RFQ 24-RFQ-015

Proposed Contract Number 24-XXX

for

CTS Centrex or Analog Services

between

*Consolidated Technology Services*

and

*Vendor*

Effective Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Exhibit A: CTS Request for Quotations 24-RFQ-015 for **CTS Centrex and Analog Services**

Exhibit B: Contractor’s Response

Note: Exhibits A and B are not attached. Exhibit A and the non- proprietary, non-confidential portions of Exhibit B are available upon request from the CTS Contract Administrator

**CONTRACT NUMBER 24-XXX**

**for**

**CTS Centrex or Analog Services**

**PARTIES**

This Contract (“Contract”) is entered into by and between the state of Washington acting through Consolidated Technology Services, an agency of Washington State government (hereinafter “Purchaser” or “CTS” d/b/a “WaTech”) located at 1500 Jefferson Street SE, 5th Floor, PO Box 41501, Olympia, WA 98504, and **Contractor,** licensed to conduct business in the State of Washington, (hereinafter “Contractor”) for the provisioning of CTS Centrex and Analog telephone services.

**RECITALS**

The state of Washington, acting by and through CTS, issued a Request for Quotations (RFQ), 24-RFQ-015, dated December X, 2023 (Exhibit A) for the purpose of establishing a Contract for Centrex or Analog services in accordance with its authority under chapter 43.105 RCW.

Contractor submitted a timely Response to CTS’ Request For Quotations (Exhibit B).

CTS evaluated all properly submitted Responses to the above-referenced RFQ and has identified Contractor as the apparently successful Contractor.

CTS has determined that entering into a Contract with Contractor will meet the State’s needs and will be in the State’s best interest.

NOW THEREFORE, CTS awards to Contractor this Contract, the terms and conditions of which shall govern Contractor’s furnishing to CTS the Centrex and Analog telephone services. This Contract is not for personal use.

This Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does the Contract prevent the State from purchasing the same or similar Products or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

# Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

**“Breach”** shall mean a material violation of the terms of this Contract or the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by Purchaser.

**“Business Days and Hours”** shall mean Monday through Friday, 7 AM to 6 PM, local time in Olympia, Washington, excluding holidays observed by the State of Washington.

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

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

**“Contractor”** shall mean --------------- its employees and agents and wholly owned subsidiaries. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

**“Contractor Account Manager”** shall mean a representative of Contractor who is assigned as the primary contact person with whom the CTS Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the CTS Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

**“Contractor Project Manager”** shall mean a representative of Contractor who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled Contractor Project Manager.

**“CTS”** shall mean the Washington State Consolidated Technology Services (CTS), also known as Washington Technology Solutions (“WaTech”) and formerly the Washington State Department of Information Services (DIS).

**“CTS Contract Administrator”** shall mean the CTS Contract Administrator responsible for the maintenance and administration of this Contract, notices, reports and any other pertinent documentation or information. The CTS Contract Administrator may also conduct periodic performance or financial audits related to this Contract.

**“Effective Date”** shall mean the first date this Contract is in full force and effect which shall be the date of the last signature of a party to this Contract.

**“Exhibit A”** shall mean the RFQ.

**“Exhibit B”** shall mean Contractor’s Response.

**“Equipment”** shall mean any material item other than reports, including hardware, hardware system(s), hardware component(s), electronic device(s) or component(s), or other non-printed or non-printable material purchased under this contract, but may include documentation regarding the purchased material items.

**“Help Desk”** shall mean a service provided by Contractor for the support of Contractor’s Products. Purchaser shall report warranty or maintenance problems to Contractor’s Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

**“Order”** or **“Order Document”** shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Contractor under this Contract.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

**“Product(s)”** shall mean any Contractor-supplied Equipment, Software and documentation within the scope of this Contract.

**“Proprietary Information”** shall meaninformation owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws, information regarding Contractors hardware, software and service products, technical, financial and marketing data, to the extent that such information is exempt from disclosure pursuant to RCW 42.56 or other federal or state statutes.

