Contract #060915

for

ePortfolio Software and Services

Between the

Center for Information Services

and

Chalk & Wire

Effective Date: _____

HOSTED SERVICES CONTRACT

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Exhibits

Exhibit A: ePortfolio Request for Quotation and Qualification
Exhibit B: Vendor's Proposal
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Exhibit D: Lloyds of London Insurance

Note: Exhibits A and B are not attached but are available upon request from the CIS Contract Administrator

HOSTED SERVICES CONTRACT

NUMBER 060915

PARTIES

This Software License and Hosted Services Contract (hereinafter referred to as "Contract") is entered into by and between the State of Washington, acting by and through the Center for Information Services, an agency of Washington State government (hereinafter referred to as "CIS") located at 3101 Northup Way, Bellevue, WA 98004-1449 and Chalk & Wire, a corporation, (hereinafter referred to as "Vendor"), located at 19 Leawood Court, St. Catherines, Ontario, L2T 3R5, Canada, for the purpose of providing ePortfolio2 Software.

RECITALS

WHEREAS, the State of Washington, acting by and through CIS, conducted a Technology Assessment competitive solicitation (Exhibit A) as specified in the State of Washington Information Services Board (ISB) Information Technology Investment Standards for ePortfolio products in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, Chalk & Wire submitted a timely proposal to CIS's competitive solicitation (Exhibit B); and,

WHEREAS, CIS evaluated all proposals properly submitted in response to the above-referenced competitive solicitation and has identified Chalk & Wire as the apparent successful Vendor; and,

WHEREAS, CIS has determined that entering into a Contract with Chalk & Wire will meet the needs of the Colleges and will be in the Colleges' best interest;

NOW THEREFORE, CIS awards to Chalk & Wire this Software License and Hosted Services Contract which shall govern Vendor's furnishing the software products and other Related Services as indicated on Schedule A (attached hereto), in accordance with the terms and conditions of this Contract. This Contract is not for personal use.

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

1.   Definition of Terms

Definitions as used throughout this Contract shall have the meanings set forth below.

"ASP" shall mean Application Service Provider, which is synonymous with the term Hosted Services.

"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.

"CIS" shall mean the same as the Center for Information Services.

"CIS Contract Administrator" shall mean that person designated by the CIS to administer this Contract on behalf of Purchasers as further defined in the section titled CIS Contract Administrator.

"Colleges" shall mean the thirty-four (34) Community and Technical Colleges of Washington State identified in Schedule B attached hereto.

"Contract" shall mean this document, all schedules and exhibits, and all amendments hereto.

"Data Storage Facility" Facilities contracted by software vendors to store data and house the software application.

"Delivery Date" shall mean the date by which the Software ordered hereunder must be delivered.

"Execution Date" shall mean the date of the last signature of a party to this Contract.

 "Exhibit A" shall mean the competitive solicitation for ePortfolio Software issued by the Washington State Center for Information Services.

"**Exhibit B**" shall mean the Vendor's response dated 7 April 2006.

"Hosted Services" shall mean software accessed remotely via the web and other related support services.

"Hosting Facility" shall mean the same as Data Storage Facility.

"License" shall mean the right to use the Software that is granted by this Contract and governed by its terms and conditions.

"Licensed Software" shall mean Software that is licensed pursuant to this Contract.

"**Order Document**" shall mean any official Purchaser document and attachments thereto specifying the Software to be purchased from the Vendor under this Contract.

"**Purchaser**" shall mean students of the Washington State Community and Technical Colleges.

"**RCW**" shall mean the Revised Code of Washington (Washington State Law).

"**Related Services/Services**" shall mean those Services provided under this Contract and related to the Software license being acquired, that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

"**Software**" shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor.

"**Specifications**" shall mean the technical and other specifications set forth in the Technology Assessment competitive solicitation, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B, collectively.

"**Subscriber**" shall mean the students of Washington State's Community and Technical Colleges.

"**Subscription**" shall mean the right to receive hosted services as specified under this Contract.

"**Vendor**" shall mean Chalk & Wire, its employees and agents. "Vendor" also includes any firm, provider, organization, individual, or other entity performing Services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

"**Vendor Contract Administrator**" shall mean a representative of the Vendor who is assigned as the primary contact person with whom the CIS Contract Administrator shall work for the duration of this Contract unless replaced, with advance CIS approval, by another representative.

CONTRACT TERM

2. **Term**

    2.1. Term of Contract

        2.1.1 Initial Term. The initial term for purchases under this Contract shall be three (3) years, commencing upon the date of its execution by both the parties. The Execution Date of this Contract shall be the date of the last signature hereto.

2.1.2. <u>Subsequent Term</u>. The term of this Contract may be extended by additional three (3) year terms unless terminated by CIS by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

3. Survivorship

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled <u>Disputes</u>, <u>Limitation of Liability</u>, <u>Patent and Copyright Indemnification</u>, and <u>Protection of Purchaser's Confidential Information</u> shall survive the termination of this Contract.

PRICING, INVOICE, AND PAYMENT

4. Pricing

4.1 The Vendor agrees to provide the Software and Related Services at the costs, rates, and fees set forth in Schedule A attached to this Contract. No other costs, rates, or fees shall be payable to the Vendor.

4.2 At least one hundred-twenty (120) days before the end of the then current term of this Contract, license term, or term of maintenance and support, the Vendor may propose fees and rate increases by written notice to the CIS Contract Administrator. Price adjustments will be taken into consideration by the CIS Contract Administrator when determining whether to extend this Contract.

5. Taxes

CIS will pay sales and use taxes imposed on the Software, Maintenance or Related Services acquired hereunder. The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which CIS does not hold title. CIS, as an agency of the Washington State government, is exempt from property tax.

6. Invoice and Payment

Invoices for work performed shall be submitted in writing, to CIS, in the format provided below. In addition to agreed-upon charges, invoices shall include such information as is necessary for CIS to determine the exact nature of all expenditures and shall reference this Contract number 060915. Additional payment terms or invoice instructions may be agreed upon by CIS and the Vendor.

The Vendor will submit properly itemized invoices and/or vouchers to CIS quarterly. Invoices shall provide and itemize, as applicable:

a)   Contract number 060915*;*
b)   Description of Software, including quantity ordered;
c)   Net invoice price for each item;
d)   Subtotals for each college;
e)   Applicable taxes;
f)   Shipping costs;
g)   Other applicable charges;
h)   Total invoice price; and
i)   Payment terms including any available prompt payment discounts.

6.1.   Such payments shall be due and payable within thirty (30) calendar days after receipt of properly prepared invoices.

6.2.   Incorrect or incomplete invoices will be returned by CIS to the Vendor for correction and reissue.

6.3.   This Contract number 060915 must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. CIS shall not honor drafts, nor Accept goods on a sight draft basis.

7. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to CIS the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

SOFTWARE LICENSE

8. **License Grant**

8.1 No license is granted under this contract. Software is made available by subscription via the internet.

8.2 Source code shall be held in escrow. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, CIS shall have a right to possession of the source code.

8.3 All data is property of Purchaser.

9. **Software Ownership**

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser, CIS, and the Colleges that Vendor is the owner of the Software hereunder or otherwise has the right to grant to Purchaser the usage rights to the Software provided by Vendor through this Contract without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

10. **Software Code Escrow**

10.1. Vendor's ISP (Magma) shall be the Escrow Agent and maintain a full, live site copy of the entire code suite. The source code will be subject to all automatic upgrades. Vendor will pay for the costs of its maintenance. The ISP will also maintain:

   a) A complete copy of any existing design documentation and user documentation; or

   b) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

10.2. Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to Escrow Agent, provided that Vendor, CIS, and Escrow Agent shall first enter into a supplementary escrow agreement attached as

Schedule B – *Escrow Agreement*. Vendor and CIS shall use best efforts to enter into such an Escrow Agreement as soon as possible after the Effective Date of this Contract, but not later than thirty (30) calendar days after the Effective Date of this Contract.

10.3. Verification of Source Code Escrow Package. At its option and expense, CIS may request that the completeness and accuracy of any Source Code Escrow Package be verified.

a) Such verification may be requested once per Source Code Escrow Package.

b) Such verification will be conducted by Escrow Agent or, upon at least ten (10) Business Days' prior notice to Vendor, by another party ("Verifier") acceptable to Vendor, after full disclosure to Vendor of information reasonably requested by Vendor about Verifier.

c) Prior to conducting the verification, Verifier shall first execute a confidentiality agreement prepared by Vendor that precludes Verifier from disclosing any information to CIS about the Source Code Escrow Package other than whether the Source Code Escrow Package was found to be complete and accurate.

d) Unless otherwise agreed at the time by Vendor and CIS, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification.

e) At its discretion, Vendor may designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. Verifier will be CIS's sole representative at the verification.

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

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

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

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

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

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

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

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

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

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

11. Reauthorization Code

Reserved.

