



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

RFP NO. 16-900

Facilities Portfolio Management Tool

AMENDMENT NO. TWO (2)

OFM RESPONSE TO BIDDER QUESTIONS/EXHIBIT 1, SAMPLE CONTRACT

05.17.2016

OFM Answer to Bidder Question

- 1) **Question:** *Section 4.11 "Bidders Response to OFM Sample Contract" references an "Exhibit 1 – Sample Contract", however I do not see that file on WEBS with the other files. Can you tell me if it is somewhere within the provided documents that I am just not seeing, or if it is indeed missing from the site?*

OFM Answer: **OFM has been in the process of final editing of Exhibit 1 – Sample Contract. It is attached to this amendment.**

- 2) **Question:** *Section 4.2 indicates that we must also provide hardcopies of the Letter of Submittal and Attachment B Reps/Certs/Assurances. Is it correct to assume that we send the hardcopies to you? Are the hardcopies due by 3:30pm PDT on June 10 or is just the e-mail version due by then with the hardcopies "to follow"?*

OFM Answer: **Electronic copies are due with your response with hardcopies to follow.**

EXHIBIT 1, SAMPLE CONTRACT

TO

OFM RFP #16-900

Contract Number *[XXX-XXX-XXX]*

for

**FACILITIES PORTFOLIO
MANAGEMENT TOOL**

between

*Washington State
Office of Financial Management*

and

[Contractor]

Effective Date: _____

Table of Contents

1.	PARTIES	1
2.	Definition of Terms	1
General SaaS Services Clauses		4
3.	General, Present License and Support and Maintenance Included	4
Contract Term.....		5
4.	Contract Term	5
5.	Survivorship	5
Pricing, Invoice And Payment		5
6.	Pricing	5
7.	Advance Payment Prohibited	6
8.	Taxes	6
9.	Invoice and Payment	6
10.	Overpayments to Contractor	7
Contractor’s Responsibilities		7
11.	Professional Services and Statement of Work	7
12.	Commencement of Work	8
13.	Use of Contractor’s Software	8
14.	Ownership/Rights in Data	8
15.	Purchaser’s Site Security	9
16.	Contractor’s Facility and Security.....	9
17.	Data Storage, Transmission and Archive	10
18.	Security Incident Response	10
19.	Functionality Warranty	11
20.	Small Business, Minority and Women’s Business Enterprise (MWBE) and Veteran-Owned Business Participation	11
21.	Protection of Confidential Information	12
Contract Administration		13
22.	Legal Notices	13
23.	Purchaser Project Manager	13
24.	Contractor Account Manager	14
25.	Section Headings, Incorporated Documents and Order of Precedence.....	14
26.	Entire Agreement	14
27.	Authority for Modifications and Amendments	15
28.	Independent Status of Contractor	15
29.	Governing Law.....	15
30.	Subcontractors.....	15

31. Assignment.....	16
32. Publicity	16
33. Review of Contractor’s Records	16
34. Right of Inspection.....	17
General Provisions.....	18
35. Patent and Copyright Indemnification	18
36. Save Harmless/Indemnification	18
37. Insurance	18
38. Industrial Insurance Coverage.....	20
39. Licensing Standards	20
40. Antitrust Violations	20
41. Compliance with Civil Rights Laws	21
42. Severability	21
43. Waiver.....	21
44. Treatment of Assets.....	21
45. Contractor’s Proprietary Information.....	22
Disputes and Remedies.....	22
46. Disputes.....	22
47. Attorneys’ Fees and Costs.....	23
48. Non-Exclusive Remedies	23
49. Failure to Perform	23
50. Limitation of Liability.....	23
Contract Termination.....	24
51. Termination for Default	24
52. Termination for Convenience.....	25
53. Termination for Withdrawal of Authority.....	25
54. Termination for Non-Allocation of Funds	25
55. Termination for Conflict of Interest	25
56. Termination Procedure.....	25
57. Transition; Transition Period	26
Contract Execution.....	26
58. Authority to Bind	26
59. Counterparts	26
Schedules.....	1
Schedule A: Authorized Services and Price List.....	1
Schedule B: Statement of Work.....	1
Schedule C: Financial and Operational Controls / Audits	10
Schedule X: MWBE Certification [if applicable]	10

ExhibitsError! Bookmark not defined.

Exhibit 1: *[Purchaser] Request for Proposal Number 13-1000-ACCO*Error! Bookmark not defined.

Exhibit 2: *Contractor's Response* **Error! Bookmark not defined.**

CONTRACT NUMBER [XXX-XXX-XXX]

for

FACILITIES PORTFOLIO MANAGEMENT TOOL

1. PARTIES

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through the Office of Financial Management, an agency of Washington State government (“**Purchaser**” or “**OFM**”) located at [address], and [Contractor], a [corporation/sole proprietor or other business form] licensed to conduct business in the state of Washington (“**Contractor**”), located at [Contractor address] for the purpose of providing a facilities portfolio management tool (“Facilities Portfolio Management Tool” or “FPMT”) that will capture, manage, use and report relevant facility inventory data for state owned and leased facilities.

RECITALS

OFM issued a Request for Proposals (RFP) [add RFP #] “Facilities Portfolio Management Tool” (FPMT) dated _____, for the purpose of obtaining use of a Contractor-managed Software as a Service (SaaS) solution in accordance with its authority under chapter 39.26 RCW.

Contractor submitted a timely Proposal Response to the OFM RFP.

OFM evaluated all properly submitted Proposal Responses to the above-referenced RFP and identified the [contractor name] as the apparently successful bidder.

OFM has determined that entering into a Contract with [contractor name] will be in the best interest of OFM and the state of Washington.

NOW THEREFORE, OFM awards to **Contractor** this Contract, the terms and conditions of which shall govern **Contractor**’s furnishing to OFM the Facilities Portfolio Management Tool delivered via SaaS and Professional Implementation Services necessary to deliver the functionality set forth in the OFM RFP and Contractor’s Proposal.

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

2. Definition of Terms

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

“**Acceptance**” shall mean that Acceptance Testing has been performed and Purchaser has accepted the work and notified Contractor via process as established in a *Statement of Work*.

