

APPENDIX C – SAMPLE CONTRACT

**PERSONAL SERVICES CONTRACT – XXXXX
BETWEEN
XXXX XXXXX
AND
XXXXX XXXXXXXX**

This Contract is made and entered into by and between [Local government] (Purchaser), and _____, (Contractor).

RECITALS

The Administrative Office of the Courts (AOC) issued Request for Proposals ACQ-2020-0817-RFP (“RFP”), which was dated October 6, 2020 and which is incorporated into this Contract by this reference, to initiate a project to provide local governments in Washington State with Electronic Monitoring Victim Notification Technology (EMVNT);

Contractor submitted a Proposal in response to the RFP, which was dated _____ and which is incorporated into this Contract by this reference;

AOC evaluated the proposal and identified Contractor as a Vendor that could that could provide EMVNT to Purchaser;

Contractor desires to enter into an agreement with Purchaser to meet Purchaser’s need for EMVNT; and

Purchaser and Contractor have agreed that the terms and conditions of this Contract shall govern Contractor’s furnishing to Purchaser the EMVNT.

Therefore, in consideration of the foregoing Recitals and the mutual promises and covenants as set forth below, the parties agree as follows:

PURPOSE

For the Contractor to provide to Purchaser Electronic Monitoring Victim Notification Technology (EMVNT) Equipment and Services when such Equipment and Services are ordered by Purchaser.

STATEMENT OF WORK

Contractor shall provide the Equipment and Services for EMVNT that are set forth in the Statement of Work to be completed by the parties, based on the RFP and Contractor’s RFP response, as well as the specific products and services being sought.

IMPLEMENTATION AND TRAINING

Contractor shall complete each Implementation of the Contractor’s Product in accordance with the RFP, Proposal, SOW and other parts of this Contract. Contractor shall also provide all

user training of its Product in accordance with the RFP, Proposal, SOW and other parts of this Contract.

SERVICES

Contractor represents and warrants that:

- a) It shall perform all Services required pursuant to this Contract in a professional manner, with high quality, knowledge and experience in business and systems integrations, maintenance, support and operations;
- b) Time shall be of the essence in connection with performance of the Services; and
- c) Contractor shall immediately reperform Services which are not in compliance with such representations and warranties at no cost to Purchaser.

INTELLECTUAL PROPERTY RIGHTS

Contractor warrants that it is the owner of the Products that are to be provided to Purchaser or otherwise has the right to grant to Purchaser the licenses (including, but not limited to, licenses to Third-Party Software) described herein without violating any rights of any third party.

Contractor further represents and warrants that:

- a) there is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Contractor to Purchaser;
- b) Products shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other Intellectual Property right; and
- c) Contractor is the owner of the Contractor Technology licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Contractor Technology provided by Contractor through this Contract without violating any rights of any third party worldwide and that Purchaser's exercise of the licenses within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology infringes any patents or copyrights, or misappropriates trade secrets or other rights of any third party, and (ii) Contractor has no actual knowledge that the Contractor Technology infringes upon any patents, copyrights, trade secrets or other rights of any third party. Purchaser shall receive prompt written notice of each notice or claim of patent or copyright infringement or infringement of other Intellectual Property right worldwide received by Contractor with respect to any Contractor or Technology delivered under this Contract.

LEGAL AND REGULATORY COMPLIANCE

Contractor represents and warrants that the Product shall comply with all applicable federal and State laws, regulations, codes, standards and ordinances. In the event that any Product performed or provided by Contractor is subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to bring the Product into compliance at no cost to Purchaser.

CONTINUOUS IMPROVEMENT

Contractor represents and warrants that it shall on an ongoing basis, as part of its total quality management process, identify, report to AOC, and implement ways to improve performance of the Services and identify and apply techniques and tools from other Contractor installations that would benefit AOC either operationally or financially.