12. Software Documentation

12.1 Vendor will provide Software documentation at the earlier of installation of this Software or within thirty (30) calendar days after execution of this Contract or as otherwise mutually agreed adequate for use of Software ordered under the sections of this Contract. Manual upgrades will be provided on a no-charge basis through the Vendor's local sales and service office in the form of PDF or other common digital format.

12.2 For all Vendor Software furnished to the Purchaser within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to CIS, if requested, at no additional cost, sufficient documentation in the form of PDF files or other suitable digital document to permit the CIS to maintain, modify or enhance such purchased or Licensed Software.

12.3 Vendor grants to CIS the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

13. No Surreptitious Code Warranty

13.1. Vendor warrants to Purchaser and CIS that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code or any Unauthorized Code as defined below. Vendor further warrants that Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict Purchaser's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

13.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the Purchaser of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a Purchaser's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

13.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

13.4. Vendor will defend Purchaser, CIS, the Colleges, and the State of Washington against any claim, and indemnify Purchaser, CIS, the Colleges, and the State of Washington against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

VENDOR'S RESPONSIBILITIES

14.   Software Delivery

Vendor shall maintain a web site from which Purchaser may access the Software. Such web site shall be of a design approved by both Vendor and Purchaser prior to this Contract's execution.

15.   Installation of Software by Purchaser

All installation of the Software subscribed to pursuant to this Contract for use by Purchaser will be by, and at the sole expense of Purchaser.

16.   Software Maintenance and Support Services

Vendor shall provide correction service at no additional cost to the Purchaser, CIS, or the Colleges for any error, malfunction, or defect, if any, in the Vendor-supplied Software which, when used as delivered, fails to perform in accordance with Vendor's officially announced technical specifications or Vendor's proposal and which the Purchaser, CIS, or the Colleges shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to the Purchaser, CIS, and the Colleges.

Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor. Such releases shall be provided to Purchaser pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release that are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.

Vendor shall provide help and maintenance services as detailed in Schedule A.

17.   Software Upgrades and Enhancements

Vendor shall:

17.1   Supply, at no additional cost, updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware operated by Vendor and/or its Hosting Facility.

17.2   Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to Purchaser; and

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

18.   Installation (Site) Security

While on College premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

19.   Use of College Property and Facilities

19.1   Any property of the College furnished to the Vendor shall be used only for the performance of this Contract.

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

19.3   The Vendor shall surrender to the College all property belonging to the College upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or Subcontractors.

20. Vendor Commitments, Warranties, and Representations

20.1 Any written commitment by the Vendor within the scope of this Contract shall be binding. Failure of either party to fulfill such a commitment may constitute breach.

20.2 For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:

20.1.1. Prices, discounts, and options committed to remain in force over a specified period of time;

20.1.2. Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, Services, or other products within the scope of this Contract;

20.1.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;

20.1.4. Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and

20.1.5. Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, Services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

21. Protection of Purchaser's Confidential Information

21.1 Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data,

law enforcement records, agency source code or object code, agency security data, financial identifiers, education, business, receipt of governmental services, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or 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. Vendor 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. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

21.2   Immediately upon expiration or termination of this Contract, Vendor shall, at CIS's option: (i) certify to CIS that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps CIS requires of Vendor to protect Purchaser's Confidential Information.

21.3   [Executive Order 00-03 requires agencies to establish reasonable procedures to review, monitor, audit, or investigate the use of personal information (included in the definition of Confidential Information) by vendors and subcontractors and provide for these procedures in contracts. The following subsection is one method. If not reasonable for this Contract, insert an alternative method for compliance.

21.4   CIS reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases. Salting is the act of placing a record containing unique but false information in a database that may be used later to identify inappropriate disclosure of data contained in the database.

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

22.   Training

22.1   See training details and pricing in Schedule A.

22.2 CIS and colleges shall have the right, so long as the Software is purchased hereunder is in use by Purchaser, to give instruction to College personnel in all courses described in Schedule A without charge, using materials supplied by Vendor. Such use by CIS and the Colleges of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation or infringement upon any patent, copyright, or other proprietary right of Vendor. Vendor grants to CIS and the Colleges the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

CONTRACT TERMINATION

23. Termination for Default

23.1. If the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the CIS Contract Administrator shall give Vendor written notice of such failure or violation which shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If Vendor's failure or violation is not so corrected, this Contract may be terminated immediately by written notice from the CIS Contract Administrator to the Vendor. The option to terminate this Contract shall be at the sole discretion of CIS.

23.2. In the event CIS terminates the Contract for default by the Vendor, CIS shall have the right to procure the Software or Services that are the subject of this Contract on the open market, and the Vendor shall be liable for all damages including, but not limited to: (1) the cost difference between the original Contract price for the Software or Services and the replacement costs of such Software or Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of the Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; (3) any other costs to the Purchaser or CIS resulting from the Vendor's breach. The Purchaser or CIS shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the Purchaser or CIS for the Vendor's default.

23.3. If either CIS violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its performance obligations under this Contract, then the Vendor shall give the CIS Contract Administrator

written notice of such failure that shall be corrected by CIS within thirty (30) calendar days. If Vendor's failure to perform is not so corrected, this Contract may be terminated by written notice from the Vendor to the CIS Contract Administrator.

23.4. If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a <u>Termination for Convenience</u>.

23.5. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

24. Termination for Convenience

24.1. When it is in the best interest of the Colleges, the CIS Contract Administrator may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to the Vendor. Invocation of the <u>Termination for Withdrawal of Authority</u> or <u>Termination for Non-Allocation of Funds</u> sections shall be deemed a termination for convenience but will not require such thirty (30) calendar days notice.

24.2. If this Contract is so terminated, CIS is liable only for payments required by the terms of this Contract for Software and Related Services received by the Purchaser prior to the effective date of termination.

25. Termination for Withdrawal of Authority

In the event that the authority of CIS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, CIS may terminate this Contract under the <u>Termination for Convenience</u> section. This section shall not be construed so as to permit CIS to terminate this Contract in order to acquire similar Software from a third party.

26. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, CIS 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. CIS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to CIS in the event this section shall be exercised. This section shall not be construed so as to permit CIS to terminate this Contract in order to acquire similar Software or Services from a third party. In the event a Purchaser has Software or Services on order at the time of the termination of the Contract for convenience, the

Purchaser shall have the option of taking delivery of the products on order at the original Contract price.

27. Termination for Conflict of Interest

27.1. CIS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

27.1.1. Ethics in Public Service, chapter 42.52 RCW; or

27.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

27.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, CIS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

28. Termination Procedure

28.1. Upon termination of this Contract, CIS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser or CIS any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.

28.2. Unless otherwise provided herein, the CIS shall pay to the Vendor the agreed-upon price, if separately stated, for the Software or Services received by the Purchaser: PROVIDED THAT, In no event shall the CIS pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. CIS may withhold from any amounts due the Vendor for such completed work or Services such sum as CIS determines to be necessary to protect the Purchaser from potential loss or liability.

28.3. After receipt of a notice of termination, and except as otherwise directed by the CIS Contract Administrator, the Vendor shall:

28.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;

28.3.2. If termination is to the Software subscription purchase sections of this Contract, then Purchaser shall place no further orders

and Vendor shall accept no further orders for additional Software subscriptions;

28.3.3. If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;

28.3.4. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of CIS to the extent required, which approval or ratification shall be final for the purpose of this section;

28.3.5. Complete performance of such part of this Contract as shall not have been terminated by the CIS Contract Administrator;

28.3.6. Take such action as may be necessary, or as the Purchaser or CIS Contract Administrator may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which the Purchaser has or may acquire an interest;

28.3.7. Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.

28.4. The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser or CIS as the result of termination.

DISPUTES AND REMEDIES

29. Disputes

Disputes arising between any Purchaser and Vendor shall be referred to the CIS Contract Administrator for resolution. In the event the CIS Contract Administrator may not resolve the dispute, then the dispute will be forwarded to the formal dispute resolution process:

- CIS shall appoint a member to the Dispute Panel.

- Vendor shall appoint a member to the Dispute Panel.

- CIS and the Vendor shall jointly appoint a member to the Dispute Panel.

- The Dispute Panel shall evaluate the dispute and make a determination of the dispute.

- The determination of the Dispute Panel shall be final and binding on the parties hereto.

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

30. Attorneys' Fees and Costs

30.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred for such litigation, including necessary fees, costs, and expenses for Services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

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

31. 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.

32. Failure to Perform

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

33. Limitation of Liability

33.1. The parties agree that neither the Vendor nor CIS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except for a claim or demand based on

patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled <u>OSHA/WISHA</u>, <u>Termination for Default</u> and <u>Review of Vendor's Records</u> are not consequential, incidental, indirect, or special damages as that term is used in this section.

33.2. Neither the Vendor nor CIS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or CIS. 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 the Vendor, CIS, or their respective Subcontractors.

33.3. If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor CIS shall be liable for damages for delays, unless the Software or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or CIS to meet its required performance schedule.