“**Acceptance Criteria**” shall mean the criteria established in a *Statement of Work*.

“**Acceptance Date**” shall mean the date upon which OFM determines that the Acceptance Testing is complete and established standards passed.

“**Acceptance Testing**” shall mean the process for ascertaining that services provided meet the standards and Acceptance Criteria set forth in a *Statement of Work*, prior to Acceptance by the OFM. Acceptance Testing shall also mean periodic reviews of SaaS services as provided for in a *Statement of Work*.

“**Confidential Information**” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal

statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, building architectural details, utilities schematics or other building information, or information identifiable to an individual that relates to any of these types of information.

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

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

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

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

"**Documentation**" means, the following items collectively, and shall be interpreted in the following order of precedence: (a) features or functionality and any special provision relating thereto, if any, as described in a Statement of Work; (b) the OFM Business and Technical Requirements; (c) deliverables other than the OFM Business and Technical Requirements; (d) the demonstrations; (e) the applicable RFP Response; (f) all of the written, printed, electronic or other format materials published or otherwise made available by Contractor to OFM; and (g) s any user, operations and similar manuals that Contractor or other software manufacturer makes generally available to its customers, that relate to the functional, operational and/or performance capabilities of the Solution or software, as applicable.

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

“**Exhibit 1**” shall mean the OFM Request for Proposals (RFP) 16-900 “Facilities Portfolio Management Tool” (FPMT) dated _____.

“**Exhibit 2**” shall mean Contractor’s Proposal Response date _____.

"**Mobile Standards**" means any laws, guidance, recommendations, guidelines or reports published by the Federal Trade Commission (FTC), Federal Drug Administration (FDA), U.S. and state Attorney General Offices, and other regulatory or governmental bodies setting forth practices, policies and procedures to govern the use of mobile devices, including the following FTC Staff Report, issued February 1, 2013, and the State of California Attorney General report on Privacy on the Go, Recommendations for the Mobile Ecosystem, issued January 2013.

“**Office of Financial Management**” or “**OFM**” shall mean the agency acting on behalf of Washington State government as a party to this contract, also known as “**Purchaser**”.

"OFM Business and Technical Requirements" means the business and technical requirements and Performance Standards described in the Statement of Work.

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

"Product(s)" shall mean any Contractor-supplied equipment, Software, and written and electronic materials.

"Professional Services" shall mean all services provided by Contractor under this contract, including but not limited to implementation, training, and support.

"Project Completion" shall have occurred when the conditions established in a *Statement of Work* for any deliverables in this Contract have been met and Acceptance achieved.

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

"Purchaser" shall mean the state of Washington, Office of Financial Management (OFM), any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

"Purchaser Project Manager" shall mean the person designated by Purchaser who is assigned as the primary contact person whom Contractor's Account Manager shall work with for the duration of this Contract and as further defined in the section titled **Purchaser Project Manager**.

"Purchaser Contracting Officer" shall mean Director of the Office of Financial Management, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

"RCW" shall mean the Revised Code of Washington.

"Response" shall mean Contractor's Response to Purchaser's RFP, Exhibit B hereto.

"RFP" shall mean the Request for Proposal used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

"Schedule A - Services and Price List" shall mean the attachment to this Contract that identifies the Deliverable Services and Prices under this Contract.

"Schedule B - Sample Statement of Work" shall mean the example document attached to this Contract that provides the basic framework to be used when writing a description of any work to be accomplished from time to time by the Contractor including additional terms and conditions if applicable.

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

“SaaS” or “Software as a Service” refers to the proposed solution delivery method provided by a Bidder in which the Bidder manages the infrastructure and platforms on which the proposed solution runs. The proposed solution is accessed through a web browser or a lightweight desktop or mobile application, and the purchaser’s data is stored remotely on the Bidders infrastructure and platforms.

“Specifications” shall mean the technical and other specifications set forth in the RFP, Exhibit 1, and any additional specifications set forth in Contractor’s Response, Exhibit 2, and any additional specifications defined in Schedule B – Statement of Work.

“State” shall mean the state of Washington including state agencies, boards, commissions and any political subdivisions including but not limited to cities and counties within Washington.

“Statement of Work” or “SOW” shall mean an attachment to this Contract that provides a complete written description of the Contractor’s work to be accomplished including additional terms and conditions, if applicable.

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

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

“User” shall mean any individual identified by Purchaser from OFM or any other state agency, board or commission who will have access to the Software under this Contract.

General SaaS Services Clauses

3. General, Present License and Support and Maintenance Included

- 3.1. Contractor shall provide the SaaS solution to OFM as set forth in Schedule B – *Statement of Work*. SaaS services may be accessed and used by OFM, state agencies and their authorized users on an Enterprise-Wide basis. Except as expressly set forth in *the Statement of Work*, there are no use, user, user type, geographic, facility, site or other similar restrictions on the access or use of the SaaS Services by OFM, state agencies or their authorized users.
- 3.2. Support and maintenance services for any and all software required to deliver SaaS Services are included within the SaaS Services Fee.
- 3.3. For purposes of the Contract and without limiting the generality of the foregoing, the term "Enterprise-Wide" shall mean the right to use the SaaS Service across the entire spectrum of business and operational activities involving OFM, state agencies and their authorized users, now and in the future, directly or indirectly, including any and all growth of OFM and its state agencies.

Contract Term

4. Contract Term

4.1. Term of Contract

The initial term of the contract will be five (5) years commencing upon the date of last signature or the date set forth in the contract.

4.2. Renewals

Upon expiration of the initial term and at OFM's sole option, the parties may agree to extend the contract for up to two (2) year increments when it is in the state's best interest to do so and the contractor is in compliance with performance standards.

The Contractor may propose increases in SaaS Services fees for any Renewal Term as set forth in Section 6. *Pricing*. Each term shall be governed by the terms and conditions established herein. No change in terms and conditions shall be permitted during these extensions unless specifically agreed in writing by the parties and set forth in an amendment to this Contract. At OFM's sole option, additional Renewal Terms may be agreed to in writing by the parties and set forth in an amendment to this Contract.

