

Contract Number *SWL-02XXX*

for

Software License and Associated Services

Between the

Office of the Administrator for the Courts

and

[Name of Vendor]

Effective Date: _____

(add date when signed by last party of execution)

SOFTWARE LICENSE CONTRACT

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SCHEDULES

Schedule A:	Authorized Product and Price List
Schedule B:	Blank
Schedule C:	MWBE Certification <i>[if applicable]</i>
Schedule D:	Installation Specifications

EXHIBITS

Exhibit A:	<i>[Name of Acquisition]</i> Request for <i>[Proposal/Quotation/Quotation and Qualification]</i>
Exhibit B:	Vendor's Proposal for <i>[Name of Acquisition]</i>

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

SOFTWARE LICENSE CONTRACT

NUMBER [XXX-XXX-XXX]

PARTIES

This Software License Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through Office of the Administrator for the Courts, an agency of Washington State government (hereinafter referred to as "Purchaser" or "OAC") located at 1206 Quince SE, P.O. Box 41170, Olympia, Washington, 98504-1170 and [Vendor's Name], a [corporation, sole proprietorship, partnership or other business form] 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 [list Vendor's address here] for the purpose of licensing [list item(s) to be licensed].

RECITALS

WHEREAS, the state of Washington, acting by and through OAC, issued a Request for Proposals, RFP-200x-xxx, (Exhibit A) to license _____ Software in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, the [Vendor's Name] submitted a timely proposal to the OAC's RFP-200x-xxx (Exhibit B); and,

WHEREAS, the OAC evaluated all proposals properly submitted in response to the above-referenced RFP-200x-xxx and has identified [Vendor's Name] as the apparently successful Vendor; and,

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

NOW THEREFORE, the Purchaser awards to [Vendor's Name] this Software License Contract which shall govern Vendor's furnishing to OAC the _____ Software 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. Definition of Terms

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

"Acceptance" shall mean a written notice from the Purchaser to the Vendor that the Software has passed its Acceptance Testing.

"Acceptance Date" shall mean the date upon which Purchaser accepts the Software as provided in the section titled Standard of Performance and Acceptance.

"Acceptance Testing" shall mean the standards to be met by the Software prior to Acceptance by the Purchaser, as set forth in the section titled Standard of Performance and Acceptance.

"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.

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

"**Court User**" shall mean an officer, employee, or agent of any court within the state of Washington and of any judicial branch agency.

"**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 Request for *Proposal RFP-200X-XXX* for _____ Software issued by the OAC.

"**Exhibit B**" shall mean the Vendor's response dated *[Date]*.

"**FEIN**" shall mean the Vendor's Federal Employer Identification Number.

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

"**Licensed Software**" shall mean Software which 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, OAC, any division, section, office, unit or other entity of the OAC or any of the officers or other officials lawfully representing the OAC, which has executed this Contract with the Vendor for specified Software and/or Services.

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

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

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

"**RFP**" shall mean the Request for *Proposal* used as a solicitation document in this procurement, as well as all amendments and modifications thereto.

"**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 *RFP-200X-XXX*, 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.

"**Subcontractor**" shall mean one not in the employment of the Vendor, who is performing all or part of those Services under this Contract under a separate contract with the Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

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

Contract Term

2. License Grant

- 2.1. Vendor grants to Purchaser a *perpetual, non-exclusive, site-wide, agency-wide, irrevocable, transferable* license to use the Software and related documentation according to the terms and conditions of this Contract, without regard to operating system, hardware usage or capacity, and number of users.
- 2.2. Purchaser may modify any Vendor application Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, the Vendor application Software will be removed from the derivative work and, at the Purchaser’s option, either destroyed or returned to Vendor.
- 2.3. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software which bears a copyright notice of any third party.
- 2.4. Purchaser may copy each item of Software to a multiple hard drives or network.
- 2.5. 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.
- 2.6. Vendor understands that Purchaser may provide information processing Services to other Court Users. 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.
- 2.7. 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.
- 2.8. Purchaser shall have the right to use Software at off-site locations for the purpose of Disaster Recovery, including all testing done at the site.