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

CONTRACT ADMINISTRATION

34. 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 Software) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: Chalk & Wire
Attention: Geoff Irvine
19 Leawood Court
St. Catherines, Ontario,
L2T 3R5, Canada
877-252-2201

to CIS at: CIS
Attention: Procurement Services Manager
3101 Northup Way
Bellevue, WA 98004-1449
425-803-9783
425-803-9650 fax
dpoarch@cis.ctc.edu

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

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

35.1. Applicable federal and state statutes, laws, and regulations;
35.2. Sections of this Contract;
35.3. Schedule A - Authorized Product and Price List;
35.4. Exhibit A - State of Washington, CIS Technology Assessment competitive solicitation;
35.5. Exhibit B - Vendor's Response to the CIS RFQQ, including all written information provided with Vendor's response;
35.6. All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to the Purchaser and used to effect the sale of Software to the Purchaser, or purports the Software is fit for a particular purpose or attests to the Software's engineering level, operating condition, functions, capabilities, or merchantability.

36.   Entire Agreement

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

37.   Additional Services and Software

CIS and Vendor agree that additional Services and/or Software, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services and/or Software, pricing and additional terms and conditions as relevant. The additional Services and/or Software shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

38.   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 an authorized representative of the Vendor and the CIS Contract Administrator. Only the CIS Contract Administrator or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the Purchaser.

39.   Vendor Account Manager

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

Vendor Account Manager: Geoff Irvine, CEO
Address: 19 Leawood Court, St. Catherines, Ontario, L2T 3R5, Canada
Phone:877-252-2201   Fax: 905-684-5943   E-mail: geoff@chalkandwire.com

40.   CIS Contract Administrator

CIS shall appoint a Contractor Administrator who will be the CIS Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The CIS Contract Administrator will manage this Contract on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract.

41.   Vendor Contract Administrator

The Vendor shall appoint a Vendor Contract Administrator for the CIS account. The Vendor Contract Administrator will be the principal point of contact for the CIS Contract Administrator concerning the Vendor's performance hereunder and for receipt of notices. The Vendor Contract Administrator will also serve as the focal point for business matters, support coordination, and administrative activities.

42.   Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

43.   Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for King County, Washington.

44. Assignment

With the prior written consent of CIS, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the Purchaser or CIS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.

With the prior written consent of the Vendor, which consent shall not be unreasonably withheld, CIS 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 CIS of any of its duties and obligations hereunder.

45. Publicity

The Vendor agrees to submit to CIS all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's or CIS's name is mentioned or language used from which the connection of the Purchaser's or CIS's name therewith may, in CIS's judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of CIS.

46. Review of Vendor's Records

The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and 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 one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.

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 CIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within King County. During the six (6) year period after this Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.

The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the CIS's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

47. Subcontractors

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

In the case of Purchasers using Vendor's Hosted Services, Vendor will notify CIS in the event Vendor plans to discontinue using Magma as their Hosting Facility. Such notification shall be sent to CIS at least 30 days prior to moving data or servers to the new location. The notification will include all of the information required to demonstrate the new Hosting Facility's compliance with the contract. CIS must have an opportunity to review these specifications. CIS retains the option of canceling the contract if the new Hosting Facility does not meet with CIS approval.

GENERAL PROVISIONS

48. Patent and Copyright Indemnification

48.1. Vendor will, at its expense, defend or settle any claim against the Purchaser, CIS, or the Colleges that Software or work products supplied hereunder infringe any patent, copyright, utility model, industrial design,

mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that the Purchaser, CIS, or the College:

48.1.1.   Promptly notifies Vendor in writing of the claim; and

48.1.2.   Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

48.1.3.   Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser, CIS, or the Colleges, except costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser, CIS, or the College agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and refund its depreciated value. No termination charges will be payable on such returned Software. Depreciated value shall be calculated on the basis of a useful life of five (5) 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 365 days per year.

48.1.4.   Vendor has no liability for any claim of infringement arising from:

- Vendor's compliance with any designs, specifications or instructions of the Purchaser;

- Modification of the Software by CIS, a College, or a third party without the prior knowledge and approval of Vendor; or

- Use of the Software in a way not specified by Vendor; unless the claim arose against Vendor's Software or Services independently of any of these specified actions.

48.2.   Vendor passes through and assigns to CIS, the Colleges, and the Purchaser any and all Patent and Copyright Indemnification provided by Chalk & Wire.

49.   Indemnification

Vendor shall indemnify and hold harmless Purchaser, CIS, and the Colleges from and against any damage, cost, or liability, and reasonable attorneys' fees resulting from any claim, and for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of its officers, employees, agents, or subcontractors, except that students and faculty are not indemnified or held harmless for their actions that are illegal or harmful to the good of the whole and/or another person.

Vendor agrees to indemnify and hold CIS, the Colleges, and the Purchaser harmless for any damages related to the Vendor's or their contractor's unauthorized use or release of personal information.

50.   Insurance

50.1   Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to CIS within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at CIS's sole option, result in this Contract's termination.

50.2   Vendor will maintain Lloyds of London coverage or insurance coverage from carrier in the same/comparable international class for Information Technology Errors and Omissions Insurance, and Commercial General Liability Insurance in the amount of not less than $2,000,000 (CDN) per occurrence. Copies of these policies are attached hereto as Exhibit D. When insurance carriers change, copies of new coverage that meets or exceeds the requirements above will be provided within 30 days of issuance to CIS.

50.3   Vendor shall include all Subcontractors as insured under the above mentioned insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

50.4   Vendor shall furnish to CIS copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this

section. Failure to provide evidence of coverage may, at CIS's sole option result in this Contract's termination.

50.5 By requiring insurance herein, CIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to CIS in this Contract.

51. Licensing Standards

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

52. UCC Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of Services, such Services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

Notwithstanding the <u>Section Headings, Incorporated Documents and Order of Precedence</u> section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

53. Antitrust Violations

Vendor and CIS recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to CIS 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 the Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

54. Compliance with Civil Rights Laws

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII

of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default section of this Contract, and the Vendor may be declared ineligible for further contracts with the CIS. The Vendor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

55.   **Quiet Possession and Usage**

Vendor warrants that the CIS, upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Software for the term provided without suit, molestation, or interruption.

56.   **Severability**

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

57.   **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 hereto.

58.   **Treatment of Assets**

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

The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.

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

The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.

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

59.   Vendor's Proprietary Information

Vendor acknowledges that CIS is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, CIS shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, CIS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, CIS will release the requested information on the date specified.

CONTRACT EXECUTION

60. **Authority to Bind**

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

61. **Counterparts**

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

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

Approved
State of Washington,
Center for Information Services

Approved
Chalk & Wire

| Signature | | Signature |

| Print or Type Name | | Print or Type Name |

| Title | Date | Title | Date |

Approved as to Form

Signature

Print or Type Name

Assistant Attorney General

| Title | Date |

Schedule A
PRICING
as of September 1, 2006
for Contract No. 060915

This Schedule may only be modified in writing by the CIS Contract Administrator. Vendor is authorized to sell only the products identified in this Schedule A at the prices set forth in this Schedule A under the above-referenced Contract.

PRICING

Subscription: Annual subscriptions for Vendor's software product, ePortfolio2, shall be $25 per student for an unlimited number of subscriptions, for the initial three (3) year term of this contract. Twelve (12) month subscriptions shall begin at the time the student creates their account. This fee may be re-negotiated at the end of the initial three (3) year term of this contract.

Billing: Vendor will submit quarterly billings to CIS. Billing will be subtotaled by college to facilitate CIS billing the individual colleges.

Faculty and Administration Accounts:

- Unlimited number of free assessor accounts for an unlimited amount of time.
- Ten (10) free assessor with portfolio accounts per college.
- Up to ten (10) free accounts per school to students who become members of local eportfolio help teams.

Training: See training section in the Statement of Work for training details and cost.

Consulting: $110/Hour. This is for special projects. Most consulting for implementation and maintenance or help is included in the subscription price.

Custom Programming: Customized programming for anything other than branding websites will be billed at $770 USD per day.

STATEMENT OF WORK

All material submitted in the Vendor's response is included this contract. Vendor will perform all tasks and commitments articulated in their response to the RFQQ. This Statement of Work provides highlights from the Vendor's response. The single exception is the cost of customized programming, which will be at the price specified in this Pricing Section above.