4.3. Statement of Work

The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of the SOW shall not exceed the term of this Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

5. Survivorship

All purchase transactions executed and Services provided 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 Renewal Term. 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 Contractor; Ownership/Rights in Data; Functionality Warranty; Protection of Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability* shall survive the termination of this Contract.

Pricing, Invoice and Payment

6. Pricing

6.1. Contractor agrees to provide the Professional Services described in Schedule B Statement of Work at the times and at the Prices set forth in Schedule A. No other Prices shall be charged by Contractor for implementation of Contractor's Response.

- 6.2. Prices may not be increased for the Professional Services and the annual SaaS services established in Schedule A unless such increase is agreed upon by the Parties and included in a written, signed amendment to this Contract.
- 6.3. If Contractor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for such Services commencing upon the next payment cycle for such Services or upon the ordering of such Services. Contractor shall send notice to the Purchaser Project Manager with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 6.4. At least one hundred twenty (120) calendar days before the end of the Initial Term or prior to any Renewal Term provided for herein, Contractor may propose rate increases based on reasonable supporting data, not to exceed a 3% increase over the previously agreed upon rate, whichever is less. Any agreed upon increase shall be in a written amendment to this Contract signed by an authorized agent of both parties.
- 6.5. Contractor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases.
- 6.6. Contractor understands that Purchaser will not reimburse Contractor for travel and other expenses to provide the services identified in this Contract or the SOW.

7. Advance Payment Prohibited

No advance payment shall be made for services furnished by Contractor pursuant to this Contract.

8. Taxes

- 8.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 8.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 8.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

9. Invoice and Payment

All Contractor invoices will be presented to the Purchaser Project Manager for the deliverables and services identified in *Schedule A: Authorized Services and Price List*, and Purchaser payments will be approved based upon Acceptance of deliverables by OFM. Purchaser payments of SaaS Services fees will be paid monthly in arrears.

- 9.1. Contractor will submit properly itemized invoices for Deliverable Services to the Purchaser Project Manager at *[physical address]* or Purchaser Project Manager's email address. Invoices shall provide and itemize, as applicable:

- Purchaser Contract number
 - Contractor name, address, phone number, and Federal Tax Identification Number;
 - Description of Services provided;
 - Date(s) that Services were provided;
 - Contractor's Price for Services;
 - Applicable taxes;
 - Other applicable charges;
 - Total invoice Price; and
 - Payment terms including any available prompt payment discounts.
- 9.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

[Note: The following subsection will be included only when Contractor indicated minority or women's business enterprise participation in its Response and Schedule "X" – MWBE Certification is attached.]

- 9.3. With each invoice Contractor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 20 below.
- 9.4. Payment of SaaS Services of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly SaaS Service Fee charges for each calendar day.
- 9.5. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 9.6. The Purchaser Contract number must appear on all correspondence relating to this Contract.
- 9.7. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.

10. Overpayments to Contractor

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

Contractor's Responsibilities

11. Professional Services and Statement of Work

- 11.1. All Professional Services shall be performed pursuant to the terms of this Contract and shall be documented in a Statement of Work *[see sample Schedule B1, Implementation Services Sample Statement of Work]* established between Purchaser and Contractor, and will be developed and finalized prior to execution of the Contract.

- 11.2. Contractor's development and finalization of the SOW pursuant to this section shall not be deemed a violation of Section 13, Commencement of Work. The SOW shall at a minimum:
- Define project or task objectives;
 - Describe the scope of Services or work to be performed;
 - Identify deliverables;
 - Describe Acceptance Criteria for Professional Services and deliverables for Project Completion;
 - Specify a timeline and period of performance;
 - Specify compensation and payment, e.g., the fixed price for service and other deliverables, total cost of the project, and reimbursable Contractor expenses (if any);
 - Describe Contractor's roles and responsibilities and identify specific Contractor staff;
 - Describe Purchaser's roles and responsibilities;
 - Provide signature block for both parties.
- 11.3. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

12. Commencement of Work

No work shall be performed by Contractor until this Contract (including a mutually agreed Statement of Work) is signed by both Contractor and Purchaser and a fully signed Contract is received by Contractor.

13. Use of Contractor's Software

- 13.1. Contractor's SaaS services will be provided for the number of concurrent Users and named Users specified by Purchaser in a separate Statement of Work (see sample Schedule B2: SaaS Services– *Statement of Work*). Users will have access to the SaaS services 24 hours per day, 7 days per week, except for interruptions by reason of maintenance or downtime beyond Contractor's reasonable control. Purchaser shall have the right to replace one named User with another.
- 13.2. OFM shall not disassemble, reverse compile, reverse engineer or otherwise translate any Software or SaaS Services.
- 13.3. Users will not transmit or share identification or password codes to persons other than authorized users or in any way permit the misuse of such codes in order to circumvent the intended and granted access to and use of the Software.

14. Ownership/Rights in Data

- 14.1. Contractor represents and warrants that it owns the Software and has title to and all rights necessary to deliver the Software to Purchaser, and has obtained rights to deliver other software to Purchaser from any third party software included in Contractor's Software solution. No title, ownership or interest in Contractor's Software or any of its parts, in any third party Software incorporated into Contractor's solution, or applicable rights therein such as patents, copyrights and trade secrets is transferred to Purchaser.
- 14.2. Purchaser and Contractor agree that all data and work products produced by Contractor pursuant this Contract (collectively "Work Product") 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 Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 14.3. If for any reason the Work Product is not considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 14.4. Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”) shall be owned exclusively by the party delivering such material. Contractor grants to Purchaser a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of Contractor’s Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.
- 14.5. Contractor shall use State data only to provide and maintain the services provided under this Contract. Such services shall not capture, maintain, scan, index, share or use State data stored or transmitted by such services, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Contractor shall not use State data stored or transmitted by such services for any advertising or other commercial purpose of Contractor or any third party.

15. Purchaser’s Site Security

While on Purchaser’s premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

16. Contractor’s Facility and Security

- 16.1. Contractor and the data center in which SaaS services are delivered shall be an ISO 27001/2 compliant, certified and audited every three (3) years by a qualified third party, with storage capacity capable of storing and otherwise supporting the data needs as described in the RFP.