**“Purchaser”** shall mean the State of Washington, CTS, and any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

**“RCW”** shall mean the Revised Code of Washington.

**“RFQ”** shall mean the Request for Quotations used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**“Response”** shall mean Contractor’s Response to the RFQfor Centrex or Analog telephone services, Exhibit B hereto.

**“Schedule A: Authorized Product and Price List”** shall mean the attachment to this Contract that identifies the authorized Products and Services and Prices available under this Contract.

**“Schedule B:** shall mean...

**“Schedule C: Escalation Procedures”** shall mean the attachment to this Contract that identifies Contractor’s escalation procedures.

**“Services”** shall mean those services provided under this Contract and related to the Products being acquired.

**“Software”** shall mean the object code version of computer programs licensed pursuant to the Contract. Software also means the source code version, where provided by Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**“Specifications”** shall mean the technical and other specifications set forth in Contractor’s Product documentation, whether or not Contractor produces such documentation before or after this Contract’s Effective Date.

**“State”** shall mean the state of Washington.

**“Subcontractor”** shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**“NSD”** shall mean the Network Services Division of CTS.

**“Warranty Period”** shall mean the period of time as set forth in the section titled Equipment Warranty.

**“Work Product”** shall mean the data and products under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

# Term

## This Contract’s initial term shall be three (3)years, commencing upon the Effective Date.

## This Contract’s term may be extended by three (3) additional one (1) year terms in renewal increments of one (1) or more years, provided that the extensions shall be at CTS’ option and shall be effected by CTS giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term’s expiration and Contractor accepting such extension prior to the Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

## Orders that are placed that required an ongoing subscription commitment must complete the term stated in the specific Order obligation (as an “Initial Term” and/or “Renewal Term(s)”, which are further defined in particular Order), Any Orders placed for Services that extend beyond the Contract Term shall continue to be governed by this Contract. However, multi-year Services that extend more than twelve (12) months beyond the Term of the Contract shall be available only to those Purchasers not precluded from making advance payments for services in excess of one year. Unused or cancelled portions of multi-year terms are not refundable.

# Survivorship

All purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price Discounts 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 **Overpayments to Contractor; Ownership/Rights in Data; Contractor Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; License Grant;** **Software Ownership; Virus Warranty; Export Compliance; Section Headings, Incorporated Documents and Order of Precedence; Publicity;** **Review of Contractor’s Records; Patent and Copyright Indemnification;** **Contractor’s Proprietary Information; Disputes;** and **Limitation of Liability**, shall survive the termination of this Contract.

Pricing, Invoice and Payment

# Pricing

## Contractor shall provide service(s) at the prices and/or discount level specified in Schedule A *Authorized Product and Price List*. No other costs or charges shall apply

## Discount levels may not be decreased during the term of the Contract. Contractor may lower pricing or give additional Discounts to Purchasers (such as a volume discounts) at any time during the life of the Contract. Nothing in this contract shall prohibit Purchaser from seeking additional discounts from Fulfillment Partners.

## If Contractor increases its discount or reduces its Prices for any of the Products or Services during the term of this Contract, Purchaser shall have the immediate benefit of such higher Discount or lower Prices for new purchases propectively.

## Contractor shall *not* be reimbursed for any expenses related to travel, i.e., per diem, meals, lodging, etc.

## Contractor agrees to participate in the Federal Communication Commission’s E-rate Discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements,only to the extent that such requirements apply to Contractor as a supplier of eligible services under the Telecommunications Act of 1996.

## Purchaser’s payment for services is made on good faith of Contractor's successful performance of deliverables. If Contractor does not successfully provide the service(s) as agreed to by the parties in writing, Purchaser shall notify Contractor in writing and Contractor shall have a 30-days to cure and successfully provide the service(s). If the service(s) are not successfully provided by Contractor within the 30-day cure period, then Purchaser may initiate a Dispute claim pursuant to Section 42 of this Contract to request a pro-rata credit associated with such non-performed service(s).

# Advance Payment Prohibited

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract, with the exception of maintenance and subscription-based services. If mutually agreed with Purchaser, Contractor may invoice the Purchaser in advance for up to, but not more than a one-year period for subscription and maintenance services.