1.   TRAINING

1.1   Training Program

The Vendor shall provide three levels of training: a) Introductory Orientation, b) Early Adopter Training, and c) Training for Deployment and Implementation:

a. **Introductory Orientation.** Upon request the Vendor will provide 90-minute Introductory Orientations. The Vendor will conduct these presentations remotely in real time using WebEx. Via these presentations, the Vendor will introduce college faculty and leadership to the possible uses of a digital portfolio. The Vendor will not charge for Introductory Orientations.

b. **Early Adopter Training.** Upon request, and mutually convenient to the personnel at the early adopting College and Chalk & Wire, Vendor will provide deployment and implementation training over the telephone to Colleges that wish to implement ePortfolio2 prior to January 2007. Early Adopter Training will be conducted by either the Chalk & Wire Chief Executive Officer or the Director of Partnership Services. The Vendor shall provide the Colleges with up to 40 hours of Early Adopter Training. The vendor is not required to provide Early Adopter Training beyond December 31, 2006. The vendor will not charge for Early Adopter Training.

c. **Training for Deployment and Implementation**: The vendor will provide training for deployment and implementation of ePortfolio2. Upon completion of this training participants will be able to:

- Train students and faculty in the use of the software
- Demonstrate the tools to any interested stakeholders
- Set up the basic structures of the assessment system to meet local needs
- Outline the local information technology support required to sustain use of the system for deployment and beyond
- Show how to optimize common file types for best effect on the Web
- State the key elements that the system measures and how these can be used to ask and get answers to questions about patterns in student learning
- Create, interpret, and save/print reports generated by the system
- Execute a training plan to train both faculty and students in the use of the system

- Begin to design a deployment and implementation plan for later completion/revision at the school.

Training for deployment and implementation consists of three days of training in which participants gain the vision and skills to successfully deploy and sustain an ePortfolio authoring and assessment system. The vendor will train a maximum of 25-30 people per session. At each training session, the Colleges will provide a computer lab with 25 computers, 1 instructor's computer, 1 projector, a large screen, and audio output from the instructor computer. The vendor will provide original copies in PDF format of the most recent version of the software manuals and training materials. The Colleges will reproduce these locally. (Note the standard user manual is approximately 12 pages long. The manuals work well in digital format as provided and do not need to be printed). Students and faculty/institutions are free to print the manuals without restriction. Chalk & Wire will also provide MSWord versions at no cost and without restriction to Colleges who wish to use the materials and edit them to meet local needs. The colleges will download and install recommended free third party software on all participant computers.

Pricing: Vendor will charge the Institute Rate noted below for 2 or more colleges.

ePortfolio2 Institute Rate: The cost for the three (3) day Institute training for deployment and implementation is $1,400.00/day (expenses not included) or $1,900.00/day (expenses included). All fees quoted in USD.

Individual College Rate: The cost for 2 day training of one individual college for deployment and implementation is $3,200.00 (expenses not included) or $3,900.00 (expenses included). All fees quoted in USD

The starting date(s) for training for deployment and implementation will be as agreed by the parties.

1.2   Training Materials

Vendor will provide workshop materials for training sessions as well as "QuickStart" Guides in PDF format. These may be printed locally in paper format if desired. A full operational manual will be provided to administrators in PDF format and may be printed locally without restriction or cost from Chalk & Wire. Vendor will provide on-line tutorials for students and administrators that include step-by-step instructions in either Flash HTML formats or both as deemed best for training purposes by Chalk & Wire trainers. Each screen used also provides a help link to contextual help for that screen.

Colleges shall have the right, so long as the Software licensed or purchased hereunder is in use by Colleges, to give instruction to College personnel in all courses described above without charge, using materials supplied by Vendor. Such use by Colleges of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation or infringement upon any patent, copyright, or other proprietary right of Vendor. Vendor grants to Colleges the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

1.3   Documentation

Documentation for revisions and upgrades will be sent to all site administrators as they occur. Documentation will also be posted on the Vendor's website. Any upgrades and/or revisions to software that affect users will be fully documented in the Vendor provided online and integrated "help" files. Additionally, information about revisions/upgrades and revised collateral is posted on the Vendor's web site.

2.   SUPPORT

2.1   Phone Support

Vendor will provide toll free support from 9:00 AM through 2:00 PM PST, Monday through Friday excepting statutory holidays in Canada only. HelpDeskConnet and e-mail help (support@chalkandwire.com) are monitored Monday through Friday excepting statutory holidays in Canada until 6:00 PM PST. Help Desk Analysts (HDAs) will be available via the email tool and Help Desk Connect. At a minimum, Chalk & Wire will acknowledge a subscribers request for help within 24 hours and communicate the timeframe for assistance.

Telephone support is provided only for issues related to the use of ePortfolio's functionality, not for related third party software such as PowerPoint that may be used in conjunction with the ePortfolio software, or general computer use. The Vendor and CIS will negotiate an increase in telephone support staff and hours to the benefit of both the Vendor and the Colleges if demand warrants it.

2.2   Help System

Tier 1: Each page of the software system will provide a contextual help link to instruct the user about features and functions relevant to the page they are on. The software includes an FAQ. As well, users may join an on-line support community in the form of a "DocuWiki" . If a user still has questions, they may access on-line support.

Tier 2: If problems are not solved by the above method, users will contact the Vendor's help desk via "Help Desk Connect" 24/7. This is an asynchronous tool that instantly logs their question and directs it to on-duty HDAs. The analyst will work with the user to resolve the issue with a goal of same day ticket closure.

Tier 3: When the HDA determines there is a software bug, the help team strives for same-day resolution and high levels of responsiveness. Where technical circumstances do not permit a 24 hour resolution the user will be contacted and informed of progress on the ticket until it is resolved. The user may click to see the "in-house" progress and discussion among staff to solve the issue. They may also, at any juncture, use this access to

update their question or add to their description of the problem. If warranted, helpdesk staff will contact users directly by phone at no charge and may either "talk" the user through the issue, or employ WebEx™ to share desktops for a hands-on session. This tool permits inter-desktop control, file exchange and real-time video and audio conferencing.

Vendor will review all help requests each day to assure that everything that can be done has been done to achieve same day closure.

2.3   Assessment Help

Vendor will provide Assessment Consultants for real time assistance to college administrators seeking feedback about their assessment system design.   The Assessment Consultants begin with a review of the issue and provide a suggested course of action. Temporary solutions will be provided where appropriate while the college administrator implements the agreed to solution. When appropriate, the Assessment Consultant will initiate a follow-up call to receive feedback about the implemented solution. This cycle will be repeated as required. This service is on-demand and provided at no charge.

2.4   Network

The average response time for network and systems problems is five minutes. The Data center is staffed 24/7. When metrics sound an alarm, the data center responds to this at that moment, sending a tech to check the causes and if need be do this directly at the box.

3.   SOFTWARE FUNCTIONALITY

3.1   APPLICATION FEATURES

3.1.1 Rubrics

The Vendor's performance assessment and program audit development tools shall support all of the following:

- Alignment of performance labels,

- Choice of pre-set rubric structures for quick authoring (based on performance labels), and;

- An advanced form for customizing all aspects of the rubric.

"Formula" rubrics may be developed to collect criteria from different rubrics, weight the selected criteria, and set the protocol for "missing assessments". Rubrics may be tested to see how assessors will view them. Rubrics may be copied/cloned, renamed and edited for rapid deployment of similar rubrics under different names.

Rubrics may also be tested for inconsistencies in scoring that will affect calculations, and may be outside of the parameters established for rubrics by the institution. Rubrics may be linked to specific assessment groups (departments/programs) to facilitate distributed authoring of rubrics, and to target assessment of specific learners associated with specific assessment groups.

Vendor will provide a library of 94 rubrics that each college may choose from. The vendor will place the fully editable rubrics library in the college's account upon deployment.

A rubric may have up to 70 criteria and all criteria may be weighted. Calculations are automatic upon assessment and specific to the requirements of the rubric set by the institution.

There are two ways to view rubrics.

- Rubrics may be displayed in a standard format showing the full descriptors of each level of performance for each criterion. In this case, the criteria are presented one at a time to facilitate easy reading of detailed rubrics.

- Alternatively, the assessor may choose "Express Assess" which presents all criteria on the same screen with drop-down menus for selection of the levels of performance.

In both cases, comments may be given for each criterion. Custom formatting may be achieved through the entering of raw html into the text box.

3.1.2 Rubric Design

Rubrics are usually linked to the sub-sections of the TOC (the assessment points for artifact presentations) however; they may also be linked to main sections.

More than one rubric may be applied to a sub-section (usually used only when there are multiple artifacts that shall be assessed separately). We recommend using one comprehensive rubric for each subsection, rather than many, if it all possible. Rubrics generally include:

• The name of the Rubric: The short, but descriptive, name of the assessment.

• A general description for the whole rubric (optional): This is presented to the assessor on the screen viewed before they start assessment. It may contain specific instructions, the rationale for the use of the rubric, and even research citations that validate the rubric.

• The Assessment regime: This indicates the rules and settings that will govern who will do the assessment, and how it happens.

- Department: Users may determine if the rubric and its assessment data is to be associated with a specific department.