- 16.2. Delivery of the Contractor’s solution must comply with the Washington State Office of the Chief Information Officer IT Security Policy 141, IT Security Standards 141.10 and IT Security Guidelines Policy 402-G2.
<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>
<http://ocio-website-files.s3-us-west-2.amazonaws.com/402G.pdf>
- 16.3. The solution must pass the w3.org validator test (<http://www.w3.org/QA/Tools/>) and be compatible with federally regulated accessibility standards (Section 508, <http://www.section508.gov/>).
- 16.4. All data transfers must be encrypted using 128bit (or higher) SSL for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be signed by a trusted third party; no self-signed certificates will be considered.
- 16.5. Records Retention. Contractor must support Purchaser in it’s compliance with the records retention policy as described in Washington Secretary of State, Washington State Archives, Records Management, Inventorying and Scheduling Guidelines (reference [http://www.sos.wa.gov/_assets/archives/RecordsManagement/Office-of-Financial-Management-Records-Retention-Schedule-v.1.2-\(September-2015\).pdf](http://www.sos.wa.gov/_assets/archives/RecordsManagement/Office-of-Financial-Management-Records-Retention-Schedule-v.1.2-(September-2015).pdf)). Contractor’s required support will be further defined in a statement of work (see Schedule B2 – *SaaS Sample Statement of Work*).
- 16.6. The solution must provide data recovery capability that adheres to the OCIO Disaster Recovery and Business Resumption Standard 151.10, at a minimum:
<https://ocio.wa.gov/policies/151-planning-it-disaster-recovery-and-business-resumption/15110-planning-disaster-recovery>
- 16.7. Data Backup Schedule – Contractor will perform full database and incremental file system backups each night and store at an offsite facility. Backup data will be retained for thirty (30) days.
- 16.8. Disaster Recovery Schedule [*Describe Contractor’s proposed schedule here.*]

17. Data Storage, Transmission and Archive

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

18. Security Incident Response

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

- Notify Purchaser of the Security Incident within a reasonable amount of time but no later than 24 hours following discovery
- Investigate the Security Incident and provide Purchaser with detailed information about the Security Incident
- Take steps to mitigate the effects and to minimize any damage or loss resulting from the Security Incident

- Provide cooperation and assistance to Purchaser in fulfilling its mitigation, investigation, and notification obligations under applicable law or regulation, including assisting third parties retained by Purchaser for such purposes.

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

19. **Functionality Warranty**

For purposes of the software functionality warranty of this Contract, the OFM Business and Technical Requirements originally set forth in RFP Attachment D – *Functional and Technical Requirements* shall be replaced by the specifications set forth in mutually agreed upon design documents, and shall become the replacement OFM Business and Technical Requirements, but only to the extent the functional and technical requirements are specifically addressed in such documents. Contractor represents and warrants to OFM that:

- (a) The Solution shall possess all of the functional capabilities described in:
 - (i) the OFM Business and Technical Requirements;
 - (ii) the Documentation; and
 - (iii) shall perform all such functions described in subsections (i) and (ii) without any high level defects or medium level defects;
 - a. A high level defect is defined as a defect in the system that has no workaround and impacts more than 5 users or is mission critical and causes a work stoppage.
 - b. A medium level defect is defined as a defect in that impacts less than 5 users and has a workaround.
- (b) Except as may be otherwise expressly set forth in a specific Statement of Work, the various components of the Solution:
 - (i) are designed to and shall not require multiple user sign-ons and forced sign-offs within, across and among all product lines, including Solutions provided to OFM from and after the Effective Date;
 - (ii) shall have the same "look and feel" within a product line; and
 - (iii) either share a common database used across components of the Solution, or if there are multiple databases, the data among such databases is coordinated, synchronized or otherwise managed by the Solution without the need of a separate interface; and
- (c) To the extent the Solution has mobile features and/or using a mobile platform, the mobile component of the Solution complies with Mobile Standards. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as OFM is receiving SaaS Services.

20. **Small Business, Minority and Women's Business Enterprise (MWBE) and Veteran-Owned Business Participation**

[Drafting Note: This Section will only apply if Contractor indicated small business, minority, women's, or veteran's business participation in its RFP Response. If not, this Section will be deleted.]

With each invoice for payment and within thirty (30) days of OFM' request, Contractor shall provide OFM an affidavit of amounts paid. The affidavit of amounts paid shall either state that Contractor still meets the definition of small business Contractor and/or maintains its MWBE and/or Veteran-Owned certification, or state that its Subcontractor(s) still meets the definition of small business and/or maintain(s) its/their MWBE and/or Veteran-Owned certification(s) and specify the amounts paid to each small business, certified MWBE or Veteran-Owned Subcontractor under the Contract. Contractor shall maintain records supporting the affidavit of amounts paid in accordance with Section 35. *Review of Contractor's Records*.

21. Protection of Confidential Information

- 21.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 21.2. If Contractor is requested or required to disclose any Confidential Information by subpoena, discovery request, or other legal process, Contractor will provide Purchaser with reasonable written notice prior to disclosure so that Purchaser may seek protective order or other appropriate remedy to prevent the disclosure of such Confidential Information. Contractor agrees to cooperate with Purchaser in its efforts to obtain such protective order or other appropriate remedy.
- 21.3. Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Confidential Information.
- 21.4. Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with the section of this RFP titled: *Review of Contractor's Records*.
- 21.5. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 21.6. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contract Administration

22. Legal Notices

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

To Contractor at:

[Contractor]

Attn:

[Contractor address]

Phone:

E-mail:

To Purchaser at:

State of Washington
Office of Financial Management

Attn: [Purchaser Project Manager]

1500 Jefferson Street S.E.
Olympia, WA 98501

P.O. Box 41409

Olympia, WA 98504-1409

Phone:

E-mail:

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

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

23. Purchaser Project Manager

Purchaser shall appoint the person identified below who will be the Purchaser Project Manager for this Contract and will provide oversight of the activities conducted hereunder. Purchaser Project Manager will be the principal contact for Contractor concerning business activities under this Contract. Purchaser shall notify Contractor, in writing, when there is a new Purchaser Project Manager assigned to this Contract.