# Taxes

## Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.

## Contractor shall complete registration with the Washington State Consolidated Technology Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor’s staff shall be Contractor’s sole responsibility.

# Invoice and Payment

## Contractor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser within 30 days for the entire order after all the items and services have been delivered. Invoices shall provide and itemize, as applicable:

### a) Contract number 24-XXX;

### b) Purchaser’s name, address and Purchase Order or Field Order Number; purchase delivery location, if different;

### c) Contractor name, address, phone number, and Federal Tax Identification Number; and remittance address, if different;

### d) Description of Equipment/Products, including quantity ordered, model and serial numbers;

### e) Description of Services provided;

### f) Date(s) of delivery of Equipment/Products or Services and/or date(s) of Product installation and set up;

### g) Any Maintenance or other related Service charges;

### h) Upon request of a Purchaser, Contractor shall include agency specific identifiers, (e.g. Network Control Center (NCC) ticket number);

### i) Total invoice price, excluding sales tax;

### j) Sales or other applicable taxes;

### k) Other applicable charges;

### l) Total invoice amount;

### m) Payment terms including any available prompt payment Discounts;

### n) Expedited install charges, when requested by Customer;

### o) Expected or actual shipping charges, when requested by Customer.

## Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance Date of Products or Services.

## Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.

## The CTS Contract number 24-XXX must appear on all bills of lading, packages, and correspondence relating to this Contract.

## If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Contractor’s bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance Date of the Equipment.

# Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within sixty (60) days’ written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

# Subcontractor Payments Reporting Requirements

This Contract is subject to compliance tracking using the State’s business diversity management system, Access Equity (B2Gnow). Access Equity is web-based and can be accessed at the Office of Minority and Women’s Business Enterprises (OMWBE) at [https://omwbe.diversitycompliance.com](https://omwbe.diversitycompliance.com/). The Contractor and all Subcontractors shall report and confirm receipt of payments made to the Contractor and each Subcontractor through Access Equity. The Contractor may contact OMWBE for technical assistance in using the Access Equity system.  User guides and documentation related to Contractor and Subcontractor access to and use of Access Equity are available online at <https://omwbe.wa.gov/access-equity-help-center>. The Public Owner reserves the right to withhold payments from the Contractor for non-compliance with this section. For purposes of this section, Subcontractor means any subcontractor working on the Contract, at any tier and regardless of status as certified WMBE or Non-WMBE.

The Contractor shall:

* 1. Register and enter all required Subcontractor information into Access Equity no later than 15 days after the Public Owner creates the Contract Record.
	2. Complete the required user training (two (2) one-hour online sessions) no later than 20 days after the Public Owner creates the Contract Record.
	3. Report the amount and date of all payments (i) received from the Public Owner, and (ii) paid to Subcontractors, issuance of each payment made by the Public Owner to the Contractor, unless otherwise specified in writing by the Public Owner, except that the Contractor shall mark as “Final” and report the final Subcontractor payments) into Access Equity no later than thirty (30) days after the final payment is due the Subcontractor(s) under the Contract, with all payment information entered no later than sixty (60) days after end of fiscal year.
	4. Monitor contract payments and respond promptly to any requests or instructions from the Public Owner or system-generated messages to check or provide information in Access Equity.
	5. Coordinate with Subcontractors, or Public Owner, when necessary, to resolve promptly any discrepancies between reported and received payments.
	6. Require each Subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from the Contractor or a higher tier Subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier Subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from the Contractor or system-generated messages to check or provide information in Access Equity; and (v) coordinate with Contractor, or Public Owner when necessary, to resolve promptly any discrepancies between reported and received payments.

Contractor’s Responsibilities

# Purchaser Ownership/Rights in Data

## Purchaser and Contractor agree that all data and work products (collectively called “Work Product”) produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

## If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

## Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

## Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

## Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

# RFQ Mandatory Requirements

The RFQ (24-RFQ-015) Mandatory Requirements are essential substantive terms of this Contract. Products and Services provided under this Contract shall meet or exceed all the mandatory requirements of the RFQ.

