Implement safety procedures as required by the Contract Documents, local codes and laws to ensure the safety of all site personnel and visitors to the site.

40.5.4. TEMPORARY CONTROLS

Vendor shall be responsible for proper supervision of personnel to prevent damage, loss or other unauthorized damage as a result of the work performed by the Contractor.

41. Dispute Resolution

Note to RFP Coordinator and Project Manager: This section is to help provide a dispute resolution process, to resolve bona fide disputes before either party takes the dispute to Court. This can be modified as appropriate at either the Project Manager or the Vendor request.

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Vendor's performance or City's obligations between the Vendor's representative and the City's representative. Either party may discontinue such discussions and

may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the Contract for cause or convenience.

The City and the 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. If the subject of the dispute is the amount due and payable by the City for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided City pays Vendor the amount the City, in good faith, believes is due and payable

42. Termination

42.1.   For Cause: The City may terminate this Contract if the Vendor is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.

42.2.   For City's Convenience: The City may terminate this Contract at any time, without cause and for any reason including the City's convenience, upon written notice to the Vendor.

42.3.   Nonappropriation of Funds: The City may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

42.4.   Acts of Insolvency: The City may terminate this Contract by written notice to Vendor if the Vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

42.5.   Termination for Gratuities and/or Conflict of Interest: The City may terminate this Contract by written notice to Vendor if The City finds that a conflict of interest exists in violation of the city Ethics Code, or that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Vendor or any agent therefore to any City official, officer or employee.

42.6.   Notice: The City is not required to provide advance notice of termination. Notwithstanding, the City may issue a termination notice with an effective date later than the termination notice itself. In such case, the Vendor shall continue to provide products and services as required by the City until the effective date provided in the termination notice.

42.7.   Actions Upon Termination: In the event of termination not the fault of the Vendor, the following shall apply:

42.7.1. Upon termination, the Vendor shall wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on the City from such winding down and cessation of services.

42.7.2. Vendor shall be paid for all products and services that have been ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted by the City, together with any reimbursable expenses then due.

42.7.3. For System development projects, Vendor shall be paid for progress performed that has been accepted by the City on or prior to the effective termination date, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract.

42.7.4. Vendor agrees that such payment shall fully and adequately compensate Vendor and all subs for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.

42.7.5. Vendor shall provide to the City all City-owned data, Property and Deliverable in the possession of either the Vendor within (X) business days, in the format originally used by the City prior to conversion and upload to the vendor, or in a format mutually agreed to by

both the vendor and the City. Where applicable, the Vendor shall provide the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.

In the event this Contract expires or is terminated for any reason, the City shall retain its rights in all Products, services and system progress that is in transit or delivered prior to the effective termination date.

42.8.   Transition Support: Vendor shall provide for a reasonable, mutually agreed period of time after the expiration or termination of this Contract, all reasonable transition assistance requested by the City, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the City or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The City shall pay Vendor for any resources utilized in performing such transition assistance at the rates in Exhibit___, Statement of Work. If the City terminates the project or this Contract under 42.b or 42.c, the City will be entitled to offset the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the Vendor may have otherwise accrued as a result of such termination.

42.9.   Actions for Non-Funding:

- The parties acknowledge and agree that this Contract is dependent upon the availability of City funding. If funding to make payments in accordance with the provisions of this Contract is not available for this Contract, or is not allocated or allotted to the City for this Contract for periodic payment in the current or any future fiscal period, then the obligations of the City to make payments after the effective date of such non-allocation or non-funding will cease and terminate.

- If funding to make payments in accordance with the provisions of this Contract is delayed or is reduced from the City for this Contract, or is not allocated or allotted in full to the City for this Contract for periodic payment in the current or any future fiscal period, then the obligations of the City to make payments will be delayed or be reduced accordingly or the City shall have the right to terminate this Contract as provided in Section 42.c, Nonappropriation of Funds.

- If such funding is reduced, the City in its sole discretion shall determine which aspects, if any, of this Contract shall proceed and which Services shall be performed, with Contractor's Charges for such Services and Purchase Prices for associated Deliverables determined in accordance with those in the Statement of Work. In these situations, the City will pay the Vendor for Services and Deliverables and certain of its costs in accordance with the terms of Section 42.g. Any obligation to pay by the City will not extend beyond the end of the City's then-current funding period.

