



**WASHINGTON
COURTS**

**REQUEST FOR PROPOSAL
AOC LEARNING MANAGEMENT SYSTEM (LMS)
ACQ-2021-0126-RFP**

1/26/2021 (RFP RELEASED)

**STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE COURTS
1206 Quince Street SE
Post Office Box 41170
Olympia, Washington 98504-1170**

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1. Introduction

This request for proposal (RFP) is an open invitation to submit proposals for a learning management system (LMS) at the Administrative Office of the Courts (AOC).

The intent is to select one (1) vendor to provide this service. Through this process, the AOC seeks to develop an operational relationship with the selected vendor who can support the AOC distance education program.

All questions and inquiries regarding this RFP should be directed to:

RFP Coordinator:

Jonathan Sutter, Contracts Specialist

1206 Quince Street SE
PO Box 41170
Olympia, WA 98504-1170
(360) 705-5265
Jonathan.Sutter@courts.wa.gov

2. Schedule of Events

| <u>Event Description</u> | <u>Date</u> |
|--|---------------------|
| RFP Released..... | 1/26/2021 |
| Deadline for Receipt of Written Inquiries..... | 2/5/2021 |
| Written Responses Delivered | 2/12/2021 |
| Proposal Due Date..... | 2/19/2021 |
| Evaluation Period Ends..... | 3/19/2021 |
| Successful Vendor Announced..... | 3/22/2021 |
| Vendor Debriefing | 3/23/2021-3/26/2021 |
| Protest Period | 3/29/2021-4/2/2021 |
| Contract established | 4/19/2021-5/28/2021 |
| AOC receives LMS | 5/31/2021 |

3. General Information

3.1. Definitions

Asynchronous: Refers to education or training where participants can participate at different times – not live training. This typically involves eLearning, online courses, and portions of blended courses. This does not require participants be in the same geographic location.

Blended Education and Training: This term, also called “hybrid training,” is any combination of online and in-person education and training.

Event: Live, in-person, multi-day events with each day containing multiple classes/sessions. An event can including online participation.

In-Person Education and Training: Live, in-person education in the form of classes, seminars, and events, typically led by face-to-face instructors, facilitators, or hosts.

Learning Management System (LMS): An LMS is an enterprise-level software application or service that provides online enrollment, content delivery, administration, tracking, and reporting of educational courses, training programs, or learning and development programs. It supports in-person, online, and blended education and training.

Online Education and Training: Can include many different forms of fully online learning, such as:

- eLearning: Self-paced, stand-alone courses. Refers to fully online courses that do not have an instructor and can be taken anytime, anywhere (asynchronous).
- Online instructor-led course: An online course that spans days or weeks, led by an online instructor, and includes learning activities such as online discussions, webinars, and assessments (synchronous and/or asynchronous).
- Webinar: Online video conference meeting that mimics live face-to-face discussions (synchronous).

Synchronous: Refers to education or training where participants meet at the same time, whether online or in-person. Also called live training. Synchronous may not require participants be in the same geographic location.

3.2. Purpose of this Request

The purpose of this RFP is to solicit proposals from qualified LMS vendors that meet requirements and capabilities as established by the AOC. The conclusion of this process will result in the selection of one (1) vendor who will be invited to enter into a contract for the selected LMS product and services.

3.3. Company Background

The AOC provides support services to state, county, and municipal courts throughout the state including the Supreme Court (SC), Court of Appeals (COA), Superior Courts, and Courts of Limited Jurisdiction (District and Municipal Courts).

The AOC's Court Services Division (CSD) is responsible for development and delivery of online education and training to court system personnel, statewide.

3.4. Project Background

AOC currently delivers court system education and training via in-person, live events and classes. Some of these classes have more recently been delivered via webinar. The AOC has determined a strategic need for a distance education solution to supplement its in-person training. To this end, the AOC needs an LMS to host educational content and manage its dissemination.

4. RFP Administration and Instructions to Vendors

4.1. RFP Questions

Specific questions concerning the RFP should be submitted to the RFP Coordinator in writing, by email, or hand delivery. Oral responses given to any questions are to be considered preliminary and non-binding. Only written responses to questions will be considered official.

4.2. Response Format

Vendors must submit their responses electronically in Word or PDF format to the RFP Coordinator.

4.3. Response Requirements and Content

Vendors must respond to each requirement/question contained in Appendix B, Vendor Response Administrative, and Appendix C, Requirements and Scoring. As long as each response is complete, Vendors may submit multiple responses.

4.4. Response Date and Location

The vendor's response, in its entirety, must be received by the RFP Coordinator in Olympia, Washington, in accordance with the schedule contained in Section 2 herein (Schedule of Events). Late responses will not be accepted and will be automatically disqualified from further consideration.

Vendors must submit their Proposals electronically. Proposals must be reproducible upon receipt by AOC on standard 8-1/2 by 11 inch paper.

Vendors assume the risk of delivery of their proposals. The AOC assumes no responsibility for delays. Late responses will not be accepted, nor will additional time be granted to any vendor.

4.5. Costs of Preparing Responses

The AOC will not pay any vendor costs associated with preparing responses, submitted in response to this RFP.

4.6. Responses Property of the AOC

All responses, accompanying documentation and other materials submitted in response to this RFP become the property of the AOC and will not be returned.

4.7. Proprietary Information/Public Disclosure

All proposals received will remain confidential until the contract is signed and approved by all parties or a decision is made not to award a contract from this RFP. Thereafter, the proposals will be publicly accessible.

Any information contained in a proposal that is considered proprietary by Vendor must be clearly designated as such. Each page must be identified, as well as the specific legal reason (e.g., statute, court rule, case law, etc.) upon which Vendor is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "proprietary" printed in the lower margins of each page, as appropriate. Marking of the entire proposal as proprietary will be neither accepted nor honored. If a request is made to view or obtain a copy of a Vendor's proposal, AOC will comply with applicable public disclosure requirements. If any information in the proposal is marked as proprietary, such information will not be made available until the affected Vendor has been given an opportunity to seek an injunction or restraining order against the requested disclosure.

Documents provided to any requestor as a result of a Public Records Request will be provided electronically unless otherwise requested. AOC will charge for copying and shipping any copies of materials. Public Records Requests may be submitted directly to AOC by e-mail to PublicRecordsOfficer@courts.wa.gov.

AOC will retain RFP records in accordance with AOC Records Retention Schedules, with guidance from the Washington State general retention schedules.

4.8. RFP Amendments/Cancellation/Reissue/Reopen

The AOC reserves the right to change the RFP Schedule or issue amendments to this RFP at any time. The AOC also reserves the right to cancel or reissue the RFP.

4.9. Receipt of Insufficient Competitive Proposals

If AOC receives only one (1) responsive proposal as a result of this RFP, AOC reserves the right to select and award the contract to the single Vendor.

4.10. Minor Administrative Irregularities

The AOC reserves the right to waive minor administrative irregularities contained in any response.

4.11. Inability to Enter Contract

The AOC reserves the right to eliminate from further consideration any vendor that the AOC, because of legal or other considerations, is unable to contract with at the time responses are due in accordance with the schedule contained in Section 2 herein (Schedule of Events).

4.12. No Obligation to Enter a Contract

The release of this RFP does not compel the AOC to enter any contract.

