

APPENDIX F

CASE MANAGEMENT SYSTEM CONTRACT

*The following identifies the County's Contract for acquisition of the Case Manager System. Please review this document carefully as it is intended to be non-negotiable. However, reasonable requests for modification may be granted at the County's sole discretion. If the Bidder takes exception to any provision below, those exceptions must be noted on the RFP Exceptions form.*

This Case Management System Contract ("Contract") is entered as of this \_\_\_\_\_ day of 2022 ("effective date") by and between the Kitsap County Prosecutor's Office ("PAO"), acting through Kitsap County, a Washington state municipal corporation ("County"), and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with offices located at \_\_\_\_\_ ("Contractor").

WHEREAS, the County desires to engage Contractor to provide a case management system (collectively System), and professional services, which the Contractor has agreed to provide;

WHEREAS, the Contractor has represented by entering into this Contract and by its response to RFP 2022-114 that it is fully qualified to perform the work to which it will be assigned in a competent professional manner to the standards required by the County; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Services set forth herein, and as attached and incorporated by reference, the County and Contractor agree as follows:

ARTICLE 1. TERM AND EFFECTIVE DATE

- 1.1 Term. The Contract will commence on the date above and remain in effect for five (5) years, until midnight \_\_\_\_\_, \_\_\_\_\_, unless terminated or extended as provided herein. The Contract may be extended for additional consecutive one (1) terms on the mutual written agreement of the parties. In no event will the Contract or any contract amendment become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.
- 1.2 The Contract, and any amendments, will become effective when approved and executed by the duly authorized representatives of Kitsap County and Contractor.

ARTICLE 2. DEFINITIONS

- 2.1 The definitions provided in the Request for Proposal Scope of Work shall apply to the Contract for all purposes unless otherwise defined herein.

ARTICLE 3. SCOPE OF WORK

- 3.1 General Engagement. Contractor agrees to perform all Services specified in this Contract and the RFP 2022-114, inclusive of addenda, appendices, and Proposal as accepted by the County. Unless otherwise stated in this Contract, the work required of the Contractor includes all labor, materials, and tasks, whether or not enumerated in this Contract, that are such an inseparable part of the work expressly stated in the Contract that exclusion thereof would render the Contractor's performance impractical, illogical, or unconscionable.
- 3.2 Inspection. The County may inspect the components of the System when delivered and reject upon

notification to Contractor any and all components of the System which do not conform to the specifications or other requirements contained in this Contract. Components of the System which are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under this Contract, such that the System conforms to the specifications and the other requirements of this Contract. If County receives components of the System with one or more Defects not reasonably apparent on inspection, then County reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations under this Contract following the discovery of such Defect(s).

- 3.3 Acceptance. Payment for any part or parts of the System, or inspection or testing thereof by County, shall not constitute acceptance or relieve Contractor of its obligations under the Contract. The County shall be deemed to have accepted the System and Contractor's Work only upon County's execution and delivery of a Certificate of Completion. Acceptance of the System does not waive any warranty or other rights provided in this Contract for the balance of Contractor's Work required under this Contract. County will have a minimum of thirty (30) days after the launch date of each phase to test the system in full production use and to identify non-conforming elements to be corrected. The Certificate of Completion will be executed once all non-conforming elements have been corrected by Contractor, except for minor or inconsequential errors.
- 3.4 Problems. Contractor agrees to promptly notify County of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of this Contract, or that is likely to occasion any delay in completion of the Work contemplated by this Contract. Such notice shall also be given in the event of any loss or reassignment of any of Contractor's key personnel, threat of strike, or major equipment failure or other force majeure event.
- 3.5 Alterations and Changes. County reserves the right, without impairing Contractor, to require additional subscriptions or services, to omit, cancel or eliminate Contract items, to alter details of implementation or installation, and to make other changes and alterations as necessary or desirable, in County's judgment, to satisfactorily complete the project contemplated by this Contract. Contractor shall perform such changed, additional, increased, decreased, varied, or altered obligations upon the mutual written agreement of the Parties. Compensation for such alterations or changes will be made on such basis as may have been agreed to by the Parties. Except as may be otherwise provided in this Contract, no payment for extras will be made unless such extras and the compensation to be paid therefore have been authorized in writing by the parties.

#### ARTICLE 4. CONTRACTOR'S PERSONNEL, SUBCONTRACTS

- 4.1 Unless otherwise provided or approved by the County, Contractor shall use its own employees to perform the services described in this Contract. The County shall have the right to review and approve any personnel who are assigned to work under this Contract. Contractor agrees to remove personnel from performing work under this Contract if requested to do so the County.
- 4.2 Subcontracts. Contractor shall not subcontract any portion of the Contract, nor change approved subcontractors, without the prior written consent of the County. The County has the right to approve Contractor's subcontractors, and the County reserves the right to request replacement of subcontractors. If the County permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this Contract. All subcontracts shall incorporate by reference the terms and conditions of the Contract. Contractor shall provide the County with verification of all subcontractors' compliance with the indemnification and insurance requirements of the Contract upon request. The County does not have any obligation to pay Contractor's subcontractors, and nothing herein creates any privity between the County and the subcontractors.