3. Term

- 3.1. License Term. The License for all Software provided pursuant to this Contract shall be perpetual.
- 3.2. Maintenance and Support of Software.
 - 3.2.1. Initial Term. The initial term for maintenance and support Services for Software licensed herein shall be one year, commencing one (1) day following Acceptance of the Software.

- 3.2.2. Subsequent Terms. The term of said maintenance and support Services may be extended by additional periods: PROVIDED, Each extension shall be at the option of the Purchaser. Purchaser shall notify Vendor 30 days prior to termination of maintenance and support services. Purchaser shall be given a prompt refund of unused months of service. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.
- 3.3. Term of Contract for Purchases. The term for purchases under this Contract shall be sixty days, 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.

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, Maintenance and other Services at the costs, rates, and fees set forth in Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor for implementation of Vendor's proposal/quotation.
- 5.2. Support services will not increase at a rate greater than five percent (5%) over the fee for the previous year.

6. Advance Payment Prohibited

No advance payment shall be made for the Software and Related Services furnished by Vendor pursuant to this Contract. Payment for the initial license, training, data conversion, implementation, and other services conducted prior to the Acceptance Date, will be payable upon invoice after the Software has been Accepted. *Notwithstanding the above, support subscription services payments, if any, may be made on an annual basis, at the beginning of each year.*

7. Taxes

The Purchaser will pay sales and use taxes imposed on the Software 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.

8. Invoice and Payment

- 8.1. The Vendor will submit properly itemized invoices and/or vouchers to the Purchaser. Invoices shall provide and itemize, as applicable:
- a) Contract number [XXX-XXX-XXX];
 - b) Description of Software and Services;
 - c) Date of delivery and/or date of installation;
 - d) Vendor's price for each item;
 - e) Applicable discounts;
 - f) Applicable taxes; and
 - g) Total invoice price
- 8.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of such Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 8.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 8.4. This Contract number [XXX-XXX-XXX] 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.
- 8.5. 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 Acceptance of the Software or receipt of Vendor's properly prepared invoice, whichever is later.

9. 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

10. 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.

11. Software Delivery

- 11.1. The Vendor shall deliver the Software ordered pursuant to this Contract on or before the date *specified in the implementation plan contained in Vendor's Proposal*. 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 liquidated damages,

and/or forfeiture of performance bond, and/or termination of this Contract and/or other damages available under law for failure to deliver on time.

- 11.2. 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

12. 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.

13. Installation of Software by Vendor

Vendor shall install the Licensed Software on Purchaser's designated computer system in accordance with the *specification in Schedule D contained in RFP-200x-xxx*)

[- OR -]

xx. 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.

14. Software Specifications

Software Specifications are listed and described in Vendor's proposal. Vendor warrants that products delivered hereunder shall perform in accordance with these specifications.

15. Standard of Performance and Acceptance

- 15.1. During Acceptance Testing, as defined in this section, Purchaser shall conduct tests as it deems appropriate concerning whether the Licensed Software appears to be capable of being effectively utilized in Purchaser's operating environment.
- 15.2. The Acceptance Testing shall commence after full implementation of the Licensed Software by Vendor.
- 15.3. Subject to possible extensions, the Acceptance Testing shall end after 20 calendar days.
- 15.4. Purchaser may (a) Accept the Licensed Software subject to the terms and conditions of this Contract or (b) *Reject the Software if it fails to conform to the specifications in this Contract, the RFP, or the Vendor's proposal*, in either case by notice to Vendor at any time during the Acceptance Testing period. The date, if any, on which Purchaser Accepts the Licensed Software is referred to as the "Acceptance Date."
- 15.5. The Warranty and Maintenance periods shall begin one day following the Acceptance Date.

16. Software Upgrades and Enhancements

Provided Purchaser is currently subscribing to Software Maintenance, Vendor shall be required:

- 16.1. To supply at no added cost updated versions of the Software to operate on upgraded versions of operating systems;
- 16.2. To supply at no added cost versions of the Software to operate on another software platform.
- 16.3. To supply at no added cost updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to the Purchaser; and
- 16.4. To supply at no added cost interface modules which are developed by the Vendor for interfacing the Software to other Software products.
- 16.5. To supply at no added cost all new releases or upgrades of the software that provide similar functionality and are designed to run on the original operating system or operating system that is generally recognized as the successor regardless of name.
- 16.6. To notify Purchaser proactively of new versions, releases, and corrections via US mail.