Purchaser Project Manager:

Address:

Phone:

Email:

24. Contractor Account Manager

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

Contractor Account Manager:

Address:

Phone:

Email:

25. Section Headings, Incorporated Documents and Order of Precedence

- 25.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 25.2. Each of the documents listed below is incorporated into this Contract as though fully set forth herein:
- Schedule A – Services and Price List
 - Schedule(s) B – Statement(s) of Work
 - [include other Schedules, if appropriate]
 - Exhibit 1 – OFM RFP 16-900 “Facilities Portfolio Management Tool”
 - Exhibit 2 - Contractor's Proposal, and
 - All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of Services to Purchaser.
- 25.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
 - b) This Contract
 - c) Schedule A – Services and Price List
 - d) Schedule(s) B – Statement(s) of Work
 - e) [include other Schedules, if appropriate]
 - f) Exhibit 1 – OFM RFP
 - g) Exhibit 2 - Contractor's Proposal Response and
 - h) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of Services to Purchaser.

26. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled *Functionality Warranty*, understandings, agreements, representations, or warranties not contained in this Contract or a

written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

27. Authority for Modifications and Amendments

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

Purchaser may acquire additional products and/or services under this contract. If additional purchases are required they shall be documented in amendments to the contract.

28. Independent Status of Contractor

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

29. Governing Law

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

30. Subcontractors

30.1. Contractor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. All agreements between Subcontractors a Contractor must include substantially the same terms as those set forth in this Contract. Upon request by OFM Contractor shall provide a copy of the unexecuted final version of any proposed agreement to be entered into between Contractor and a Subcontractor prior to execution.

30.2. Data Center Facility Subcontracts: In addition to OFM' rights under Section 33.1, for subcontracts where a Subcontractor will be providing data center facility services, Contractor shall ensure that all such Subcontractor agreements include provisions naming OFM as a direct and intended third party beneficiary or otherwise granting OFM the right to directly enforce Contractor's rights against such Subcontractor . OFM shall have the right to withhold its consent to any such proposed subcontract until OFM is satisfied that

such obligations have been appropriately addressed in the proposed subcontract agreement.

- 30.3. If OFM determines, in its sole discretion, that any previously-approved Contractor's Subcontractor is not satisfactorily performing its obligations, OFM reserves the right to require Contractor to replace such Subcontractor with another Subcontractor or for Contractor to directly perform such obligations.
- 30.4. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the *Patent and Copyright Indemnification, Protection of Confidential Information, and Ownership/Rights in Data* sections of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The *Patent and Copyright Indemnification, Protection of Confidential Information, Ownership/Rights in Data, Publicity and Review of Contractor's Records* sections of this Contract shall apply to all Subcontractors.

31. Assignment

- 31.1. With the prior written consent of Purchaser Contracting Officer, which consent shall be at Purchaser's sole option, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 31.2. Purchaser may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

32. Publicity

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

33. Review of Contractor's Records

- 33.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Contractor's ISO data security policy that complies with ISO 27001/2, Minority and Women's Business

Enterprise participation, protection and use of Purchaser'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. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

- 33.2. Contractor will audit the security of the computers and computing environment that it uses in processing State data in performing services under this Contract and the physical data centers from which such services are provided. This audit: (a) will be performed every three (3) years; (b) will be performed according to ISO 27001/2 standards; (c) will be performed by independent third party security professionals at Contractor's expense; (d) will result in the generation of an audit report ("Security Audit Report"); and (e) may be performed for other purposes in addition to satisfying this section. Within thirty (30) days of Contractor's receipt, Contractor will provide the Security Audit Report to Purchaser. At its sole cost and expense, Purchaser will have the right, through its internal staff, an agency of the State, or a third party auditor, to audit Contractor's security standards related to the services provided in this Contract. Any such audit will occur on Contractor's premises, during normal working hours, subject to Contractor's reasonable policies and regulations, and no more than once annually. Contractor will be responsible for correcting any deficiencies identified in either the Security Audit Report or any Purchaser security audit.
- 33.3. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 33.4. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.
- 33.5. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

34. Right of Inspection

Contractor shall provide right of access to its facilities to Purchaser, or any of Purchaser's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

35. Patent and Copyright Indemnification

- 35.1. Contractor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product and/or Work Product supplied hereunder, or Purchaser's use of the Product and/or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
- a) Promptly notifies Contractor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- 35.2. If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Product and/or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product and/or Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product and/or Work Product and provide Purchaser a refund to Purchaser its undepreciated value.
- 35.3. Contractor has no liability for any claim of infringement arising solely from:
- a) Contractor's compliance with any designs, specifications or instructions of Purchaser;
 - b) Use of the Product and/or Work Product in a way not specified by Contractor;
- unless the claim arose against Contractor's Product and/or Work Product independently of any of these specified actions.

36. Save Harmless/Indemnification

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

37. Insurance

- 37.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's*

Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to Purchaser within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.

- 37.2. The minimum acceptable limits shall be as indicated below, with no deductible [*or state an acceptable deductible amount*] for each of the following categories:

Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate; Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1,000,000 per accident;

Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1,000,000 per employee for bodily injury by disease; Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 37.3 below, and coverage of not less than \$5,000,000 per occurrence/\$10,000,000 general aggregate; and

Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 37.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

Cyber Liability coverage with a limit not less than \$2,000,000, conditioned upon subsection 37.3 below.

- 37.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Contract provide for Purchaser's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to Purchaser, in the amount of \$1 million, during the initial and any subsequent terms of this Contract, and for six (6) years beyond the expiration or termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at Purchaser's sole option, in the event Contractor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Purchaser (the beneficiary) of a written demand therefor.

- 37.4. Contractor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference the Contract number and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.
- 37.5. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 37.6. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 37.7. Contractor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.
- 37.8. Policies must reference the State's Contract number and "Office of Financial Management". The State of Washington, Office of Financial Management, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.
- 37.9. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.
- 37.10. As State expands the use of the SaaS solution, it reserves the right to require additional insurance coverages and/or additional coverage amounts.