ARTICLE 5. COMPENSATION

- 5.1 Compensation. County will pay all fees for the initial term which shall not exceed the amount identified in Appendix C (Cost Proposal Form), as accepted by the County, unless authorized in writing by the County.
- 5.2 Subsequent Terms. After the initial contract term, Contractor may submit an annual request for cost adjustments to the PAO on or before March 30 for the following year. Requests shall identify any increase in the Contract pricing and must be supported with financial and other documentation. In no event shall a price increase exceed the percent of change in the all Urban Consumer Price Index (CPI-U) for the Seattle-Tacoma-Bremerton area as is specified by the Bureau of Labor Statistics, United States Department of Labor ([www.bls.gov](http://www.bls.gov)) for the prior year. The increase for any subsequent year shall not exceed 2%.
- 5.3 Price Reduction. Price reductions may be submitted to the County for consideration at any time during the contract period. County at its own discretion may accept a price reduction. Price reductions will become effective upon acceptance by County.

ARTICLE 6. PAYMENT AND COSTS

- 6.1 Invoice. Contractor shall utilize the invoice format directed by PAO to submit one complete and accurate invoice per month for the services and goods received in the prior month, along with supporting documentation. Invoices are due by the 10<sup>th</sup> of each month. Invoices shall be legible and reflect all appropriate adjustments for credits due the County. Invoices that are illegible shall be returned to Contractor for clarification and County will not be held to established timeframes for payment as set above. County shall have the right to require Contractor to provide additional supporting documentation prior to payment of an invoice. Within 90-days of receipt and acceptance of third-party goods and/or services, Contractor shall submit a complete and accurate invoice for payment from the County. The County shall not be responsible for paying or reimbursing Contractor for any bills submitted after this 90-day timeframe.
- 6.2 Payments. County will make reasonable efforts to pay Contractor within 30 days from the date the County receives a complete and correct invoice, unless otherwise provided herein. All funds disbursed to Contractor will be processed by Direct Deposit via Automated Clearing House (ACH), unless otherwise agreed to by the parties.
- 6.3 Discrepancy. County will provide notice to Contractor of any invoice discrepancy. Contractor and County shall resolve the discrepancy by comparison and reconciliation of records. If resolution cannot be achieved the disputed amount shall not be paid until the parties have received an agreement resolving the discrepancy. Timeframes for payment for the disputed amount shall be waived until the dispute is resolved.
- 6.4 Insurance/W-9 Compliance. All payments are expressly conditioned upon Contractor's compliance with all insurance requirements and submission of a current IRS W-9 form to the County. Payments may be suspended in full in the event of noncompliance. Upon full compliance, payments will be released to Contractor unless otherwise provided herein.
- 6.5 Restrictions. Contractor will only be entitled to receive payment for Services expressly authorized in the Contract and received during the Contract term and accepted by County. Contractor acknowledges oral requests, and authorizations, for additional compensation are prohibited and

unenforceable. Advance payments are not authorized. County does not pay, and is not subject to, any late charges, fees, or penalties of any kind.

- 6.6 Taxes. Contractor is solely liable for payment of all tax obligations arising from its performance of the Contract. Contractor and its subcontractors shall pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor and its subcontractors shall hold the County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation. Contractor will collect sales and use taxes imposed on goods or services acquired hereunder as required by law within their contracted rate. Contractor must pay all taxes including, but not limited to: Business and Occupation Tax, taxes based on Contractor's gross or net income, or personal property to which the County does not hold title. County is exempt from Federal Excise Tax.
- 6.7 Discount Terms. Contractor agrees to offer County any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

#### ARTICLE 7. DELAYS AND EXTENSIONS OF TIME

- 7.1 Delays. Contractor shall use commercially reasonable efforts to meet the projected timelines and avoid unreasonable delays in the delivery of all Services required prior to the launch date unless excused at the mutual agreement of the parties. County shall also make best efforts to meet the projected timelines and avoid unreasonable delays in assisting Contractor as reasonably necessary in connection with the Services.
- 7.2 Extensions of Time. If Contractor is delayed at any time in the progress of providing Services covered by the Contract, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually written agreement of the parties. Any request for an extension of time shall be made in writing to the County.
- 7.3 Force Majeure. In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the federal government or any unit of state or local government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

#### ARTICLE 8. TERMINATION

- 8.1 Termination for Convenience. County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the best interests of the County. County may terminate the Contract upon giving Contractor 10-days' written notice.
- 8.2 Funding Issues. If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under

this provision will be effective upon the date specified in the written notice of termination sent by County to Contractor. No costs incurred after the effective date of the termination will be paid.

- 8.3 Termination for Cause. The County may terminate the Contract in whole or in part due to Contractor's material default in the performance of any of its obligations hereunder. In such an event, County will provide Contractor written notice of the breach and an opportunity to cure. If the default has not been cured within time frame identified in the notice, County shall have the right to immediately terminate the Contract. County may, upon termination of the Contract for cause, procure, on terms and in the manner that it deems appropriate, materials or services similar in scope and level of effort to those terminated, and Contractor shall be liable to County for all of its costs and damages, including but not limited to, excess costs incurred by County in procuring materials or services in substitution for those due from Contractor.