The AOC reserves the right to refrain from contracting with any vendor that has responded to this RFP whether or not the vendor's response has been evaluated and whether or not the vendor has been determined to be qualified. Exercise of this reserved right does not affect the AOC's right to contract with any other vendor.

The AOC reserves the right to request an interview with any vendor who is a prospective contractor prior to entering a contract with that vendor. If a vendor declines the request for an interview for any reason, the vendor may be eliminated from further consideration.

4.13. Multiple Contracts

The AOC reserves the right to enter contracts with more than one vendor as a result of this RFP.

4.14. Most Favorable Terms

AOC reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that Vendor can offer. AOC reserves the right to contact a Vendor for clarification of its proposal during the evaluation process. In addition, if a proposal is selected, AOC reserves the right to enter into contract negotiations with the Apparently Successful Vendor (ASV), which may include discussion regarding Vendor's approach to meeting the terms of the contract. Contract negotiations may result in incorporation of some or all of the awarded Vendor's proposal, except to the extent revised in an Attachment to the Contract. Vendor must be prepared to accept this RFP for incorporation into a contract resulting from this RFP. The contract may incorporate some or all of Vendor's proposal. At its discretion, AOC reserves the right to request best and final offers from the RFP finalists. It also is understood that the proposal will become a part of the official procurement file.

4.15. Non-Endorsement

The selection of a vendor pursuant to this RFP does not constitute an endorsement of the vendor's services. The vendor agrees to make no reference to the AOC in any literature, promotional material, brochures, sales presentations, or the like without the express written consent of the AOC.

4.16. Contract Payment Limitations

The Washington State Constitution provides that the State of Washington may make no advanced payment for goods or services. Therefore, the vendor should anticipate payment at the end rather than the beginning of the invoice period in which it submits any services for which a payment is due. Invoices should be submitted no more often than monthly.

5. RFP Evaluation

5.1. RFP Responses

Responses must include the following.

- All questions must be answered in Appendix A.
- The vendor must address/answer all LMS requirements/questions in Appendix B and Appendix C.
- Additional scoring information is provided in Appendix D.
- Confidentiality Agreement form is provided in Appendix F.

5.2. Evaluation Procedure

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this procurement and any amendments issued. The evaluation of proposals will be accomplished by AOC evaluation team(s) who will be responsible for the review, evaluation, and scoring of a section(s) or subsection(s) of the Bidder proposals.

5.3. AOC Evaluation Team

An AOC Evaluation Team (Team) of at least three (3) persons will evaluate the responses to this RFP. The Team will review the vendor information and prices quoted for the required product/service. The Team may also consider past contract performance and may factor into the evaluation technical specifications that exceed the required specifications.

5.4. RFP Clarification

As part of the evaluation process, at the discretion of the Team, vendors may be asked to clarify specific points in their response. However, under no circumstances will the vendor be allowed to make changes to the response.

5.5. Evaluation and Scoring

The AOC will conduct a three-phased approach to evaluating proposals.

5.5.1. Phase 1: Mandatory Requirements

Each proposal will first be screened to determine if the Vendor complied with the pertinent instructions found herein, and if the proposal meets the Mandatory Requirements in Appendix B. If the Vendor's proposal is incomplete or the response is not organized as requested, the AOC may, at any time, consider the

proposal non-responsive and withdraw it from consideration. Proposals that comply with the pertinent instructions and Vendors that meet the Mandatory Requirements will move to Phase 2 in the evaluation process.

5.5.2. Phase 2: Additional Requirements

During this phase of the evaluation process, the evaluators will assess the Vendor's response to the Additional Requirements in Appendix C. The finalists from the Phase 2 evaluation will qualify to proceed to Phase 3.

5.5.3. Phase 3: Product Demonstrations

Finalists that qualify, based on the assessments from Phase 2, will be asked to demo their product via web conference (may be recorded). The demonstrations will be limited to 1.5 hours per Vendor. Vendor should be able to demonstrate any functional or technical feature claimed to be currently available in the version of the software being proposed. Failure to do so may be grounds for disqualification

Vendors will be required to provide acceptance of invitation for demonstration to the RFP Coordinator within two (2) business days of receipt of e-mail notification of such. The RFP Coordinator will provide individual demonstration notification regarding the date and time to each Vendor. Scheduling of Vendor demonstrations will be made at the sole discretion of AOC. Vendor must confirm acceptance of the scheduling to the RFP Coordinator within two (2) business days. Once a demonstration has been confirmed by a Vendor, AOC may, at its sole discretion, consider, upon Vendor request, a change to the scheduled demonstration date/time

Vendor will conduct a demonstration to include, but not be limited to, the LMS requirements/features from three sections in Appendix B and Appendix C:

- Accessibility
- Learning Development
- LMS Administration

Additional questions may be asked during a demonstration, at the discretion of AOC.

6. Post Evaluation

6.1. Notification of Selection of Apparently Successful Vendor

Vendors, whose responses have not been selected for further negotiations or award, will be notified via email.

6.2. Debriefing of Unsuccessful Vendors

Vendors who submitted responses that were not selected will be given the opportunity for a debriefing conference. A request for a debriefing conference

must be received by the RFP Coordinator within three (3) business days after the notification to unsuccessful vendors is e-mailed to vendors. The debriefing must be held within three (3) business days of the request, unless otherwise agreed to by AOC and the requesting Vendor.

Discussion will be limited to critique of the requesting vendor's response. Comparisons between responses or evaluations of other responses will not be allowed. Debriefing conferences may be conducted in person, on the telephone, or via webinar, at the discretion of the RFP Coordinator, and will be scheduled for a maximum of one (1) hour.

6.3. Protest Procedures

Vendors submitting a protest to this procurement must follow the procedures described herein. Protests of Vendors that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to Vendor under this procurement.

A person authorized to bind Vendor to a contractual relationship must sign the protest letter. The agency must receive the written protest within five (5) business days after the debriefing conference and must, in turn, immediately notify AOC's designee of receipt of the protest. AOC must also postpone further steps in the acquisition process until the protest has been resolved.

The protest must state all facts and arguments on which the protesting party is relying. At a minimum, this must include:

1. The name of the protesting Vendor, its mailing address and phone number, and the name of the individual responsible for submission of the protest.
2. Information about the acquisition and the acquisition method and name of the issuing agency.
3. Specific and complete statement of the agency's action(s) being protested.
4. Specific reference to the grounds for the protest.
5. Description of the relief or corrective action requested.

Only protests stipulating an issue of fact concerning a matter of bias or discrimination, or a conflict of interest, arithmetic errors in computing the score, or non-compliance with procedures described in the procurement document will be considered. Protests not based on procedural matters will not be considered.

In the event a protest may affect the interest of any other Vendor, such Vendor(s) will be given an opportunity to submit their views and any relevant information on the protest to the RFP Coordinator.

Individuals not involved in the protested acquisition will review the written protest material submitted by Vendor and all other relevant facts known to the agency. AOC must deliver its written decision to the protesting Vendor within five (5) business days after receiving the protest, unless more time is needed. The protesting Vendor will be notified if additional time is necessary.

