

Request for Quotation  
RFQ 16-1600

for

*Ethernet Transport Services  
for the  
K-20 Education Network*

Released by  
Office of Financial Management  
PO Box 43113  
Olympia, Washington 98504-2113

Released on: August 12, 2016

## CONTENTS

1.	Introduction .....	5
1.1	Background .....	5
1.2	Purpose .....	5
1.3	Minimum Qualifications.....	5
1.4	Period of Performance .....	5
1.5	Definitions.....	6
1.6	ADA .....	7
1.7	Contracting with current or former state employees.....	7
2.	General Information .....	7
2.1	RFQ Coordinator .....	7
2.2	Estimated Schedule of Procurement Activities.....	7
2.3	Questions and Answers.....	8
2.4	Submission of Responses .....	8
2.5	Proprietary Information/Public Disclosure .....	8
2.6	Revisions to the RFQ .....	9
2.7	Acceptance of RFQ Terms .....	9
2.8	Responsiveness .....	9
2.9	Most Favorable Terms .....	9
2.10	Contract.....	10
2.11	Costs to Propose .....	10
2.12	No Obligation to Contract.....	10
2.13	Rejection of Responses .....	11
2.14	Non-Endorsement and Publicity .....	11
2.15	Assumptions.....	11
2.16	Complaints .....	11
3.	Administrative Requirements .....	11
3.1	Letter of Submittal .....	11
3.2	Vendor’s Certification and Assurance Forms.....	13
3.3	Administrative Screening.....	13
4.	Ethernet Performance Requirements.....	14
4.1	Ethernet Performance Requirements Assurance .....	14
4.2	Service Availability .....	14
4.3	Service Reliability .....	14
4.4	Service Performance .....	14

4.5	Frame Delay (Latency) .....	14
4.6	Frame Loss Ratio & Availability (Packet Loss) .....	14
4.7	Inter-Frame Delay VARIATION (Jitter).....	14
4.8	Protocols .....	15
4.9	Maximum Transmission Unit (MTU).....	15
4.10	Out of Service DEFINITION.....	15
4.11	Service Interface and Termination Requirements.....	15
4.12	Purchaser’s Site Connectivity Requirements.....	15
4.13	Link Integration .....	16
4.14	Equipment Space and Power .....	16
4.15	Ethernet Standards .....	16
4.16	VLANS.....	16
4.17	BPDUs.....	16
4.18	Spanning Tree Protocols .....	16
4.19	VLAN Tags .....	17
4.20	Marking of Traffic.....	17
4.21	Class of Service/Quality of Service.....	17
5.	Service Requirements .....	17
5.1	Service Requirements Assurance.....	17
5.2	Service Reports .....	18
5.2.1	Incident Event Logs .....	18
5.2.2	Vendor Emergency Repair/Trouble Log.....	18
5.2.3	Reason for Outage .....	18
5.2.4	Detailed Diagrams.....	18
5.3	Network Operations Center.....	18
5.3.1	Capabilities.....	18
5.3.2	Functions.....	19
5.4	Service Repair and Incident Reporting.....	19
5.4.1	Response to Incident Reports .....	19
5.4.2	Toll-Free Incident Reporting Number .....	19
5.4.3	Incident Reporting .....	19
5.4.4	End-To-End Service Monitoring and Test Capability.....	19
5.4.5	Error Statistics Reporting .....	19
5.4.6	Incident Escalation Procedure .....	20
5.5	Service Maintenance.....	20

5.5.1	Scheduled Routine Maintenance/Testing.....	20
5.5.2	Planned Maintenance/Testing Notification.....	20
5.5.3	Unplanned Emergency Repair/Maintenance/Testing .....	20
5.6	Service Installation.....	20
5.6.1	Acquisition of Permits.....	20
5.6.2	Coordination of Installation .....	20
5.6.3	Timeline for Installation.....	21
5.6.4	Service Acceptance .....	21
5.7	Escalation Procedures.....	22
6.	Vendor Financial Response.....	22
6.1	Introduction .....	22
6.2	Pricing Worksheet.....	22
7.	Evaluation and Selection as an Apparently Successful Contractor.....	23
7.1	Overview .....	23
7.2	Requirements.....	23
7.3	Financial Evaluation .....	24
7.4	Notification to Vendors.....	24
7.5	Debriefing of Unsuccessful Vendors.....	24
7.6	Protest Procedure .....	24
Exhibit A—Certifications and Assurances		
Exhibit B—Ethernet Performance and Service Requirements Assurances		
Exhibit C—Proposed Contract		
Attachment A—Vendor Evaluation Pricing Worksheet		

## **1. INTRODUCTION**

### **1.1 BACKGROUND**

The K-20 Education Network is the nation's first high-speed, high-capacity network linking colleges, universities, K-12 school districts and libraries statewide.

The K-20 Education Network provides a dedicated, carrier class network for video, communication, and data services to education facilities across the state.

With the continued growth in use of online instructional resources as well as online assessment in K-12, the Washington State Superintendent of Public Instruction is promoting the State Educational Technology Director's Association (SETDA) target bandwidth goals for Washington school districts. These goals have also been adopted by the President of the United States in his ConnectEd initiative, as well as by the Federal Communications Commission in their recent E-rate Modernization Order. This procurement will enable the K-20 Network to continue working toward those goals.

### **1.2 PURPOSE**

The Office of Financial Management (OFM) is conducting this procurement on behalf of the K-20 Education Network ([www.wa-k20.net](http://www.wa-k20.net)) to re-procure existing secondary Ethernet circuits for disparate K-20 customers throughout Washington State.

The purpose of this Request for Quotation (RFQ) is to contract with one or more qualified Ethernet telecommunications vendors to provide Ethernet services between multiple customer end sites and K-20 node sites for integration onto the K-20 network. The Attachment A - Vendor Evaluation Pricing Worksheet - Pricing Worksheet contains the site addresses.

### **1.3 MINIMUM QUALIFICATIONS**

Have a minimum of two (2) years' experience providing the proposed services to customers with networks of equivalent size and complexity as the State of Washington's K-20 Education Network, the subject of this procurement.

### **1.4 PERIOD OF PERFORMANCE**

The period of performance of any contracts resulting from this RFQ is tentatively scheduled to begin on or about July 1, 2017 and to end on June 30, 2022. Amendments extending the period of performance, if any, shall be at the sole discretion of OFM.

OFM reserves the option to renew the contract for up to one additional year in time increment(s) that best meet the needs of OFM. Option(s) to renew shall be at the sole discretion of OFM.

## 1.5 DEFINITIONS

Definitions for the purposes of this RFQ include:

**“Acceptance”** shall mean that the Services successfully passes Purchaser Acceptance Testing and shall be formalized in a written notice from Purchaser to Contractor.

**“Acceptance Date”** for Contractor-installed Service shall mean the date upon which Purchaser formally accepts the Services as specified in RFQ Section 4. Ethernet Performance Requirements.

**“Acceptance Testing”** shall mean the process for ascertaining that the Services meet the standards set forth in RFQ Section 4. Ethernet Performance Requirements, prior to Acceptance by Purchaser.

**“Agency”** shall mean the Office of Financial Management.

**“Apparently Successful Vendor”** shall mean vendor(s) selected as an entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

**“Business Days”** or **“Business Hours”** shall mean Monday through Friday, 8 AM to 5 PM, local time in Olympia, Washington, excluding Washington State holidays.

**“Contract”** shall mean the RFQ, the Response, Contract document, all schedules and exhibits, and all amendments awarded pursuant to this RFQ.

**“Contractor”** shall mean the individual or company interested in the RFQ and that may or does submit a proposal in order to attain a contract with the Agency. Also known as “Vendor” or “Bidder”.

**“K-20 Node”** shall mean a K-20 operated backbone telecommunications facility.

**“OFM”** shall mean Office of Financial Management.

**“Response”** shall mean the written proposal submitted by Vendor to OFM in accordance with this RFQ. The Response shall include all written materials and assurances submitted by Vendor as of the date set forth in the RFQ schedule or as further requested by OFM. The Response shall be in the English language, and all measurements and qualities will be stated in units required by law in the United States. Also known as “Response.”

**“Term of Service”** shall mean the minimum period of service for which a circuit is ordered.

**“Unsuccessful Vendor”** shall mean vendor(s) not selected as an entity to perform the anticipated services.

**“Vendor”** shall mean the company, organization, or entity submitting a Response to this RFQ, its subcontractors and affiliates. Also known as “Bidder” or “Contractor”.

**“Vendor Demarcation Point”** shall mean a physical location at the Purchaser’s site where the Vendor’s service physically terminates and is cross-connected to the Purchaser’s equipment.

## 1.6 ADA

The Agency complies with the Americans with Disabilities Act (ADA). Vendors may contact the RFQ Coordinator to receive this RFQ in Braille or on tape.

## 1.7 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to 42.52 RCW. Vendors should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

## 2. GENERAL INFORMATION

### 2.1 RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact for this procurement. All communication between the Vendor and the State of Washington upon release of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Bonnie Lindstrom
Mailing Address	Office of Financial Management PO Box 43113 Olympia, WA 98504-3113
E-Mail Address	Bonnie.lindstrom@ofm.wa.gov
Telephone	(360) 902.0568

Any other communication will be considered unofficial and non-binding on the OFM and the state of Washington. Vendors are to rely on written statements issued by the RFQ Coordinator. Communication directed to parties other than the RFQ Coordinator will result in disqualification of the Vendor.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Quotations	August 12, 2016
Vendors may submit written questions until 3:30PM PDT	August 26, 2016
OFM will issue responses	August 29, 2016
Complaints due	October 14, 2016
Vendor must submit Response by 3:30PM PDT	October 21, 2016
OFM announces "Apparent Successful Vendor" and begins contract negotiations	November 1, 2016
OFM notifies Unsuccessful Bidders	November 1, 2016

Unsuccessful Vendors may request Debriefing until 3:30PM PDT	November 4, 2016
OFM holds Debriefing Conferences, if requested	November 9, 2016
Unsuccessful Vendors may submit protest(s) until 3:30PM PST	November 17, 2016
OFM considers and respond to any Protests	November 24, 2016
Vendor begins contract work.	December 1, 2016

OFM reserves the right to revise the above schedule.