The rights and remedies of the County 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.

8.4 Procedures on Termination

- A. Upon receipt of notice of termination, Contractor shall continue to perform, in accordance with the requirements of the Contract up to the date of termination as directed in the termination notice, notify Staff of the termination date, and minimize further costs. On the effective termination date, all finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become the property of County and delivered to County on demand.
- B. County shall pay Contractor its reasonable and allowable costs for work in progress, work completed, and materials accept by County before the effective date of termination, subject to offset as provided herein. No costs incurred after the effective date of the termination will be paid. In the event of termination or suspension of the contract by County, such termination or suspension shall not affect the obligation of Contractor to indemnify the County for any claim by any third party against the State or the County arising from Contractor's performance of the Contract and for which Contractor would otherwise be liable under the Contract.
- C. Prior to or at the termination of the contract, Contractor shall make available all such information as requested by County, including in a readable electronic format specified by County.

8.5 Disentanglement. In the event of termination or expiration of the Contract, the following shall apply.

- A. Contractor shall work cooperatively with the County to accomplish a complete, timely, and seamless transition of any terminated services from Contractor and the subcontractors to the County, or to any replacement provider designated by the County, without any interruption of or adverse impact on the terminated services or any other services provided by Third-Parties or Services that Contractor shall continue to provide (each transition, a "Disentanglement"). Contractor shall cooperate with County and any new service provider and otherwise promptly take all steps required or reasonably requested, to assist County in effecting a complete and timely Disentanglement of any terminated services. Contractor shall provide all information regarding the terminated services or as otherwise needed for Disentanglement, including data conversion, interface specifications, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all terminated services, as County may direct,

including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or County's designee. Contractor's obligation to provide Services shall not cease until a Disentanglement satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Section, has been completed.

- B. Contractor will provide one account for County to access a web-based storage platform to retrieve all Data (the "Transition Account"). The Transition Account will be available to the County for 90-days prior to the cutoff date, and access will continue for at least 90-days after the Cutoff Date. The Cutoff Date is the date that all existing user accounts are terminated.
- C. Contractor shall ensure the Data available via the Transition Account is accessible in a Microsoft SQL Server database format as approved by County.
- D. Contractor will return Data consisting of images or attachments to records within the System separately in their native format, and not bundled together with other records and data.
- E. Contractor will return Data in a non-proprietary format, without technical restrictions or need for de-coding, suitable for reproduction and reuse without the assistance of Contractor or any third-party software that places restrictions on access to the records and data in any way.
- F. Contractor will provide entity relationship diagrams, data dictionaries, and complete data documentation which comprises the design specifications, file types and formats, and all other material necessary to allow a reasonably skilled programmer or analyst to maintain and reuse the Data extracted from Contractor.
- G. Support.
  - 1. Contractor will assist County to resolve any issues either party deems to be the result of errors in Contractor's platform or export process for a period of twelve (12) months after the Cutoff Date. No less than one year after the Cutoff Date, and promptly thereafter, Contractor will delete Data from all of Contractor's online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.
  - 2. Within six (6) months from the date of deletion of Data from all Contractor's online systems, all Data will be erased from database backups.
  - 3. Transition Assistance as outlined within this section is included in the amount charged to County for Services under this Contract. In the event that any undisputed amounts have not been paid as required in this Contract, Contractor may decline to provide the support outlined in this section until such amounts are paid in full.
- H. Upon County's request, Contractor shall continue to provide the Service to Customer (except where Contractor is enjoined) pursuant to the terms of this Contract for a transitional period of up to twelve (12) months (the "Transition Period"). Access to the Services during the Transition Period will be subject to the annual fees for the preceding twelve-month period, prorated on a monthly basis.

## ARTICLE 9. NOTICE AND CONTRACT REPRESENTATIVES

- 9.1 Any notices, demands and other communications required by the Contract will be effective if personally served upon the other party or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's Contract Representative at the address below. Notice

will be deemed to be given three days following the date of mailing, or immediately if personally served. Each party will designate a “Contract Representative”, which may be changed by providing 15 days’ prior notice to the other party.

County’s Contract Representative

Name: Carrie Alire  
Title: Administrative Manager  
Address: Kitsap County Prosecutor’s Office  
614 Division Street MS-35A  
Port Orchard, WA 98366  
Phone: (360) 337-4814  
Email: [cbruce@co.kitsap.wa.us](mailto:cbruce@co.kitsap.wa.us)

Contractor’s Contract Representative

Name:  
Title:  
Address:  
Phone:  
Email:

ARTICLE 10. INDEPENDENT CONTRACTOR

- 10.1 Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Contractor shall have complete responsibility and control over its Staff. Neither Contractor nor its Staff shall be, or be deemed to be, or act or purport to act, as an employee, agent or representative of County.
- 10.2 All actions of employees on the Contractor’s payroll shall be the Contractor's responsibility. Contractor shall comply with all applicable government regulations related to the employment, compensation and payment of Staff. Contractor and its Staff shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay or sick pay, or other right or privilege afforded to County employees. Contractor and its Staff shall be responsible for payment of all insurance, taxes, and benefits.
- 10.3 County will not be responsible in any way for the damage or loss caused by fire, theft, accident, or otherwise to Contractor's stored supplies, materials, equipment, or personal property stored of Contractor’s Staff stored on County property.