Upon receipt of a protest, a protest review will be held by AOC to review the procurement process utilized. This is not a review of responses submitted or the evaluation scores received. The review is to ensure that procedures described in the procurement document were followed, all requirements were met, and all Vendors were treated equally and fairly.

Protests will not be accepted prior to selection of the ASV. Protests must be received within five (5) business days from the date of the notification of the ASV. The RFP Coordinator or his/her delegate will then consider all the information available to him/her and render a written decision within five (5) business days of receipt of the protest, unless additional time is required. If additional time is required, the protesting party will be notified of the delay. AOC decision is final and no further administrative appeal is available.

6.4. Execution of the Contract

6.4.1. General Terms and Conditions

The Vendor selected will be expected to enter into a contract with the AOC which will contain special terms and conditions related to this RFP and general terms and conditions. The Special Terms and Conditions will be based on the product/services to be provided as described in this RFP. **In no event is a Vendor to submit its own standard contract terms and conditions as a response to this RFP and such a submittal may be grounds for disqualification.** The general terms and conditions are attached as **Appendix E**. If Vendor requires variations from the terms and conditions, Vendor must submit changes via writing to the RFP Coordinator as part of the submission.

6.4.2. Criminal Background Check

As a requirement of the contract, the AOC may require the Vendor, and any employee, assistant, agent, or subcontractor of the Vendor completing work under the contract, to provide the results of a criminal background check. Such an investigation may include, but not be limited to, fingerprinting and criminal history records checks. The Vendor will agree to cooperate fully with the AOC in completion of this requirement. Results of the investigation and/or failure of the Vendor and any employee, assistant, agent, or subcontractor of the Vendor completing work under the contract to cooperate fully may be grounds for termination of the contract.

6.4.3. Confidentiality Agreement

The Vendor contractor may have access to confidential and/or propriety information during the period of performance. Vendor will sign a confidentiality agreement safeguarding such information (Appendix F).

6.4.4. Hardware and Software Responsibility

The Contractor will ensure that its representatives have the hardware and software necessary to complete the engagement, unless special circumstances exist where either AOC's hardware or software is needed. Such special

circumstances should be noted in the Vendor's proposal. AOC will not supply hardware or software to the Contractor unless specifically agreed to in writing.

6.5. Insurance (A.K.A. Worker's Compensation)

The successful Vendor must maintain in full force and effect the insurance described in this section. The Vendor must 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 Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor must provide written notice of such to the AOC within one (1) business day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at the AOC's sole option, result in this contract's termination.

The minimum acceptable limits are as indicated below, with no deductible for each of the following categories:

6.5.1. Commercial General Liability

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.

6.5.2. Employers Liability

Employers Liability Insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per employee for bodily injury by accident and \$1 million per employee for bodily injury by disease.

6.5.3. Umbrella Policy

Umbrella Policy providing excess limits over the primary policies in an amount not less than \$3 million.

6.5.4. Professional Liability Errors and Omissions

Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000 and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.

6.5.5. Crime Coverage

Crime Coverage with a deductible not to exceed \$1 million, conditioned, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

6.5.6. Industrial Insurance Coverage

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

Note:

Vendor shall pay premiums on all insurance policies.

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

Vendor 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 Vendor's liability or responsibility.

Vendor shall furnish to the AOC copies of certificates of all required insurance within thirty (30) calendar days of Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at the AOC's sole option, result in this contract's termination.

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

Appendices

And Supporting Materials

7. Appendix A: Vendor Response Administrative

Vendors must provide the information below.

1. Vendor Name.
2. Contact name, address, telephone number, e-mail address and fax number.
3. Describe the legal status of vendor, e.g., corporation, sole proprietor, etc.
4. Provide the vendor's Uniform Business Identifier (UBI) number. Information about the UBI can be obtained by calling the Washington State Department of Licensing, or by visiting its website at: <http://www.wa.gov/dol/bpd/ubiprogram.htm>.
5. Provide a statement that the price quoted in the attached response constitutes a firm offer valid for sixty (60) days following receipt and that the AOC may accept any time within the 60-day period.
6. Provide a statement that no assistance in preparing the response was received from any current or former employee of the state of Washington whose duties relate (d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP.
7. State if the vendor or any employee of the vendor is related by blood or marriage to an AOC employee or resides with an AOC employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the vendor's organization of such vendor employees.
8. State whether any of the individuals proposed is a current state employee or a former state employee during the past two years. State the employing state agency, individual's title at that state agency, and termination date.
9. If the vendor has had a contract terminated for cause during the past five (5) years, describe all such incidents, including the other parties' name, address, and telephone number. Present the vendor's position on the matter. Termination for cause is defined as notice to stop performance or delivery due to the vendor's non-performance or poor performance, and the issue was either: (a) not litigated; or (b) litigated and such litigation determined the vendor to be in cause. If the vendor has had no such terminations for cause in the past five (5) years, so state. Poor contract performance may cause the vendor to be eliminated from consideration. FAILURE TO DISCLOSE will result in disqualification of the vendor and, if applicable, may be grounds for termination of any contract entered with the vendor.
10. Provide three (3) references for which you have provided services of similar size and scope. Include company name, address, contact name, phone number, e-mail address, and date of service. Also produce a brief

description of the service(s) provided. The AOC may contact the provided references during the evaluation process.

11. State the cost of proposed LMS product/service.
12. State the costs of increased active users after the first year.
13. State any additional costs (if applicable).

8. Appendix B: LMS Mandatory Requirements

See Appendix D for Scoring guidelines.

| Item | Description | Score | Demo |
|-----------|---|-------|------|
| 1. | Accessibility | | |
| 1.1. | Enrollment management Provide automated, manual, and self-registration features. (e.g., HR Information System (HRIS) live feed, file transfer, manual upload, and self-enrollment (with approval) functions.) Also features policy/rule-based enrollment and ability to automate assignment of programs to individual learners. | | |
| 1.2. | Individual learning plans Create and assign learning plans to include specified sequences of courses (curriculum). | | |
| 1.3. | Single Sign On (SSO) Ability to login to LMS via organization's internal sign on credentials. | | |
| 1.4. | ADA compliant LMS is ADA compliant including operability with common reader apps and multilingual support. | | |
| 2. | Learning Development | | |
| 2.1. | Online courses Ability to create instructor-led courses delivered synchronous and asynchronous, in-person and online, and blended/hybrid modalities. | | |
| 2.2. | Events Ability to create multi-day events delivered via synchronous in-person, online, and blended/hybrid modalities. Can pre-enroll and self-enroll learners to daily sessions (similar to in-person courses). Events can have assigned prerequisite eLearning modules. Events can setup pre-defined notifications. | | |
| 2.3. | eLearning | | |

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|-----------|--|--|----|
| | Ability to host and upload eLearning modules via AICC SCORM 1.2, SCORM 2004, xAPI/Tin Can API. Also, allows bookmarking: ability for learners to start where they left off in eLearning modules. | | |
| 2.4. | Progress tracking Users can track their progress through courses and programs. Progress can also be tracked by managers, instructors, etc. | | |
| 2.5. | Certifications Course tracks can lead to certification; allows courses to have prerequisites etc. | | |
| 2.6. | Assessments Provide a variety of assessment types such as multiple choice, matching, fill in (essay), surveys, etc. | | |
| 2.7. | Marking completion Ability to track completion of individual learning objects (e.g., completion of PDF, video, or other file; completion of eLearning, completion of end-of-course survey, etc.) | | |
| 3. | LMS Administration | | |
| 3.1. | Create user roles Ability to assign pre-defined and custom user roles. Roles can be assigned unique combinations of LMS functions. | | |
| 3.2. | Reporting capabilities Ability to create custom reports and possessing a selection of pre-defined reports. Can distribute reports to specified individuals/groups automatically or on-demand. | | |
| 4. | Data Security | | |
| 4.1. | Hosting location Store/host applications, services, and data in secure location(s). Describe where the service is hosted. | | NA |