ACCEPTANCE

All Products, Equipment and Services will be completed by Contractor with input from Purchaser Program Manager. Final review and Acceptance signers are the Contractor and Purchaser Program Manager. A signed Acceptance document will be produced. The Equipment and Product will be considered accepted once the Acceptance document is signed. Once accepted Contractor may submit a monthly invoice for Services and other Products requested by Purchaser.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will commence on date of execution and run through Xxxxxx X, 20??.

COMPENSATION AND PAYMENT

Maximum Amount

Purchaser shall pay an amount not to exceed \$XXXX for the Products, Equipment and Services as set forth above and in the Statement of Work. Contractor shall not increase the maximum amount or charges, except pursuant to a written amendment to the Contract by authorized representatives of the parties. This amount includes expenses necessary or incidental to performing the items under the Statement of Work, including, but not limited to, travel, lodging and per diem related expenses. Contractor will submit an invoice after the completion and Acceptance is signed as noted above. After Equipment is in use Contractor will submit an invoice on a monthly basis for its Services and Products.

Taxes

Purchaser shall pay any sales or use taxes imposed on applicable Services and/or Equipment. Contractor must pay all other applicable taxes including, but not limited to, the Washington Business and Occupation Tax, taxes based on Contractor's income, gross receipts, or revenue or personal property taxes levied or assessed on Contractor's personal property to which Purchaser does not hold title. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

Transportation and Insurance Charges.

Contractor shall pay the costs associated with transportation, delivery and insurance, if any, for each Deliverable.

Contractor Expenses

Contractor shall pay Contractor’s out of pocket expenses incurred in connection with providing the Equipment, Services and Products and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel and per diem for its staff.

BILLING PROCEDURES

Contractor will submit properly prepared itemized invoices via email to an email address supplied by Purchaser. Invoices shall be submitted no more frequently than once a month. Incorrect or incomplete invoices shall be returned by Purchaser to Contractor for correction and reissuance. The invoices shall describe and document to Purchaser’s reasonable satisfaction a description of the Services performed and use of the Equipment. All Invoices shall provide and itemize, at a minimum, the following:

- A. **Contract Number XXXXX;**
- B. Contractor name, address, phone number;
- C. Contractor Federal tax Identification Number;
- D. Description of Services provided;
- E. Date(s) Services were provided;
- F. Total Invoice Price.

Payment will be considered timely if made by Purchaser within thirty (30) calendar days of receipt of a properly prepared and approved invoice. Payment shall be sent to the address designated by the Contractor.

Purchaser may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by Purchaser.

PROJECT MANAGEMENT

The Program Manager for each of the parties shall be the contact person for all communications regarding the performance of this Contract.

Purchaser Program Manager	Contractor Program Manager

ASSURANCES

Purchaser and the Contractor agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

REFERENCE AND BACKGROUND CHECKS

As a requirement of this Contract, for any Staff performing work under this Contract, Contractor shall: (i) provide the results from a fingerprint-based background check completed within the last 12 calendar months; (ii) conduct, at the Contractor's expense, and provide the results from a fingerprint-based background check for Staff who do not have results from the last 12 calendar months; (iii) conduct, at the Contractor's expense, and provide the results from a fingerprint based background check at Purchaser's Program Manager's request, based on probable cause to do so, not more than annually; (iv) at the request of a local court or Probation office (at the requestor's expense); and/or (v) every five years thereafter. Purchaser shall have the authority to accept or reject the Staff based upon results in accordance with Purchaser's policies.

HARDWARE AND SOFTWARE USE

The Contractor shall ensure that Contractor will have the hardware and software necessary to complete the engagement as identified in the scope of work. Purchaser will not supply hardware or software to the Contractor unless specifically agreed to in writing.

SITE SECURITY

Contractor staff shall conform in all respects with physical, fire or other security regulations while on Purchaser premises. Failure to comply with safety regulations may be grounds for revoking or suspending security access to these facilities. Purchaser reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify Purchaser.

ENTIRE AGREEMENT

This contract including Appendix A - General Terms and Conditions, and all other referenced appendices represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties.