ARTICLE 11. WARRANTY, RISK OF LOSS, AND INDEMNIFICATION

- 11.1 Warranty of Contractor. Contractor warrants that work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within Contractor’s profession, doing the same or similar work under the same or similar circumstances.
- 11.2 Equipment. Contractor represents and warrants that the Equipment, at the Acceptance Date, will be new and free from Defects in materials and workmanship. Contractor further represents and warrants that County shall obtain good and marketable title to the Equipment, free from any lien or encumbrance.
- 11.3 Intellectual Property Warranty. Contractor represents and warrants that its performance of all obligations under this Contract does not and will not infringe in any way, directly or contributorily, upon any third party’s intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.
- 11.4 Risk of Loss. Contractor shall bear all loss of conforming material covered under the Contract until received and accepted by authorized County personnel at the location designated in the purchase

order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

#### 11.5 Indemnification and Claim

A. Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively “Indemnitees”) from and against any and all Claims resulting from or in connection with the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of Contractor, its Staff, third parties, or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions any of them may be liable or based upon Contractor’s or its Staff’s use of, presence upon or proximity to the property of the County. It is the specific intent of the parties that the Indemnitees shall in all instances, except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by Contractor from and against any and all Claims.

A. For purposes of this Contract, “Claim” means any and all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, fees, and expenses of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, litigation, reasonable attorneys’ fees, court costs, and expenses incidental to such defense. Damages includes without limitation, any bodily injury or personal injury (including death, sickness, injury, disease, or disability), or loss, damage or destruction of any tangible or intangible business or property, including the loss of use, caused or alleged to be caused, in whole or in part, by the negligent or willful acts, errors or omissions of Contractor, or any of its owners, officers, directors, or Staff. Claim includes any claims of infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by Contractor, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the County’s actual or intended use of any Work Product furnished by Contractor, or its subcontractors of any tier, under the Contract.

C. Any Claim against any Indemnitee by any of Contractor’s Staff, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, shall not limit Contractor’s indemnification obligation in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or Contractor’s Staff under workers’ compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) by application of any other worker's compensation act, disability benefit act or other employee benefit act. The foregoing indemnification obligations of Contractor are a material inducement to County to enter into the Contract, are reflected in Contractor’s compensation, and have been mutually negotiated by the parties.

#### 11.6 Notice of Claim and Tender

A. Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of the Contract, Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by Contractor for the County.

B. Contractor shall promptly provide County Representative written notice of any occurrence or information known to Contractor that could reasonably result in a Claim against the County,

or any Claim made or filed against Contractor or its subcontractors regarding any matter resulting from, or relating to, Contractor's obligations under the Contract. Contractor will cooperate, assist, and consult with the County in the defense or investigation of any Claim against County related to Contractor's performance under the Contract.

- C. The County will promptly provide Contractor's Representative written notice of any Claim made or filed against County by a third party that may give rise to a Claim by County against Contractor based on the indemnity contained herein. Contractor shall respond to the County's tender of defense of a claim in writing within 14 calendar days from the date of notice and will advise County if Contractor accepts or denies tender of the claim. County may in its discretion withhold all or part of any payment due Contractor under the Contract until Contractor responds to such notice.
- D. Contractor expressly agrees to assume and pay for, without cost to the County Indemnitees, a full and complete defense on behalf of the County against any Claim brought or actions filed against the Indemnitees, where such claim or action involves, in whole or in part, the subject of the indemnity contained in this Contract, whether such claims or actions are rightfully or wrongfully brought or filed.
- E. Contractor shall keep County continuously, timely and fully informed through all stages of the defense and promptly respond to and comply with County's requests for information. County at all times reserves the right, but not the obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of Contractor's indemnity and defense obligations under the Contract.
- F. Contractor shall not settle or compromise any Claim without the prior written consent of the County. Violation of any provisions of this article, including improper refusal to accept tender, is a material breach. Rights and remedies available to County under this Article are cumulative to those provided elsewhere in the Contract, and those allowed by law. The Article shall survive termination and expiration of the Contract.

11.7 Indemnity by Subcontractors. In the event Contractor enters into subcontracts to the extent allowed under the Contract, Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to County.

## ARTICLE 12. INSURANCE REQUIREMENTS

### 12.1 Minimum Requirements

- A. Contractor and its subcontractors, if any, shall procure prior to providing services and maintain uninterrupted until all of Contract obligations have been fully discharged, including any warranty period, all insurance required in this article with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A: VIII, with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from County. Coverage limits shall be at minimum the limits identified in this section, or the limits available under the policies maintained by Contractor without regard to the Contract, whichever is greater.
- B. The required insurance coverage limits identified in this section shall be provided for each annual policy term. The Insurance Requirements herein are minimum requirements for the Contract and do not limit the indemnity covenants contained in the Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect Contractor

from liabilities that arise out of the performance of the work under the Contract by Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

12.2 Commercial General Liability (“CGL”)

A. Not less than \$1,000,000 per occurrence and \$5,000,000 annual aggregate under this Contract. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer’s liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County.

B. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract. There shall be no exclusion or restriction preventing coverage from applying to injury caused by an act of Discrimination or a violation of Civil Rights, including but not limited to race, religion, sex, national origin as well as allegations for failure to provide adequate treatment.

12.3 Professional Liability/Errors and Omissions

A. Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate under this Contract. Coverage will apply to liability for professional error, act or omission arising out of or in connection with Contractor’s services under the Contract. The coverage shall not exclude bodily injury, property damage or hazards related to the work rendered as part of the Contract or within the scope of Contractor’s services under the Contract, including testing, monitoring, measuring, operations or laboratory analysis where such Services are rendered under the Contract. There shall be no exclusion or restriction preventing coverage from applying to injury caused by an act of discrimination or a violation of civil rights, including without limitation, race, religion, sex, national origin as well as allegations for failure to provide adequate treatment.

B. If the professional liability coverage is included on the same policy as the commercial general liability, limits of liability must be provided separately for each coverage.

12.4 Network Security/Cyber Liability (Cyber Protection). Not less than \$1,000,000 per occurrence and \$5,000,000 annual aggregate under this Contract. Such insurance shall include, but not be limited to, coverage for third-party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

12.5 Business Automobile Liability. Not less than \$500,000 per occurrence and \$1,000,000 annual aggregate under this Contract. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.

12.6 Umbrella, Excess Liability. Contactor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual

aggregate limit shall not be less than the highest “Each Occurrence” limit for either CGL or Automobile Liability. Contractor agrees to an endorsement naming the County as an additional insured as provided in this section unless the Umbrella or Excess Liability provides coverage on a “Follow-Form” basis.

- 12.7 Workers’ Compensation and Employer Liability. If applicable, Contractor shall maintain workers’ compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor’s Staff eligible for such coverage. If the Contract is for over \$50,000, then the Contractor shall also maintain employer liability coverage with a limit of not less than \$1,000,000.
- 12.8 Primary, Non-Contributory Insurance/Subcontractors. Contractor’s and its subcontractors’ insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Contractor’s and its subcontractors’ liability insurance policies must be endorsed to show as primary coverage. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein. Insurance provided by Contractor shall not limit Contractor’s liability assumed under the indemnification provisions of the Contract.
- 12.9 Policy Review. Upon request, Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer’s financial condition or licensing status in Washington. County has the right to request and review the self-insurance retention limits and deductibles, and Contractor’s most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.
- 12.10 Coverage Verification. Contractor will be required to provide the following Certificate of Insurance within five (5) days after receipt of written notice of intent to award the Contract. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by the Contract. An authorized representative of the insurer shall sign the certificates.
- 12.11 Waiver of Subrogation. In consideration of the Contract award, Contractor agrees to waive all rights of subrogation against County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should Contractor enter into a waiver of subrogation on a pre-loss basis.
- 12.12 Additional Insured, Endorsement and Certificate of Insurance. All required insurance coverage, other than the workers’ compensation and professional liability, shall name the County, it’s elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by Contractor and its subcontractors. Endorsement is not required if Contractor is a self-insured government entity or insured through a government risk pool authorized by Washington State. The Certificate of Insurance and

endorsement shall identify the Contract number and shall require not less than 30 days' prior notice of termination, cancellation, nonrenewal or reduction in coverage. At the time of execution, Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, Washington 98366.

- 12.13 General. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of Contractor under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its elected and appointed officials, officers, employees, or agents. Contractor's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, subject to the limits of the insurer's liability.
- 12.14 Claims-Made. If any insurance required by the Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of the Contract and, either continuous coverage will be maintained, or Contractor shall purchase an extended-discovery period or "tail" coverage for a minimum period of three (3) years following completion of the performance or attempted performance of the Contract.
- 12.15 Subcontractors. Contractor shall establish and outline the insurance requirements for each subcontractor that will perform work under the terms of the Contract. Such insurance shall be in forms and limits customary in Washington for the specific services being provided by each subcontractor. Such insurance shall include Kitsap County, and its officers, elected officials, directors, agents, and employees as additional insureds and waiver of subrogation with respect to all applicable policies. Contractor shall be responsible for confirming each subcontractor meets the established insurance requirements for the specific work or medical service being provided. Contractor is responsible for furnishing evidence of insurance to County for each subcontractor.
- 12.16 Approval and Modifications. County reserves the right to review or modify insurance limits, required coverages, or endorsements throughout the life of the Contract, as deemed necessary whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.
- 12.17 Joint Ventures. If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: i) Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as required above, or ii) Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".

#### ARTICLE 13. CONTRACT CHANGES, SUBCONTRACTS

- 13.1 Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 13.2 Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 13.3 Assignment and Delegation. Contractor shall not assign any right or delegate this Contract, or any service, or duty under the Contract without the prior written consent of the County. This prohibition

includes subcontracts, or assignments or transfers, by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law. Any purported assignment or delegation in violation of this subsection shall be void.