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|--|--|--|----|
| 4.2. | Accessing the service Provide adequate security to access the service. Describe how users access the service. | | NA |
| 4.3. | Authentication Provide secure authentication method. Provide example(s) of your authentication method. | | NA |
| 4.4. | Browser dependencies Describe any third party software dependencies (browser, plugins, installed clients or apps) and whether these applications can be updated as soon as security vulnerabilities are detected. | | NA |
| 4.5. | Data exposure Records only learning data (names, emails, course completion data, etc.) and does not expose critical AOC data (court data, PII, etc.). | | NA |
| 4.6. | Links to AOC data Describe how the service securely transfers user data (name, email, etc.) from AOC to the LMS so that critical AOC data is protected. | | NA |
| 4.7. | Infrastructure requirements Describe AOC infrastructure requirements to support the service (servers, databases, licenses, firewall exclusions, etc.) | | NA |
| 4.8. | Security updates LMS Vendor must agree that timely ‘patching’ of security vulnerabilities for any external applications for which their product is dependent upon (browsers, JAVA or Adobe plugins, etc.), will not result in an outage of the LMS service. AOC must be able to implement critical security updates without coming into conflict with vendor products that cease to work when browsers or plugins are updated. | | NA |
| 5. | Cost | | |
| There are no Mandatory Requirements for this category. | | | |

9. Appendix C: LMS Additional Requirements

See Appendix D for Scoring guidelines.

| Item | Description | Score | Demo |
|-----------|---|-------|------|
| 1. | Accessibility | | |
| 1.5. | Notifications/messaging Create rule-based notifications that can be easily configured to automate the notification process. | | |
| 1.6. | Mobile devices Users can access the LMS and hosted training/events from mobile devices such as tablets and phones | | |
| 1.7. | Technical support Provide technical support for learners, instructors, developers, and LMS administrator(s). Online support can be in the form of demos, tutorials, searchable knowledgebase, live support, etc. | | |
| 1.8. | User friendly Interface is intuitive and user-friendly; not overly complex. | | |
| 1.9. | Reliability The LMS is reliable with a solid uptime record | | |
| 2. | Learning Development | | |
| 2.8. | Video conferencing integration Can integrate web conferencing into course rooms (e.g., Zoom, etc.). Users can receive calendar invite with meeting link. | | |
| 2.9. | Video capabilities Ability to embed video into courses from either a built-in streaming service or a third-party streaming service (e.g., Vimeo, Kaltura, YouTube, etc.) Also, ability to provide captioning and transcripts. | | |
| 2.10. | Discussions boards / forums | | |

| | | | |
|-----------|---|--|--|
| | Ability for text-based moderated discussions per course, program, and group/portal. | | |
| 2.11. | Third-party eLearning Ability to host and track third-party eLearning courses. Includes ability to add these to a learning plan. | | |
| 2.12. | Competency-based Courses can be assigned competencies, which can be tracked for completion/compliance. | | |
| 2.13. | Assign credits Courses can be assigned credits. This includes for third-party courses that may not be hosted in the LMS (e.g., Washington State Bar Association, etc.) | | |
| 2.14. | Achievement tracking Ability to define, grant, and track achievements. | | |
| 2.15. | Grading and online submissions Ability to complete a course via pass or fail, complete or incomplete, and grade level. Learners can also upload submissions for grading and review. | | |
| 2.16. | End-of-course surveys Provide end-of-course and/or end-of-program (or event) surveys. | | |
| 3. | LMS Administration | | |
| 3.3. | Create unique groups/portals Ability to create separate portals for unique groups with specific branding, catalogs, calendars, collections, etc. | | |
| 3.4. | Import/export courses to/from LMS Ability to import and export courses and course archive data between different LMSs. | | |
| 3.5. | Third-party plugins (LTI, xAPI, etc.) Ability to plug in third-party tools such as Yellowdig, VoiceThread, etc. | | |

| | | | |
|---|--|--|----|
| 3.6. | LMS Administrator training and support Provide initial and ongoing training and support for the LMS Administrator. | | |
| 3.7. | Initial Setup, Configuration, and operability Provide support for initial setup and configuration of the LMS according to AOC’s specifications. Provide a project plan for installation, configuration, and admin training for the LMS. | | |
| 4. | Data Security | | |
| There are no Additional Requirements for this category. | | | |
| 5. | Cost | | |
| 5.1. | Warranty and Acceptance The vendor guarantees that the LMS will operate (installed, accessible/SSO, configured, etc.) by June 30, 2021. | | NA |
| 5.2. | Cost It is estimated that the LMS will need to host 1500 active users in the first year and may increase in subsequent years; therefore, a fixed estimate per year is preferred. Monthly use cannot be accurately predicted. AOC is open to considering multi-year contracts if it results in decreased overall costs. | | NA |

10. Appendix D: Scoring

In response to the RFP, vendors should briefly describe how their proposed solution meets the requirements specified in Appendix B and Appendix C. For each requirement, proposals will receive a **score** of zero through five as shown in the table below.

| Score Range | Description |
|-------------|--|
| 0 | Response to the requirement is non-responsive or wholly inadequate ; if a Mandatory Requirement (MR), it will result in the disqualification of the proposal. |
| 1-2 | Response to the requirement is below average capability, performance, and efficiency. |
| 3 | Response to the requirement is average capability, performance, efficiency. |
| 4-5 | Response to the requirement is clearly superior to that which is average or expected as the norm. |

Requirements (Appendix B, Appendix C) are divided into five categories. The following Weighing will be assigned to each category.

| 1. Accessibility | 15% |
|--------------------------------|-----|
| 2. Learning Development | 15% |
| 3. LMS Administration | 15% |
| 4. Data Security | 15% |
| 5. Cost | 40% |

Demonstrations will be conducted and scored on a pass/fail basis. References will be contacted for the top-scoring proposal(s) only and will be scored on a pass/fail basis.

Your sub-total score for the written proposal will be the average of the scores of the evaluators who review your written proposal. Your final total proposal score will be the average points awarded to your written proposal, plus demonstration and the response for the references.

11. Appendix E: Draft Contract/General Terms and Conditions

SOFTWARE LICENSE CONTRACT NUMBER - SWL21XXX

PARTIES

This Software License Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through the Office of the Administrator for the Courts, an agency of Washington State government (hereinafter referred to as "Purchaser" or "AOC") located at 1206 Quince Street SE, P.O. Box 41170, Olympia, Washington, 98504-1170 and Vendor, a *corporation* located at [Address] for the purpose of licensing the [SW Product].

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

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

"Acceptance Testing" means 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" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

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

"Delivery Date" means the date by which the Software ordered hereunder must be delivered, and specific deliverables listed in the statement of work(s).