- Criterion 1: This is the first category of observations users will be making using this rubric and will have multiple levels in it representing each of the different scores that are possible with this rubric. Each criterion that makes up the rubric will consist of the following:

    - A short title - a common description for this criterion (optional, but may contain a specific outline of the required performance at the highest level, or any other information necessary);

    - The weighting - pre-set to 1.0, but may be changed if needed to raise or lower the scored weighting for this criterion relative to the other criterion in this rubric;

    - The level of performance labels - e.g. Weakly Expressed, Evident, Mostly Evident or met / not met, and the scores for each label;

    - Description - this is where objective attributes of performance are stated. We strongly recommend the use of these detailed performance descriptions. They assist assessors significantly because they present clear criteria and help assessors fix their scoring more accurately given what they are actually seeing. Such detailed performance descriptions also clarify for the student what the nature of their performance is, and the expectations for as yet unachieved levels of performance. Such clarity also reduces inter-rater reliability issues with rubrics, and raises the overall validity, reliability, and accuracy of assessment.

This pattern is repeated for all remaining criterion in the rubric. Although the default is 7, there may be up to 40 criteria per individual rubric.

3.1.3 Aggregate Searches

The software will disaggregate/aggregate data across multiple portfolios, across multiple rubrics and criterion, disaggregated by demographic filters as well as periods of time. The software exports data for use in additional statistical applications such as SPSS.

3.1.4 Archiving Portfolios

The software will save portfolios to any type of portable media such as external hard drives, CD, DVD, or other formats. Portfolios or individual portfolio elements may be saved in their entirety onto other media. Saved portfolios (or portfolio elements) remain fully functioning. Individual artifacts saved in the Chalk & Wire system, but not yet active elements of a portfolio, may also be saved to alternate media. The software will download individual portfolios in whole or in part and

save to a local disk. Downloaded portfolios will operate locally as if being viewed on the Web. The software will print portfolios.

3.2. Collection/Content Management

3.2.1 Individual Repositories

The vendor will provide each ePortfolio user with an unlimited amount of secure online file storage space. The vendor will provide each user the ability to create an unlimited number of portfolios.

Vendor will not issue any required surcharge or upgrade for this unlimited storage space.   If at the discretion of the administrator there needs to be a limit placed on storage space, the vendor will implement those limits by individual user, group, or college.

The software will upload any type of file with the exception of .exe and .BAT files The Vendor reserves the right to refuse to upload files types that have been altered or misused to render them harmful to Chalk & Wire's services or its users The application uploads files individually or in groups via .zip files (WINZIP). The software breaks out (unzips) multiple files automatically. The software organizes files into folders at the discretion of the user. The software links to files hosted on other servers and links to websites either inside or outside the C&W system.

3.2.2 Artifact Authenticity

The application will maintain an archived copy of the student work as it existed at the time of submission. Subsequent changes to the artifact/file are not changed in the archived version.

3.2.3 File Format Support

The software will support all file types except .EXE and .BAT. The application supports all forms of text files, including .pdf, audio, image and video files. The Vendor reserves the right to refuse to upload files types that have been altered or misused to render them harmful to Chalk & Wire's services or its users

Application administrators may limit the file types used to between 1 and 10 megabytes --10 megabytes being the upward limit for any single upload.

3.2.4 User File and Disk Limitations

The vendor will place no limitation on total amount of space used by individuals or institutions nor will the vendor issue any required surcharge or upgrade for this unlimited storage space.

Application administrators may set limits to file size uploads used to between 1 and 10 megabytes. 10 megabytes being the upward limit for any single upload

3.2.5 Repository Organization

The application will allow the user to organize files and artifacts into folders and sub-folders.

3.2.6 Multiple Associations

The application will create an unlimited number of portfolios repurposing and re-using artifacts (files). The application uploads artifact files once; subsequently the artifact may be inserted (added) into / in an unlimited number of portfolios.

3.2.7 Teacher/Student Interaction

The application will securely share student portfolios completely, or in part, with teachers for the development of review and non-critical dialogue. The application will include a comment feature to send teacher comments back to the student. The application will allow students to share their eportfolios with each other for peer review.

The application will provide a formal assessment feature for student submission of eportfolios in whole or in part to a single instructor or multiple assessors. The application captures assessment scores via a prepared rubric. The application provides functions for the assessor to record personal comments for the students. The application includes functions that reassess items again at another time, for example, after resubmission.

3.2.8 Customizable Structured Artifacts

The structure of an eportfolio is referred to as the table of contents (TOC). The application will provide functions for institution/department/faculty TOC development for formal assessment. The TOC links to assessment rubrics. The application allows students to add items to the TOC, but not change it. The application provides functions for students to create non-assessment portfolios, for example, students may create a customized TOC for the purposes of employment. The eportfolio user may include items such as previous employment, education, etc.

3.2.9 Search and Sort

The application will provide functions that attach key words to items uploaded to the artifact library. The application will search items by file name, key word, specific date or a date range.

3.2.10 Customizable Metadata for Files

The software will provide functions to enter metadata for any file (supports multiple tags, comma separated). The metadata may then be used to search for files.

3.2.11 File Versioning

Students may create multiple versions of an essay. The software keeps track of which version was formally assessed.

The software will archive a copy of work submitted if altered after submission but prior to assessment and retain a copy of the work so that it is linked to the actual work submitted. The application will preserve the archived work regardless of subsequent changes by the student. The software will provide functions that allow an assessor to view work as it was at the time of submission, as well as in its current form.

The software will automatically copy and transfer submitted work to the colleges' local servers if requested. Upon request, the application will store permanent, complete, local copies of all work samples submitted. The software will not allow work samples that have been submitted but not assessed to be altered by students without archiving the original copy submitted for assessment, maintaining data integrity over long periods of time. Note: Post assessment, students may alter the files as part of the legitimate revision and learning process. Where the altered version is subsequently submitted, it too will be archived in the event that any attempt is made to alter it between the time of submission and assessment. Where files submitted are not altered, no archive is necessary.

Alternatively, the vendor will fully host all aspects of the service using a state of the art ISP to protect and deliver user data and a statistically significant sample of all archived assessment work samples.

3.3   Selection and Presentation

3.3.1   Multiple Presentations

The software will provide functions that enable students to create an unlimited number of portfolios and use and re-use the same artifacts in any configuration they wish. The application will copy eportfolios so the user can make changes and repurpose the eportfolio. Additionally, students may present or share their individual portfolios in whole or in part to anyone they wish.

3.3.2   Presentation Templates

The application will provide templates to create portfolios. The application also will allow users to supply their own templates.

3.3.3   Selection Templates

Upon request, the vendor will pre-load installations with organizational templates (i.e., Tables of Contents). The Chalk & Wire CEO and/or Director of Partnership Services, at no charge, will work with faculty and institution leadership to develop

custom Tables of Contents or to refine the existing Tables of Contents as necessary. The application will provide a multi-level outline structure, wherein content may be organized to meet course, semester, program or agency goals. Alternatively, the application will allow users to develop a customized Table of Contents.

3.3.4 Rich Media and Design

The application will accept any materials that may be captured digitally with the exception of .exe and .bat files. The application will fully support HTML and other rich media in the actual pages of the portfolio.

3.3.5 Simple User Designed Presentations.

The application will provide functions that use either html or a simple text editor to add eportfolio content. The application will select simple color combinations with a click. The application will provide custom colors via hexadecimals. The application will provide functions to add images, (personal images or from the image galleries provided by the system), align images, make images link to external URLs or pages within the portfolio, upload a new artifact (any file) or access one previously uploaded, and add an external URL.

The software will provide functions to add and edit additional blocks of content to an established portfolio page. The application will allow the user to alternate between html and text mode.

The application will include functions to alter the banners and menu colors (text and background). The theme and table of contents will be fully customizable. The application will provide functions to change the entire graphic theme with one click.

3.3.6 Rich User Designed Presentations

The application will provide functions to design custom templates.

The application will provide choice from among dozens of graphic templates. Users may also create their own templates. The application will include functions to add url links to the portfolio.

3.3.7 Shared templates

The application will provide functions to custom design Tables of Contents and makes them generally or specifically available. The application provides functions to custom design and share assessment instruments (rubrics) and topical sections (with questions) in demographic and standard surveys supported by the survey tool in the system.

The application will tag institutional selected images resources to specific groups/departments/programs to aid in authoring portfolios in the form of one or more optional "Image Galleries". These are intended to act as "stock images" for

users relative to their programs of learning. The colleges take sole responsibility for creating and maintaining such custom galleries, and also for assuring that in their presentation and use there are no copyright or royalty infringements in the use of the images.

3.4 Communication, Collaboration, and Community

3.4.1 Comments on Presentations

The application will provide functions for faculty to comment on student work either formally, through the assessment feature, or informally through the comment feature. Additionally, comments may be communicated through regular email. To comment on student work through the formal assessment feature, a student would submit the item for assessment. The faculty (assessor) reviews the work and scores it based on the pre-established rubric. At this point the assessor may add personal comments visible only to the portfolio developer. To comment informally, the student simply shares their eportfolio with the faculty member. The faculty member then reviews the portfolio (in whole or in part) and responds via the "comment" feature. A *new comment* tag appears on the main page of the student's portfolio site. Students may also share their eportfolios via a secure URL and receive feedback from users.