### **2.3 QUESTIONS AND ANSWERS**

To be considered responsive, Vendor MUST download a copy of this RFQ from the Electronic Business System (WEBS) web site. Failure to do so will result in dismissal of your bid response. Be sure to look at this website periodically in order to be sure you have downloaded any addenda or clarifications.

Vendors may e-mail or mail written questions to the RFQ Coordinator. Questions will be accepted until the date set forth in the Section 2.2. Early submission of questions is encouraged. Questions and answers will be posted by addenda on Washington Electronic Business System (WEBS) and on [www.ofm.wa.gov](http://www.ofm.wa.gov). Vendors may only rely on written statements issued by the RFQ Coordinator. Any oral communications are unofficial and are not binding on OFM.

### **2.4 SUBMISSION OF RESPONSES**

Vendors are required to submit proposals as an attachment to an e-mail to the RFQ Coordinator at the e-mail address above, on or before the proposal due date and time stated in Section 2.2.

Vendors should allow sufficient time to ensure timely receipt of the proposal by the RFQ Coordinator. Late Responses will not be accepted and will be automatically disqualified from further consideration.

OFM assumes no responsibility for delays caused by Vendor's e-mail, network problems or any other party. Zipped files cannot be received by OFM and cannot be used for submission of Responses. All proposals and any accompanying documentation become the property of the Agency and will not be returned.

### **2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

All proposals submitted in response to this solicitation shall become the property of the Agency. All proposals received shall remain confidential until the Apparently Successful Vendor has been announced; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Vendor desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Vendor is making the claim must be cited. Each page containing the information claimed to be exempt from

disclosure must be clearly identified by the word “Confidential” printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as confidential will not be honored.

If a public records request is made for the information that the Vendor has marked as proprietary, the Agency will notify the Vendor of the request and of the date that the records will be released to the requester unless the Vendor obtains a court order enjoining that disclosure. If the Vendor fails to obtain the court order enjoining disclosure, the Agency will release the requested information on the date specified. If a Vendor obtains the court order enjoining disclosure, to the extent consistent with Chapter 42.56 RCW, the Agency shall maintain the confidentiality of the Vendor’s information identified as proprietary.

Regardless of Vendor claims of proprietary information, all pricing information will be made publicly available upon award of a contract resulting from this RFQ.

## **2.6 REVISIONS TO THE RFQ**

In the event it becomes necessary to revise any part of this RFQ, addenda will be published on the Washington Electronic Business System (WEBS) at <https://fortress.wa.gov/ga/webs/> and at [http://ofm.wa.gov/contracts\\_procurements/default.asp](http://ofm.wa.gov/contracts_procurements/default.asp). For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFQ and will be placed on the website.

The State of Washington also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to execution of a contract.

## **2.7 ACCEPTANCE OF RFQ TERMS**

The Vendor acknowledges that the submission of a Response, which includes a signed Vendor Certification and Assurance Form, attached as Exhibit A, constitutes a binding offer that is valid for 90 days from the due date for receipt of proposals.

## **2.8 RESPONSIVENESS**

All proposals will be reviewed by the RFQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQ. The Vendor is specifically notified that failure to comply with any part of the RFQ may result in rejection of the proposal as non-responsive.

The Agency also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

Vendors are liable for all errors or omissions contained in their Responses. Vendors will not be allowed to alter Response documents after the deadline for Response submission. OFM is not liable for any errors in Responses.

## **2.9 MOST FAVORABLE TERMS**

The State of Washington reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Vendor can propose. There will be no best and final offer procedure. The State of Washington does reserve the right to contact a Vendor for clarification of its proposal.

The Apparent Successful Vendor (s) should be prepared to accept this RFQ for incorporation into a contract resulting from this RFQ. Contract negotiations may incorporate some or all of the Vendor's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the State of Washington.

## **2.10 CONTRACT**

The Apparently Successful Vendor (s) (ASV) will be expected to enter into a contract, which is substantially the same as the proposed contract attached as Exhibit C. In no event is a Vendor to submit its own standard contract terms and conditions in response to this solicitation. The Vendor may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. The Agency will review requested exceptions and accept or reject the same at its sole discretion.

Any specific areas of dispute with the attached terms and conditions must be identified in the Response and may, at the sole discretion of OFM, be grounds for disqualification from further consideration in the award of a Contract.

Vendor must explain why each item proposed as additional contract terms is in the state's best interest as a customer and how it will support the state's business objectives. Where terms and conditions cannot be changed and may have negative consequences on the quality of goods and services or their supply, Vendors are required to recommend methods of mitigating or limiting these negative consequences.

Vendor must review and identify the language in Exhibit C that Vendor finds problematic, state the issue, and, in the body of the document – utilizing Track Changes - propose the language or contract modification Vendor is requesting.

The final contract executed by the parties must satisfy the state's obligations with respect to performance-based contracting as directed in RCW 39.26.180. The parties may negotiate performance-based elements, in addition to those in Exhibit C, for inclusion into the final contract.

The foregoing should not be interpreted to prohibit either party from proposing additional contract terms and conditions during negotiation of the final Contract.

The ASV will be expected to execute the Contract within ten (10) Business Days of its receipt of the final Contract. If the selected Vendor fails to sign the Contract within the allotted ten (10) days' time frame, OFM may elect to cancel the award, and award the Contract to the next ranked Vendor, or cancel or reissue this solicitation.

## **2.11 COSTS TO PROPOSE**

The Agency will not be liable for any costs incurred by the Vendor in preparation of a proposal submitted in response to this RFQ or any other activities related to responding to this RFQ.

## **2.12 NO OBLIGATION TO CONTRACT**

This RFQ does not obligate the state of Washington or the Agency to contract for services specified herein.

### **2.13 REJECTION OF RESPONSES**

The Agency reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQ.

### **2.14 NON-ENDORSEMENT AND PUBLICITY**

In selecting a Vendor to supply Services to the State of Washington, the State is neither endorsing Vendor's Products, nor suggesting that they are the best or only solution to the State's needs. By submitting a Response, Vendor agrees to make no reference to OFM, the K-20 Education Network, or the State of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without prior review and express written consent.

### **2.15 ASSUMPTIONS**

OFM will rely upon representations made in the Response. If the Vendor chooses to identify assumptions or dependencies on which it has based its proposal, OFM retains the right to determine if the Vendor's assumptions/dependencies render the Response non-responsive.

### **2.16 COMPLAINTS**

This procedure is available to potential Vendors who are contemplating submitting a bid in response to this RFQ. Only complaints concerning the following subjects shall be considered:

- A claim that the solicitation unnecessarily restricts competition;
- A claim the solicitation evaluation or scoring process is unfair or flawed, or
- A claim the solicitation requirements are inadequate or insufficient to prepare a response.

Vendors complaining about this procurement shall follow the procedures described below. Complaints that do not follow these procedures shall not be considered. If a Vendor registers a complaint against this solicitation, the complaint cannot be raised again during the protest period.

All complaints must be in writing and signed by the complaining party or an authorized agent. The complaint must be sent to the Procurement Coordinator, or designee, as scheduled in Section 2.2 and must clearly articulate the basis for the complaint. The Vendor submitting the complaint must also include a proposed remedy.

Upon receipt of a complaint, a complaint review will be held by the Agency. The Agency Procurement Coordinator will respond to complaints in writing and the Agency director will be notified of all complaints and provided a copy of the Agency's response. A copy of the response to the complaint, including any changes to the solicitation, will also be posted to WEBS.

The complaint process does not include an appeal process.

## **3. ADMINISTRATIVE REQUIREMENTS**

### **3.1 LETTER OF SUBMITTAL**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQ) must be signed and dated by a person authorized to legally bind the Vendor to a contractual

relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Signing the Letter of Submittal indicates that the Vendor accepts the terms and conditions of the RFQ. The Letter of Submittal shall contain the following information:

- a. Name, address, principal place of business, telephone number, fax number, and e-mail address of the legal entity or the individual with whom the contract would be written.

- b. Account Manager

Identification of the Account Manager to be the principal contact for OFM for the duration of the contract. The Account Manager will serve as the focal point for business matters and administrative activities. Provide the name, address, phone number, and e-mail address for the Account Manager.

- c. Project Manager

Identification of the Project Manager assigned to this project and a description of the roles and responsibilities of the Project Manager.

- d. A statement regarding whether subcontractors are/are not being used to provide any elements of the proposed Ethernet Transport services. Subcontractors must be listed and their relationship described in this section of the Letter of Submittal.

- e. USAC Service Provider Identification Number

Vendors must participate in the Schools and Libraries Program (commonly known as E-rate) of the Universal Service Administrative Company (USAC) in order to respond to this procurement.

Vendors must also have a current Service Provider Identification Number (SPIN) and be in good standing with USAC. In addition, vendors must have the demonstrated ability to provide Telecommunications Services (Form 499 filer), or be an eligible Telecommunications provider in accordance with FCC rules.

This status can be verified at the following address:

[http://www.sl.universalservice.org/Forms/SPIN\\_Contact\\_Search.asp](http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp)

In this section of the Letter of Submittal, provide the Vendor's SPIN for K-20's verification.

- f. Terminations for Default

- If the Vendor has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Vendor's position on the matter. The

Agency will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Vendor in the past five years, so indicate.