- 13.4 Subcontracts. Contractor shall provide County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.

#### ARTICLE 14. OWNERSHIP, CONFIDENTIALITY, BREACH, RECORDS, AUDIT

##### 14.1 Ownership.

- A. Unless otherwise provided for herein, all Work Products originated and prepared by Contractor or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the County for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property. Contractor hereby Assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this Contract. Contractor further agrees to execute any documents necessary for the County to perfect, memorialize, or record the County's ownership of rights provided herein.
- B. For all Work Products delivered to the County that are not originated or prepared by Contractor or its subcontractors of any tier under this Contract, Contractor hereby grants a non-exclusive perpetual license to use such Work Products for any County purposes.
- C. Contractor shall not provide or disclose any Work Product to any third party without prior written consent of County. Any subcontract entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that County's ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with County.

- 14.2 Confidentiality of Records. Contractor shall establish and maintain procedures and controls, that are acceptable to County to assuring that no information contained in its records or obtained from County or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to County. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by County.

14.3 Data Breach

- A. Contractor shall immediately notify the County when any Contractor and/or subcontractor system that may access, process, or store Data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures. Notice shall be provided via electronic correspondence to the person identified in the Notice provisions herein.
- B. Contractor shall notify County immediately upon knowledge of a threat to Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of County Sensitive Data. If an unauthorized use or disclosure of any Sensitive Data occurs, Contractor must provide electronic notification to County Representative and County IS Department (network@kitsap.gov) immediately after Contractor's discovery of such use or disclosure and, thereafter, all information County requests concerning such unauthorized use or disclosure. Contractor, immediately upon discovery, shall report to County any improper or non-authorized use or disclosure of Sensitive Data. Contractor's report shall identify: i) the nature of the unauthorized use or disclosure; ii) the Sensitive Data used or disclosed; iii) who made the unauthorized use or received the unauthorized disclosure; iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and vi) shall provide such other information, including a written report, as reasonably requested by County.
- C. Contractor shall ensure that all personal identifying information, financial information, and other information submitted or made available to Contractor by, or on behalf of, County, or acquired or developed by Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. Such information will be utilized by Contractor solely as necessary for the performance of the Contract and not made available to any other person without the County's prior written consent. Upon expiration or termination of the Contract, all confidential information shall be returned to County or destroyed at County's discretion.
- D. Contractor shall, at its sole expense, comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification, including without limitation RCW 19.255.010, as in effect at any given time. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law, Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend County and its officials and employees from and against any claims, damages, costs, or other harm related to such security obligation breach or other event requiring the notification.

14.4 Loss of Data. In the event of loss of any Data or records where such loss is due to the intentional act or omission or negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by County. Contractor shall ensure that all data is backed up and recoverable by Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by Contractor under the Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which Contractor is working hereunder.

- 14.5 Public Records. Contractor acknowledges the Contract and all public records associated with the Contract shall be available to County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (“Act”). To the extent that public records in the custody of Contractor are needed for County to respond to a request under the Act, as determined by County, Contractor shall make them promptly available to County at no cost to County. If Contractor considers any portion of any record provided to County under the Contract, electronic or hard copy, to be protected from disclosure under the law, Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If County receives a request under the Act to inspect or copy the information that has been identified by Contractor as confidential or proprietary and County determines that release of the information is required by the Act or otherwise appropriate, County’s sole obligation will be to make a reasonable effort to notify Contractor of the request and the date that such information will be released to the requester unless Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If Contractor fails to timely obtain a court order enjoining disclosure, County will release the requested information on the date specified. County has, and by this section assumes, no obligation on behalf of Contractor to claim any exemption from disclosure under the Act. County will not be liable to Contractor for releasing records in compliance with the Act, this section or court order.
- 14.6 Audit and Record Retention. Contractor and its Staff shall maintain and retain all books, documents, and records relating to performance of the Contract and services provided in connection with the Contract for six years after completion of the Contract or longer if requested by County. All records shall be subject to inspection and audit by County at all reasonable times. In the event of any audit or records request, Contractor shall provide assistance to County, without additional compensation, and provide all books, documents and records requested, and identify, investigate, and reconcile any audit discrepancies and/or variances. Contractor and its Staff shall fully cooperate with County when County is evaluating Contract compliance and conducting performance audits and financial audits, which shall include making all records requested by County promptly available to County for review, at no cost to County.