38. Industrial Insurance Coverage

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

39. Licensing Standards

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

40. Antitrust Violations

Contractor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Contractor hereby assigns to

Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

41. Compliance with Civil Rights Laws

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

42. Severability

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

43. Waiver

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

44. Treatment of Assets

- 44.1. Title to all property furnished by OFM shall remain in OFM. Title to all property furnished by Contractor, for which OFM is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in OFM. As used in this section **Treatment of Assets**, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in OFM.
- 44.2. Any OFM property furnished to Contractor shall, unless otherwise provided herein or approved by OFM, be used only for the performance of this Contract.
- 44.3. OFM shall be responsible for any loss of or damage to property of OFM that results from Contractor's negligence or that results from Contractor's failure to maintain and administer that property in accordance with sound management practices.
- 44.4. Upon loss or destruction of, or damage to any OFM property, Contractor shall notify OFM thereof and shall take all reasonable steps to protect that property from further damage.
- 44.5. Contractor shall surrender to OFM all OFM property prior to completion, termination, or cancellation of this Contract. Contractor shall as instructed by OFM surrender, destroy and/or remove all OFM data at completion, termination, or cancellation of this Contract.
- 44.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

45. Contractor's Proprietary Information

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

Disputes and Remedies

46. Disputes

- 46.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 46.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

- 46.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 46.4. Purchaser and Contractor 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.
- 46.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in

good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

47. Attorneys' Fees and Costs

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

48. Non-Exclusive Remedies

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

49. Failure to Perform

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

50. Limitation of Liability

- 50.1. **Limitation of Liability.** The parties agree that neither Contractor nor OFM shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages, except a claim related to bodily injury or death, or a claim or demand based on data breach, patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages, if any, or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Review of Contractor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 50.2. **Exclusions from Limitation of Liability.** Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in **Section 50.1** shall not apply to: (a) claims arising as a result of personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) claims arising as a result of damage to real property or tangible personal property (including loss of data) caused by a party or its employees, agents and/or subcontractors; (c) breaches of Confidential Information; (d) Contractor's failure to comply with its obligations under *Contractor's Facility and Security, Security / Operational / Financial Audits, Data Storage, Transmission and Archive, Patent and Copyright Indemnification, and Disputes*; (e) to any amounts paid by Contractor as credits related to performance set forth in any SOW; and (f) any negligence or willful misconduct on the part of Contractor.

- 50.3. **Costs of Cure.** To the extent a party elects to cure any failure by it to comply with its obligations under the Contract, all costs and expenses associated with such cure shall be borne solely by the curing party.
- 50.4. Neither Contractor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, Purchaser, or their respective Subcontractors.
- 50.5. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 50.6. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

51. Termination for Default

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

52. Termination for Convenience

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by thirty (30) calendar day's written notice to Contractor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by Purchaser prior to the effective date of termination.

53. Termination for Withdrawal of Authority

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

54. Termination for Non-Allocation of Funds

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

55. Termination for Conflict of Interest

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

56. Termination Procedure

- 56.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Contractor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 56.2. In the event of termination of this Contract, within ninety (90) days of the effective date of such termination, all electronic State data must be returned to Purchaser in an Microsoft Excel spreadsheet or other suitable standard format as otherwise agreed between the parties. Concurrent with such return of data, the Contractor must delete any production, backup or other versions of such State data from Contractor's systems in compliance with industry best practices. This will also include the removal of backup data from tapes if the retention period is too long for aging to occur naturally.

Contractor will assist Purchaser in the extraction and return of all of State's electronic data to ensure no data is inadvertently deleted.

Within the same time period, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all other State data disclosed to it under this Contract; or (ii) return all other data to Purchaser.

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

57. Transition; Transition Period

Upon an expiration or a complete or partial termination of the Contract for of SaaS services for any reason, OFM shall have the right, at OFM' option, for up to thirty six (36) months (the "Transition Period"), to all or any combination of the following: (a) continue to receive from Contractor all SaaS Services (at the applicable rates under the Contract); (b) if OFM will be transitioning to a new system or software solution (irrespective of whether any SaaS Services have been terminated), receive from Contractor all services reasonably necessary to effectuate an orderly transition to such new solution, including providing assistance in transferring data files to an industry-standard format designated by OFM; and (c) obtain from Contractor Professional Services as necessary. All Services provided by Contractor during the Transition Period shall be provided at the SaaS Services rates or other applicable rates set forth in Schedule A.

Contract Execution

58. Authority to Bind

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

59. Counterparts

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

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

[Add Effective Date below.]

Schedule A

Services and Price List

[Contractor] is authorized to provide **the Services identified and at the Prices set forth in this Schedule A** under this Contract.

Additional Software products, modules or services may be added to this Contract only by written amendment to this Contract, and executed by both Parties as prescribed in Contract Section *Authority for Modifications and Amendments*.

[Contractor's Price Proposal and fee schedule to be ADDED upon contract award]

Schedule B

SAMPLE - Statement of Work

This Statement of Work (SOW) incorporates by reference the terms and conditions of the Contract between the Purchaser and Contractor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Contractor agree as follows *(to include but not limited to)*:

1. Project or Task Objectives

[Describe in detail the project or task objectives.]

2. Scope of Work and Deliverables

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

[Describe in detail what work Contractor will perform. Identify all tasks, work elements and objectives of the SOW, and timeline for completion of the major elements of the project.]

3. Timeline and Period of Performance

The period of performance for this project will start as mutually agreed by the Parties and based on the Project Schedule and Work Breakdown Schedule.

4. Compensation and Payment

Contractor's compensation for services rendered shall be based on Contractor's Prices as set forth in the Contract's Schedule A, *Authorized Services and Price List*.

5. Contractor Staff, Roles and Responsibilities

[Identify Contractor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]

6. Purchaser Staff, Roles and Responsibilities

[Identify Purchaser staff who will be involved and describe in detail their roles and responsibilities.]

7. OFM Business and Technical Requirements"

[The functional and technical requirements established in RFP Attachment D - Functional and Technical Requirements shall be replaced by the specifications set forth in the solution design document, and shall become the replacement OFM Business and Technical Requirements, but only to the extent the functional and technical requirements are specifically addressed in the solution design document.]

8. Additional Terms and Conditions Specific to this SOW

[State additional terms and conditions specific to this SOW not found in Contract, if any.]