3.4.2 Private Comments

The application will provide functions so that when leaving a comment on a portfolio, a viewer may allow the comment to be seen only by the portfolio developer. By providing an email address (in the specific text box), a viewer allows the eportfolio developer to enter into a dialogue about the commentary. An email address is optional.

3.4.3 Notifications

The application will provide notification (by e-mail, etc.) upon key events, such as new comments, presentation being shared, ready for review, etc. This capacity to send mass mail and assure its receipt is not guaranteed as intermediary hosts and even the Colleges themselves may knowingly or unknowingly apply SPAM filters that errantly or intentionally blacklist Chalk & Wire mail. Further, delivery may not be possible to some faculty/students whose e-mail has exceeded local capacity limits, or are using free e-mail services which make no guarantees regarding delivery.

The application will include a News service. This supports "News Flashes" - short messages that may have linked resources for download or URLs. These may be made role specific so that students logging in see messages meant for them while assessors logging into the same installation see different messages. This feature may also be generalized to target a message to all user types. This announcement appears prominently upon login in a space reserved for such general communications.

The "News" service also supports mail merged mass e-mailing for the institution. In this case, the administrator may author "News Letters" that are personalized and sent out to thousands of users at a time. In this tool, recipients do not need to be official account holders. The institution may register as many external recipients as desired for this service. This may address legacy students for alumni contact purposes. As earlier in this section, for reasons out of Chalk & Wire's control, there is no absolute guarantee of delivery.

3.4.4 Membership in Multiple Communities

The application will provide functions that allow the portfolio owner to participate in multiple defined groups, for example, communities of practice or groups of students working on common projects. Users may be in as many groups as they wish. They may join or leave groups at will. Additionally, the administrators may set up departments that may be adjusted at any time.

3.4.5 Organization by group

User groups may be defined any way that the institution requires. Each installation has an administrator role to oversee the entire installation. There may be an unlimited number of sub-administrators at the school, department, or group level. Groups may be linked to resources, assessment instruments and tables of contents (structures for specific portfolios) as well as image galleries and demographic topics in surveys. This enables the institution to customize what users who have membership in one or more groups may see.

3.4.6 Viewer Uploaded Documents

The application will include a resources feature. Administrators or sub-administrators may include materials accessible to students through the resources feature of the table of contents. Through this feature faculty may include documents, web resources, or narrative as guidance or information for the student. Faculty are not permitted to add items to students' ePortfolios. Access to the creation and development of the ePortfolio is limited to the portfolio owner. This is a privacy issue. Items may not be added to a student's portfolio without his or her awareness and agreement.

3.4.7 Links across portfolios

Users may copy and repurpose their ePortfolios, re-use artifacts an unlimited number of times, and include single or multiple pages from other portfolios in any portfolio they create. They may include pages from ePortfolios they created themselves, or pages (or entire portfolios) that were created by others or by a group. If needed, an entire portfolio may be embedded into another portfolio via a secure URL with an expiration date setting and/or password protection.

3.4.8 Usage Tracking

The application will provide a usage logging feature and capacity tracker for each installation available to administrators. Actions, user types accessing and times for server response are logged. The administrator may choose to view specific dates at will to compare usage over time. This enables the institution to better plan the use of an on-line tool in a network environment.

3.5 Assessment

3.5.1 Assessment Tools

At no cost, the vendor will provide desktop assessment tools, referred to as CWDesktop. CWDesktop will download assessment data for local manipulation, upload, and synchronize the data with the server at the end of the session. Within CWDesktop, each assessor may assign unlimited advisory and class assessment groups.

3.5.2 Assessment/Evaluation Workflow

ePortfolios may be used as a formative or a summative assessment tool, or as both. Specific "help" is embedded into the application to guide users through the process of assessment and evaluation. During training with administrators, assessors and students, the workflow cycle is described and demonstrated. Specific assessment and evaluation processes are dependent upon the assessment goals of the institution. An example of workflow is:

1) Faculty develops the Table of Contents describing the specific elements of the portfolio;

2) Faculty link rubrics to the Table of Contents;

3) Students create the necessary artifacts (and reflections) and submit them to assessors for assessment;

4) Notice of pending assessments are received by the assessor via e-mail that contain links to the login screen so that the assessor may go to assessment immediately if desired;

5) Assessors review student submissions and score the work using the linked rubric(s);

6) Administrators (and sub-administrators) may aggregate/disaggregate assessment data collected to date. When students login to see their assessments, they are automatically informed if there are any new assessment results to be seen.

3.5.3 Reflection

Reflections may be added to a portfolio in several ways. Chalk & Wire's eP2 allows users to create an entire portfolio from one screen. As users add artifacts directly to the page using a simple file upload, reflections may be added directly to the page in paragraphs to serve as descriptions of the specific artifacts, or may be added as files themselves. Users are encouraged to write reflections about their learning experience directly into the ePortfolio page. Reflection may be compelled by administrators adding specific titles and questions to any screen such as "Reflection" or "Importance", or questions such as "What is the importance of this artifact(s)?". They may also add other prompts and aids to the screen in advance by linking helpful instructions about reflective practice or even downloadable templates for this function.

3.5.4 Artifact Authenticity

The application will capture and archive a copy of the work submitted for assessment immediately upon submission if the page or artifacts are in any way altered between the time of submission and assessment. If the files remain unchanged no archive is made or necessary. This archived work may be used for reference by the institution, instructors, or students. If a student changes his or her work at a later date, the archived work is still preserved and viewable. Subsequent versions of student work may be compared. By clicking on specific icons, an assessor may view work as it was at the time of submission, as well as work as it currently exists.

Upon request, the vendor will automatically copy and transfer to servers at users' sites all submitted work. Users may keep permanent, complete, local copies of all work samples submitted. Chalk & Wire assessment archiving means that work samples may not be altered by students, maintaining data integrity over long periods of time.

3.5.5 Reporting

At no cost, the vendor will provide desktop reporting tools, including CW Reporter, for reporting. The desktop reporting tool will manipulate downloaded data, run reports and save queries.

Vendor will provide tools for building custom reports in addition to in-depth pre-designed reports. The software provides functions to customize reports online. The software saves custom report queries for future use.

The Chalk & Wire ePortfolio assessment system allows users to track and monitor student performance across almost any parameters they determine. Assessment results may be viewed by rubric, individual criterion, specific student demographic(s), standard, and across time. ePortfolio's assessment system may support multiple unit assessment plans at once. Users may import any demographic and assessment data from other systems and combine these with results from portfolio and field or internship assessments. Users may produce

simple progress reports that track standards, as well as complex breakouts of data by demographic and assessment criterion, with a few clicks. Users may acquire/obtain detailed comparative analysis for the performance of a group versus the whole, focus on any section of a standard and or performance level, and see macro or micro views of standards achievement in a few clicks. Users may view performance by elements of a criterion or by rubric over time to see if skills, knowledge, or dispositions have improved over time (longitudinal studies). Additionally, users may conduct complex statistical analysis such as T-Tests, usually reserved for expensive, desktop statistics software.

3.5.6 Custom Reports

At no charge, the Vendor will provide a custom reporting tool that allows users to determine the type of report, the variable, the term, the demographic filters and the report format. Users may then view the report, export the report as is for use with another statistical application, or export the raw data. Custom reports may be developed offline using our desktop tools. Common queries may be saved for frequent use.

3.5.7 Associating Evidence

The Table of Contents is the element within the Chalk & Wire system that allows the individual pieces or standards, rubrics and student work to be connected. If users need to compare results across different standards, users may link a section of a standard to multiple rubrics and Table of Content entries. The structure of the Table of Contents determines the alignment of student work with standards, outcomes and goals. Institutions may create as many Tables of Contents as they like. TOCs may be categorized by department, program, or course.

3.5.8 Documenting Standards

Standards, goals, and outcomes are entered into the system and may be linked to specific areas of multiple tables of contents and specific (multiple) rubrics. eP2 provides reports that show student performance against a single standard or set of standards. The system may contain a virtually unlimited number of standard sets.

3.5.9 Linking to Standards

Standards may be integrated in several ways. In order to create reports that allow administrators to view student performance against a particular set or sets of standards, they may be entered into the standards tab in the rubric marker. The standards are cross-referenced with the specific elements of a student's portfolio and then with the specific rubrics used to assess those portfolio elements. Standards/Principles may also be added to the portfolio as resources for students to refer to and use to guide and evaluate their own performances. In either case, standards may be copied and added as text or as a link to the authoring agency's web site.

3.6   Accessibility and Ease of Use

3.6.1 Web-Based Access

The application will support all commonly used web browsers including Internet Explorer, Netscape, Safari, Firefox, and Opera. (Any GUI browser interface will work dating back to IE 5.0.

3.6.2 Accessibility

The software will be Section 508/ADA compliant. Should the colleges determine that the software does not comply with Section 508 of the Americans with Disabilities Act, the vendor, at no expense to the colleges, shall remedy the deficiencies.