## ARTICLE 15. REPRESENTATIONS, WARRANTIES

- 15.1 General. Each party represents and warrants that 1) it has all necessary rights, licenses and approvals required to provide the Work required under this Contract and to provide the other with the rights to utilize the System in the manner indicated within County RFP 2022-114 and that County shall be entitled to use the System without disturbance; 2) all obligations owed to the third parties with respect to the activities contemplated to be undertaken by the parties pursuant to this Contract, are or will be, fully satisfied so that the parties will not have any obligations (other than obligations set forth in this Contract) with respect thereto; 3) the parties’ obligations under the this Contract are not in conflict with any of their other obligations; 4) each party will comply with all applicable laws in the performance of its obligations under this Contract; and 5) the parties’ arrangements with any Subcontractors who provide services in connection with the performance of the Work required under this Contract shall be in compliance with the terms and conditions of this Contract.
- 15.2 Intellectual Property Warranty. Contractor represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party’s intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

- 15.3 Defects. Contractor represents and warrants that, while this Contract is in effect, the System and all components thereof shall comply with the specifications contained in the Contract and be free from errors in operation and performance and be free from Defects.
- 15.4 Malicious Code. Contractor represents and warrants that it shall use its best efforts to prevent the introduction and proliferation of any Malicious Code into the System or the County's information technology environment. Without limiting Contractor's other obligations under this Contract, Contractor covenants that, in the event any Malicious Code is found in the System or County information technology environment, if such Malicious Code originated in the equipment, Software, interfaces or other resources provided by Contractor under this Contract, Contractor shall remove such Malicious Code and correct all associated issues at its sole expense.
- 15.5 Disabling Code. Contractor represents and warrants that Contractor shall not insert into the System any code which could be invoked to disable or otherwise shut down all or any portion of the System except as required in the event of the termination or expiration of this Contract or as otherwise contemplated by this Contract. Contractor further represents and warrants that no portion of the System contains any "back door," "time bomb," "Trojan horse," "worm," "virus," or other computer software routines or hardware components designed to 1) permit access or use of either the CMS or County's computer systems by Contractor or a third party not authorized by this Contract, 2) disable, damage or erase the System or any information or data stored therein, in each case other than as contemplated by this Contract. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) or the provision by Contractor of services under this Contract shall not be deemed disabling code.
- 15.6 No Fee. Contractor certifies it has not received, nor paid or agreed to pay, another person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.
- 15.7 Compliance. Contractor represents and warrants that: 1) it is qualified to do business in the State of Washington and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; 2) it is not in arrears with respect to the payment of any monies due and owing the state, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract; 3) it shall comply with all applicable Laws, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees; and 4) it shall obtain and maintain, at its expense, all licenses, permits, certifications, insurance, governmental approvals, and other documents necessary for Contractor's performance under the Contract and pay any fees. Contractor certified to immediately notify County of any suspension, termination, lapse, nonrenewal, or restriction of licenses, permits, certificates, or other documents.
- 15.8 Non-Discrimination. Contractor and its Staff shall not discriminate against any person based on race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of the Contract. Any subcontract entered into by Contractor, relating to the Contract, shall be subject to the provisions of this paragraph.
- 15.9 Claims for Labor and Materials. Contractor shall promptly pay when due all amount payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against County property (including reports,

documents, and other tangible or intangible matter produced by Contractor hereunder), against Contractor's rights to payments hereunder, or against County, and shall pay all amounts due under the Unemployment Compensation Act with respect to such labor.

- 15.10 Quality. Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for one year after acceptance by County of the materials, they shall be: i) of a quality to pass without objection in the trade under the Contract description; ii) fit for the intended purposes for which the materials are used and all requirements of the Contract and representations of Contractor; iii) within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units; and iv) conform to the written promises or affirmations of fact made by Contractor.

## ARTICLE 16. RIGHTS AND REMEDIES

- 16.1 Noncompliance. If noncompliance issues are identified by County, the County may provide a written cure notice to Contractor regarding the details of the noncompliance, the required corrective action, and the period of time allowed for bringing its performance back into compliance with the Contract requirements. If, at the end of the specified time period, Contractor has complied with the cure notice requirements, County shall take no further action. If, however, Contractor has not complied with the cure notice requirements, County may in its discretion take any action available under law or equity, including without limitation, monetary sanctions, suspension, refusal to renew, or termination of the Contract. County may, upon termination of the Contract, procure on terms and in the manner that it deems appropriate, procure a System and/or services to replace the System and/or services under the Contract. Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by County in procuring such System and/or services in substitution for those due from Contractor.
- 16.2 Withholding Payment. In the event County determines that Contractor has failed to perform any obligation under this Contract within the times set forth in the Contract, then County may withhold from amounts otherwise due and payable to Contractor in the amount determined by County as necessary to cure the default, until County Representative determines that such failure to perform has been cured. Withholding under this subsection shall not be deemed a breach entitling Contractor to termination or damages, provided that County gives notice in writing to Contractor of the nature of the default or failure to perform.
- 16.3 Recovery of Funds. Whenever, under the Contract, any sum of money shall be recoverable from or payable by Contractor to County the same amount may be automatically deducted from any sum due to Contractor under the Contract or under any other contract between Contractor and the County including reasonable attorney fees and or any other collection costs. The rights of County are in addition and without prejudice to any other right County may have to claim the amount of any loss or damage suffered by County on account of the acts or omissions of Contractor.
- 16.4 Right of Assurance. If the County in good faith has reason to believe Contractor will not or cannot perform or continue performing under the Contract, County may demand in writing that Contractor give a written assurance of intent and/or ability to perform. Failure by Contractor to adequately address all issues of concern to the reasonable satisfaction of County, within the number of days specified the demand may, may result in County resorting to any single or combination of the following remedies: cancel any contract; reserve all rights or claims for damage for breach or any covenants of the Contract; and/or all other rights and remedies available under the Contract and/or as provided by law.