Schedule B-1

Implementation Services

Sample Statement of Work

To Contract Number *[add OFM Contract #]*

This Statement of Work (SOW) incorporates by reference the terms and conditions of the Contract between the Purchaser and Contractor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Contractor agree as follows:

1. Project or Task Objectives

[Describe in detail the project or task objectives.]

2. Scope of Work and Deliverables

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

[Describe in detail what work the Contractor will perform. Identify all Professional Services including tasks, work elements and objectives, and timeline for completion of the major elements of the project. This description shall also include acceptance criteria for each Professional Service.]

- *[Professional Services 1:Description]*

Key Deliverable(s) and Projected Completion Date-*[List of Deliverables]*

- Professional Services 2:
- Professional Services 3:
- Professional Services 4:
- Professional Services 5:
- Professional Services 6:
- Professional Services 7:
- Professional Services 8:

Project Completion: The following conditions are required for a project to achieve "Project Completion":

(a) Written Acceptance by Purchaser Contract Manager

(b) Contractor has provided to OFM all written and electronic materials and other Deliverables relating to the Solution and

- (c) Contractor has fulfilled its obligations relating to the transfer of knowledge; and
- (d) The Senior Facilities Oversight Manager or her or his designee, has provided her or his written confirmation that the conditions specified in subsections (a) through (c) have been satisfied.

Nothing else, including OFM' use of the Solution or System, or any component thereof, in a live, production environment shall constitute acceptance or completion, or affect any rights and remedies that may be available to OFM under law.

3. Timeline and Period of Performance

The period of performance for this project will start on [date] and based on the Project Schedule and Work Breakdown Schedule will be completed on or before [date].

4. Compensation and Payment

Implementation Services and Price List

The following “Professional Services/Deliverables” table presents each deliverable and its firm fixed price. The statement of work reference column links to the full description in the statement of work for each professional service to be performed.

Professional Services	Scheduled Completion Date	Firm Fixed Price	Schedule B1 Statement of Work Reference
			2a
			2b
			2c
			2d
			2e
			2f
			2g
			2h

Professional Services Hourly Rate

If additional services are required to complete this Statement of Work, such additional services and the deliverables shall be in writing and attached hereto. Further, the parties agree to the rates set forth in Schedule A of the Contract shall be the basis for pricing for such additional services and deliverables.

5. Contractor Staff, Roles and Responsibilities

[Identify Contractor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]

6. Purchaser Staff, Roles and Responsibilities

[Identify Purchaser staff who will be involved and describe in detail their roles and responsibilities.]

Contractor Name: _____

7. OFM Business and Technical Requirements

[The functional and technical requirements established in RFP Attachment D - Functional and Technical Requirements shall be replaced by the specifications set forth in the solution business requirements document, and shall become the replacement OFM Business and Technical Requirements, but only to the extent the functional and technical requirements are specifically addressed in the solution design document.]

8. Additional Terms and Conditions Specific to this SOW

[State additional terms and conditions specific to this SOW not found in Contract, if any.]

Schedule B-2
***Sample* Statement of Work**
To Contract Number *[add OFM Contract #]*
For
SaaS Services

This Statement of Work (SOW) incorporates by reference the terms and conditions of the Contract between the Purchaser and Contractor. In case of any conflict between this SOW and the Contract, the Contract shall prevail.

This SOW describes the services to be provided by the Contractor (“Services”) the respective responsibilities of the parties, the service level objectives (“SLOs”), and the problem management process.

Purchaser and Contractor agree as follows:

1. Project or Task Objectives

[Describe in detail the project or task objectives.]

2. Scope of Work and Deliverables

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

[Describe in detail what work Contractor will perform. Identify all tasks, work elements and objectives of the SOW, and timeline for completion of the major elements of the project.]

All of the services, functions, processes, and activities described below will be collectively described as the “Services” for purposes of this Agreement. All Services will be provided by the Contractor to and for the Purchaser’s benefit in a manner that will meet the objectives outlined in Service Level Objectives set forth in this SOW.

The general scope of Services addressed by this Agreement includes the operation, maintenance, and support of the:

- Database software for the Applications hosted under this agreement
- Database security
- Data Center server operation

3. Application

This Agreement is for Software as a Service, Application refers to the software provided by the Contractor pursuant to this Agreement under Contract #____ or as amended.

4. Support Software

Support Software includes the operating system, utilities, database software, and all necessary licenses required to operate the Application and provided by the Contractor as part of the Services.

5. Hardware

Server infrastructure is located in [City/State].

[Describe hardware here.]

6. Database Instances

The Contractor will maintain a single Production Database instance. This Production Database will provide the daily, real-time transaction data to the Application users.

In addition to the Production Database, the Contractor will maintain one additional, non-production Database (Test). Upon request by Purchaser, the Contractor will populate these additional Databases with Purchaser's Production data up to 4 times throughout the calendar year at no additional cost.

7. Backups

Full database and incremental file system backups are taken each night and stored at an offsite facility. Backup data is retained for 30 days.

8. Hours of System Operations

The Application will be accessible and available to the Purchaser and capable of any and all normal operating functions twenty four (24) hours a day, seven (7) days a week except for periods of Scheduled Maintenance and previously approved outages.

[Describe in detail the support services here.]

9. Application Maintenance—Software as a Service

1. Correction of Deviations

In the event that the Purchaser encounters an error and/or malfunction ("Deviation") in the Software, the Purchaser shall communicate the circumstances and any supporting information to the Contractor. Upon receipt, the Contractor will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of the Contractor and Purchaser, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, the Contractor will correct the Deviation and distribute the correction in accordance with the Contractor's normal Software revision schedule.
- b. In the event that, in the mutual and reasonable opinion of the Contractor and the Purchaser, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, the Contractor will take such steps as are required to correct the Deviation with all due dispatch. Corrections will be applied and distributed to the latest software release. The Contractor will have no obligation to provide development support for an issue that can be resolved by Purchaser installing a revision to the software.

2. Software Revisions.

The Software may be revised by the Contractor as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). No charge shall be made to the Purchaser for either Mandatory Revisions or Optional Revisions.