17. Software Maintenance and Support Services

- 17.1. Vendor shall provide the software maintenance and support services listed in Vendor's proposal. In addition, Vendor must provide support at no additional charge, Monday through Friday, between 8 am and 5 pm Pacific Time. All OAC staff must be able to access support via a toll free telephone number and email, at a minimum. Also, the Vendor must respond to a trouble report within two (2) hours and provide OAC with a resolution plan containing the estimated resolution time.
- 17.2. Vendor shall continue to offer support for prior versions of the Software for a minimum of three years after release of a subsequent version.

18. Reauthorization Code Required

Vendor's Software shall not require a reauthorization code in order for the Software to remain functional upon Purchaser's movement of the Software to another computer system.

19. Software Documentation

- 19.1. Vendor will provide Software documentation at the earlier of installation of this Software or within thirty (30) calendar days after execution of this Contract two manuals, 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.
- 19.2. 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.
- 19.3. Vendor grants to the Purchaser the right to copy or otherwise reproduce, adapt, and distribute manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

20. 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.

21. Use of Purchaser's Property and Facilities

- 21.1. Any property of the Purchaser furnished to the Vendor shall be used only for the performance of this Contract.
- 21.2. 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.
- 21.3. 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.

22. Vendor Commitments, Warranties, and Representations

- 22.1. Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due the Purchaser under the terms of this Contract.
- 22.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
 - 22.2.1. Prices, discounts, and options committed to remain in force over a specified period of time;
 - 22.2.2. 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;
 - 22.2.3. 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;
 - 22.2.4. 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
 - 22.2.5. 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.

23. Date Warranty

Vendor warrants that the Software provided pursuant to this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present

calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at the Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to the Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity of Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

24. Physical Media Warranty

- 24.1. 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 Acceptance of the Software copy by the Purchaser.
- 24.2. 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.
- 24.3. 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.

25. No Surreptitious Code Warranty

- 25.1. 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."
- 25.2. 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.
- 25.3. 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.
- 25.4. 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.

26. Training

Vendor shall provide training according to Vendor's Training Plan submitted in Vendor's proposal. At a minimum, the training will be conducted onsite at Purchaser's location for up to 30 employees.

27. Minority and Women's Business Enterprise (MWBE) Participation

Within thirty (30) calendar days of Contract execution, Vendor shall notify Purchaser if Vendor has a current MWBE certification in the state of Washington. Vendor's MWBE status was not considered in the award of this Contract.

28. Protection of Purchaser's Confidential Information

28.1. Vendor 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 State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees 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. Vendor agrees to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.

28.2. This section does not impose any obligation on the Vendor 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 to the Vendor; (3) furnished by the Purchaser to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

29. 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 such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

Contract Termination

30. Termination for Default

30.1. If either the Purchaser or 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 aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.

30.2. In the event of termination of this Contract by Purchaser, the Purchaser 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 this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and (3) any other costs to the Purchaser resulting from the Vendor's breach. The Purchaser 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 for the Vendor's default.

- 30.3. 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.
- 30.4. 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.
- 30.5. This section shall not apply during the Accepting Testing period.

31. Termination for Convenience

- 31.1. When it is in the best interest of the Purchaser, the Purchaser Contracting Officer may terminate this Contract, in whole or in part, by *fourteen (14) 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 *fourteen (14) calendar days* notice.
- 31.2. 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 and Accepted by the Purchaser prior to the effective date of termination.

32. Termination for Withdrawal of Authority

In the event that the authority of the Purchaser 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, the Purchaser may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Software from a third party.

33. 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 agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Software or Services from a third party.

34. Termination for Conflict of Interest

- 34.1. The Purchaser 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:
 - 34.1.1. Ethics in Public Service, chapter 42.52 RCW; or
 - 34.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.
- 34.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, the Purchaser 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.