ORDER OF PRECEDENCE

In the event that there is a conflict between the documents comprising the Contract, the following order of precedence shall apply.

1. Applicable federal and State laws, regulations and policies.
2. The terms and conditions in the body of this Contract, including Appendix A, General Terms and Conditions and the Definition section of the RFP, which has been attached to the Contract as Appendix B.
3. Appendix C (Statement of Work).
4. Appendix D - The RFP.
5. Appendix E - Contractor's Proposal to the RFP.
6. All Contractor publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made

**APPENDIX - A
PERSONAL SERVICES CONTRACT – PSCXXX
GENERAL TERMS AND CONDITIONS**

ACCESS TO DATA

In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to AOC, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, recommendations of the Contractor's reports, including computer models and methodology for those models.

AMERICAN WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ADVANCE PAYMENTS PROHIBITED

No payment in advance or in anticipation of services to be provided under this contract shall be made by Purchaser.

CHANGES AND MODIFICATIONS

Any change or modification to this contract must be in writing and signed by both parties.

CONFIDENTIAL INFORMATION

- A. Protection Obligations. Access and Protection. During the term of the Contract, Contractor and Purchaser will have access to and become acquainted with each party's Confidential Information and proprietary information. Except for disclosure pursuant to Section A 1 (Public Record) below, Purchaser and Contractor, and each of their officers, employees and agents, shall, subject to State laws, regulations, and court rules, and in accordance with this Section, maintain (i) all Confidential Information of the other party in strict confidence, and (ii) all proprietary information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or proprietary information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and State law and regulation and this Section, the other party's Confidential Information and proprietary information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract. Except for disclosures pursuant to section A 1 (Public Record) below, each party agrees that prior to disclosing any proprietary information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that

such third party will be bound by the same terms as specified in this Section with respect to the proprietary information and Confidential Information. In addition to the requirements expressly stated in this Section, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of Purchaser that relates to the safeguarding or disclosure of information relating to court records, Contractor's operations, or the Services performed by Contractor under this Contract.

1. Public Record. Notwithstanding the above, Contractor acknowledges and agrees that Purchaser is subject to either i) [Supreme Court General Rule - GR 31.1](#) and that this Contract shall be a public record as defined in [Supreme Court General Rule - GR 31.1](#). or ii) the Washington Public Records Act (PRA), RCW 42.56. Any specific information that is claimed by Contractor to be proprietary information or Confidential Information must be clearly identified as such by Contractor. Purchaser will maintain the confidentiality of all such information marked proprietary or Confidential Information as allowed by applicable law, including [Supreme Court General Rule - GR 31.1](#) or the PRA. If a request is made to view Contractor's proprietary information or Confidential Information, Purchaser will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Purchaser will release the identified requested information on the date specified.
2. Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of Purchaser and which the other party may establish from time to time, with respect to information and materials which come into each party's possession and to which such party gains access under this Contract. Such information and materials include without limitation all proprietary Confidential Information. While on Purchaser's premises, Contractor's staff shall conform in all respects with physical, fire, computer system, network or other Purchaser security requirements.

B. Audit

Purchaser reserves the right to audit or investigate Contractor's use of Purchaser's Confidential Information and proprietary information collected, used, or acquired by Contractor under this Contract.

C. Return

Subject to record retention laws and to Purchaser's rights under this Contract, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information and proprietary information, including copies thereof.

D. Unauthorized Disclosures or Uses

Contractor shall immediately report to Purchaser any and all unauthorized disclosures or uses of Purchaser's Confidential Information or proprietary information of which it or its Contractor's staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of Purchaser's Confidential Information or proprietary

information to others may cause immediate and irreparable harm to Purchaser. If Contractor should publish or disclose such Confidential Information or proprietary information to others without authorization, Purchaser shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

AOC will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information or proprietary information of which Purchaser is aware or has knowledge. Purchaser acknowledges that any publication or disclosure of Contractor's Confidential Information or proprietary information to others may cause immediate and irreparable harm to Contractor. If Purchaser should publish or disclose such Confidential Information or proprietary information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

E. Nondisclosure of Other Purchaser Information

The use or disclosure by Contractor of any of Purchaser's information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of Purchaser.