3. Purchaser Notifications.

The Contractor will provide at least thirty (30) days advanced notice via email to Purchaser's designee in advance of all Testing updates, fixes and upgrades or any other Software Revisions.

4. Telephone Hotline Assistance

The Contractor shall make available technically qualified personnel to respond to all reasonable telephone requests, Monday through Friday, excluding holidays, during normal business hours of 7am to 6 pm Pacific Time Zone, that may be made by the Purchaser Representative relating to the application and operation of the Software.

5. *Technical Literature*

The Contractor shall make available to the Purchaser on line all technical literature that is considered by the Contractor to be relevant to the Software and its use within the scope of Purchaser's operations.

6. *Proper Use*

- a. The Purchaser agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
- b. In the event that the Purchaser or its agents misuses the Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the Software, although the Contractor is not obligated to correct such misuse, the Contractor shall be entitled to attempt to correct the situation, if possible, at Purchaser's expense.
- c. In the event that diagnostic assistance is provided by the Contractor, which, in the reasonable opinion of the Contractor and the Purchaser, relates to problems not caused by a Deviation in the Software, such assistance shall be at the Purchaser's expense.

10. Timeline and Period of Performance

The period of performance for SaaSService will start on [date] or the day after written acceptance by OFM that the configured service is ready for productive use. Renewals shall be as specified in the Contract.

11. Contractor Staff, Roles and Responsibilities

[Identify Contractor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]

12. Purchaser Staff, Roles and Responsibilities

[Identify Purchaser staff who will be involved and describe in detail their roles and responsibilities.]

13. Service Level Objectives

The Service Level Objectives are intended to provide an understanding of the level of service to be delivered by the Contractor for the Services specified in this SOW. The service levels set forth below apply to the Services provided by the Contractor under the Agreement.

AVAILABILITY

The Contractor will use commercially reasonable efforts to provide Services with an average of ninety eight percent (98%) Availability (as such term is hereinafter defined) for each month during the Period of Performance. For purposes of the Agreement, "Availability" during any month refers to an Authorized User's ability to log into the Application during such month, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- "x" is the Availability of the Application during the month;
- "y" is the total number of hours in such month minus the number of hours during such month that the Purchaser is unable to log into the Application because of (a) regularly scheduled

- maintenance windows for the Application and for times in which Purchaser has been notified in writing (including e-mail) by the Contractor in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by the Contractor or certified by the Contractor for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by the Contractor).
- “z” is the number of hours in such day during which the Purchaser is unable to log into the Application (other than for reasons set forth in the definition of “y” above); provided that the Contractor has been notified or is otherwise aware (or reasonably should be aware) of Purchaser’s inability to utilize the Application.

APPLICATION RESPONSE TIMES

The expected screen response time is a maximum of five (5) seconds. The upper performance standards of five seconds will be evaluated annually. The expected response time for data queries is a maximum of five (5) seconds with the assumption that the proper search filters are in place.

Purchaser will report to the Contractor’ Telephone Hotline any response times slower than Purchaser believes is reasonable to request assistance in determining the root cause of the delays (within the Contractor host system or between Purchaser and the Contractor). The Contractor will affect any corrections to their system as required.

14. Compensation and Payment

Contractor’s compensation for services rendered shall be based on Contractor’s Prices as set forth in the Contract’s Schedule A, *Authorized Services and Price List* and as otherwise set forth in the Contract or this SOW.

Support and maintenance services for any and all software required to deliver SaaS Services are included within the SaaS Services Fee.

15. Fee Schedule and Fee Credits

SaaS Annual Fees

Annual SaaS fees are listed in the table below. Support and maintenance services for any and all software required to deliver SaaS Services are included within the SaaS Services Fee.

These fees allow access to the solution for x concurrent users and x total users.

SaaS Annual Fees	Firm Fixed Price
Year 1 (Begins after implementation completion for 12 months)	
Year 2	
Year 3	
Year 4	
Year 5	
SaaS Fees, 5 years:	

Additional concurrent users may be added at a cost of _____ per user annually.

Fee Credits

In the event that the Contractor does not meet the Availability levels set forth above, the amount of fees payable by Purchaser will be reduced as follows:

In the event the average Availability for the Application is less than ninety eight percent (98%) but is equal to or greater than ninety five percent (95%) during any two (2) consecutive months, the Contractor will initiate investigations and prepare a corrective action plan, identifying the root cause of problem and the plan to correct or prevent further degradation of Availability. The corrective action plan will be submitted to the Purchaser's representative.

In the event the average Availability for the Application is less than ninety five percent (95%) during any two consecutive months, Purchaser will receive a credit to its account with the Contractor of five percent (5%) of the amount of a month's aggregate Services Fees paid or payable by Purchaser to the Contractor.

The Contractor's obligation to provide Purchaser with fee adjustments as set forth above is conditioned on Purchaser providing detailed written notice to the Contractor of its contention that the Contractor was unable to meet the applicable Availability levels. Upon receipt of such notice, the Contractor shall have thirty (30) calendar days to investigate the contention. If, at the end of the thirty (30) calendar day period it is determined that the Contractor did in fact fail to meet the applicable Availability levels, Purchaser will receive the appropriate credit to its account during the next invoice cycle.

16. SaaS Services Summary

Maintenance

[Describe software maintenance in detail here.]

Point of Contact - The Contractor

Customer Care Portal Address:

Telephone Hotline Help Desk:

Phone Number:

Email Address:

Hours of Operation: from 7:00 AM to 6:00 PM Pacific Time

After-hours Support:

Days of Operation: Monday through Friday, with the exception of observed holidays listed below:

New Year's Day	Labor Day	Christmas Day
Memorial Day	Thanksgiving Day	
Independence Day	Day After Thanksgiving	

Technical Point of Contact

All communications between the Contractor and state of Washington users will be through the Purchaser's designee unless otherwise agreed to for a specific problem issue.

Primary Contact:	Secondary Contact:
------------------	--------------------

Name:	Name:
Email:	Email:
Phone:	Phone:

17. Additional Terms and Conditions Specific to this SOW

[State additional terms and conditions specific to this SOW not found in Contract, if any.]

Schedule X
MWBE Certification