35. Termination Procedure

- 35.1. Upon termination of this Contract, the Purchaser, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser 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.
- 35.2. Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed-upon price, if separately stated, for the Software or Services received and Accepted 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 Contract Administrator determines to be necessary to protect the Purchaser from potential loss or liability.
- 35.3. After receipt of a notice of termination, and except as otherwise directed by the Purchaser, the Vendor shall:
 - 35.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;
 - 35.3.2. 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;
 - 35.3.3. 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 Contract Administrator 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;
 - 35.3.4. 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;
 - 35.3.5. 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;
 - 35.3.6. Complete performance of such part of this Contract as shall not have been terminated by the Purchaser;
 - 35.3.7. Take such action as may be necessary, or as the Purchaser 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;
 - 35.3.8. Transfer title, excluding Licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the Purchaser Contract Administrator, any property which is required to be furnished to Purchaser; and
 - 35.3.9. Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.
- 35.4. The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser as the result of termination.

36. Covenant Against Contingent Fees

- 36.1. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of the Vendor.
- 36.2. In the event of breach of this section by the Vendor, the Purchaser shall have the right to either annul this Contract without liability to the Purchaser, or, at the Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Disputes and Remedies

37. Disputes

- 37.1. In the event a bona fide dispute concerning a question of fact arises between the Vendor and the Purchaser and it cannot be resolved between the parties with the aid of the Purchaser Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 37.2. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days.
 - 37.2.1. Then, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.
 - 37.2.2. Within three (3) Business Days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - 37.2.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - 37.2.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 37.3. Both parties agree to be bound by the determination of the dispute resolution panel.
- 37.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 37.5. The Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.
- 37.6. If the subject of the dispute is the amount due and payable by Purchaser for maintenance Services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute.

38. Attorneys' Fees and Costs

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.

39. 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.

40. Liquidated Damages

40.1. Liquidated Damages - General

- 40.1.1. Any delay by the Vendor in meeting the *maintenance or repair date* set forth in this Contract will interfere with the proper operations of the Purchaser's programs to the loss and damage of the Purchaser.
- 40.1.2. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, the Purchaser and the Vendor, therefore, agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following sections and the parties agree that the Vendor shall pay such amounts as liquidated damages and not as a penalty.
- 40.1.3. Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability.

40.2. Liquidated Damages - Specific

- 40.2.1. If the Vendor fails to begin repairs or make or make reasonable progress toward problem resolution within forty-eight (48) hours of notification by the Purchaser that maintenance is required (or some other mutually agreed upon timeframe), the Vendor shall pay to the Purchaser fixed and agreed liquidated damages, in lieu of all other damages due to such non-responsiveness. The liquidated damage amount shall be calculated as one twelfth (1/12) the annual maintenance fee and shall be due for each twenty-four (24) hour period between the agreed upon resolution time and the actual.

41. 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. 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.

42. Limitation of Liability

- 42.1. 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 regarding liquidated damages, retainages, 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 and Performance Bond are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 42.2. The Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of 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, 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.

- 42.3. 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

43. 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, or by fax, or by email to the parties at the following addresses:

to **Vendor** at: *[Vendor Name]*
 Attention: [Name]
 [Street Address]
 [City]
 [State and Zip]
 [Phone and fax numbers]

to **Purchaser** at: Office of the Administrator for the Courts
 Attention: Contracts Officer
 1206 Quince SE
 PO Box 41170
 Olympia, WA 98504-1170
 (360) 705-5239
 (360) 664-0616 Fax
 contracts@courts.wa.gov

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.

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

- 44.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 44.2. 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:
- 44.2.1. Applicable federal and state statutes, laws, and regulations;
 - 44.2.2. Sections of this Contract *[Contract Number]*;
 - 44.2.3. Schedule D - Software Specifications, to this Contract;
 - 44.2.4. Schedule A - Authorized Product and Price List, to this Contract;

- 44.2.5. Exhibit A - Office of the Administrator for the Courts Request for *Proposal RFP-200X-XXX* for _____ Software;
- 44.2.6. Exhibit B - Vendor's Response to the Purchaser, dated *[Date]*, including all written information provided with Vendor's response;
- 44.2.7. The terms and conditions contained on Purchaser's purchase documents, if used; and
- 44.2.8. 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.