- g. A list of all RFQ addenda downloaded by the Vendor from WEBS and listed in order by addenda number and date. If there are no RFQ addenda, the Vendor must include a statement to that effect.
- h. A statement substantiating that the person who signs the letter is authorized to contractually bind the Vendor's firm.
- i. A statement substantiating that the Vendor meets all of the Minimum Qualifications as listed in Section 1.3, Minimum Qualifications.
- j. Identification of the page numbers on the Vendor's Response that are marked "Proprietary Information".
- k. A statement confirming that, if, during the term of the Contract, lower prices and rates are made available by the Vendor to any other customer for like terms, conditions, quantities and services, Purchaser will be given immediate benefit of such lower prices and rates.
- l. Pricing Evaluation. Vendor must provide a statement agreeing that, should they receive a contract through this procurement, they agree to conduct a contract pricing re-evaluation with the state in January, 2019 and January 2021 of the initial five-year term to determine whether or not state is receiving the benefit of the lowest corresponding price. Vendors must also state that, if the parties conclude that Vendor shall offer the state lower pricing, the contract shall be amended to reflect the lower pricing and that the parties may elect to amend the price list to provide greater bandwidth for the same rates as those listed in the contract, as appropriate.
- m. Lowest Corresponding Price. It is the responsibility of the Vendor to provide the most favorable terms to OFM. Under the rules of the E-rate program, the Vendor must provide OFM with the lowest corresponding price that the Vendor would provide to customers similarly situated to OFM/K-20. Failure to do so may result in the rescission of E-rate funding, for which the Vendor would be become liable, as well as further penalties under the E-rate program. Bidders that receive Universal Service High Cost support must offer broadband service in response to posted FCC Forms 470 in high cost areas at rates reasonably comparable to rates charged to schools and libraries in urban areas for similar services.

### **3.2 VENDOR'S CERTIFICATION AND ASSURANCE FORMS**

Bidders must submit a completed Vendor Certification and Assurances Form, Exhibit A and the Ethernet Performance and Service Requirements Assurances Exhibit B. Please sign and include any attachments that are necessary.

### **3.3 ADMINISTRATIVE SCREENING**

Responses will be reviewed initially by the RFQ Coordinator to determine, on a pass/fail basis, compliance with the Administrative Requirements as specified herein. Evaluators will only evaluate Responses meeting all administrative requirements.

## **4. ETHERNET PERFORMANCE REQUIREMENTS**

### **4.1 ETHERNET PERFORMANCE REQUIREMENTS ASSURANCE**

No alternative specifications or requirements to those listed below will be accepted. The attached Ethernet Performance and Service Requirements Assurances Form (Exhibit B to this RFQ) must be signed and dated by a person authorized to legally bind the Vendor to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Signing the Ethernet Performance and Service Requirements Assurances form indicates that the Vendor accepts the terms and conditions of the RFQ.

### **4.2 SERVICE AVAILABILITY**

Vendor's Ethernet service must be available twenty-four (24) hours per day, three hundred sixty five (365) calendar days per year.

### **4.3 SERVICE RELIABILITY**

Vendor's service must perform at a minimum 99.9 percent of the time during a calendar year.

### **4.4 SERVICE PERFORMANCE**

Purchaser expects to receive from Vendor the agreed upon bandwidth capacity 24x7 for the duration of the service term. For example, if Purchaser contracts with Vendor for a 100Mbps circuit between two of Purchaser's endpoints then Purchaser will always have 100Mbps of capacity available for Purchaser's sole use between those endpoints. Vendor may oversubscribe their networks as long as Purchaser packets are not dropped when overall Purchaser use is within the purchased guaranteed bandwidth profile.

### **4.5 FRAME DELAY (LATENCY)**

The Vendor's five (5) minute average One-way Frame Delay, as defined by the MEF standards in MEF 10.3, should be < 15 ms. One-way is defined as "the time required to transmit a Service Frame from the ingress UNI to the egress UNI."

If Vendor will fall outside of those requirements, Vendor will call out the violation of One-way Frame Delay and submit to Purchaser a schedule of Frame Delay Performance Objectives for each of the Class of Service instances on the Ethernet Virtual Connection (EVC).

### **4.6 FRAME LOSS RATIO & AVAILABILITY (PACKET LOSS)**

Vendor's five (5) minute average One-way Frame Loss Ratio, as defined by the MEF standards in MEF 10.3, must be < .01%. One-way Frame Loss Ratio is defined as "the measure of the number of lost frames between the ingress UNI and the egress UNI."

### **4.7 INTER-FRAME DELAY VARIATION (JITTER)**

Vendor's five (5) minute average for Inter-Frame Delay Variation, as defined by the MEF standards in MEF 10.3, must not exceed 50% of the Frame Delay as defined in Section 4.5. Inter-Frame Delay

Variation is defined as “the difference between the one-way delays of a pair of selected Service Frames.”

#### **4.8 PROTOCOLS**

Vendor shall not impede the passing of any protocol Frames on the Ethernet Virtual Connection (EVC) for the specific type of service (EPL, EVPL, etc...) whilst adhering to the standards set forth in MEF 6 which specifically addresses L2CP protocols. Any impediment or modification of protocol frames not specified by the MEF standards will constitute a service outage. This shall include, but not be limited to, topology discovery protocols, routing protocols, multicast protocols, streaming protocols, and voice protocols.

#### **4.9 MAXIMUM TRANSMISSION UNIT (MTU)**

Vendor shall allow the Purchaser to be able to transmit up to 9000 byte frames on 1G and higher links (not inclusive of Link Aggregation Group – LAG – links, unless one of the subtended circuits on the LAG is of 1G or higher bandwidth). The Vendor shall allow the use of 1500 byte frames on all Ethernet transport circuits.

#### **4.10 OUT OF SERVICE DEFINITION**

Vendor must accept the definition of “out of service” as the inability to reliably pass data at the purchased rate on any Vendor-managed transport path due to excessive latency, errors, loss or violations as defined in Section 4 – Ethernet Performance Requirements.

#### **4.11 SERVICE INTERFACE AND TERMINATION REQUIREMENTS**

Unless otherwise specified by Purchaser, the interfaces provided to Purchaser locations must be administratively configured for use as a full duplex interface per the resulting work order or site agreement as defined below.

Handoff of 1,000Mbps (1Gbps) or less shall have a 1000BASE-T RJ-45 copper handoff, also referred to as 802.3ab

Handoff greater than 1,000Mbps (1Gbps) and less than or equal to 10,000Mbps (10Gbps) shall have a 10GBASE-LR LC Single Mode fiber handoff, also referred to as 802.3ae

Handoff of 100,000Mbps (100Gbps) shall have a 100GBASE-LR4 CFP Single Mode fiber handoff, also referred to as 802.3ba

Vendor is responsible for all access and fiber/cabling to the point of service handoff at the customer premise equipment (switch, router, or other point, as defined by purchaser)

#### **4.12 PURCHASER’S SITE CONNECTIVITY REQUIREMENTS**

Purchaser’s sites will require a standard Ethernet connection or an IEEE 802.1q trunk depending on the customer requirement. Purchaser’s sites will require either a fiber or copper handoff as specified by purchaser.

#### **4.13 LINK INTEGRATION**

If Purchaser orders an aggregated Ethernet service from the Vendor, the Vendor must support Link Aggregation Control Protocol (LACP) via the IEEE 802.3ad standard while keeping in compliance with MEF standards set forth in MEF 10.

If and/or where possible, the Purchaser would prefer to have the LACP configuration to be a Multi-Chassis LACP Configuration, providing chassis redundancy in addition to link redundancy. While aggregation of Ethernet services is not a mandatory requirement, the use of LACP in instances where this service is provided is mandatory.

#### **4.14 EQUIPMENT SPACE AND POWER**

Vendor shall be responsible for the purchase, installation, configuration and maintenance of all equipment required to provide Ethernet services to Purchaser. Following receipt of a work order Vendor must disclose whether Vendor owned equipment is required on Purchaser premises in order to deliver the required interface. If so, Vendor must disclose the type of equipment and the space and power requirements necessary to serve Vendor's equipment. Vendor must supply an uninterruptable power supply capable of providing at least 4 hours of backup power and use this to power their equipment.

Vendor must utilize active equipment (typically a NID, NIU or other device delivering the UNI interface) at the service delivery location which allows them to be able to collect usage statistics and performance monitoring as required for compliance with section 5.4.4 End-to-End Service Monitoring and Test Capability and 5.4.5 Error Statistics Reporting.

#### **4.15 ETHERNET STANDARDS**

Vendor's Ethernet interface provided at the Purchaser's point-of-presence must adhere to IEEE 802.3 standards for Ethernet, depending on the service purchased at the location by the Purchaser.

#### **4.16 VLANS**

Vendor's Ethernet services must provide support for Virtual Local Area Network (VLAN) via the IEEE 802.1Q standard.

#### **4.17 BPDUs**

Except for specific L2CP protocols as specified by the Metro Ethernet Forum (MEF) Ethernet Services Definitions – MEF 6, Vendor shall not manipulate any Bridge Protocol Data Units (BPDU) which are sent along the circuit by the Purchaser without the purchaser's expressed consent.

#### **4.18 SPANNING TREE PROTOCOLS**

Except for specific L2CP protocols as specified by the Metro Ethernet Forum (MEF) Ethernet Services Definitions – MEF 6, Vendor shall not impede the operation of any spanning tree protocols, including, but not limited to; Spanning Tree Protocol (STP), Per-VLAN Spanning Tree (PVST), Per-VLAN Spanning Tree Plus (PVST+), Rapid Spanning Tree Protocol (RSTP), Rapid Per-VLAN Spanning Tree Protocol (R-PVST), Multiple Spanning Tree Protocol (MSTP), VLAN Spanning Tree Protocol (VSTP), without the Purchaser's expressed consent.

#### **4.19 VLAN TAGS**

In accordance with established standards in MEF 6, Vendor shall not rewrite any VLAN tags affixed to packets by the Purchaser, without the Purchasers expressed consent. The Vendor shall also ensure that they do not impede the ability of the Purchaser to utilize 802.1ad tagging, also known as Q-in-Q.

In addition to preserving VLAN tags affixed by the Purchaser, it is strongly desired and encouraged that the Vendor not require the Purchaser insert or remove any VLAN tags, at the non-trunk UNI location for the service, on the Vendors behalf; all tag manipulation for proper transit through Vendors network should occur on the Vendors equipment. Examples of this are S-TAG (service tag) or C-TAG (customer tag) insertion or removal by the Purchaser on the Vendor's behalf to ensure proper routing through the Vendors network.