"Error" means any failure of the Software to substantially conform to the Specifications.

"Error Correction" means a Software modification or addition which when made or added to the Software, establishes material conformity to the Specifications.

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

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

“License” means the right to use the Software which is granted by this Contract and governed by its terms and conditions.

“Licensed Software” means Software which is licensed pursuant to this Contract.

“Order Document” means any official Purchaser document and attachments thereto specifying the Software to be purchased from the Vendor under this Contract.

“Purchaser” means the state of Washington, Office of the Administrator for the Courts, any division, section, office, unit or other entity of the Office of the Administrator for the Courts or any of the officers or other officials lawfully representing the Office of the Administrator for the Courts, which has executed this Contract with the Vendor for specified Software and/or Services.

“Purchaser Contract Administrator” means that person designated by the Office of the Administrator for the Courts to administer this Contract on behalf of the Office of the Administrator for the Courts as further defined in the section titled Purchaser Contract Administrator.

“Purchaser Contracting Officer” means the Administrator for the Courts, 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” means the Revised Code of Washington (Washington State Law).

“Related Services/Services” means the services described in the Statement of Work attached as Exhibit A, but excluding Maintenance and Support Services.

“Maintenance and Support Services” means the services described in the Section titled Software Maintenance and Support Services.

“Software” means computer programs and any related documentation, excluding maintenance diagnostics, to be delivered under the Statement of Work, including the Vendor Tools (object code only) and the [SW Product] (object code and source code).

“Vendor Tools” means the Vendor Development, Deployment, and Server software in object code format only (including, without limitation, any run-time modules, development kits, and rapid application development tools) and related documentation as described in the Statement of Work.

“Specifications” means the technical and other specifications set forth in the contract deliverables contained in the Statement of Work.

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

“Sub-contractor” means 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 “Sub-contractor” means Sub-contractor(s) of any tier.

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

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

“Vendor” means Vendor, 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 sub-contractor retained by Vendor as permitted under the terms of this Contract.

“Vendor’s Account Manager” means a representative of the Vendor who is assigned as the primary contact person with whom the Office of the Administrator of the Courts Contract Administrator shall work for the duration of this Contract unless replaced, with advance Purchaser approval not to be unreasonably withheld, by another representative.

Contract Term

2. License Grant

- 2.1. Vendor grants to Purchaser a limited non-exclusive, statewide license to use the [SW Product], Vendor-provided modifications, and related documentation for their intended purpose as a learning management system, according to the terms and conditions of this Contract. Vendor grants to Purchaser a limited, non-exclusive statewide license to use the Vendor Tools subject to the limit of authorized users, according to the terms and conditions of this Contract.
- 2.2. Vendor grants to Purchaser a limited non-exclusive, statewide license to access and modify the [SW Product] for internal purposes only. Purchaser may modify the [SW Product] and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, the [SW Product] 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 *multiple hard drives, servers, network or other platforms as reasonably necessary to permit authorized use of the Software.*
- 2.5. Purchaser may make and maintain one (1) archival copy of each item of Software, and each copy will be subject to the same conditions and restrictions as the original. Purchaser shall keep copy location records and account at all times for such archival copies. 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 the Licensed Software to other users that are agencies of the Washington state government and other publicly-supported entities within the state of Washington provided that the number of users may not exceed the number of authorized users hereunder. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein.

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 Vendor Tools.
 - 3.2.1. Initial Term. The initial term for Maintenance and Support Services for the Vendor Tools licensed herein shall be from the date of Acceptance through [Date].
 - 3.2.2. Subsequent Terms. The term of said Maintenance and Support Services may be extended by additional calendar year periods as provided in the standard Maintenance and Support program terms set forth on Schedule C. Each maintenance term shall be governed by the terms and conditions established herein. 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. Purchase of initial and subsequent licenses may commence as set forth herein after the effective date of this contract.

4. Survivorship

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In

addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Pricing, Invoice and Payment, and Vendor's Proprietary Information shall survive the termination of this Contract.

Pricing, Invoice and Payment

5. Pricing

The Vendor agrees to provide, and the Purchaser agrees to pay for, the Software, Maintenance and Support Services, and other Services at the costs, rates, and fees and subject to the reimbursement of Vendor's reasonable expenses as set forth in Schedule A and the Statement of Work to this Contract; provided, that such reasonable expenses shall not exceed the sum of [total amount]. No other costs, rates, or fees shall be payable to the Vendor for implementation of the [SW Product] and the Vendor Tools.

6. Advance Payment Prohibited

No advance payment shall be made for the Software and Related Services furnished by Vendor pursuant to this Contract. *Notwithstanding the above, maintenance payments shall 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, Payment, and Audit Rights

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 SWL-2021-XXX;
- b) Description of Software, including quantity ordered;
- c) Date of delivery and/or date of installation;
- d) Vendor's list price for each item if applicable;
- e) Applicable discounts;
- f) Monthly or annual maintenance charges;
- g) Net invoice price for each item;
- h) Applicable taxes;

- i) Shipping costs;
 - j) Other applicable charges;
 - k) Total invoice price; and
 - l) Payment terms including any available prompt payment discounts.
- 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; provided, that the first payment of \$XX,XXX (plus state sales tax) shall be due and payable upon on the later of: (i) thirty (30) days after Purchaser's receipt of the initial deliverables set forth in the Statement of Work (the Vendor Tools and the existing [SW Product] source code) and (ii) thirty (30) days after Purchaser's receipt of an invoice therefor.
- 8.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 8.4. This Contract number *SWL-2021-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 (or the maximum legally permissible rate, whichever is lower) 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.
- 8.6. Purchaser shall compile and maintain accurate written and/or electronic records to verify that the Software is being used in accordance with the license scope, including verification that the Software is being used in accordance with the authorized number of users hereunder. Vendor shall have the right, at its sole expense and following at least ten (10) business days' advance written notice to Purchaser to periodically request that Purchaser provide Vendor with a copy of Purchaser's records pertaining to the verification of the license scope and fee issues described in the preceding sentence. The provisions of this Section 8.6 shall survive termination of this Contract for a period of two (2) years.

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

Under the terms of this agreement, AOC is purchasing a perpetual license for the Licensed Software, including the [SW Product] customized on its behalf by Vendor. AOC is granted the right to use any of the Licensed Software products for the authorized number of users without any further charges being levied. Furthermore, AOC is granted the right to alter the [SW Product] for internal purposes only in any way it sees fit, either through the services of Vendor or any other party internally or externally, free of royalties or any further license charges. These licenses cannot be resold, demonstrated for resale, sub-licensed, transferred, granted without charge to any other party without the express written permission of Vendor. The licenses granted hereunder shall be effective only upon payment of any and all outstanding balances.

Vendor shall retain ownership of (a) all developmental tools and software utilized by Vendor while delivering the Services, that are not provided to Vendor by AOC, including, without limitation, the Vendor Tools; and (b) all ideas, concepts, methods, know-how, or techniques related to programming or processing utilized, developed, or discovered by Vendor in the process of providing the Services.