F. Exceptions

The following information shall not be considered Confidential Information for the purposes of this Contract: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

G. Survival

The provisions of this Section shall remain in effect following the termination or expiration of this Contract.

CONFLICT OF INTEREST

Purchaser may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by Purchaser that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, Purchaser shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of Purchaser provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained

by the Contractor for purposes of securing business. Purchaser has the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such percentage, brokerage or contingent fee.

DISPUTES

In the event that a dispute arises under this Agreement, the parties agree that it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint two additional members to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties.

FORCE MAJEURE

Neither Contractor nor Purchaser shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

GOVERNING LAW

This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in _____ County. The Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

INDEMNIFICATION

The Contractor shall defend, protect, and hold harmless the state of Washington, Purchaser, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of Confidentiality, or which constitute an infringement of any copyright, patent, trademark or trade name through use or reproduction of material of any kind.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The Contractor and his or her employees or agents performing under this contract are not employees or agents of Purchaser. The Contractor will not hold himself/herself out to be an officer or employee of Purchaser or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under chapter 28B.16 RCW or chapter 41.06 RCW or which would accrue to an employee of the Judicial Branch specifically exempted by chapter 41.06 RCW.

INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this agreement, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required by an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. Should the Contractor fail to secure industrial insurance or fail to pay premiums, as may be required under Title 51 RCW, Purchaser may deduct the amount of premiums and any penalties owing from the amounts payable to the Division of

Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by Purchaser.

Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any Subcontractor or employee of the Contractor which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify Purchaser and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

INSURANCE

A. Liability and Auto Insurance

Contractor shall, at its sole cost and expense, obtain, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A, Class VII or better, in the most recently published edition of Best's Reports. Contractor shall include Purchaser, its boards, agencies, contractors, offices, employees, agents and volunteers as a named insured party in Contractor's insurance policy. If Contractor fails to buy and maintain the insurance coverage described in this section, Purchaser may terminate this Contract under Termination for Default. The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
2. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
3. Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
4. Umbrella policy providing excess limits over the primary Commercial General Liability policies in an amount not less than \$3 million;
5. Professional Liability Errors and Omissions, coverage of not less than \$1 million per occurrence/\$2 million general aggregate;
6. Crime Coverage insurance, with a deductible not to exceed \$1 million and coverage of not less than \$5 million single limit per occurrence and \$5 million in

the aggregate, which shall at a minimum cover first-party costs and third-party claims from EFT, computer, electronic transmissions fraud and theft, and occurrences falling in the following categories: Forgery; Money and Securities; and Employee Dishonesty.

B. Subcontractors

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

C. Premiums

Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for Purchaser pursuant to this Section shall expressly provide that Purchaser be named as additional insured on Commercial General Liability and Business Automobile Liability policies, and that it shall not be revoked by the insurer unless notice of intended revocation shall have first been given to Purchaser by such insurer according to the terms of the policy.

D. Cancellation

Contractor's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days' written notice has been given to Purchaser, attention Purchaser Program Manager, and Contractor has replacement insurance policies in place that satisfy the requirements set forth in this section. Contractor's insurance policies shall not be reduced in scope without Purchaser's prior written consent.

E. Insurance Documents

Contractor shall furnish to Purchaser's Program Manager copies of certificates of all required insurance within 30 calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Contract by for material breach.

F. Increased Coverage

Purchaser must be notified by Contractor immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

G. Subrogation

As between Contractor and Purchaser for claims for which Contractor is liable, with regard to Contractor's Commercial General Liability and Business Automobile Liability Contractor agrees to waive all rights of subrogation against Purchaser, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Contract.