#### **4.20 MARKING OF TRAFFIC**

Vendors must not mark or remark any traffic without approval from the Purchaser. The Purchaser will expect that all traffic leaving a site will arrive after traversing the vendor network with the same markings it left with (QoS, Multicast, etc.).

#### **4.21 CLASS OF SERVICE/QUALITY OF SERVICE**

Vendor must provide a minimum of 1 CoS marking per Ethernet Service delivered. The service delivered with this marking must be in minimal accordance with sections 4.5, 4.6, and 4.7 of this document.

Vendor must either provide an Ingress Bandwidth Profile on a per Ethernet service basis or in the case where multiple levels of CoS are requested on the Ethernet circuit, provide an Ingress Bandwidth Profile for each CoS ID as marked by the PCP (Priority Code Point) on the Ethernet frame as agreed upon at the time of purchase.

Vendor shall list values for each of the following attributes (Frame Delay, Frame Delay Variation, Frame Loss Ratio, and Availability) for each CoS marking and these variables must be in minimal accordance with sections 4.5, 4.6, and 4.7 of this document.

Vendor shall specify the CoS ID(s) to Purchaser to ensure proper coordination of CoS markings are utilized. For services that are sent by the customer as "unmarked", Vendor must forward the traffic according to the agreed upon ingress traffic profile of the Ethernet service.

When multiple CoS IDs are utilized on a given Ethernet service, any traffic transmitted in excess of the agreed upon ingress bandwidth profile shall be re-prioritized as "best-effort".

### **5. SERVICE REQUIREMENTS**

#### **5.1 SERVICE REQUIREMENTS ASSURANCE**

No alternative specifications or requirements to those listed below will be accepted. The attached Ethernet Performance and Service Requirements Assurances Form (Exhibit B to this RFQ) must be signed and dated by a person authorized to legally bind the Vendor to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or

the proprietor of a sole proprietorship. Signing the Ethernet Performance and Service Requirements Assurances form indicates that the Vendor accepts the terms and conditions of the RFQ.

## **5.2 SERVICE REPORTS**

Vendor agrees to comply with the delivery of timeline service reports to the Purchaser as follows:

### **5.2.1 Incident Event Logs**

Vendor will provide Incident Event Log summary, monitoring and testing statistics and error statistic reports to the Purchaser upon request.

- Emergency Repair/Incident log contents are defined in Section 5.4.3
- End to End service monitoring and testing statistics are defined in Section 5.4.4
- Error Statistics report contents are defined in Section 5.4.5

### **5.2.2 Vendor Emergency Repair/Trouble Log**

Vendor will provide a weekly trouble log summary to the Purchaser.

Summary must include the date of the repair occurrence, problem found, action taken to resolve the incident, and the total out-of-service time.

### **5.2.3 Reason for Outage**

Vendor will provide a per incident Reason for Outage (RFO). Preliminary RFOs shall be provided within 2 hours after an outage has been resolved with complete RFOs provided within 24 hours. For incidents requiring additional carrier research the RFO is to be updated every 24 hours until such time as a final determination has been made.

### **5.2.4 Detailed Diagrams**

Vendor will provide to the Purchaser, or their designate, detailed network diagrams for circuits, as requested by Purchaser. These diagrams shall be provided in no less than 5 business days.

## **5.3 NETWORK OPERATIONS CENTER**

Vendor must maintain a Network Operations Center (NOC) with the following characteristics

### **5.3.1 Capabilities**

- Provide network and systems support services delivered from the Provider's NOC.
- Perform 24x7x365 call center, monitoring, fault detection, problem isolation, escalation, and restoration management of supported networks and equipment.
- Supply and operate technical support tools to perform network management; manage and maintain network and system software products; quality test and implement network support software, and backup/restore for operational systems.
- Supply trained operations staff and provide and maintain operations standards and procedures. NOC staff must communicate in English as their primary language.

### **5.3.2 Functions**

Functions supported by the NOC shall include the following:

- 24x7x365 Call Center with technically competent staff required
- Incident management and reporting (ideally via web access) for network problem reporting, ticket status and shared information
- Provisioning support for new circuits, devices, and capabilities on the network
- Network Change Control
- Network availability reporting
- Network traffic reporting
- Thresholds and exception notifications

## **5.4 SERVICE REPAIR AND INCIDENT REPORTING**

Vendor agrees to provide timely response, communication and pro-active reporting for all service repairs and incidents as follows:

### **5.4.1 Response to Incident Reports**

Vendor must respond to, and confirm receipt of, all incident reports twenty-four (24) hours a day, 365 days per year within thirty (30) minutes of the initial incident report. Subsequent periodic responses must be at least every 2 hours, or more frequently as appropriate.

### **5.4.2 Toll-Free Incident Reporting Number**

Vendor must provide a toll-free Incident reporting number.

### **5.4.3 Incident Reporting**

For all service incidents, the Vendor Incident Reports (as defined in section 5.4.1) must include the type of problem, estimated time to repair, and vendor ticket number.

Vendor must maintain a repair log listing the date of the repair occurrence, problem found, action taken to resolve the problem, and the total out-of-service time. Only issues affecting Purchaser's service need be logged.

### **5.4.4 End-To-End Service Monitoring and Test Capability**

Vendor must have the capability of monitoring the service End-to-End (from the providers demark or beyond) utilizing their own tools and systems and have the ability to perform remote site testing independent of the purchaser as necessary to troubleshoot problems with their service.

### **5.4.5 Error Statistics Reporting**

Vendor must be able to provide continuous End-to-End Monitoring and error statistics for services they provide to the Purchaser.

#### **5.4.6 Incident Escalation Procedure**

Vendor agrees to provide an incident escalation procedure as part of the Contract. The escalation procedure must identify who should be contacted, the order the contact should occur, and what additional Vendor resources will be added at each escalation stage of the incident.

### **5.5 SERVICE MAINTENANCE**

Vendor agrees to change control procedures for schedule, planned and/or emergency maintenance or testing as follows:

#### **5.5.1 Scheduled Routine Maintenance/Testing**

Vendor and Purchaser will develop an agreed upon maintenance window of days and times for routinely scheduled maintenance and testing of purchased services.

Unless otherwise agreed to by Purchaser, the maintenance window is defined as 10:00 pm – 5:00 am.

#### **5.5.2 Planned Maintenance/Testing Notification**

Vendor shall notify the Purchaser of any planned maintenance to occur on equipment which services the Purchaser's service which may have the ability to affect the circuit. Any maintenance which will occur outside of the Scheduled Routine Maintenance window will require 7 business days' advanced notice, and any maintenance occurring within the Scheduled Routine Maintenance window will require 3 business days' notice.

#### **5.5.3 Unplanned Emergency Repair/Maintenance/Testing**

Vendor must notify the Purchaser, with a brief description of the nature of the problem and actions to be taken for resolution, immediately if emergency maintenance or testing is going to occur that could potentially disrupt the Purchaser's service.

Vendor shall dispatch repair services within 60 minutes of incident identification. Any dispatch to a K-20 end site shall be subject to Purchaser confirmation and approval.

### **5.6 SERVICE INSTALLATION**

#### **5.6.1 Acquisition of Permits**

Vendor will be responsible for the acquisition of any required city, county, or state permits.

#### **5.6.2 Coordination of Installation**

Vendor is responsible for coordinating with the Purchaser for specific needs or requirements such as facility access, security, and work hours. Vendor shall coordinate with Purchaser to schedule project work to allow maximum access to the Vendor while minimizing disruption of Purchaser's business. Installation should be coordinated between 6:00 a.m. and 6:00 p.m., Pacific Time, Monday through Friday. Vendor must notify end user customers of scheduled installations at least 24 hours prior to arrival at the site. Vendors must notify and work with

the Purchaser's designated point of contact (POC) when testing/completing installation of service.

### 5.6.3 Timeline for Installation

Vendor must agree to have the service installed, tested and ready for Purchaser acceptance at the sites on or before forty five (45) calendar days, where facilities already exist, or ninety (90) calendar days, where facilities do not exist, from the placement of an order. It is Vendor's responsibility to coordinate delivery, installation, testing, and making operational all items necessary to provide the services described.

If the selected Vendor fails to have the service installed, tested, and ready for Purchaser acceptance at the sited within the allotted calendar days, OFM may elect to cancel the award, and award the Contract to the next ranked Vendor, or cancel or reissue this solicitation.

### 5.6.4 Service Acceptance

After Vendor installation of the service has occurred, Vendor must notify Purchaser of completion of installation of service, using the email template below in this section. Portions of the template in square brackets ([]) will need to be filled out with appropriate information by Vendor. Purchaser will have 15 days from normal notification mechanism and receipt of email template to test the service. Service testing will utilize industry standard testing techniques and equipment. Upon successful testing, Purchaser will send notification to Vendor, and Vendor may start billing as of the Acceptance Date. If testing is unsuccessful, Purchaser agrees to notify Vendor regarding the testing failure and the nature of the failure and will make appropriate good faith attempts to help the Vendor to resolve the issue. If Vendor is unable to remedy the failure within 30 days of Vendor notifying Purchaser of completion of installation of service, then Purchaser reserves the right to cancel the service request, at no cost, and contract with the bidder with the next lowest price.

Email Template:

TO: amandac@k20wa.org

CC: uw-prov@wa-k20.net

SUBJECT: [Carrier Name] [Site Name] Completion Notification

BODY: [In addition to any standard handoff documents or language, please provide the following information in the below format.]

- Site Name: [Provided from the SOW]
- Node: [Which aggregation site it is going to: Seattle, Spokane, or Portland]
- VLAN: [Assigned VLAN ID]
- CID: [Circuit ID Number]
- BW: [Contracted Service Bandwidth]
- [Any specific test and acceptance instructions: Phone number for testing / turn-up, what needs to be referenced, Circuit ID, Order Number, Account Number, etc...]

## 5.7 ESCALATION PROCEDURES

Vendor must submit a document laying out their Escalation Procedures.