Vendor, as Licensor, hereby warrants and represents to Purchaser as licensee that Vendor has not granted and will not grant any rights in the Licensed Software to any third party which grant is inconsistent with the rights granted to Purchaser in this Contract. To the best of Vendor's knowledge, there are currently no actual or threatened suits by any third party alleging that Vendor's licensing of the Software violates such third party's rights.

11. Installation of Software by Vendor

Vendor shall install the Licensed Software on Purchaser's designated computer system in accordance with the statement of work.

12. Software Specifications

Software Specifications will be developed by Vendor under the Statement of Work. The Software Specifications, after approval by AOC, will be incorporated by this reference into this Contract.

13. Standard of Performance and Acceptance

13.1. Following completion of the final deliverables under the Statement of Work, Purchaser and Vendor shall conduct tests ("Acceptance Testing") of the Software in accordance with Exhibit B to verify that the Software conforms to the acceptance criteria set forth in Exhibit B ("Acceptance Criteria"). Exhibit B will be modified, finalized, and mutually agreed upon

in writing by AOC and Vendor after completion of phase 1B of the Statement of Work.

- 13.2. Following completion of Acceptance Testing, Purchaser shall within ten (10) business days either give Vendor its written Acceptance or shall provide Vendor with written notice detailing the nature of any material non-conformity. If Purchaser fails to provide written Acceptance or written notice of non-conformity within such ten-day period, Acceptance shall be deemed to have occurred at the end of such period. In the event of any such notice of non-conformity, Vendor will use its best efforts to cure such non-conformity and promptly resubmit the deliverables within fifteen (15) business days for retesting by Purchaser pursuant to Exhibit B. Purchaser shall retest the deliverables and shall have five (5) business days following completion of such retesting within which to give Vendor its written Acceptance or to notify Vendor in writing that the resubmitted deliverables again do not conform to the Acceptance Criteria. Failure to give such notice shall be deemed Acceptance. If Purchaser notifies Vendor that the deliverables did not pass the retesting, then Purchaser shall be entitled to grant Vendor an additional period to cure the nonconformities or to terminate this Agreement. The date, if any, on which Purchaser Accepts the Licensed Software is referred to as the "Acceptance Date."
- 13.3. Purchaser acknowledges that the timely delivery of the Software and related deliverables is contingent upon Purchaser's prompt performance of its responsibilities hereunder, including, without limitation, the "Client Responsibilities" set forth in the Statement of Work.
- 13.4. The Warranty and Maintenance and Support Service periods shall begin on the Acceptance Date.

14. Software Maintenance and Support Services

- 14.1. Vendor shall provide the Maintenance and Support Services for the Vendor Tools as described on Schedule B hereto. Vendor shall be obligated to perform the Maintenance and Support Services only during (i) the period commencing on the Acceptance Date and ending on December 31, 2001 and (ii) subsequent calendar year periods in respect of which Purchaser has paid the applicable annual Maintenance and Support Fees.
- 14.2. An Error shall be "Mission Critical" when it produces an emergency situation in which the Software is unusable causing an interruption of AOC's juvenile court operations such that all operations must be conducted manually. Purchaser shall notify Vendor (and receive confirmation of such notice) of any Mission Critical Error in the Vendor Tools ("Vendor Tools Error") specifying how the Vendor Tools do not conform to the Specifications. In the event Purchaser notifies Vendor of a

Mission Critical Vendor Tools Error, Vendor shall respond within four (4) hours of the Error being reported and commit a technical resource to addressing such Error until an Error Correction is implemented or the source of the problem has been identified as something other than a Vendor Tools Error.

15. Reauthorization Code

Vendor shall not require a reauthorization code to remain functional upon movement to another computer system or platform.

16. Software Documentation

Vendor will provide Software documentation when and if it becomes available, at no additional charge. Vendor grants to the Purchaser the right to copy or otherwise reproduce, modify, and distribute manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

17. Installation (Site) Security

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

18. Use of Purchaser's Property and Facilities

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

18.2. 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 of which loss, destruction or damage Vendor receives actual notice in the performance of its obligations hereunder, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

18.3. 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 Sub-contractors.

19. Vendor Commitments, Warranties, and Representations

19.1. 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.

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

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

19.2.2. Any warranty or representation made by the Vendor in this Contract 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;

19.2.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications incorporated in this Contract.

20. Vendor Tools Warranty

Commencing on the Acceptance Date, Vendor warrants that the Vendor Tools will perform substantially in accordance with the documentation enclosed therewith for a period of sixty (60) days. In the event Purchaser notifies Vendor during such warranty period of a failure of the Vendor Tools to perform properly, Purchaser's sole remedy under this warranty shall be, and Vendor's sole and exclusive obligation under this warranty shall be to replace or repair the non-conforming Vendor Tool so that it will perform substantially in accordance with the documentation. VENDOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE. THE WARRANTIES CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

21. 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; and (iii) will lose no functionality, data integrity, or performance with respect to any date ("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 on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of the representations and warranties contained in this Section, 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.

22. Physical Media Warranty

- 22.1. 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").
- 22.2. The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents, or Sub-contractors 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.
- 22.3. As Purchaser's sole remedy for a breach of this warranty, 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. This Physical Media Warranty shall last until such time as the term for Maintenance and Support Services hereunder ends.

23. No Surreptitious Code Warranty

- 23.1. Vendor warrants to Purchaser that no copy of the Licensed Software as provided to Purchaser contains 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."
- 23.2. 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.
- 23.3. 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.

- 23.4. Vendor's sole responsibility for breach of the No Surreptitious Code Warranty shall be to provide an Error correction that cures the non-conformity of the Software, provided that the non-conformity is reported by Purchaser in writing to Vendor.

24. Training

Vendor shall provide training as specified in the Statement of Work.

25. Protection of Purchaser's Confidential Information

- 25.1. 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 Sub-contractors requiring such information, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to Sub-contractors 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.
- 25.2. 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 or (5) legally required to be disclosed.

26. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software, Maintenance and Support Services 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 such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

Contract Termination

27. Termination for Default

- 27.1. 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 sixty (60) calendar days of its receipt of such notice 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.
- 27.2. In the event of termination of this Contract by Purchaser on the basis of a material failure to perform by Vendor, 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.
- 27.3. 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 and the Purchaser shall not be entitled to the remedies described in this Section.
- 27.4. 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.

28. Termination for Convenience

- 28.1. When it is in the best interest of the Purchaser, the Purchaser Contracting Officer may terminate this Contract 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.
- 28.2. If this Contract is so terminated, the Purchaser is liable only for payments required by the terms of this Contract for Software, Maintenance and

Support Services and Related Services received by the Purchaser prior to the effective date of termination. If this Contract is terminated by the Purchaser prior to delivery of all deliverables under the Statement of Work, Purchaser will desist use of the Licensed Software and will destroy all copies of the software and Vendor-provided modifications previously delivered.

29. 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.

30. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, Purchaser agrees to notify the Vendor of such non-allocation at the earliest possible time. the Purchaser will not be obligated to pay any further charges for Services after such notice is given including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. The giving of a notice under this Section shall be treated as a termination under the Termination for Convenience section and Purchaser shall be liable for payments in accordance therewith. 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, Maintenance and Support Services or Related Services from a third party.

31. Termination for Conflict of Interest

31.1. 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:

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

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

31.2. 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.