H. Cross Liability

All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by Purchaser and shall include a severability of interests (cross liability) provision.

LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the Contracting Officer or his/her delegates (delegation to be made in writing prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract on behalf of Purchaser. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contracting Officer or his or her delegate.

NON-ASSIGNABILITY

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with Purchaser. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

PERSONALITY RIGHTS

Contractor grants Purchaser the rights to use Contractor's name, voice, signature, photograph or other likeness in conjunction with services provided under this Agreement and to videotape or audio record the presentation.

PRIVACY PROTECTION

Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor 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 Purchaser or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

Purchaser reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by Purchaser. Salting is the act of placing a record containing unique but false information into a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless Purchaser for any damages related to Contractor's unauthorized use of personal information.

PUBLICITY

The Contractor agrees to submit to Purchaser all advertising and publicity matters relating to this contract which Purchaser's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of Purchaser.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the State of Washington, Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RECORDS, DOCUMENTS, AND REPORTS

The Contractor 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 expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by Purchaser and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other material relevant to this contract for six years after settlement, and make them available for inspection by persons authorized this provision.

RIGHT OF INSPECTION

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

SAFEGUARDING OF INFORMATION

The use or disclosure by the Contractor of any information obtained as a result of performance under this contract concerning Purchaser for any purpose not directly connected with the administration of Purchaser's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of Purchaser.

SAVINGS

In the event funding from local, state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, Purchaser may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions.

SEVERABILITY

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

SUBCONTRACTING

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval from Purchaser.

TERMINATION

A. Termination for Default

Purchaser may, by written notice, terminate this contract, in whole or in part, for failure of the Contractor to perform any of the obligations or provisions required by the contract. In the event of default, the Contractor shall be liable for damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

B. Termination for Convenience

Except as otherwise provided in this contract, Purchaser may terminate this contract by providing written notice of such termination to the Contractor, specifying the effective date thereof, at least five (5) calendar days prior to such date. If this contract is so terminated, Purchaser shall be liable only for payment for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE

Upon termination of this contract, Purchaser, in addition to any other rights provided in this contract, shall require the Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of the contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by Purchaser, and the amount agreed upon by the Contractor and Purchaser for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by Purchaser, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Contracting Officer shall determine the extent of liability of Purchaser. Purchaser may withhold from any amounts due the Contractor such sum as Purchaser determines to be necessary to protect Purchaser against potential loss or liability.

The rights and remedies of Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of notice of termination, and except as otherwise directed by Purchaser, the Contractor shall:

- A. Stop work under this contract on the date and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

- C. Assign to Purchaser, in the manner, at the times, and to the extent directed by Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Purchaser to the extent the Contracting Officer may require, which approval or ratification shall be final for all purposes of this clause;
- E. Transfer title to Purchaser and deliver in the manner, at the times, and to the extent directed by Purchaser any property which, if the contract had been completed, would have been required to be furnished to Purchaser;
- F. Complete performance of such part of work as shall not have been terminated by Purchaser; and
- G. Take such actions as may be necessary, or as Purchaser may direct, for the protection and preservation of the property related to this contract which is in possession of the Contractor and in which Purchaser has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in Purchaser upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in Purchaser upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by Purchaser in whole or in part, whichever first occurs.

Contractor shall convey to Purchaser title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Product and the embedded software in the Product.

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

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

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

The Contractor shall surrender to Purchaser all property of Purchaser prior to settlement upon completion, termination or cancellation of this contract.

WAIVER

Waiver of any default of any term or condition of this contract shall not be deemed to be a waiver of any other prior or subsequent default. Waiver of breach of any provision of the contract shall not be deemed a waiver of any other or subsequent breach and shall not be construed as a modification of the terms of this contract unless stated to be such in writing, signed by the Contracting Officer and attached to the original contract.

WARRANTY

The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its Proposal, (b) the Product is suitable for the purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the Proposal or for which Purchaser or AOC has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to Purchaser) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.