3.6.3 Time Efficiency

Using Vendor's software, a user may create a professional portfolio in under an hour. Artifacts and images may be added directly to the portfolio page without having to upload artifacts in a second step. Portfolio creation uses WYSIWYG (what-you-see-is-what-you-get) editing. There is no second step in publishing a portfolio.

- Portfolio pages are built as a series of "paragraphs." A Paragraph may be formatted text, images (with hyperlinks), links on the Internet or documents, raw HTML, and or background images/colors. Users may add and move content of a portfolio screen or create personal tables of contents from any graphic template.

- Artifacts are uploaded directly to the screen they are to appear on.

- Images, text, and links are also added directly to the ePortfolio page.

- All personal images are automatically resized to fit into the graphic theme. There is no need for users to master an image editing software to resize pictures.

- Items may be submitted for assessment right from the editing screen.

- Comments and assessment results are available from the screen to which they are related and are dynamic (comments may become an on-going discussion that is summarized in either via e-mail or ePortfolio account, or both.)

3.6.4 Performance

The software will deliver pages in less than 4 seconds on average over a 24-hour period. Should the colleges experience average page delivery times greater than 10 seconds on a mean over a 24-hour period, the vendor will, at no cost, provide

expert networking consulting to determine the source of the below standard performance.

3.6.5 Performance Scalability

Vendor's software will scale to support the performance speeds mentioned above.

3.6.6 Interface Complexity

Users are role specific and see only functions relevant to their role and privileges. This keeps the number of interface objects to a minimum for each user. For example, students authoring a portfolio see only four tabs: My Portfolios, My Results, Artifact Library, and Image Gallery. In each case, activity on each screen first seen is minimized to the most common tasks. Less common, more complex tasks are "drilled to." The same rules apply to assessors. Provided they do not also have a portfolio and are only assessing, they see none of the student tabs listed above. Instead they view tabs relevant only to their role: My Assessments, Rubrics, Standards, and Tables of Contents so that they may access views of the assessment system they need and to access their assessments in different ways.

3.6.7 Decision Support/Reporting

The software will support multiple unit assessment plans at once, import any demographic and assessment data from other systems and combine these with results from portfolio and field or internship assessments. Users may produce simple progress reports that track standards, as well as complex breakouts of data by demographic, assessment, and program variables with a few clicks. The software will support analysis of statistical significance, performance comparisons, and relational predictability (T-Tests, P stat, correlation and linear regression). The software will report conventional means, medians, standard deviation, and standard errors of the mean. The software will break out performance at the criterion level for spans of time enabling longitudinal research.

The software will support inter-rater reliability testing (on-going), and blind inter-rater reliability studies.

The software will provide the ability to save custom report settings to be run again at any time for comparative purposes. Multiple assessments, and/or specific criterion within rubrics may also be combined in "Formula Rubrics" to generate "global" scores for skills practiced over multiple assessments and programs. The software will export any reports to ASCII to be opened in EXCEL, SPSS or imported into other databases. Reports may also be named, annotated and saved locally as HTML pages. These can then be automatically assembled in an on-line "exhibit" the client may choose to make available to external viewers. Such on-line reports may be drilled into to allow reviewers to see actual samples of work and the assessment instruments used in the assessment process.

3.6.8 Administration and Customization

a) Site Branding: At no charge, the Vendor will create a branded site with the Colleges' banner, logo, and colors as requested by each College. Each site will be an individual installation with the specific College's logo, colors, etc. Colleges may embed a link to the portfolio site on their portal on their own time and at their own expense.

b) Single Sign On: The development of software to allow for a single login for students will be billed at $700/day USD. The number of hours to achieve SSO with the willing collaboration of IT people at the College is typically not more than 7.5 hours. Vendor will work with College IT staff to determine the best way to meet their needs. Colleges may also create their own eportfolio graphic themes for use by students.

3.6.9 Customizable Roles

Within the Chalk & Wire system there are an infinite number of possible roles ranging from student to assessor, from assessors to many potential levels of sub-administrators, to administrators. The software will provide functions to move users from one role to another as required. For example, a faculty member may be a person who does nothing but assess. They may be instantly given a portfolio (and thus new elements in their interface). They may also be given the privilege of creating Advisory Groups (ones in which they see the assessments of other assessors), and/or Student Groups (in which they see only their own assessments).

3.6.10 Administrator Group Creation

Assessors may define two types of groups: Advisory Groups (in which they see the assessments by other instructors) and/or Student Groups (in which they see only their own assessments and the progress charts for their own students toward portfolio completion) NOTE: Administrators may turn off the advisory feature so that assessors are given only the choice of Student Groups.

3.6.11 User Defined Groups

The software will provide functions to create multiple groups in any configuration. Groups may be added, changed and/or deleted at any time. Students may define "Sharing" groups.

3.7   Portability, Interoperability, and Longevity

3.7.1 Inter-College Portability

Vendor will move a student's portfolio from one college to another upon notification. All facets of their account may be moved to the new College. All assessment data remains with the first institution including archived work samples.

When the local system administrator at a college receives notice from their registrar that the move has been requested, this person will notify the Vendor. The Vendor then transfers the data and the account to the new college. Alternatively, the student may download their portfolio and all of its artifacts to a local drive (USB drive usually) and install it at the new college. The Vendor will provide the student's account at the new college for the duration of their subscription. The latter is more typical of this transference.

3.7.2 Real-Time Data Exchange

The application will exchange real-time information from other systems such as student records, HR, etc. through defined interfaces. APIs that may be requested to facilitate the automation of this process will be developed in collaboration with the college personnel. The fee for this is $700 USD/day.

The application will interface with any system for the purposes of data exchange, as long as the other system may export/import in common file types. If needed, the Vendor will build an interface to automate this process (APIs). The fee for this is $700 USD/day.

3.7.3 Data Export

The software will allow data to be exported in several ways: individual eportfolio users may save portfolios to any type of portable media such as external hard drives, CD, DVD, etc. Saved portfolios remain fully functioning as if still on the web. Individual artifacts saved in the Vendor's system, but not yet an active element of a portfolio, may also be saved to alternate media. In the case of statistical data, Vendor's software allows the exportation of any and/or all data for use by Colleges in both report and raw data forms ASCII delimited files. All data may be exported into common file formats.

The software will export student work samples and archived student eportfolios allowing them to be stored directly with the institution. Downloaded portfolios operate locally as if being viewed on the Web.

3.7.4 Directory Integration

Users, groups, and roles may be obtained and synchronized with existing campus directory services.   Upon request, Vendor will provide assistance to Colleges to facilitate synchronization with existing campus directory

services at no charge.

This may include APIs as a solution. Where custom programming is required, the Vendor will provide such service in collaboration with data specialists of the College and/or CIS at a fee of $700 per day.

3.7.5 Digital Preservation

Vendor guarantees that artifacts and portfolios will be compatible with all current and future versions of the software.

4. TECHNICAL

4.1 Database Support

The server-side database files are not available to users directly. Vendor's desktop reporting tool downloads data in text form, and converts it into an MS Access database for further processing if needed.

4.2 Bandwidth Constraints

Each user may upload files of up to 10MB at a time to the application (a locally controlled setting of 5 MB or less is recommended). The application will manage up to 500 5MB uploads per user, per 24-hour period.

4.3 Load Balancing

Audits are regularly conducted to evaluate load and volume demands and determine if new architecture is warranted. If needed, new server farm architecture will be implemented.

4.4 Network

Overall system availability on a per-customer basis, outside of the maintenance window, is 99.9% or better.

4.5 Scheduled Maintenance

Vendor's maintenance window is from 5am EST to 8am EST (2-5 PST) Monday through Saturday, and all day Sunday. Service will only occasionally be interrupted during this time. If a planned service interruption will extend beyond one (1) hour, Vendor will provide Colleges with an electronic, two (2) day advance notice unless the outage is an unexpected event. Backups and similar performance-affecting operations are restricted to the 3am-5am (midnight-2 PST) period.

4.6   Software Update Process

All software will be updated continuously, either to implement features requested by customers, or to deal with any problems which have arisen.

4.7   Proactive Software Patches

All updates are provided immediately to all customers, without a specific customer having to request it.

4.8   Application Monitoring

Chalk & Wire will track and report application usage when requested.

All application hits will be recorded and logged at the server, with details of the parameters of each event, the requesting IP address and user account, and the time taken by the software to respond to the event.

Chalk & Wire will provide the colleges with online application usage data when requested.

Part of the online service is a log browser, with statistics on the number of hits and the server response times for each. Specific commands are tracked, in order to reveal the types of event which are presenting the most load to the server. Time-of-day breakdowns are also provided.

5.   DATA SECURITY

5.1   User Authentication

The software will authenticate users via unique user ID and password. Application web sites will be secure URLs (128-bit encrypted) and will conform to FERPA guidelines. SSO (single sign on authentication) will be provided where the college collaborates in its development. A fee of $700./day USD applies to such development.