43. Force Majeure– Suspension and Termination

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Contract, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

44. Major Emergencies or Disasters:

The City may undergo an emergency or disaster that may require the Vendor to either increase or decrease quantities from normal deliveries, or that may disrupt the Vendor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

44.1. The City shall notify the Vendor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Vendor.

44.2. Upon such notice by the City, the Vendor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.

44.3. The City of Seattle shall be the customer of first priority for the Vendor. The Vendor shall provide its best and priority efforts to provide the requested goods and/or services to the City of The City in as complete and timely manner as possible. Such efforts by the Vendor are not to be diminished as a result of Vendor providing service to other customers.

44.4. If the Vendor is unable to respond in the time and/or quantities requested by the City, the Vendor shall make delivery as soon as practical. The Vendor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:

44.5. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;

44.6. Offering the City substitutions provided the Vendor obtains prior approval from the City for such substitution.

44.7. The Vendor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Vendor incurring unavoidable additional costs and causes the Vendor to increase prices in order to obtain a fair rate of return, the Vendor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

45. Debarment

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a sub on any Contract with the City for up to five years after determining that any of the following reasons exist:

45.1. Vendor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

45.2. Vendor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

45.3. Vendor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

45.4. Vendor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

45.5. Vendor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

45.6.　Vendor colluded with another Vendor to restrain competition.
45.7.　Vendor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
45.8.　Vendor failed to cooperate in a City debarment investigation.
45.9.　Vendor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050.   The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

46. Recycle Products Requirements

As required by Seattle Municipal Code 20.60, whenever practicable, Vendor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Vendors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Vendors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

47. Section Headings, and Sub-Headings, Incorporated Documents and Order of Precedence

<mark>Note to RFP Coordinator and Project Manager: This is required, both by City Purchasing and Law. Modify the list of attachments, and verify the order of precedence. Edit as appropriate.</mark>

47.1.　The headings used herein are inserted for convenience only and do not define or limit the contents.

47.2.　No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of the Vendor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

47.3.　The following documents are incorporated by reference into this Contract. Where there is conflict or gap among these documents, the controlling document will be resolved in the following order of precedence (first listed being the precedent):

47.3.1. Applicable federal, state and local statutes, laws and regulations;
47.3.2. This Contract
47.3.3. All Attachments to this Contract including Statement of Work, Service Level Agreement, Confidentiality Agreement
47.3.4. Work Oders
47.3.5. RFP issued by the City
47.3.6. Vendor Proposal Response
47.3.7. Work Ordersued, if any; and
47.3.8. Vendor or manufacturer publications or written materials Vendor made available to City and used to effect the sale.

48. Entire Agreement

<mark>Note to RFP Coordinator and Project Manager: Required section. This section establishes that the Contract constitutes the entire agreement between City and Vendor with respect to the subject matter of</mark>

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. No changes to provisions, price, quality, or Statement of Work of this Contract will be effective without the written consent of both parties.

49. Authority for Modifications and Amendments

The Parties hereto reserve the right to make amendments or modifications to this Contract by written agreement, signed by an authorized representative of each party. No modification, amendment, alteration, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by the City RFP Coordinator and Vendor Contracting Officer. Only the City RFP Coordinator 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 the City.

50. Severability

If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

51. Miscellaneous Provisions

51.1. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.

51.2. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

51.3. Modifications: Only the City's Purchasing Buyer shall have the authority to alter, amend, modify, or waive any clause or condition of this Contract on behalf of the City. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding until made in writing and signed by the purchasing agent(s) authorized by the City Project Director or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein

51.4. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.

51.5. Waiver: No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by The City of Vendor performance nor payment to Vendor for any portion of Work shall constitute a waiver by The City of the breach or default of any term or condition unless expressly agreed to by The City in writing.

51.6. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.

51.7. Attorneys' Fees: Subject to the indemnification provisions set forth in this Contract, if any

action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

51.8.   Authority: Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

(Vendor)   **City of Seattle**

By _____   By _____
     Signature   Date   Signature   Date

     _____   NANCY LOCKE, City Purchasing Director
     (Printed Name)

     _____
     Title

Washington State Unified Business Identifier Number (UBI):

Summit Vendor Number: