

Request for Quotation and Qualification

for

ePortfolio Software and Services

for the

Community & Technical Colleges

of the

State of Washington

Released by

Center for Information Services

3101 Northup Way

Bellevue, WA. 98004-1449

March 15, 2006

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SECTION 1

1. INTRODUCTION AND BACKGROUND

Washington State's thirty-four (34) community and technical colleges (CTCs) serve approximately 450,000 students each year. (See State of Washington, State Board for Community and Technical Colleges, *Academic Year Report 2004-05*, December 2005, at <http://www.sbctc.ctc.edu/data/acadyrrpts.asp>)

The CTC's, through a rigorous project selection process, identified ePortfolio as an information technology priority, conducted extensive research, and now want to identify an Apparent Successful Vendor to provide ePortfolio Software and Services to the Colleges.

The Center for Information Services (CIS) is a state agency responsible for providing a variety of information technology services including technology procurement and various administrative computing systems for the thirty-four (34) community and technical colleges of the State of Washington. CIS is releasing this Request for Quotation and Qualification (RFQQ) on behalf of the CTC's.

1.1. Purpose

The CTC's seek an ePortfolio system that will a) support assessment by providing evidence of student learning, including course-related accomplishments and community involvement; and b), allow for communication about learning among students, faculty, staff, employers, etc.

1.2. General Information

The CTC's seek to acquire ePortfolio Software and Support via a CIS Contract with an ePortfolio Software Vendor.

The CTC's developed the following usage projections:

- 1500 students have used the ePortfolio application by Fall 2007
- 5000 students have used the ePortfolio application by June 2008
- 14,000 students using the ePortfolio application during 2009-10 academic year

Numbers based on deployment at a minimum of 10 colleges or 30% of total colleges within the system. Based upon 2004-05 system annual unduplicated headcount of 455,673 students, this assumes ePortfolio adoption by 1% of students at 10 colleges by Fall 2007, 4% of students at 10 colleges by June 2008, and 10% of students at 10 colleges by June 2010. Based upon an average of 25 students per class, the preceding projections suggest usage by 60 classes by Fall 2007, 200 classes by June 2008, and 560 classes using ePortfolio during 2009-10 academic year.

The CTC's vision requires that the Apparently Successful Vendor regard the community and technical colleges of the State of Washington as a single entity. This single-entity view must encompass the user experience, application architecture, and financial accounting. In the CTC vision, the student would purchase a one-year subscription to ePortfolio from her campus bookstore and receive some physical proof of purchase, for example a serialized receipt. When the student logs in to her campus portal, ePortfolio is one of the applications her credentials

allow her to access. Selecting the ePortfolio application, she finds a menu of Washington State Community and Technical Colleges and selects the icon representing her school, which enables her to begin learning about and using ePortfolio. Each participating college in the CTC system would make an annual projection of the number of accounts they would need and a focal at CIS would manage licensing with the vendor.

1.3. Acquisition Authority

The Revised Code of Washington (RCW) amended, Chapter 43.105, established the Washington State Information Services Board (ISB). While the ISB does not purchase for agencies, it regulates the manner in which state agencies may acquire information technology equipment, software, and services. ISB publishes policies and standards that determine when goods must be competitively acquired. The ISB has delegated its purchasing approval authority to the Center for Information Services (CIS) on behalf of the community and technical colleges of the State of Washington. Authority for the establishment of Contracts is in accordance with ISB Information Technology Policies and Procedures.

CIS is releasing this Request for Quotation and Qualification under the delegated authority of the ISB. CIS is referred to as CIS or the State throughout this document and resulting Contract.

1.4. Eligible Customers Defined

CIS is defined as the sole eligible customer for any contract resulting from this solicitation.

1.5. Master Contract

Any contract that may result from this acquisition process will not be a Department of Information Services (DIS) Master Contract.

1.6. Term of Contract

The initial term will be one (1) year commencing upon the date of execution of the contract. After the initial one (1) year period, CIS may extend the Contract for one (1) year extensions annually. The decision to extend will be based on Customer satisfaction with software, service performance, and agreement to price with vendor.

Extensions will be executed by giving written notice to Vendors not less than thirty (30) days prior to the expiration date of the term of the Contract, subject to any revised terms and conditions that may then be in effect.

1.7. CIS Contract Administration Fee

A CIS Contract Administration Fee will not be applied to this contract.

1.8. Quantity/Usage

No guarantee of volume or usage can be given.

SECTION 2

2. ACQUISITION SCHEDULE

RFQQ Released	March 15, 2006	4:00 PM
Letter of Intent due	March 22, 2006	
Vendor Questions Period	March 15 through March 31, 2006	
Responses Due	April 12, 2006	3:00 PM
Score Responses	April 19, 2006	
Notification of Invitation to Demo Software	April 20, 2006	3:00 PM
1 st Debriefing Completed	April 27, 2006	3:00 PM
Software Demonstrations	May 4 & 5, 2006	
Notification of Apparent Successful Vendor	On or After June 2, 2006	
2 nd Debriefing Completed	June 1, 2006	3:00 PM

CIS reserves the right to revise the above schedule.

SECTION 3

3. ADMINISTRATIVE REQUIREMENTS

3.1. RFQQ Coordinator

Upon release of this RFQQ, all Vendor communications concerning this acquisition must be directed to the RFQQ Coordinator listed below.

Keith Mutch, RFQQ Coordinator,
Center for Information Services
3101 Northup Way
Bellevue, WA. 98004-1449
Telephone: 425-564-2340
E-mail: kmutch@bcc.ctc.edu

A Q&A document will be posted on the CIS Procurement Announcement web page at: <http://www.cis.ctc.edu/pub/Procurement.htm>. It is the Vendors' responsibility to check the web page often to view the Q&A document.

Unauthorized contact regarding the RFQQ with other state employees may result in disqualification. Any oral communications will be considered unofficial and non-binding. Vendors should rely only on written statements issued by the RFQQ Coordinator. Responses to verbal requests for information or clarification will be considered unofficial until received in writing.

3.2. Response Template

A Response Template (Appendix A) is provided as part of this RFQQ and must be used as Vendors' response to this RFQQ. Vendors' response must be inserted electronically after each item listed on this template. Failure to provide the requested information for all items in the Response Template may result in elimination. Space between each item may be expanded to accommodate the response. Where indicated, Vendors will attach documents to the template. Each of these documents will include the section number and the title of the RFQQ item it is meant to respond to. No other material will be considered in the evaluation of the vendor's response.

3.3. Mandatory (M) Requirements

Mandatory requirements on the Response Template are denoted by an "(M)", indicating that the item is a Mandatory requirement, meaning that the requirement is mandatory and the response will not be scored and will be evaluated on a pass/fail basis only. Failure of a Vendor's response to pass a Mandatory requirement may cause their entire proposal to be deemed non-responsive and therefore rejected from further consideration.

3.4 Mandatory Scored (MS) Requirements

Most of the line items on the Response Template are denoted by either an “(MS)”, indicating that the item is a Mandatory Scored requirement, meaning that the requirement is mandatory and the response will be scored, or an “(S)”, meaning the item is a desired component, not mandatory, and will be scored. Vendors are required to respond to all items. Those without an “(MS)” or “(S)” designation will be evaluated on a pass/fail basis only, no scoring will be credited. Failure of a Vendor’s response to pass any of these items or provide an Acceptable Alternative may cause their entire proposal to be deemed non-responsive and therefore rejected from further consideration. (Reference 3.7, Acceptable Alternative Responses Defined.)

Failure to meet a Mandatory Scored requirement (MS) is established by any of the following conditions:

- a. The Vendor states a Mandatory Scored requirement (MS) cannot be met.
- b. The Vendor fails to include information requested by a Mandatory Scored Requirement (MS).
- c. The Vendor fails to include sufficient information to substantiate that a given Mandatory Scored requirement (MS) can be met.

For each of the Mandatory Scored requirements, the Vendor response must always indicate explicitly whether or not the Vendor’s proposed solution meets the requirement. The statement - “(Vendor Name) fully complies with this requirement” - is acceptable. In addition to this statement, Vendors must also describe how their software meets the requirement.

3.5. Scored Items (S)

Scored Items are those line items in the Response Template marked (S). Vendors must respond to each Scored (S) item. Failure of a Vendor’s response to address any of the Scored Items (S) or provide an Acceptable Alternative may cause their entire proposal to be deemed non-responsive and therefore rejected from further consideration. (Reference 3.7, Acceptable Alternative Responses Defined.)

The evaluation team will assign a numeric score from 0 to 4 based on the quality of the Vendor’s response for both MS and S items. A score of 2 will be assigned if the evaluation team deems a response to minimally fulfill the requirement. A score of 4 will be assigned if the evaluation team deems a response to exceed the minimum requirement. If a score for any MS is 0, the entire proposal may be disqualified.

Note: Responses will be evaluated only on the material entered in and attached to the template contained in this RFQQ as Appendix A. Vendors are to disregard any previous draft material and any oral representations they may have received.

3.6. Price

In the Response Template, Appendix A, provide pricing for each of the following items: 1) the initial purchase, 2) the annual software maintenance (upgrades, updates, and new versions), 3) software support (telephone, email, and web), 4) implementation services, and 5) all training that will be required. CIS reserves the right to calculate these dollar amounts from the information given by a Vendor if this format is not followed.

3.7. Acceptable Alternative Responses Defined

Vendors may propose an alternative to a Mandatory Scored (MS) requirement. CIS, at its sole discretion, will determine if the proposed alternative meets the intent of the original mandatory requirement. To be acceptable, the alternative must be one that CIS considers satisfactory in meeting a mandatory specification.

3.8. (M) Letter of Intent

Vendors wishing to participate in this acquisition process should provide a Letter of Intent. The RFQQ Coordinator should receive the Letter of Intent at the address specified in Subsection 3.1 no later than 3:00 PM, local time on the date specified in the Acquisition Schedule. In addition to US Postal Service and hand-delivery to the CIS office, Letters of Intent may be e-mailed to the RFQQ Coordinator at the email address referenced in Subsection 3.1.

3.9. Number of Response Copies Required

Vendors must submit one (1) electronic copy of their proposal by e-mail.

3.10. Cost of RFQQ Response Preparation

CIS will not reimburse Vendor costs associated with preparing or presenting any response to this RFQQ.

3.11. Response Property of CIS

All materials submitted in response to this RFQQ become the property of CIS. CIS has the right to use any of the ideas presented in any response to the RFQQ. Selection or rejection of a response does not affect this right.

3.12. Proprietary Information

Any information contained in the Vendors' responses that is proprietary must be clearly designated as such. Marking of the entire response or entire sections as proprietary will not be honored. CIS will not accept responses where pricing is marked as proprietary. If a request is made to view a Vendor's response, the State will comply according to the Public Disclosure Act (RCW 42.17).

3.13. Waive Minor Administrative Irregularities

CIS reserves the right to waive minor administrative irregularities contained in any Vendor response.

3.14. Errors in Response

CIS is not liable for any errors in Vendors' responses. Vendors will not be allowed to alter response documents after the deadline for response submission. Vendors are liable for all errors or omissions contained in their responses. CIS reserves the right to contact Vendors for clarification of proposal documentation.

3.15. RFQQ Amendments

CIS reserves the right to change the acquisition schedule or to issue amendments to the RFQQ at any time.

CIS reserves the right to make corrections or amendments due to errors identified in the RFQQ by CIS or a Vendor. Any changes will be posted on the CIS Procurement Announcements web site at: <http://www.cis.ctc.edu/pub/Procurement.htm>. Vendors' questions and their official answers will also be posted on this website. It is the Vendors' responsibility to check this website for amendments to the RFQQ.

3.16. Right to Cancel

CIS reserves the right to cancel or reissue this RFQQ at any time without obligation or liability.

3.17. Contract Terms and Conditions

Under no circumstances are Vendors to submit their own standard Contract Terms and Conditions as a response to this RFQQ. Vendors need to address the specific language in Appendix C and submit whatever exceptions or exact Contract modifications that their firm may have. These must be attached to the Certification and Assurances document in Appendix B. CIS expects that the final Contract to be signed with the Apparent Successful Vendor will be substantially the same as the Contract in Appendix C.

The foregoing should not be interpreted to prohibit CIS from proposing additional Contract Terms and Conditions during negotiation of the final Contract.

3.18. Multiple Award

There will not be more than one Apparent Successful Vendor identified by this RFQQ.

3.19. Incorporation of RFQQ into Contract

This RFQQ, in addition to the Vendor's response, will be incorporated into any resulting Contract.

3.20. Best and Final Offer

CIS reserves the right to make awards without further discussion of the responses submitted; there will be no best and final offer procedure associated with selecting the Apparent Successful Vendor. Therefore, the initial response should provide the most favorable terms that Vendors can offer.

3.21. No Costs Chargeable

No costs chargeable to the proposed Contract may be incurred before receipt of a fully executed Contract.

3.22. No Obligation to Buy

CIS reserves the right to refrain from contracting with any and all Vendors. Neither the release of this RFQQ nor the consequent execution of Contracts hereunder obligates the State to make any purchases.

3.23. Non-Endorsement

As a result of the selection of a Vendor to supply ePortfolio Software and Services to the CTC's, the State is neither endorsing nor suggesting that the Vendor's services are the best or only solution. The Vendors agree to make no reference to CIS, the CTC's, or the State of Washington in any literature, promotional material, brochures, sales presentation, or the like, without the express written consent of CIS.

3.24. Withdrawal of Response

Vendors may withdraw a response that has been submitted at any time up to the response due date and time (identified on the Acquisition Schedule, RFQQ Section 2). To accomplish this, a written request signed by an authorized representative of the Vendor must be submitted to the RFQQ Coordinator. It is also acceptable to transmit the letter of withdrawal via e-mail. After withdrawing a previously submitted response, the Vendor may submit another response at any time up to the response due date and time.

3.25. Announcement of Invitation to Demo Software

All Vendors responding to the RFQQ will be notified by fax or e-mail when the selection of Vendors to demonstrate their software has been made. The tentative schedule for the announcement is identified in the Acquisition Schedule (RFQQ Section 2). Vendors invited to demonstrate their software will be provided with a demonstration script and instructions at the time of this announcement.

3.25. Announcement of Apparent Successful Vendor

All Vendors responding to the RFQQ will be notified by fax or e-mail when the Apparent Successful Vendor has been selected. The date of announcement of the Apparent Successful Vendor will be the date the announcement letter is sent. The tentative schedule for the announcement is identified in the Acquisition Schedule (RFQQ Section 2).

3.26 Optional Vendor Debriefing

Vendors who submit a response and are not selected may request an optional debriefing conference to discuss the evaluation of their response. The requested debriefing conference must occur on or before the date specified in the Acquisition Schedule. The request must be in writing and addressed to the RFQQ Coordinator. CIS will accept the request via fax or e-mail. The debriefing will not include any comparison between the Vendor's response and any other responses submitted. Debriefing conferences will be conducted by phone and will be scheduled for a maximum of one (1) hour. Debriefings are offered after the Announcement of Invitation to Demo Software and the Announcement of the Apparent Successful Vendor.

3.27. Protest Procedures

Upon completion of the debriefing conference, a Vendor is allowed five (5) business days to file a formal protest of the acquisition with CIS. Such protest is allowed only if it is based on alleged irregularities as specified below.

- The agency failed to follow procedures established in the solicitation document, the ISB policy, *Acquisition and Disposal of Information Technology Resources*, or applicable state or federal laws or regulations.
- There is evidence of bias, discrimination, or conflict of interest on the part of an evaluator.

Protests not based on these criteria will not be considered. Further information regarding the filing and resolution of protests is contained in Appendix D, Protest Procedures.

3.28. RFQQ Available Electronically

The RFQQ is available for download at <http://www.cis.ctc.edu/pub/Procurement.htm>

3.29. Vendor Complaints Regarding Requirements and Specifications

Vendors may submit complaints to the RFQQ Coordinator prior to responding to the RFQQ if the Vendor believes the RFQQ unduly constrains competition or contains inadequate or improper criteria. The complaint must be made in writing to the RFQQ Coordinator before the due date of the RFQQ response. Complaints may be delivered via fax or e-mail. The RFQQ Coordinator may work with the Department of Information

to resolve the complaint. CIS reserves the right to amend the RFQQ should the Vendor complaint identify a change that is in the best interest of the State.

SECTION 4

4. EVALUATION PROCEDURES

4.1. Evaluation Methodology

Only one Apparent Successful Vendor will be named. This will be the Vendor who responds as required to all of the items in the Response Template (Appendix A) and achieves the highest total score.

4.2. Evaluation Process

4.2.1. Basis for Evaluation

The Mandatory Scored (MS) and Scored (S) items will be evaluated only on the basis of the information contained in the Vendor's response using the attached template (Appendix A) and any attachments that have been requested.

4.2.2. Evaluation Team

The RFQQ Coordinator and the Vendor Evaluation and Selection Team (VEST), including selected personnel from CIS and its member institutions, will perform the evaluation procedures.

4.2.3. Screening

All responses will be reviewed to determine if Vendors have responded to all items in the Response Template (Appendix A). Only those responses that have provided the required information for each of the items in the Response Template will be further evaluated.

4.2.4. Evaluation and Scoring

Evaluation and scoring will be based on the information provided by the Vendors in the Response Template provided as Appendix A in this RFQQ. If a vendor response is unclear, the VEST may, at their discretion and acting through the RFQQ Coordinator, contact a responding Vendor to clarify specific points in a response. However, under no circumstances will the responding Vendor be allowed to make changes to the proposed items after the deadline stated for receipt of responses.

Vendors should understand that a score of zero (0) on any MS or S item may result in Vendors' disqualification from the competition unless an Acceptable Alternative has been proposed and accepted by CIS.

VEST will assign points on a scale of zero (0) to four (4), generally defined as follows:

- 0 Response is missing or does not fully comply with the requirement.
- 2 Response meets the expectation stated in the requirement.
- 4 Response exceeds expectations.

4.3. Final Score

The evaluation process is designed to award acquisitions not necessarily to Vendors of least cost, but rather to Vendors with the best combination of attributes based upon the evaluation criteria.

In the event there is a tie between two (2) or more Vendors, VEST will select the Apparent Successful Vendors between the tied Vendors at its sole discretion.

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APPENDIX A – Response Template

See separate Excel spreadsheet

APPENDIX B - Certifications and Assurances
Center for Information Services
Request for Quotation and Qualification and Qualification
for
ePortfolio Software and Services

We make the following certifications and assurances as a required element of the Response to which it is attached, understanding the truthfulness of the facts affirmed here and the continuing compliance with these requirements and all requirements of the Request for Quotation and Qualification (RFQQ) are conditions precedent to the award or continuation of the related Contract(s).

The prices and/or cost and/or service charges data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition.

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

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

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

We understand that any Contract awarded as a result of this Response will incorporate all the RFQQ requirements. Submission of a response and execution of this Certifications and Assurances document certify Vendor's willingness to comply with the Contract terms and conditions appearing in Appendix B of the RFQQ, or substantially similar terms, if selected as a Contractor. It is further understood that a Vendor submitted Contract will not be considered as a replacement for the terms and conditions appearing in Appendix B of the State's RFQQ.

Signature

Vendor

Title

Date

APPENDIX C - Terms and Conditions

Contract #xxxxxx

for

ePortfolio Software and Services

Between the

Center for Information Services

And

Vendor

Effective Date: _____

SOFTWARE LICENSE CONTRACT

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Exhibits

Exhibit A: Recruitment Software Request for Quotation

Exhibit B: Vendor's Proposal

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

SOFTWARE LICENSE CONTRACT
NUMBER XXXXXX

PARTIES

This Software License 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 [Vendor Name], a corporation, with TIN [FEIN # or SSN in lieu] licensed to conduct business in the State of Washington under UBI number [UBI number] (hereinafter referred to as "Vendor"), located at [Vendor Address] for the purpose of providing Recruitment Software products.

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 to license [Vendor Name] products in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, [Vendor Name] 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 [Vendor Name] as the apparent successful Vendor; and,

WHEREAS, CIS has determined that entering into a Contract with [Vendor Name] will meet the needs of the Purchaser and will be in the Purchaser's best interest;

NOW THEREFORE, CIS awards to [Vendor Name] this Software License Contract which shall govern Vendor's furnishing to this consortium previously identified, the software products and other Related Services as indicated on the schedule titled, Authorized Product and Price List (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. DEFINITIONS

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

“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.

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

“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 Recruitment Software issued by the Washington State Center for Information Services.

“Exhibit B” shall mean the Vendor’s response dated _____, 2006.

“FEIN” shall mean the Vendor’s Federal Employer Identification Number.

“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 the State of Washington, CIS, and the community and technical colleges, including the State Board for Community and Technical Colleges, and the four-year public higher education institutions of the State of Washington.

“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.

“SSN” shall mean the Vendor’s Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor’s Federal Tax Identification Number.

“TIN” shall mean the Vendor’s Federal Tax Identification Number which may be either FEIN or SSN.

“UBI” shall mean the Vendor’s Uniform Business Identifier issued by the Washington State Department of Revenue.

“Vendor” shall mean [Vendor Name], 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. License Grant

- 2.1. Vendor grants to Purchaser a non-exclusive, non-transferable, perpetual, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract unless stated otherwise.
- 2.2. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software which bears a copyright notice of any third party.
- 2.3. Purchaser may copy each item of Software to single or multiple hard drives as needed.
- 2.4. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.
- 2.5. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.
- 2.6. 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, Purchaser shall have a right to possession of the source code.
- 2.7. At termination of contract, all content developed by Purchaser remains the property of Purchaser.
- 2.8. All data is property of Purchaser.
- 2.9. Vendor understands that Purchaser may provide information processing Services to other users that are agencies of state government and other tax supported entities. Software delivered hereunder may be used in the delivery of these Services. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein.
- 2.10. Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

3. Term

License Term. The License for all Software provided pursuant to this Contract shall be perpetual unless stated otherwise.

- 3.1. Term of Contract for Purchases.

- 3.1.1 Initial Term. The initial term for purchases under this Contract shall be one (1) year, 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.
- 3.1.2 Subsequent Term. The term of this Contract may be extended by additional one (1) 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.

4. 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 Disputes, Limitation of Liability, Patent and Copyright Indemnification, and Protection of Purchaser's Confidential Information shall survive the termination of this Contract.

PRICING, INVOICE, AND PAYMENT

5. Pricing

- 5.1. The Vendor agrees to provide the Software and Related Services at the costs, rates, and fees set forth in the Authorized Product and Price List attached as Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor.
- 5.2. 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 license fees and maintenance and support (Service) 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.

6. Taxes

The Purchaser 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 the Purchaser does not hold title. Purchaser, as an agency of the Washington State government, is exempt from property tax.

7. Invoice and Payment

Invoices for work performed shall be submitted, in writing to the Purchaser, in a format designated by the Purchaser. Each college will submit a purchase order to vendor and be invoiced directly. In addition to agreed-upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number 0011XX. Additional payment terms or invoice instructions may be agreed upon by the Purchaser and the Vendor. Each college will submit a purchase order to vendor and be invoiced directly.

- 7.1. The Vendor will submit properly itemized invoices and/or vouchers to the Purchaser. Invoices shall provide and itemize, as applicable:
 - a) Contract number 0011XX;
 - b) Description of Software, including quantity ordered;
 - c) Net invoice price for each item;
 - d) Applicable taxes;
 - e) Shipping costs;
 - f) Other applicable charges;
 - g) Total invoice price; and
 - h) Payment terms including any available prompt payment discounts.
- 7.2. Such payments shall be due and payable within thirty (30) calendar days after receipt of properly prepared invoices.
- 7.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 7.4. This Contract number 03XXXX must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. The Purchaser shall not honor drafts, nor Accept goods on a sight draft basis.
- 7.5. If the Purchaser fails to make timely payment, Vendor may invoice the Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of receipt of Vendor's properly prepared invoice.

8. Overpayments to Vendor

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

Vendor Responsibilities

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, as Licensor, hereby warrants and represents to Purchaser as licensee that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed 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 Delivery

10.1 The Vendor shall deliver the Software ordered pursuant to this Contract on or before the date specified in the Purchase Order. For any exception to this Delivery Date, the Vendor must notify the Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and the Vendor may be subject to termination of this Contract and/or other damages available under law for failure to deliver on time.

10.2 All Software deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be Accepted. All packages must be accompanied by a packing slip which identifies all items included with the shipment and the Purchaser's Purchase order number. The Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

11. Risk of Loss and Shipping

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

12. Installation of Software by Purchaser

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

13. Software Maintenance and Support Services

Vendor shall provide a replacement copy or correction service at no additional cost to the Purchaser 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 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

In addition, Vendor shall provide the following Services:

- 13.1. Telephone Support. Vendor will provide telephone support, toll-free in the United States, to Purchaser during Business Days and Hours. Vendor's telephone service shall include but is not limited to the following Services:
 - 13.1.1 Assistance related to questions on the use of the subject Software;
 - 13.1.2 Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
 - 13.1.3 Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
 - 13.1.4 Information on errors previously identified by Purchaser and reported to Vendor and detours to these where available; and
 - 13.1.5 Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
- 13.2. Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by the Purchaser of identified errors or malfunctions in the Software, Vendor will either:
 - 13.3.1 Provide Purchaser with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, or
 - 13.3.2 Provide Purchaser with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable, subject to Purchaser's approval, for correcting or working around the error or malfunction.
- 13.3. Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor. Such releases shall be licensed 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.
- 13.4. When Vendor performs Services pursuant to this Contract which require the use of the Purchaser's computer system(s), the Purchaser agrees to make it available at reasonable times and in reasonable time increments, and in no event will the Purchaser charge the Vendor for such system use.

14. Reauthorization Code Required

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

15. Software Documentation

15.1. 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.

15.2. 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 the Purchaser, if requested, at no additional cost, sufficient documentation to permit the Purchaser to maintain, modify or enhance such purchased or Licensed Software.

15.3. Vendor grants to the Purchaser 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.

16. Installation (Site) Security

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

17. Use of Purchaser's Property and Facilities

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

17.2. The Vendor shall be responsible for any loss or damage to property of the Purchaser 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 Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

17.3. The Vendor shall surrender to the Purchaser all property belonging to the Purchaser 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.

18. Vendor Commitments, Warranties, and Representations

- 18.1. 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.
- 18.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
 - 18.2.1 Prices, discounts, and options committed to remain in force over a specified period of time;
 - 18.2.2 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;
 - 18.2.3 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;
 - 18.2.4 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
 - 18.2.5 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.

19. Year 2000 Compliance Warranty

Vendor warrants that the Software provided pursuant to this Contract is Year 2000 compliant. This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century. Failure to comply with Year 2000 requirements shall entitle Purchaser to a refund of three (3) times the initial license fee. Vendor has no liability for any failure to comply with this provision that is caused solely by failure of an interconnected third-party product to be Year 2000 compliant.

20. Physical Media Warranty

- 20.1. Vendor warrants to Purchaser that each licensed copy of the Licensed Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects

discovered more than ninety (90) calendar days after the date of receipt of the Software copy by the Purchaser.

- 20.2. The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents, or Subcontractors after the media has left Vendor's control in cases of theft, vandalism, fire, water, acts of God or other perils beyond the control of Vendor.
- 20.3. Purchaser shall be entitled to replacement by Vendor, at Vendor's expense including shipping and handling costs, of any Software copy provided by Vendor that does not comply with this warranty.

21. No Surreptitious Code Warranty

- 21.1. Vendor warrants to Purchaser that no copy of the Licensed Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 21.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.
- 21.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or 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.
- 21.4. Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

22. Protection of Confidential Information

- 22.1. Both parties acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the parties' services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Both parties agree to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Both parties agree to release such information or material only to Subcontractors who have signed a written

agreement expressly prohibiting disclosure. Both parties further agree to either destroy or return all such information at the end of the term of this Contract.

- 22.2. This section does not impose any obligation on either party if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished; (3) furnished by either party to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

23. Privacy Protection

- 23.1. Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Vendor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Purchaser or as provided by law. Vendor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.
- 23.2. The Purchaser reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Vendor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Purchaser. Vendor shall certify return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.
- 23.3. Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Vendor agrees to indemnify and hold harmless the Purchaser for any damages related to the Vendor's unauthorized use of personal information. For purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

24. Subpoena

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

Contract Termination

25. Termination for Default

- 25.1. 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 or the affected Purchaser 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 or the Purchaser's order may be terminated by written notice from the Purchaser to the Vendor. The option to terminate this Contract shall be at the sole discretion of CIS.
- 25.2. 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.
- 25.3. If either CIS or the Purchaser 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 or the Purchaser, whichever is appropriate, written notice of such failure that shall be corrected by CIS or the Purchaser 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. The Vendor will notify the CIS Contract Administrator of any notices given to any Purchasers for violations of the material terms and conditions before taking any action.
- 25.4. 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 Termination for Convenience.
- 25.5. 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.

26. Termination for Convenience

- 26.1. When it is in the best interest of the Purchaser, 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 Termination

for Withdrawal of Authority or Termination for Non-Allocation of Funds sections shall be deemed a termination for convenience but will not require such thirty (30) calendar days notice.

26.2. If this Contract is so terminated, the Purchaser 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.

27. Termination for Withdrawal of Authority

In the event that the authority of the Purchaser or 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 Termination for Convenience 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.

28. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, the Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. The Purchaser or CIS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to the Purchaser or CIS in the event this section shall be exercised. This section shall not be construed so as to permit the Purchaser or 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.

29. Termination for Conflict of Interest

29.1. 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:

29.1.1 Ethics in Public Service, chapter 42.52 RCW; or

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

29.2. 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.

30. Termination Procedure

30.1. 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 or Software 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.

- 30.2. Unless otherwise provided herein, the Purchaser 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 Purchaser 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. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser determines to be necessary to protect the Purchaser from potential loss or liability.
- 30.3. After receipt of a notice of termination, and except as otherwise directed by the CIS Contract Administrator, the Vendor shall:
 - 30.3.1 Stop work under this Contract on the date, and to the extent specified, in the notice;
 - 30.3.2 If termination is to the Software license purchase sections of this Contract, then Purchaser shall place no further orders and Vendor shall accept no further orders for additional Software license;
 - 30.3.3 If termination is to the Software license, then except as otherwise agreed to by the parties, Purchaser shall, at its option, surrender to Vendor or destroy and provide Vendor with a certificate signed by the Purchaser attesting to the destruction of all copies of the Licensed Software purchased pursuant to this Contract and terminated by this section, remaining in the possession of Purchaser, its employees, or agents;
 - 30.3.4 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;
 - 30.3.5 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 the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;
 - 30.3.6 Complete performance of such part of this Contract as shall not have been terminated by the CIS Contract Administrator;
 - 30.3.7 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;

- 30.3.8 Transfer title, excluding Licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the CIS Contract Administrator, any property which is required to be furnished to Purchaser; and
- 30.3.9 Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.
- 30.4. 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

31. 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 cannot 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.

32. Attorneys' Fees and Costs

- 32.1 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.
- 32.2 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.

33. 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.

34. Failure to Perform

If the Vendor fails to perform any substantial obligation under this Contract, the Purchaser 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 Purchaser may withhold all monies due and payable to Vendor, without penalty to the Purchaser, until such failure to perform is cured or otherwise resolved.

35. Limitation of Liability

35.1 The parties agree that neither the Vendor nor the Purchaser 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 OSHA/WISHA, Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

35.2 Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, the Purchaser, or their respective Subcontractors.

35.3 If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor the Purchaser 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 the Purchaser to meet its required performance schedule.

35.4 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

36. 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: [Vendor Name]
Attention: [Vendor's Representative]
[Vendor's Address]
[Vendor's Phone Number]

to CIS at: CIS
Attention: Procurement Services Manager
12401 SE 320th Street
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.

37. 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:

- 37.1. Applicable federal and state statutes, laws, and regulations;
- 37.2. Sections of this Contract 0011XX;
- 37.3. Schedule A - Authorized Product and Price List, to this Contract;
- 37.4. Exhibit A - State of Washington, CIS Technology Assessment competitive solicitation;
- 37.5. Exhibit B - Vendor's Response to the Purchaser, dated March X, 2001, including all written information provided with Vendor's response;
- 37.6. 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.

38. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor

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

39. Additional Services and Software

Purchaser 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.

40. 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.

41. 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 Purchaser's 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.

43. 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.

44. 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.

45. 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.

46. 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.

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

General

48. Patent and Copyright Indemnification

48.1. Vendor will, at its expense, defend or settle any claim against the Purchaser 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 Purchaser:

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.

48.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser, 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 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. In the event the Software has been installed less than one (1) year, transportation to the initial installation site paid by Purchaser shall be refunded by Vendor.

- 48.3. Vendor has no liability for any claim of infringement arising from:
- 48.3.1 Vendor's compliance with any designs, specifications or instructions of the Purchaser;
 - 48.3.2 Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Vendor; or
 - 48.3.3 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.
- 48.4. Vendor passes through and assigns to CIS and Purchaser any and all Patent and Copyright Indemnification provided by [Vendor Name].

49. Indemnification

Vendor shall indemnify and hold harmless purchaser and CIS from and against any damage, cost, or liability, including 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.

50. Industrial Insurance Coverage

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

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold CIS and Purchaser harmless from all damages assessed against the CIS and Purchaser as a result of the failure of the items furnished under this Contract to so comply.

53. 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 Section Headings, Incorporated Documents and Order of Precedence 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.

54. 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.

55. 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 Purchaser. 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.

56. Quiet Possession and Usage

Vendor warrants that the Purchaser, 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.

57. 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 can be given effect without the invalid term,

condition, or application; to this end the terms and conditions of this Contract are declared severable.

58. 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.

59. Treatment of Assets

Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled Software Ownership. As used in this section Treatment of Assets, if the "property" is the Vendor's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.

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.

60. 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

61. Authority to Bind

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

62. 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
[Vendor Name]

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

SCHEDULES

Schedule A: Authorized Product and Price List..... 27

**Schedule A
Authorized Product and Price List
as of May __, 2006
for
Contract No. 0512XX
with
[Vendor Name]**

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.

Insert products/services list and costs along with maintenance fees

This Schedule may only be modified in writing by the CIS Contract Administrator.

APPENDIX D - Protest Procedures

Procedure

This protest procedure is available to Vendors who have submitted a response to this solicitation and have received a debriefing conference. Protests are made:

- A. To CIS after CIS has announced the Apparent Successful Vendor. Vendor protests shall be received, in writing, by CIS within five (5) business days after the Vendor debriefing conference.

(The protest should be sent to the attention of the RFQQ Coordinator. The name and address of the Coordinator are provided in RFQQ Section 3.1)

- B. To the DIS for acquisitions conducted by CIS only after protesting first to CIS and the CIS resolution is not satisfactory to the protesting party. Protests to the DIS shall be made within five (5) business days after the Vendor has received notification of the CIS decision.

Grounds for Protest

- A. Arithmetic errors were made in computing the score.
- B. The agency failed to follow procedures established in the solicitation document, the ISB policy *Acquisition and Disposal of Information Technology Resources*, or applicable state or federal laws or regulations.
- C. Bias, discrimination, or conflict of interest on the part of an evaluator.

Protests not based on these criteria will not be considered.

Format and Content

Vendors making a protest shall include, in their written protest to CIS, all facts and arguments upon which the vendor relies. Vendors shall, at a minimum, provide:

- A. Information about the protesting Vendor; name of firm, mailing address, telephone number, and name of individual responsible for submission of the protest.
- B. Information about the acquisition; issuing agency, acquisition method.
- C. Specific and complete statement of the agency action(s) being protested.
- D. Specific reference to the grounds for the protest.
- E. Description of the relief or corrective action requested.
- F. For protests to the DIS, a copy of the CIS written decision on the protest.

The CIS Review Process

Agencies conducting competitive acquisitions of Information Technology Resources shall provide the protest process to the Vendor. The agency review shall precede all other reviews.

Upon receipt of a Vendor protest, CIS will postpone further steps in the acquisition process until the protest has been resolved.

CIS will perform an objective review of the protest by individuals not involved in the acquisition process being protested. The review shall be based on the written protest material submitted by the Vendor and all other facts known to CIS.

CIS will render a written decision to the Vendor within five (5) business days after receipt of the Vendor protest, unless more time is needed. The protesting Vendor shall be notified if additional time is necessary.

Final Determination

The final determination shall:

- A. Find the protest lacking in merit and uphold the agency's action; or
- B. Find only technical or harmless errors in the agency's acquisition process conduct, determine the agency to be in substantial compliance, and reject the protest, or
- C. Find merit in the protest and provide the agency with options that may include:
 - Correct its errors and reevaluate proposals; and/or
 - Reissue the Vendor solicitation document; or
 - Make other findings and determine other courses of action as appropriate.
 - Not require the agency to award the Contract to the protesting party or any other Vendor, regardless of the outcome.

CIS Review Process

Protests to the CIS may be made for acquisitions conducted by CIS. Protests of the decisions of CIS shall be made by letter to the Director of CIS, who may establish procedures to resolve the protest. Protests shall be received by the Director of CIS within five (5) business days after the decision of CIS in order to be considered. The resulting decision is final, with no further administrative appeal available.