## 6. VENDOR FINANCIAL RESPONSE

### 6.1 INTRODUCTION

The State intends to award one or more contracts for the circuits listed on the Attachment A, Vendor Evaluation Pricing Worksheets. The Pricing Worksheets for the vendor's response are found in electronic form at the Washington Electronic Business System (WEBS) at <http://www.ga.wa.gov/webs/> and at [ofm.wa.gov](http://ofm.wa.gov)

The award for each circuit will be made to the respondent that meets all mandatory requirements and has the lowest "Vendor Evaluation Price" for the proposed circuit.

For each site on which Vendor intends to bid, Vendor must provide pricing for all items indicated in the Cost Model (Attachment A) for that site. If any item is left blank or does not include an actual cost, the vendor will not be eligible to be awarded that site.

### 6.2 PRICING WORKSHEET

The Vendor's Pricing Worksheet must be presented in the formats shown in the MS Excel worksheets. The following definitions and notes apply to the evaluation pricing spreadsheet:

1. Individual Pricing – Individual Pricing Worksheet on Attachment A Vendor must complete the following on the Individual Pricing Worksheet:
  - a. Monthly Recurring Costs (Columns J and K) – The state is requesting Vendors to supply pricing for evaluation purposes that reflects the state's anticipated need for increased bandwidth during the initial term. Vendors must provide pricing for both bandwidth profiles A and B (Columns H and I on the Attachment A, Vendor Evaluation Pricing Worksheet). A blank column H or I on the Vendor Evaluation Pricing Worksheet will be interpreted a non-bid for bandwidth profiles A and B. A value of zero in columns H and I will not be interpreted as a non-bid, and will be interpreted as zero cost to the Purchaser.

Both bandwidth profiles will be used to compute vendor's evaluation cost (Column M, Vendor Evaluation Price). The resulting contract(s) will reflect both bandwidth pricing options. However, the state reserves to right to purchase either bandwidth and shall not be obligated to change bandwidth or upgrade to a higher bandwidth after 36 months.
  - b. Non-Recurring or Installation Cost (Column L) – is the total one-time charge, if any, for the vendor to install the defined service. The installation price is to include all one-time charges for the circuit components between the listed demarcation points, regardless of bandwidth profile.
  - c. Bandwidth Profile C (Column P) – is not part of the evaluation and is optional for the Vendor to complete. Pricing from profile C will be used should bandwidth greater than profile B be needed during the term.

## 2. Vendor Proposed Node Sites

It is mandatory for Vendors to provide services to a K-20 node. K-20 will purchase trunks at identified nodes, and Vendor shall hand off a single trunk and not individual connections.

- a. Proposed Node Site (Columns N) – Vendor must identify which K-20 Node Site they propose for each site termination. K-20 Node Sites from which to choose are:
  - i. Seattle:  
Westin Building  
2001 Sixth Ave, 19<sup>th</sup> Floor Meet-Me-Room  
Seattle, WA 98121
  - ii. Portland:  
Pittock Building  
921 SW Washington, T250 Meet-Me-Room  
Portland, OR 97205
  - iii. Spokane:  
US Bank Building  
422 W. Riverside, Suite 816  
Spokane, WA 99201

3. The Contacts tab on Attachment A contains the contact information for each site on the pricing worksheets for the purpose of arranging site visits only. Vendors are not allowed to address any other issue regarding the RFQ to site contacts.

## 7. EVALUATION AND SELECTION AS AN APPARENTLY SUCCESSFUL CONTRACTOR

### 7.1 OVERVIEW

Contracts may be awarded to one (1) or more Vendors capable of providing the Ethernet Transport services between the locations listed in Attachment A.

The Apparently Successful Vendor(s) will be the Vendor(s) who:

- Meet all requirements in Section 3: Administrative Requirements
- Meet all requirements in Section 4: Ethernet Performance Requirements
- Meet all requirements in Section 5: Service Requirements
- Meet all requirements in Section 6: Vendor Financial Response, complete the Vendor Evaluation Price per end site (Attachment A), and offer the lowest total cost based on the Evaluation Model described in the RFQ.

If a vendor is selected as an ASV, they will enter into contract negotiations with OFM. If during contract negotiations it is determined that first ASV is unable or no longer able to provide the service, OFM reserves the right to enter into contract negotiations with the next lowest vendor.

### 7.2 REQUIREMENTS

Responses meeting all of the administrative, Ethernet performance, and service requirements will then be reviewed on a pass/fail basis to determine if the Response meets the Requirements. Only

Responses meeting all Requirements will be further evaluated. The State reserves the right to determine, at its sole discretion, whether Vendor's response to a Requirement is sufficient to pass.

If only one Vendor is determined to be responsive, OFM may award a single contract without formal evaluation. At any time OFM may reject any and all proposals submitted in response to the RFQ.

### **7.3 FINANCIAL EVALUATION**

The financial evaluation will be based upon the vendor responses to Section 6 Vendor Financial Response. Each vendor response must provide individual circuit pricing for all circuits for which the vendor proposes to offer services listed on the cost model.

Vendor Evaluation Price for each site is based on the following formula:

$(\text{Profile A MRC} * 36 \text{ months}) + (\text{Profile B MRC} * 24 \text{ months}) + \text{NRC} = \text{Vendor Evaluation Price.}$

The Vendor with the lowest Vendor Evaluation Price per site will be declared the ASV for that site. If during contract negotiations it is determined that the ASV is unable or no longer able to provide the service, OFM reserves the right to enter into contract negotiations with the next lowest vendor.

### **7.4 NOTIFICATION TO VENDORS**

The Agency will notify the Apparently Successful Vendor (s) of their selection by e-mail upon completion of the evaluation process. Individuals or firms whose proposals have not been selected as an Apparently Successful Vendor will be notified separately by e-mail.

### **7.5 DEBRIEFING OF UNSUCCESSFUL VENDORS**

Any Vendor who has submitted a proposal and been notified that they were not selected as an Apparently Successful Vendor may request a debriefing. The request for a debriefing conference must be received by the RFQ Coordinator as scheduled in Section 2.2 of this RFQ. Debriefings will be held as scheduled in Section 2.2 of this RFQ. Vendors who are notified that they are an Apparently Successful Vendor for at least one site they bid will not be entitled to a debriefing conference.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the Vendor's proposal;
- Critique of the requesting Vendor's proposal based on the evaluation; and
- Review of Vendor's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

### **7.6 PROTEST PROCEDURE**

Protests may be made only by Vendors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the

Vendor is allowed five (5) business days to file a protest of the acquisition with the RFQ Coordinator. Protests must be received by the RFQ Coordinator as scheduled in Section 2.2. Protests may be submitted by email, but must then be followed by the document with an original signature.

Vendors protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Vendors under this procurement.

All protests must be in writing, addressed to the RFQ Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFQ number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document or Agency policy

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on the quality of a proposal, or 2) Agency's assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the Agency. The Agency director or an employee delegated by the Director who was not involved in the procurement, will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Vendor that submitted a proposal, such Vendor will be given an opportunity to submit its views and any relevant information on the protest to the RFQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the Agency's action.
- Find only technical or harmless errors in the Agency's acquisition process and determine the Agency to be in substantial compliance and reject the protest.
- Find merit in the protest and provide the Agency options which may include:
  - Correct the errors and re-evaluate all proposals
  - Reissue the solicitation document and begin a new process
  - Make other findings and determine other courses of action as appropriate

If the Agency determines that the protest is without merit, the Agency will enter into a contract with the Apparently Successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

**Exhibit A**  
**CERTIFICATIONS AND ASSURANCES**

Issued by the State of Washington

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the RFQ are conditions precedent to the award or continuation of the resulting Contract.

The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offer or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single proposal or bid.

The attached Response is a firm offer for a period of 90 days following the Response Due Date specified in the RFQ, and it may be accepted by OFM without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90 day period. In the case of protest, your Response will remain valid for 120 days or until the protest is resolved, whichever is later.

In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to the State's solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures, compliance with Mandatory and all other administrative requirements described in the solicitation document.

We understand that any Contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Exhibit C, or substantially similar terms, if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in Exhibit C of this solicitation.

We (circle one) **are / are not** submitting proposed Contract exceptions (see RFQ Section 2.10, *Contract*).

\_\_\_\_\_  
Vendor Signature

\_\_\_\_\_  
Vendor Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit B**  
**ETHERNET PERFORMANCE AND SERVICE ASSURANCES**

Issued by the State of Washington

We make the following assurances as a required element of the Response, to which it is attached, affirming and acknowledging that this response meets or exceeds compliance with the requirements stated in Sections 4 and 5, in their entirety, of the RFQ and that meeting or exceeding the requirements are necessary to the award and/or continuation of the resulting Contract.

We understand that any Contract awarded, as a result of this Response will include and incorporate all the Ethernet Performance and Service Requirements contained in Sections 4 and 5 of the RFQ. Submission of a Response and execution of this Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Exhibit C, or substantially similar terms, if selected as a contractor.