- 16.5 Responsibility for Errors. All Services shall be completed to the satisfaction of County and as required herein. Upon request, Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by County, at no additional cost to County. In the event of an error or omission under the Contract, Contractor shall, at no cost to County, provide all necessary design drawings, estimates, and all other professional services County deems necessary to rectify and correct the matter to the satisfaction of County. Contractor shall continue to be responsible for the accuracy of Services, even after the Work is accepted by County and the termination or expiration of the Contract.
- 16.6 Right of Offset, Reimbursement. County shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by County, or damages assessed by County concerning Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
- 16.7 Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to County at law and in equity.
- 16.8 Nonconforming Tender. Materials or services supplied under the Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the County may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code or pursue any other right or remedy available to it.
- 16.9 Non-Exclusive Remedies. The rights and the remedies of the County under the Contract are not exclusive.
- 16.10 Breach. In the event of a material breach by Contractor, the County may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. Contractor shall be liable to County for any and all costs, expenses, penalties, and fees incurred by County in procuring such Services in substitution for those due from Contractor under the Contract.

#### ARTICLE 17. LIQUIDATED DAMAGES

- 17.1 It would be impractical and extremely difficult to assess the actual damage sustained by County in the event of delays or failures in Service, or in the event the System does not provide the functionality listed in the RFP. County and Contractor, therefore, presume that in the event of any such failure to perform to the Standards, County will be paid an amount equal to 1.5% of the total Contract amount for each day the System is not accessible to users due to a System or technical failure in Contractor's technology environment, it's servers or software, whether hosted inside or outside Contractor's facilities. This amount represents both parties' best estimate of the damages resulting from the injury that in the event of any such failure, Contractor shall pay such amounts as liquidated damages and not as a penalty. For amounts due the County as liquidated damages, County may deduct from any money payable to Contractor or may bill Contractor as a separate item. By executing the Contract, Contractor expressly agrees to the amount, and imposition, of liquidated damages, as provided in the Contract.

#### ARTICLE 18. GOVERNING LAW, DISPUTES

- 18.1 Governing Law; Venue. The Contract has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable

to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of the Contract or any provisions hereto shall be instituted only in courts of competent jurisdiction within Kitsap County, Washington, unless otherwise required by law.

- 18.2 Disputes. Differences between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due Contractor shall be brought to the attention of the County Representative at the earliest possible time in order that such matters may be settled, or other appropriate action promptly taken by the County's Representative. All decisions of County's Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

## ARTICLE 19. GENERAL PROVISIONS

- 19.1 Advertising, Logo. Contractor shall not use, advertise, or promote information for commercial benefit concerning the Contract or use any trade name, trademark, logo, or symbol of the County, or County Departments, without County's prior written consent.
- 19.2 Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.
- 19.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the County and they may be amended, the following shall prevail in the order set forth: 1) Contract; 2) scope of work; 3) request for proposal; 4) documents referenced or included in the RFP; and 5) Proposal as accepted by the County
- 19.4 Headings/Captions. Headings and captions used are for convenience only and are not a part of the Contract and do not in any way limit or amplify the terms and provisions hereof.
- 19.5 No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 19.6 Time of Performance. Time is of the essence with respect to each and every term and provision of the Contract.
- 19.7 Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 19.8 Waiver. A waiver of a default of any part, term, or provision of this contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. No waiver of any default of the Contract shall be held to be a waiver of any other or subsequent default.
- 19.9 Non-Exclusive Contract. County may at its discretion enter into multiple agreements to obtain the same or similar services that are the subject of this Contract or may have its own employees perform the same or similar services contemplated by the Contract.
- 19.10 Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

- 19.11 Survival. Any provision of the Contract which contemplates performance or observance subsequent to any termination or expiration of the Contract shall survive termination or expiration of the Contract and continue in full force and effect. Those provisions include, without limitation: Article 3 (Scope of Work), Article 8 (Termination), Article 11 (Warranty, Risk of Loss, and Indemnification), Article 12 (Insurance Requirements), Article 14 (Ownership, Confidentiality, Breach, Records, Audit), Article 16 (Rights and Remedies), and Article 18 (Governing law, Disputes).
- 19.12 Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements and representations, whether oral or written, entered into prior to the Contract are hereby revoked and superseded by the Contract.
- 19.13 Authorization. Each party signing the Contract warrants to the other party, that they have the full power and authority to execute the Contract on behalf of the party for whom they sign.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

CONTRACTOR

KITSAP COUNTY

\_\_\_\_\_  
Name

\_\_\_\_\_  
Chad M. Enright  
Kitsap County Prosecuting Attorney

\_\_\_\_\_  
Title

**APPROVED:**

**KITSAP COUNTY BOARD OF COMMISSIONERS  
PORT ORCHARD, WASHINGTON**

\_\_\_\_\_  
EDWARD E. WOLFE, Chair

Dated: \_\_\_\_\_

\_\_\_\_\_  
CHARLOTTE GARRIDO, Commissioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
ROBERT GELDER, Commissioner

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Dana Daniels, Clerk of the Board