5.2   Encryption

The software will meet all requirements of the Family Educational Rights and Privacy Act (FERPA).   The software will encrypt and transmit student data via SSL (Secure Sockets Layer) 128-bit protocol. After the connection is made, the information transmitted between the learner's browser and the vendor's server is encrypted.

The software will implement session timeouts. The Vendor will not manually change passwords upon random request from students claiming to have forgotten their password. There is an automated process for this if the student has a valid e-mail address (that is deliverable) and can respond correctly to security questions. In the case

of an invalid or unreachable e-mail address, the vendor's support personnel will contact the local administrator and the student will be referred to him or her for a new password. Only local personnel may vouch for the identity of a student in this circumstance.

5.3   User Granted Permissions

Users control access to their portfolios and file storage by setting permission on various items for individuals or groups. They may share individual pages of their portfolio or the entire portfolio in several ways. They may create a secure URL that they may set an "expire" date on as well as password protect if needed. They may also share with a group of their own determination, or share with an individual within the eportfolio community. They may also download their portfolios and save them to another media (CD, DVD, hard drive). They are also "sharing" their eportfolio when they submit it for assessment. Once submitted, the work may be accessed again at anytime to review formative progress prior to further scores assessment events.

5.4   Single Sign-On

Single Sign-on is a desirable feature that allows integration with existing campus authentication/credentials so that users may sign-in once and be authenticated for multiple applications.

The development of additional software to allow for a single login for students will be billed at a cost of $700/day USD.

5.5   Redundancy

The vendor will use RAID 5 in configuration on all servers are to assure that any one drive failure does not cause a loss of service.

5.6   Firewalls

The vendor will use CISCO Firewall Appliances to monitor and prevent attacks. The vendor will monitor firewalls 24/7.

5.7   Monitoring

Metrics regarding software delivery and hardware integrity are measured throughout the day and night. Failure on a metric triggers alarms in the ISP data center and automatically informs Chalk & Wire personnel via e-mail and phone. The ISP then addresses the server or issue within a 5-minute window of the alarm and, if warranted will call in a full MSA team at any time of the day or night.

5.8   Backups

Managed backups will be conducted daily for all servers. Tapes will be isolated weekly to maintain data separation. Data is backed up once daily and tapes are stored off-site in another secure location provided by Magma Communications. Given the RAID 5 Configuration of all servers there is built in redundancy as failure on a drive results in an

automatic switch to a redundant drive while a new drive is swapped in. Given backup a full server may be restored within two hours. This was tested in November of 2005. Results were within the required time limit.

5.9   Physical Access

Access to the Internet Data Center and server rooms will be controlled via a secured entrance using a retinal scanner biometric identification system. Video surveillance will be in place. Only Chalk & Wire technical personnel may access these areas and then only given prior notice. All interior and exterior doors will use key card access with fully logged access control. Entire facility will be monitored by cameras.

5.10   Risk Factor Assessments

Chalk & Wire has conducted a thorough risk factor assessment and will maintain a plan that covers both massive and unlikely contingencies (destruction of ISP - separate site location of back up tapes and software) and deaths of key personnel (CEO, CIO, R & D Lead - succession).

5.11   Data Transmission

All servers will be fitted with security certificates (Entrust or similar certificate provider and of industry standard quality) so that interactions via the web are secure socket (128 bit encrypted). No authoring or assessment data is transmitted "in the clear". All transactions will be SSL/128 bit encrypted. Also outlined below are reviews of the Firewall (CISCO Appliances) and use of virus scanning in file transfer. Passwords will be encrypted as they go across the internet.

5.12   Employee Background Checks and Security Training

Vendor will conduct reference checks of all employees for employee reliability. Vendor will continuously train employees to keep them aware of Vendor's security and confidentiality requirements. Failure to comply, results in immediate dismissal. Staff will be security screened during the hiring process as per the policy for such screenings at Chalk & Wire (within the allowable limits for such screening permissible within Canada). Security guards will undergo a training program regarding IDC security policies at Magma Communications (as they are the agents that hold the data in fully or partly hosted, this a matter of their declared internal policy).

6.   HOSTED ENVIRONMENT

6.1   Data Storage Provider Location and Description

Magma is the data storage service provider. It is a Class 'A' ISP (http://www.magma.ca). It was built expressly to meet both civilian corporate and government requirements for secure and safe provision of mission critical services via the Internet.

Located in Ottawa, Canada, the facility is in neither a flood plain nor an earthquake zone. The neighborhood in which it resides is a professional and corporate Business

Park in the country's capital city, with another similar center in Toronto, Canada. The address of its headquarters and the location of the Chalk & Wire server facility is Magma Communications, 31 Auriga Drive Ottawa, Ontario, Canada K2E 1C4. For more details about Magma facility see: http://www1.magma.ca/corporate/idc/index.cfm

Vendor will notify CIS in the event Vendor plans to discontinue using Magma as their Hosting Facility. Such notification shall be sent to CIS at least 30 days prior to moving data or servers to the new location. The notification will include all of the information required to demonstrate the new Hosting Facility's compliance with the contract. CIS must have an opportunity to review these specifications. CIS retains the option of canceling the contract if the new Hosting Facility does not meet with CIS approval.

6.2   Scalability

The current Chalk & Wire Server farm configuration is scaleable for another 40,000 users assuming the addition of 1 new server/5000 new users (present policy). Servers have built-in drive redundancy (RAID5). Two servers also paired to do daily RSYNCS (student data/portfolio servers).

6.3   Power Supply

The ISPs installation provides uninterruptible power supply (backup systems) and also has a full diesel generator plant to assure service in the event of external power outage.

6.4   Fire Suppression

2 Stage Fire Suppression System is used to prevent any risk of serious damage by extinguishing a fire. A secondary pre-action sprinkler system is used as backup.

6.5   Environmental Controls

All server rooms have raised floors to reduce the effect of server heat and cold room procedures are in place. Environmental sensors are used to monitor temperature and humidity in all areas of the facility and assure a constant temperature (20-24 degrees Celsius) and relative humidity between 40 to 50%.

Schedule B

Center for Information Services

Member Institutions

College	Address	City, State Zip
Bates Technical College	1101 S Yakima Avenue	Tacoma WA 98405
Bellevue Community College	3000 Landerholm Circle SE	Bellevue WA 98007
Bellingham Technical College	3028 Lindbergh Avenue	Bellingham WA 98225
Big Bend Community College	7662 Chanute Street	Moses Lake WA 98837
Cascadia Community College	19017 120th Avenue NE, Suite 102	Bothell WA 98011
Centralia College	600 W Locust Street	Centralia WA 98531
Clark College	1800 E McLoughlin	Vancouver WA 98663
Clover Park Technical College	4500 Steilacoom Boulevard SW	Tacoma WA 98499
Columbia Basin College	2600 N 20th	Pasco WA 99301
Center for Information Services	3101 Northup Way, Suite 100	Bellevue WA 98004
Edmonds Community College	20000 68th Avenue W	Lynnwood WA 98036
Everett Community College	2000 Tower Street	Everett WA 98201
Grays Harbor College	1620 Edward P. Smith Drive	Aberdeen WA 98520
Green River Community College	12401 SE 320th Street	Auburn WA 98092
Highline Community College	PO Box 98000	Des Moines WA 98198
Lake Washington Technical College	11605 132nd Avenue NE	Kirkland WA 98034
Lower Columbia College	PO Box 3010	Longview WA 98632
North Seattle Community College	9600 College Way N	Seattle WA 98103
Olympic College	1600 Chester Avenue	Bremerton WA 98337
Peninsula College	1502 E Lauridsen Boulevard	Port Angeles WA 98362
Pierce College District	9401 Farwest Drive SW	Lakewood WA 98498
Renton Technical College	3000 NE 4th Street	Renton WA 98056
Seattle Central Community College	1701 Broadway	Seattle WA 98122
Seattle District	1500 Harvard Road	Seattle WA 98122
Shoreline Community College	16101 Greenwood N	Shoreline WA 98133
Skagit Valley College	2405 E College Way	Mount Vernon WA 98273
South Puget Sound Community College	2011 Mottman Road SW	Olympia WA 98512
South Seattle Community College	6000 16th Avenue SW	Seattle WA 98106
Spokane Community College	1810 N Greene Street	Spokane WA 99217
Spokane District	2000 N Greene Street	Spokane WA 99217
Spokane Falls Community College	W 3410 Fort George Wright Drive	Spokane WA 99224
State Board for Community & Technical Colleges	319 7th Avenue	Olympia WA 98504
Tacoma Community College	6501 S 19th Street	Tacoma WA 98466
Walla Walla Community College	500 Tausick Way	Walla Walla WA 99362
Wenatchee Valley College	1300 Fifth Street	Wenatchee WA 98801
Whatcom Community College	237 W Kellogg Road	Bellingham WA 98226
Yakima Valley College	PO Box 22520	Yakima WA 98907