---

Vendor Signature

---

Vendor Company Name

---

Title

---

Date

Exhibit C  
PROPOSED CONTRACT

**Contract Number KXXXX**  
for  
**Ethernet Transport Services**  
**for the K-20 Education Network**

between

***State of Washington***  
***Office of Financial Management***

and

***Vendor***

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

(fill in date after contract signed)

## TABLE OF CONTENTS

1. Definition of Terms.....	4
<b>Contract Term .....</b>	<b>7</b>
2. Term .....	7
3. Survivorship.....	7
<b>Pricing, Invoice and Payment .....</b>	<b>8</b>
4. Pricing .....	8
5. Tariffs .....	9
6. Advance Payment Prohibited.....	9
7. Taxes.....	9
8. Invoice and Payment .....	10
9. Overpayments to Contractor .....	12
10. Statement of Work .....	13
11. Site Security .....	13
12. Contractor Commitments, Warranties and Representations.....	13
13. Protection of Purchaser’s Confidential Information.....	14
<b>Contract Administration .....</b>	<b>15</b>
14. Purchaser Use of Contract.....	15
15. Legal Notices.....	15
16. Contractor Account Manager .....	16
17. Contractor Project Manager .....	16
18. Section Headings, Incorporated Documents and Order of Precedence .....	16
19. Entire Agreement.....	17
20. Authority for Modifications and Amendments .....	17
21. Additional Services .....	17
22. Independent Status of Contractor .....	17
23. Governing Law.....	17
24. Rule of Construction as to Ambiguities .....	17
25. Subcontractors.....	18
26. Assignment.....	19
27. Publicity .....	19
28. Review of Contractor’s Records.....	19
<b>General Provisions .....</b>	<b>21</b>
29. Patent and Copyright Indemnification .....	21
30. Save Harmless .....	21
31. Insurance.....	22

32. Industrial Insurance Coverage .....	23
33. Licensing Standards .....	23
34. Antitrust Violations .....	23
35. Compliance with Civil Rights Laws.....	23
36. Severability .....	23
37. Waiver .....	24
38. Treatment of Assets.....	24
39. Contractor's Proprietary Information .....	24
<b>Disputes and Remedies.....</b>	<b>25</b>
40. Disputes.....	25
41. Non-Exclusive Remedies .....	25
42. Failure to Perform .....	25
43. Limitation of Liability.....	26
<b>Contract Termination.....</b>	<b>27</b>
44. Termination for Default .....	27
45. Termination for Convenience .....	27
46. Termination for Withdrawal of Authority .....	28
47. Termination for Non-Allocation of Funds.....	28
48. Termination for Conflict of Interest .....	29
49. Termination Procedure .....	29
50. Covenant Against Contingent Fees.....	30
<b>Contract Execution .....</b>	<b>31</b>
51. Authority to Bind .....	31
52. Counterparts.....	31

# CONTRACT NUMBER KXXXX

for

## Ethernet Transport Services for the K-20 Education Network

### PARTIES

This Contract ("Contract") is entered into by and between the state of Washington acting through the **Office of Financial Management**, an agency of Washington State government (hereinafter "OFM"), and **[Vendor]**, licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the provisioning of Ethernet Transport Services for the K-20 Education Network.

### RECITALS

The State of Washington, acting by and through the Office of Financial Management (hereinafter "OFM"), issued a Request for Quotations (RFQ) dated August 12, 2016 , for the purpose of establishing Contracts for Ethernet Transport Services for the K-20 Education Network.

OFM evaluated all properly submitted Responses to the above-referenced RFQ and has identified **[Vendor]** as an apparently successful Vendor.

OFM has determined that entering into a Contract with **[Vendor]** will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, OFM awards to **[Vendor]** this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers of Ethernet Transport Services for the K-20 Education Network. This Contract is not for personal use.

This Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does the Contract prevent the State from purchasing the same or similar Products or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

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

### 1. DEFINITION OF TERMS

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

**"Acceptance"** shall mean that the Services successfully passes Purchaser Acceptance Testing and shall be formalized in a written notice from Purchaser to Contractor.

**"Acceptance Date"** for Contractor-installed Service shall mean the date upon which Purchaser formally accepts the Services as specified in RFQ Section 4. Ethernet Performance Requirements.

**"Acceptance Testing"** shall mean the process for ascertaining that the Services meet the standards set forth in RFQ Section 4. Ethernet Performance Requirements, prior to Acceptance by Purchaser.

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

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information. Confidential Information also includes any Personal Information under the provisions of RCW 19.255.010 and RCW 42.56.590.

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

**“Contract Administrator”** shall mean the Contract Administrator, designated by K-20 as responsible for the maintenance and administration of this Contract, notices, reports and any other pertinent documentation or information. The Contract Administrator may also conduct periodic performance or financial audits related to this Contract.

**“Contractor”** shall mean [Vendor], 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 with whom the Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

**“Contractor Project Manager”** shall mean a representative of Contractor who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled Contractor Project Manager.

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

**“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.

**“Ethernet Transport”** shall mean Ethernet based Transport aggregated to a regional node site.

**“Exhibit A”** shall mean RFQ 16-1600.

**“Exhibit B”** shall mean Contractor’s Response to RFQ 16-1600.

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

**“Hand-Off”** shall mean the formal notification by the Vendor to OFM the Vendor believes the Service meets the specifications in RFQ Section 4. Ethernet Performance Requirements, and is in good working order and ready for Acceptance Testing.

**"Node Site(s)"** shall mean a K-20 operated backbone telecommunications facility.

**"Order"** or **"Order Document"** shall mean any official document and attachments thereto specifying the Services to be purchased from Contractor under this Contract.

**"OFM"** shall mean the Washington State Office of Financial Management.

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

**"Project"** shall mean the installation and provision of Ethernet service to a single end site for a specific term.

**"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"** or **"Authorized Purchaser"** shall mean the state of Washington, K-20 Education Network (currently administered by OFM), and those entities listed as Authorized Purchasers in the list of Authorized Purchasers attached as Schedule D hereto, and any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

**"RCW"** shall mean the Revised Code of Washington.

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

**"Response"** shall mean Contractor's Response to the RFQ for Ethernet Transport Services for the K-20 Education Network, Exhibit B hereto.

**"Schedule A: Authorized Product and Price List"** shall mean the attachment to this Contract that identifies the authorized Products and Services and Prices available under this Contract.

**"Schedule B: Statement of Work Template"** shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

**"Specifications"** shall mean the technical and other specifications set forth in the RFQ, as specified in RFQ Section 4. Ethernet Performance Requirements, and Section 5. Service Requirements.

**"State"** shall mean the state of Washington.

**"Statement of Work"** or **"SOW"** shall mean a separate statement of the work to be accomplished by Contractor under the terms and conditions of this Contract. A template SOW is attached as Schedule B.

**"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.

**"Vendor Demarcation Point"** shall mean a physical location at the Purchaser's site where the Vendor's service physically terminates and is cross-connected to the State or Purchaser's equipment.

## CONTRACT TERM

### 2. TERM

- 2.1 This Contract's initial term shall be approximately five (5) years, commencing upon the Effective Date and expiring on June 30, 2021.
- 2.2 This Contract's term may be extended by one (1) additional one (1) year term, provided that the extensions are mutually agreed to by both parties and shall be effected by OFM giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term's expiration and Contractor accepting such extension prior to the Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.3 Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The service term indicated in any SOW shall survive the expiration of the contract. The SOW may be terminated in accordance with the termination sections of this Contract or as agreed between the parties.

### 3. SURVIVORSHIP

All purchase transactions executed under a Statement of Work (SOW) pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof for the term of such SOW. 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; Contractor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; License Grant; Software Ownership; Date Warranty; No Surreptitious Code Warranty; 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

### 4. PRICING

- 4.1 Contractor agrees to provide the Services to Purchasers at the prices set forth in the *Authorized Product and Price List* attached as Schedule A to this Contract. Such prices may not be increased during the term of this Contract. Services may also be ordered based on subsequent site specific price quotes provided by Contractor.
- 4.2 If, during the term of the Contract, lower prices and rates are made available by the Vendor to any other customer for like terms, conditions, quantities and services, Purchaser will be given immediate benefit of such lower prices and rates.
- 4.3 Vendor must agree to conduct a contract pricing re-evaluation with the state in January, 2019 and January 2021 of the initial five year term to determine whether or not the state is receiving the benefit of the lowest corresponding price.
- 4.4 If the parties conclude that Vendor shall offer the state lower pricing, the contract shall be amended to reflect the lower pricing.
- 4.5 In addition, the parties may elect to amend the price list to provide greater bandwidth for the same rates as those listed in the contract, as appropriate.
- 4.6 E-rate Funding
  - a) If, for any reason other than Vendor's material failure to deliver Service under the terms of the Agreement, the FCC, USAC or Other Funding Sources fail to reimburse Vendor's for Service, or if the FCC, USAC or Other Funding Sources reclaim any portion of Support paid to Vendor on Customers' behalf, then Customer will reimburse Vendor for these amounts.
  - b) While Vendor will use commercially reasonable efforts to assist Customer in requesting Support, Vendor is not responsible for Customer's compliance with FCC, USAC or Other Funding Source rules and regulations, Customers' applications for Support, or any decisions or actions by the FCC, USAC or Other Funding Sources with respect to Customer.

## **5. TARIFFS**

- 5.1 Contractor agrees to make all State or Federal tariff filings that are required by law or regulation and that are necessary for contract performance. Contractor shall provide Purchaser with copies of all such tariffs on the same day they are filed. Contractor shall certify that all terms, conditions, and prices in the tariff are as stated in this Contract, and that the tariff contains nothing inconsistent with the Contract.
- 5.2 If necessary, Contractor shall make any initial filing required to implement the contract within ten (10) calendar days after the Effective Date of this Contract. If such initial filing is not permitted to become effective by the appropriate regulatory body (30) calendar days after the date of contract award, the Purchaser shall have the right partially or entirely to terminate the contract without liability.
- 5.3 Before this Contract becomes effective, Contractor shall provide to Purchaser copies of its current tariffs which pertain to the provision of the Service described herein.
- 5.4 If any ruling, order or determination of any regulatory agency or court of competent jurisdiction shall materially and adversely affect the Contractor's ability to offer Services under the terms and conditions of this Contract, Contractor agrees to immediately develop a proposal that provides comparable service to Purchaser at rates equal to or less than those set forth in the contract, and under terms and conditions identical to those set forth in the contract, to the extent permissible under applicable legal and regulatory requirements. Such service may be provided under other existing tariffs (if this can be done at such tariffs' then effective rates without further revision) or under newly filed tariffs. If Contractor is unwilling or unable to develop such a proposal within ten (10) days of any such event, the Purchaser will have the right partially or entirely to terminate the contract without liability.

## **6. ADVANCE PAYMENT PROHIBITED**

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

## **7. TAXES**

- 7.1 Purchaser will pay sales and use taxes, if any, imposed now or in the future, by any governmental entity (whether such taxes are assessed by a governmental authority directly upon Vendor or OFM) attributable or measured by the sale price or transaction amount, or surcharges, fees, and other similar charges, which are required or permitted to be assessed on Purchaser for the Products and 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.
- 7.2 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.

7.3 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.

## 8. INVOICE AND PAYMENT

8.1 Vendor shall provide billing with the presentation of a proper invoice. Invoices that do not contain the proper billing detail in accordance with guidelines set forth herein will be returned unpaid to the Vendor for proper billing detail corrections.