32. Termination Procedure

- 32.1. 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 Purchaser property or Software already specifically produced during performance of this Contract prior to its termination and for which Purchaser has made all applicable payments.. The sections for the Treatment of Assets shall apply in such property transfer.
- 32.2. 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.
- 32.3. After receipt of a valid notice of termination, the Vendor shall:
 - 32.3.1. Stop work under this Contract on the termination date specified in the notice;
 - 32.3.2. If termination arises from the breach of 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;
 - 32.3.3. If termination occurs prior to the effectiveness of 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;
 - 32.3.4. If termination arises from breach of 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;
 - 32.3.5. As soon as reasonably practicable, but in no event longer than ninety (90) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated, 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;
 - 32.3.6. 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;

32.3.7. 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

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

33. Covenant Against Contingent Fees

33.1. 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.

33.2. 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

34. Disputes

34.1. 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.

34.2. 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 ten (10) Business Days.

34.2.1. Then, both parties shall have ten (10) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the ten (10) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.

34.2.2. Within ten (10) 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 ten (10) Business Days.

34.2.3. 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.

- 34.2.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 34.3. Both parties agree to be bound by the determination of the dispute resolution panel.
- 34.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 34.5. 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.
- 34.6. If the subject of the dispute is the amount due and payable by Purchaser for Maintenance and Support Services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

35. Attorneys' Fees and Costs

- 35.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred for such litigation, including necessary fees, costs, and expenses for reasonable legal services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 35.2. In the event that the parties agree to 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 and expenses incurred as a result of the alternative dispute resolution method.

36. 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.

37. Limitation of Liability

- 37.1. 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, a breach of the Section titled License Grant or a breach of the Sections titled Protection of Purchaser's Confidential Information and Vendor's Proprietary Information, 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 are not consequential, incidental, indirect, or special damages as that term is used in this section, but are expressly made subject to this section. Notwithstanding any other provision of this Contract, except with respect to the third party indemnification obligations set forth in the Patent and Copyright Indemnification section below, under no circumstances shall Vendor's total liability of all kinds arising out of or related to this Contract and its exhibits regardless of the forum and regardless of whether any action or claim is based in contract, tort or otherwise, exceed the total amount paid by Purchaser to Vendor under this Contract.

- 37.2. Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor or the Purchaser.
- 37.3. If delays are caused by a Sub-contractor without its fault or negligence, neither the Vendor nor the Purchaser shall be liable for damages for delays, unless the Software or Services to be furnished by their Sub-contractors were reasonably obtainable on comparable terms from other sources in sufficient time to permit the Vendor or the Purchaser to meet its required performance schedule.
- 37.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Administration

38. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except any authorized requests for telephonic support) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service,

deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, or other method including e-mail if receipt is confirmed, to the parties at the following addresses:

to **Vendor** at: Vendor

to **Purchaser** at: Office of the Administrator for the Courts
Attention: *Contracts Officer*
PO Box 41170
Olympia, WA 98504-1170
360-705-5539
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.

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

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

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, subject to all applicable federal and state statutes, laws, and regulations:

39.1.1. Sections of this Contract SWL-2021-XXX;

39.1.2. Exhibit A - Statement of Work, to this Contract;

39.1.3. Exhibit B – Acceptance Criteria;

39.1.4. Schedule A – Authorized Product and Price List, to this Contract, to this Contract;

39.1.5. Schedule B - Vendor Maintenance Program, to this Contract

40. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and all 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.

41. 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.

42. 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.

43. Purchaser Contract Administrator

The Purchaser shall appoint **Scott Hillstrom**, 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.

44. Vendor's Account Manager

The Vendor shall appoint **XXXXXXXXXXXXXXXXXX** 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 day to day communications. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

45. 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.

46. 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 or the federal district court for the District of Washington.

47. Sub-contractors

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 Sub-contractors 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 Sub-contractors, 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 Sub-contractors, their agents or employees. The Patent and Copyright Indemnification section of this Contract shall apply to all Sub-contractors.

48. Assignment

- 48.1. 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.
- 48.2. 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.

49. 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.

50. Review of Vendor's Records

- 50.1. The Vendor and its Sub-contractors 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 make commercially reasonable efforts to 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.
- 50.2. 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 and during the six (6) year period after termination, access to these items will be provided at Vendor's offices in Irvine, California, and delivery of and access to these items will be at Purchaser's expense. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Sub-contractors.
- 50.3. The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 50.4. 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

51. Patent and Copyright Indemnification

51.1. Vendor will, at its expense, defend or settle any claim against the Purchaser that Software or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that Purchaser:

51.1.1. Promptly notifies Vendor in writing of the claim;

51.1.2. Grants Vendor sole control of the defense and all related settlement negotiations; and

51.1.3. Fully cooperates with Vendor in the defense of such claim or action.

51.2. Vendor will pay all costs of such defense and settlement and any court awarded costs and damages finally awarded to Purchaser (or assessed pursuant to settlement. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and refund its depreciated value. No termination charges will be payable on such returned Software. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Software has been installed less than one (1) year, transportation to the initial installation site paid by Purchaser shall be refunded by Vendor.

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

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

51.3.2. Modification of the Software by Purchaser or a third party where the alleged infringement relates to such modification (unless Vendor expressly instructs purchaser to make or have made such modification for purposes of an Error Correction); or

53.3.3 Use of the Software in a manner not expressly authorized by this Contract; or

53.3.4 Combination of the Software with other products (hardware or software), processes or materials where such infringement would not have arisen through use of the Software standing alone.

52. Hold Harmless

Vendor shall protect, indemnify and hold the Purchaser harmless from and against any damage, cost, or liability finally awarded (or assessed pursuant to settlement) against Purchaser, including reasonable attorneys' fees, resulting from a 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 Sub-contractors. For any claim for which indemnification is sought under this section, Purchaser shall (i) provide prompt notice in writing to Vendor of any such claim or action; (ii) permit Vendor, through its counsel, to assume control of the defense and settlement of such claim or action; and (iii) provide Vendor with reasonable information, assistance, cooperation, and authority to permit Vendor to defend such claim or action.

53. Insurance

53.1. 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:

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

53.1.2. General Business Liability; and

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

53.2. Premiums on all insurance policies shall be paid by Vendor or its Sub-contractors. 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.

53.3. Vendor shall furnish to the Purchaser copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

54. 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, but only to the extent such statute is applicable to Vendor and shall maintain full compliance with Title 51 RCW during

the course of this Contract, but only to the extent such statute is applicable to Vendor. The Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Sub-contractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and Services under this Contract.

55. 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.) Purchaser's sole remedy, and Vendor's sole obligation in the event of a breach of this covenant, shall be for Vendor to pay any applicable fines incurred and to take all necessary steps to obtain any required license.

56. 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.

57. UCC Applicability

- 57.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by the laws of the State of Washington, including, without limitation, any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 57.2. 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.
- 57.3. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. Treatment of Assets

62.1. 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 and subject to the section titled Software Ownership. As used in this section Treatment of Assets, if the "property" is the Vendor's proprietary work(s) protected by copyright, patent rights, trademark rights, and/or other intellectual property rights, then only the applicable license, not title, is passed to and vested in the Purchaser.

62.2. Any property of the Purchaser furnished to the Vendor (other than any and all fees hereunder) shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.