45. 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.

46. 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.

47. 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 Purchaser. Only the Purchaser Contracting Officer 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.

48. Purchaser Contract Administrator

The Purchaser shall appoint *[Name]* who will be the Purchaser Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Purchaser 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. The Purchaser shall notify Vendor, in writing, when there is a new Purchaser Contract Administrator assigned to this Contract.

49. Vendor's Account Manager

The Vendor shall appoint *[Name]* who will be the Account Manager for the Purchaser's account. The Vendor's Account Manager will be the principal point of contact for the Purchaser concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

50. 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 venturers, 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.

51. 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 Thurston County, Washington.

52. Subcontractors

The Vendor may, with prior written permission from the Purchaser Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to the Purchaser for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to hold the Purchaser harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. The Purchaser shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of the Patent and Copyright Indemnification section of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification section of this Contract shall apply to all Subcontractors.

53. Assignment

- 53.1. With the prior written consent of the Purchaser, 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 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.
- 53.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, the Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, That such assignment shall not operate to relieve the Purchaser of any of its duties and obligations hereunder.
- 53.3. If Vendor assigns its license rights to another Vendor, Purchaser may terminate the agreement and receive a refund of license fees of one-half the purchase price and a full refund of unused maintenance fees. Purchaser will have 18 months after notification of license transfer to exercise its rights under this clause.

54. Publicity

The Vendor agrees to submit to the Purchaser all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's name is mentioned or language used from which the connection of the Purchaser's name therewith may, in Purchaser'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 the Purchaser.

55. Review of Vendor's Records

- 55.1. 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.
- 55.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston 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.
- 55.3. The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 55.4. 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

56. Patent and Copyright Indemnification

- 56.1. 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 or settled upon provided that Purchaser:
 - 56.1.1. Promptly notifies Vendor in writing of the claim; and
 - 56.1.2. 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.
- 56.2. 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 noninfringing 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.

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

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

56.3.2. Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Vendor; or

56.3.3. 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.

57. Save Harmless

Vendor shall protect, indemnify and save the Purchaser harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or Subcontractors.

58. Insurance

58.1. Liability and Auto Insurance. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the Purchaser Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:

58.1.1. Public liability covering the risks of bodily injury, property damage and personal injury (including death);

58.1.2. General Business Liability; and

58.1.3. Automobile liability (owned or nonowned) covering the risks of public liability and property damage.

58.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for the Purchaser pursuant to this section shall name the Purchaser as an additional insured and shall have a condition that they cannot be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to the Purchaser by such insurer.

59. 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.

60. Deleted

61. 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.)

62. 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 the Purchaser harmless from all damages assessed against the Purchaser as a result of the failure of the items furnished under this Contract to so comply.

63. UCC Applicability

- 63.1. 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.
- 63.2. 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.
- 63.3. 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.

64. Antitrust Violations

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

65. 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.

66. 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.

67. 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.

68. 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.

69. Treatment of Assets

- 69.1. 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.
- 69.2. 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.
- 69.3. 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.
- 69.4. 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.
- 69.5. The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
- 69.6. All reference to the Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

70. Vendor's Proprietary Information

Vendor acknowledges that the Purchaser 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, the Purchaser shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, the Purchaser 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, the Purchaser will release the requested information on the date specified.

Contract Execution

71. Authority to Bind

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

72. 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.

The parties, agree to this Contract in its entirety.

Approved

State of Washington,
Office of the Administrator for the Courts]

Approved

[Vendor's Name]

Signature

Signature

Print or Type Name

Print or Type Name

Title Date

Title Date

Schedule A

Authorized Product and

Price List

Schedule A
Authorized Product and Price List
as of [Date]
for
Contract No. [XXX-XXX-XXX]
with
[Vendor]

Vendors are (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.

[List information required to be included by the Vendor, e.g., Product Category, Products Name, Product Description, Price, Training fees, Installation fees, Upgrade fees, Maintenance Fees, etc.]

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

Schedule B

(Blank)

Schedule C

MWBE Certification

Schedule D

Installation Specifications

Site and Installation Planning – To establish responsibility for site specifications and preparation.