8.2 Monthly invoices must be itemized and priced, to include the following for each service provided to customer:

- End-Site Name (provided by Purchaser)
- Contract number;
- Vendor account number;
- Vendor circuit identifier;
- Monthly Recurring Charges for Services;
- Maintenance or other service charges;
- Taxes and fees;
- Any service credits, including without limitation, Out of Service credits issued pursuant to this Contract;
- Dates of service period (prefer 1<sup>st</sup> though end of month)
- Installation cost (if applicable);
- Total invoice amount; and
- Payment terms, including any available prompt payment discount

8.3 Unless otherwise indicated in an Order Document or Supplemental Work Order, the billing for services must be submitted in PDF, Word, Excel, or comparable electronic format and emailed to:

billing@K20.wa.org

In the event that email is not available, billing for services may be submitted to the following physical address exclusively via the United States Postal Service:

K-20 Education Network  
PO Box 42438  
Olympia, WA 98504-2438  
attn: Accounts Payable

- 8.4 The Federal Universal Services Administrative Company (USAC) as an agent of the Federal Communications Commission (FCC) has determined private-line services, regardless of their A & Z locations are assumed to be interstate unless otherwise certified by the customer and that intrastate backbone and tail circuits are defined as those carrying less than 10% interstate traffic. Additionally, the K-20 Education Network is defined in statute as a statewide educational network exclusively for Washington State entities. Contractor agrees and understands that the Washington State K-20 Education Network self-certifies as carrying less than 10% interstate traffic on all network circuits and is thus exempt from paying Universal Service Fund (USF) fees on invoices received from Contractor.
- 8.5 Contractor shall complete registration with the Washington Statewide Vendor Payment Registration system prior to issuing any invoices for services. Registration may be completed at: <http://www.ofm.wa.gov/accounting/vendors.asp>.
- 8.6 Billing will commence upon Service Acceptance Date.
- 8.7 Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 8.8 Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 8.9 The Contract number and SOW number [YY-YY] must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.10 If there are any good faith disputes related to an invoice, Purchaser may pay only the undisputed portion of the invoice on a timely basis and notify Contractor in writing of Purchaser's basis for withholding payment of the disputed amount. Upon receipt of Purchaser's dispute notice, Contractor and Purchaser agree to work together in good faith to resolve such dispute in a prompt and mutually acceptable manner. If the dispute is not resolved within ninety (90) days after Contractor's receipt of Purchaser's dispute notice, the parties shall resolve the issue pursuant to the relevant provisions of this contract.
- 8.11 Customer understands and agrees that Contractor supplies as an intrastate, intraLATA telecommunications service, as defined by State and/or Federal Communications Commission ("F.C.C.") regulations, which are incorporated herein by this reference. It is OFM's responsibility to ensure that OFM or Purchaser uses Service as an intrastate, intraLATA telecommunications service consistent with such regulations. F.C.C. regulations permit interstate usage of Service if such usage does not exceed 10% of the total usage. If OFM or Purchaser should use this Service for any other purpose, or if interstate usage exceeds 10%, it is OFM's responsibility to immediately notify Contractor of such use and to place an order for appropriate service. Contract will bill, and OFM or Purchaser will promptly pay, appropriate monthly recurring charges, for such use of and changes to OFM's or Purchaser's telecommunications service including, but not limited to all applicable Contractor Access Tariff F.C.C. No. 1 interstate access charges or intrastate Tariff access charges.

- 8.12 Subsequent orders to add new Service port(s) at a specific site will be for the remainder of the Term for that site, provided the Minimum Service Period can be met. All Service ports ordered for a specific site under a SWO and/or Site Agreement will expire on the same date regardless of when they are ordered (e.g., if the original Service is in Month 10 of a 60-month fixed period rate plan, the new Service port at that site will be billed at the 60-month rate for the next 50 months). In the event the Minimum Service Period cannot be met, a new SWO and/or Site Agreement must be signed for that site.
- 8.13 A subsequent order to change Service Port or Service Bandwidth during the Term may be assessed a NRC. The MRC will be changed to the new Service bandwidth profile charge. Purchaser may be assessed an early Termination liability charge for any decrease in bandwidth during the Term of the Service Agreement.
- 8.14 Customer's request for a physical move of Service to a new location may be treated as a termination of service at the original location. NRC's may apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, a new SWO and/or Site Agreement must be signed.
- 8.15 For the physical move of a Purchaser's existing Service to a location within the same building, Contractor may charge actual costs to Purchaser. Contractor shall provide a written estimated cost to Purchaser for prior review and approval prior to the service being moved. If Purchaser does not want to move forward with the move based on the estimated cost then Customer may install the infrastructure within the building to accommodate the move. In all cases, there shall be no changes to the Minimum Service Period, unless mutually agreed to in writing.

## **9. OVERPAYMENTS TO CONTRACTOR**

Contractor shall pay the Purchaser's full amount of any erroneous payment or overpayment under this Contract within thirty (30) days written notice by check or money order. Payment shall be made by the next applicable billing period. For overpayments or erroneous payments that would otherwise require the issuance of credits after the termination of affected services under this Contract, Contractor shall refund to Purchaser the full amount in the form of a check in accordance with Section 8 of this Contract.

**10. STATEMENT OF WORK**

10.1 All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW or other order document established between Purchaser and Contractor.

10.2 The terms and conditions of any SOW/order document cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

10.3 Contractor agrees that within ten (10) business days of the initial receipt of a SOW, Contractor shall either sign and return such SOW, or notify the OFM Contract Administrator of the need for additional time. No work shall be performed by Contractor until a SOW is executed by Contractor and Purchaser and is received by Contractor.

**11. SITE SECURITY**

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

**12. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Except as expressly provided in the agreement, all services and products are provided “as is.” Vendor disclaims all express or implied warranties, including but not limited to all warranties of merchantability, fitness for a particular purpose, and non-infringement.

### **13. PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION**

- 13.1 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. Contractors that may come into contact with medical data will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work. Contractor will not be deemed to have accessed, received or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of the Services.
- 13.2 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 Purchaser's Confidential Information.
- 13.3 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.
- 13.4 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

### 14. PURCHASER USE OF CONTRACT

#### 14.1 Statements of Work

All Services to be performed under this Contract shall be documented in one or more Statements of Work (SOW) established between Purchaser and Contractor as set forth in the Statement of Work attached hereto as Schedule B.

### 15. LEGAL NOTICES

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

<b>To Contractor at:</b>	<b>To Purchaser at:</b>	
[Contractor Name]	K-20 Education Network	
<b>Attn:</b>	<b>Attn:</b> Contract Administrator	
	<b><i>If by US Postal Service:</i></b>	<b><i>If by Overnight Courier:</i></b>
	PO Box 42438	410 11th Ave. SE #204
	Olympia, WA 98504	Olympia, WA 98501
Phone:	Phone: 360-292-4190	
E-mail:	E-mail: <a href="mailto:tomc@k20wa.gov">tomc@k20wa.gov</a>	

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.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or 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.

**16. CONTRACTOR ACCOUNT MANAGER**

Contractor shall appoint an Account Manager for the State’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 the Contract Administrator, 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:	Fax:	E-mail:

**17. CONTRACTOR PROJECT MANAGER**

Contractor shall assign a Contractor Project Manager for each Purchaser project. Purchaser shall have approval rights over the Contractor Project Manager, or any replacements thereof. The Contractor Project Manager shall be the principal point of contact for Purchaser and shall coordinate Contractor’s activities. The Contractor Project Manager shall produce and maintain a complete plan for all Contractor-related activities concerning installation and training.

**18. SECTION HEADINGS, INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**

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

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

- Schedules A and B;
- OFM’s RFQ 16-1600;
- Contractor’s Response to OFM’s RFQ 16-1600;
- The terms and conditions contained in Statements of Work; 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.

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

- Applicable federal and state statutes, laws, and regulations;
- Sections of this Contract;
- The terms and conditions contained in Statements of Work;
- Schedules A and B;
- OFM’s RFQ 16-1600;
- Contractor’s Response to OFM’s RFQ 16-1600; 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.

**19. 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 **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

**20. AUTHORITY FOR MODIFICATIONS AND AMENDMENTS**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Contractor.

**21. ADDITIONAL SERVICES**

Contractor may submit new Services with associated discounts or prices to the Contract Administrator. New or changed Services submitted by Contractor shall meet all mandatory requirements of the RFQ. Additional Services that are determined by Purchaser to be appropriate to the scope of this Contract, may be added to Schedule A of this Contract by an instrument in writing, signed by both Contractor and Purchaser. Such writing shall include a specific description of the additional Services, pricing, and additional terms and conditions as relevant.

**22. 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 ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW (State Civil Service Law) or Title 51 RCW (Industrial Insurance).

**23. 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. 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 or the county in which Purchaser is located within the state of Washington.

**24. RULE OF CONSTRUCTION AS TO AMBIGUITIES**

Each party to this Contract acknowledges that such party has reviewed this Agreement and participated in its drafting and agrees that no provision of this Contract shall be construed

against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have drafted, structured or dictated such provision or provisions.

## 25. SUBCONTRACTORS

Contractor may, with prior written permission from OFM, 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. 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 employees, or violations of the **Protection of Purchaser's Confidential Information** section of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Protection of Purchaser's Confidential Information, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

## 26. ASSIGNMENT

26.1 With the prior written consent of Purchaser, which consent shall not be unreasonably withheld, 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, or warranties made herein including but not limited to, rights of setoff. Contractor requires the right to freely assign its rights under the Agreement, without the necessity of obtaining Purchaser's consent, under the following circumstances:

- to any entity into which Contractor may be merged or consolidated or that purchases substantially all the assets of Contractor.

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

## 27. PUBLICITY

27.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's products by the State of Washington or Purchaser and shall not be so construed by Contractor in any advertising or other publicity materials.

27.2 Contractor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product 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 with Contractor's Products or Services 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.

## 28. REVIEW OF CONTRACTOR'S RECORDS

28.1 Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of 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.