- 62.3. 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.
- 62.4. Upon loss, or destruction of, or damage to any Purchaser property, of which loss, destruction or damage Vendor receives actual notice in the performance of its obligations hereunder, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 62.5. The Vendor shall surrender to the Purchaser all property of the Purchaser upon completion, termination, or cancellation of this Contract.
- 62.6. All reference to the Vendor under this section shall also include Vendor's employees, agents, or Sub-contractors.

63. 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

64. Authority to Bind

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

65. Counterparts

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

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

Approved

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

Approved

Vendor

Signature

Signature

Print or Type Name

Print or Type Name

Title

Date

Title

Date

Schedule A
Authorized Product and Price List
Contract No. SWL-2021-XXX

[based on bid]

This Schedule may only be modified in a writing signed by each party.

**SCHEDULE B
VENDOR
MAINTENANCE PROGRAM**

1. Vendor Maintenance

[TO BE INSERTED]

1.1 Products Covered

1.2 Program Cost & Term

APPENDIX A - SWL21XXX

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 the AOC.

CHANGES AND MODIFICATIONS

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

CONFLICT OF INTEREST

The AOC may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the AOC 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, the AOC 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 the AOC 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 an AOC percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for purposes of securing business. The AOC shall have 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 AOC 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 AOC 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 Thurston 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, the AOC, 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 AOC. The Contractor will not hold himself/herself out to be an officer or employee of AOC 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, the AOC 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 the AOC.

The AOC 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 the AOC 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.

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 the AOC. 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 the AOC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

PERSONALITY RIGHTS

Contractor grants the AOC 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 the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The AOC reserve 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 the AOC. 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 the AOC for any damages related to Contractor's unauthorized use of personal information.

PUBLICITY

The Contractor agrees to submit to the AOC all advertising and publicity matters relating to this contract which AOC'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 AOC.

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.

RIGHTS IN DATA

The AOC shall own all rights, title and interest in and to all materials developed and delivered under this contract. The Contractor grants to the AOC royalty-free, perpetual license to copy, use, distribute, and modify all materials developed and delivered under this contract for the use and benefit of the judicial branch of the Washington State government. This license does not include the right to sub-license, sell or otherwise transfer the materials or any rights to the materials to any other person or organization for any purpose without the express written authorization of the Contractor.

Materials provided by the AOC to the Contractor remain the sole property of the AOC and cannot be used by the Contractor for purposes beyond this contract without the express written authorization of the AOC.

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 the AOC, the Office of the State Auditor, 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 the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington 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 the AOC or the Court for any purpose not directly connected with the administration of the AOC's, the Court's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the AOC or the Court.

SAVINGS

In the event funding from 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, the AOC 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 the AOC.

TERMINATION

A. Termination for Default

The AOC 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, the AOC 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, the AOC shall be liable only for payment for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE

Upon termination of this contract, the AOC, in addition to any other rights provided in

this contract, shall require the Contractor to deliver to the AOC 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.

The AOC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the AOC, and the amount agreed upon by the Contractor and the AOC 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 the AOC, 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 the AOC. The AOC may withhold from any amounts due the Contractor such sum as the AOC determines to be necessary to protect the AOC against potential loss or liability.

The rights and remedies of the AOC 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 the AOC, 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 the AOC, in the manner, at the times, and to the extent directed by the AOC, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the AOC 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 the AOC 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 the AOC and deliver in the manner, at the times, and to the extent directed by the AOC any property which, if the contract had been completed, would have been required to be furnished to the AOC;
- F. Complete performance of such part of work as shall not have been terminated by the AOC; and
- G. Take such actions as may be necessary, or as the AOC may direct, for the protection and preservation of the property related to this contract which is in possession of the Contractor and in which the AOC has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by the AOC shall remain in the AOC. 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 the AOC 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 the AOC 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 the AOC in whole or in part, whichever first occurs.

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

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

The Contractor shall surrender to the AOC all property of the AOC 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.

12. Appendix F: Vendor Confidentiality Agreement

As a contractor or contract employee working under a signed contract with the Administrative Office of the Courts, I understand that I may have access to confidential information and records such as court case files, the Judicial Information System, databases of other organizations, security plans and procedures, and other AOC and judicial branch administrative records in files and databases.

I further acknowledge that, in the course of performing work for the Administrative Office of the Courts (AOC), I may have access to confidential information that is proprietary to AOC or to third parties and this information may include, without limitation, software and related documentation, private details about individuals, or business methods of AOC.

I agree to treat such information as the valuable confidential property of AOC, providing access only to those individuals who have signed a Confidentiality Agreement and with a need to know for the purpose of performing work for AOC. I agree to use any accessible confidential information only as necessary to perform work for AOC. I agree to return all proprietary and confidential information that I possess upon termination of my work for AOC, upon AOC's request or upon termination by the company for which I am employed.

By signing this statement, I affirm my understanding of my responsibilities to maintain confidentiality and agree to the following:

1. I understand that I may access, read or handle confidential records to the extent required in, and for the purpose of, performing my assigned duties as a contractor or contractor employee.
2. I agree not to divulge, publish, or otherwise make known to unauthorized persons or to the public any confidential information obtained in the course of my employment with the Administrative Office of the Courts. I understand that:
 - a. I may divulge confidential information to judicial officers and authorized court employees as necessary to perform my work under the contract.
 - b. I may divulge confidential information to others only if specifically authorized to do so by statute, court rule, judicial policy, or court order.
 - c. Maintaining confidentiality includes not discussing confidential information outside of the workplace, or outside of my usual work area.
 - d. After the termination of the contract, I may not divulge confidential information obtained during the course of my work under the contract.
3. I agree to hold in confidence information and materials (Work Information), if any, developed for AOC. All Work Information shall remain the property of AOC and shall be returned to AOC promptly upon termination of my work for AOC.
4. I recognize the disclosure of confidential and propriety information by me or any other person may give rise to irreparable injury to AOC, inadequately compensable in damages and that, accordingly, hereby consent to AOC

obtaining injunctive relief as well as any other legal remedies which may be available.

5. I understand that a breach of confidentiality may be grounds for my immediate removal from the contract work and loss of access to the AOC facility and network, and/or termination of the contract.
6. I agree to consult the AOC project manager regarding any questions I may have concerning decisions regarding whether particular information may be disclosed. I agree to notify the AOC project manager immediately should I become aware of an actual breach of confidentiality or a situation which could potentially result in a breach, whether this is on my part or on the part of another person.
7. I agree that any developments made by myself or under my direction for AOC shall be considered "works made for hire" under the copyright laws of the United States and shall be the sole and exclusive property of AOC and any and all patents and copyrights (including renewal rights) shall belong to AOC. If any such developments are not covered under the works made for hire provision of the copyright laws of the United States, I hereby assign my rights to AOC. I further agree to execute any such documents necessary to vest full and exclusive title in such developments to AOC.
8. I have unrestricted rights to any know-how learned in the performance of work for AOC.
9. The provisions of this Agreement shall survive the termination of the related contract(s). This agreement does not in any way abridge existing obligations including, but not limited to, applicable court rules and statutes.

Vendor Name (Print)

Date

Vendor Signature

_____ is authorized access to confidential information.

Vendor Name (Print)

AOC Name

Date

AOC Signature