28.2 All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the 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. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

28.3 Contractor shall incorporate in its subcontracts this section's records retention and review requirements. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to 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.

## **GENERAL PROVISIONS**

### **29. PATENT AND COPYRIGHT INDEMNIFICATION**

29.1 Contractor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any service supplied hereunder, or Purchaser's use of the service within the terms of this Contract, infringes any patent, copyright, 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:

- 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
- 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.

29.2 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 the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Contractor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of seven (7) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Contractor.

### **30. SAVE HARMLESS**

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.

## 31. INSURANCE

31.1 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 authorized 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 five (5) Business Days 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.

31.2 The minimum acceptable limits shall be as indicated below, unless otherwise indicated, 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 \$1 million per occurrence/\$2 million 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 million 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 million per employee for bodily injury by disease;

Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and

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

31.3 Contractor shall pay premiums on all insurance policies. Purchaser shall be included as an additional insured on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) including Purchaser as an additional insured.

31.4 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.

31.5 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 or insurance appropriate for the types of products and/or services they are providing. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

31.6 Contractor shall furnish to Purchaser copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates and endorsements 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.

31.7 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.

## **32. INDUSTRIAL INSURANCE COVERAGE**

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.

## **33. 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.)

## **34. 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.

## **35. 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 the State.

## **36. 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.

**37. 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.

**38. TREATMENT OF ASSETS**

38.1 Nothing contained in this Contract shall be construed to transfer title to any property furnished by Purchaser.

38.2 Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.

38.3 Contractor shall be responsible for any loss of or damage to property of Purchaser 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.

38.4 Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

38.5 Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.

38.6 All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

**39. 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 42.17 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**

### **40. DISPUTES**

- 40.1 In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot be resolved between the parties or by the Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 40.2 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 five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.
- 40.3 If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) 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 five (5) Business Days.
- 40.4 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.
- 40.5 Each party shall bear the cost for its panel member and its attorneys' fees and share equally the cost of the third panel member.
- 40.6 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.
- 40.7 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.
- 40.8 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.

### **41. 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.

### **42. 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 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.

Any circuit on an SOW resulting from this contract will be considered to be in a state of service failure if it meets the any of the following criteria:

- Service reliability of the circuit drops below 99.9% during any calendar year, or no more than 8.76 hours per year.
- The circuit is “out of service” (defined in section 18) for three (3) or more periods lasting ten (10) or more minutes during any ninety (90) day period.
- The circuit is “out of service” (defined in section 18) for five (5) or more periods lasting three (3) or more minutes during any ninety (90) day period.

The Purchaser may elect, at its sole discretion, to terminate any circuit on a work order resulting from this contract for convenience, and without any termination liability, if the performance of the circuit meets any of the service failure criteria mentioned above.

#### **43. LIMITATION OF LIABILITY**

43.1 The parties agree that Contractor and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA**, **Termination for Default**, and **Review of Contractor’s Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

43.2 Contractor and Purchaser shall not 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.

43.3 Neither Contractor nor Purchaser 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

### 44. TERMINATION FOR DEFAULT

44.1 If Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the Contract Administrator or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Contract may be terminated immediately by written notice from Purchaser to Contractor, or an Order may be terminated by written notice to Contractor from Purchaser.

44.2 In the event of termination of an Order or this Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of this Contract from the vendor submitting the next lowest price in response to RFQ 16-1600, or 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/Order price for the Services and the replacement costs of such Services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order or Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser resulting from Contractor's breach. Purchasers 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 Purchasers for Contractor's default.

44.3 If Purchaser 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 Contractor shall give Purchaser, as appropriate, written notice of such failure, which shall be corrected by Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Contract may be terminated by written notice from Contractor to Purchaser.

44.4 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**.

44.5 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.

### 45. TERMINATION FOR CONVENIENCE

45.1 When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser may terminate this Contract, in whole or in part, by fourteen (14) calendar days written notice to Contractor.

45.2 Purchaser may terminate its Order upon sixty (60) days notice to Contractor. If an Order is so terminated, Purchasers are liable only for payments for Products and Services received and accepted by Purchaser prior to the effective date of termination.

#### **46. TERMINATION FOR WITHDRAWAL OF AUTHORITY**

46.1 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 or any Order and prior to normal completion, Purchaser may terminate this Contract, or may terminate its Order(s), by thirty (30) Business Days 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, or to terminate its Order(s) in order to acquire similar Products or Services from a third party. If this Contract is terminated pursuant to this Section, Purchaser is liable only for payments required by the terms of this Contract for Services received and accepted by Purchaser prior to the effective date of termination.

46.2 In the event that Purchaser's end user customer's authority to perform any of their duties related to receiving services from K-20 through this contract is withdrawn, reduced, or limited in any way after the commencement of a SOW and prior to normal completion, Purchaser may terminate or amend SOW(s) or individual circuits in Service under this Contract and its associated SOW(s) without penalty upon thirty (30) days prior written notice. This section shall not be construed to permit Purchaser or its end user customer to terminate SOW(s) in order to acquire similar Services from a third party. If a SOW is terminated pursuant to this Section, Purchaser is liable only for payments required by the terms of this Contract for Services received and accepted prior to the effective date of termination.

#### **47. TERMINATION FOR NON-ALLOCATION OF FUNDS**

47.1 If funds are not allocated to Purchaser to continue this Contract or Order in any future period, Purchaser may terminate this Contract or individual circuits in service under this Contract by seven (7) Business Days written notice to Contractor. 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, or its Order(s) in order to acquire similar Products or Services from a third party. If a circuit is terminated pursuant to this Section, Purchaser is liable only for payments required by the terms of this Contract for Services received and accepted by Purchaser prior to the effective date of termination.

47.2 If funds are not allocated to Purchaser's end user customer to continue with Service under SOW(s) associated with this Contract in any future period, Purchaser may amend or terminate the applicable SOW(s) or individual circuits in Service under this Contract. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser or its end user customer to terminate SOW(s) in order to acquire similar Services from a third party. If an SOW is terminated pursuant to this Section, Purchaser is liable only for payments required by the terms of this Contract for Services received and accepted by Purchaser prior to the effective date of termination.

#### **48. TERMINATION FOR CONFLICT OF INTEREST**

Purchaser may terminate this Contract, or Purchaser its Order(s), 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 or any Order 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 or any Order.

#### **49. TERMINATION PROCEDURE**

49.1 In addition to the procedures set forth below, if Purchaser terminates this Contract, Vendor shall follow any procedures Purchaser specifies in its Notice of Termination.

49.2 Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Products and 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 or Order 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.

49.3 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.

**50. COVENANT AGAINST CONTINGENT FEES**

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

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



# Schedule A

## ***Authorized Product and Price List***

as of [Effective Date](#)

for

**Contract Number [XXX-XXX-XXX](#)**

with

**[Vendor]**

**Contractor is authorized to sell only the Products and Services listed below under this Contract.**

# Schedule B

## Statement of Work Template

This Statement of Work YY-YY (SOW) is made and entered by and between the State of Washington, Office of Financial Management, on behalf of Washington’s K-20 Education Network (“Purchaser”), and [Vendor](#) (“Contractor”), pursuant to Section 10 of that certain contract [XXX-XXX-XXX](#), for Ethernet Transport Services for K-20 Education Network.

### Recitals

**NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows. Unless otherwise defined, capitalized terms in this Amendment have the meanings ascribed to them in the contract.**

#### 1. Definitions

In addition to the definitions contained in the Contract, the following definitions shall apply to this SOW:

“**Minimum Service Commitment**” shall mean the minimum period in which Purchasers agree to keep circuits in service.

“**Node Router**” shall mean Customer Router to which vendor delivers an aggregated bundle of VLANs.

#### 2. SOW Term

This SOW shall be effective as of the date executed by Purchaser and Contractor (the “Effective Date”) and continue in full force and effect through [xxxxx xx,xxxx](#).

#### 3. Incorporation of the Contract

The terms and conditions of the Ethernet Contract are hereby restated and incorporated by reference in their entirety.

#### 4. Service Delivery Locations

Vendor agrees to provide during the Term of this SOW, Ethernet Services at the throughput, price, and between the endpoints specified in Attachment 1.

#### 5. Service Order and Installation

Vendor agrees to have the service installed, tested, and ready for Purchaser’s Acceptance Testing (pursuant to Section 5.6.4 Service Acceptance of RFQ 16-1600) on or before forty-five (45) days where facilities exist and ninety (90) days where facilities do not exist, from the execution of a Statement of Work. Contractor may request reasonable extensions of these intervals to at least one hundred twenty (120) days.

It is Vendor’s responsibility to coordinate the delivery of, install or arrange installation of, test and make operational all items necessary to provide the services described. Vendor agrees to provide written notification to Purchaser upon service installation in accordance with RFQ Section 5.6.4 Service Acceptance.

**6. Term of Service – Individual Circuits**

Circuits ordered on this SOW shall have a Minimum Service Commitment of twenty-four (24) months, commencing on the Service Installation Date for that site. The list of circuits covered by this SOW is incorporated by reference and attached hereto. All construction costs will be included in the first invoice.

**7. Termination Liability**

As the sole and exclusive remedy for termination of any Services prior to the end of the term, Customer agrees to pay the Vendor the termination liability as follows:

- For termination during the Minimum Service Commitment, Termination Liability shall be an amount equal to 100% of the monthly recurring cost of the Services terminated times the number of months remaining in the Minimum Service Commitment period, plus 40% of the monthly recurring charges times the number of months remaining in the Term of this SOW after the Minimum Service Commitment.
- For termination after the Minimum Service Commitment, Termination Liability shall be an amount equal to 40% of the monthly recurring charges times the number of months remaining in the Term of this SOW.
- For K-20 sites leaving the K-20 Education Network, Termination Liability shall be an amount equal to 100% of the monthly recurring cost of the Services terminated, times the number of months remaining in the Minimum Service Commitment period.

In Witness Whereof, the parties hereto, having read this SOW YY-YY to Contract Number KXXXX in its entirety, do agree thereto in each and every particular.

[Signature Blocks Identical to Contract]