# Security

## Facility Access.

Contractor understands that Purchaser’s building entrances may be controlled for access. Contractor agrees to become familiar with Purchaser’s building and security policies, and further agrees to observe and comply with all Purchaser’s building and security policies or procedures.

Contractor understands that in order to obtain access to Purchaser’s premises, Contractor may be required to be issued a security badge by Purchaser. Contractor shall provide certain personal information, including valid government issued photo identification, prior to obtaining a security badge. Contractor further understands that Purchaser will collect and retain such personal information for so long as the Contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to deny an application for a security badge. Failure of Contractor to comply with Purchaser’s security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser’s facilities.

Upon the earlier of termination of the Contract, or suspension or termination of access to Purchaser’s facilities, Contractor shall return all security badges.

## Remote Access to Network.

Contractor understands that in order to obtain remote access to Purchaser’s Local Area Network (LAN), email, or supported computing environments through a remote access connection (“Remote Access”), Contractor must comply with Purchaser’s Remote Access policy and any other applicable policies or procedures. Contractor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser. Contractor will not be liable for not providing, or required to provide Services, if Contractor is unable to comply with Purchaser’s Remote Access policy or otherwise denied access to Purchaser’s network.

## Safety.

Contractor shall observe and comply with OSHA regulations, all applicable safety and environmental laws and regulations, and all Purchaser’s rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

## Information and System Security.

Contractor acknowledges and understands that access to Purchaser’s computer newtorks may be necessary to perform the work under this Contract, and as a result Purchaser has placed or may place special confidence and trust in the Contractor in providing such access. Contractor acknowledges and understands that any access to Purchaser’s computer networks hsall be limited, restricted, and conditioned upon Contractor’s compliance with certain Purchaser policies and practices. Contractor warrents that they will perform all work for or on behalf of Purchaser in full compliance with Washington State’s OCIO and CTS security policies, as well as any other policy of Washington State that is still in effect, which may inlcude the Information Services Board Security Policy, Standards and Guidelines, and the CTS Site and Security Policy attached hereto as Exhibit C, and any other security documents and best practices provided by Purchaser (“Security Policies”).

Contractor, having agreed upon Purchaser’s Security Policies as the acceptable standard for network security, warrents that they shall exercise their best efforts in the execution of the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, exraneous code, self-help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of Purchaser’s network, system or data.

# Contractor Escalation Procedures

Contractor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Product and Service problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Contractor’s employee(s) responding at each level and the elapsed time before the next level of response is invoked.

# Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, Discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response.

# Protection of Purchaser’s Confidential Information

## Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors (i) on a “need to know” basis, and (ii) who have signed a nondisclosure agreement that contractually obligates such employees and Subcontractors to maintain the confidentiality of the Confidential Information which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

## Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser’s option, and upon written notice: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser’s Confidential Information.

## Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties available by law.

## Contractor grants to Purchaser a non-exclusive, non-transferable license to the Software for which Purchaser has fully-paid fees to use the Software and related documentation according to the terms and conditions of this Contract.

## Freedom of Use. Contractor understands that CTS may provide information processing services to other users that are governmental entities and other tax supported entities. Contractor further understands that Purchaser may provide services to the public through web-based applications. Software delivered hereunder may be used in the delivery of these services. Contractor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

Contract Administration

# Legal Notices

## Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except for subpoena or notice of legal process and except notice of malfunctioning Equipment or Software) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or via facsimile, to the parties at the addresses and fax numbers provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

|  |  |
| --- | --- |
| **To Contractor at:** | **To CTS at:** |
|  | State of WashingtonConsolidated Technology Information Services |
| **Attn:**  | **Attn:** Contract Administrator |
|  | ***If by US Postal Service:*** | ***If by Overnight Courier:*** |
|  | PO Box 41501 | 1500 Jefferson St. SE |
|  | Olympia, WA 98504 | Olympia, WA 98502-2445 |
| Phone:  | Phone: 360-407-8781 |
| Fax:  | Fax: 360-586-1414 |
| E-mail:  | E-mail: ctsdlols@cts.wa.gov  |

## Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

## In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Contractor 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.

## Any change in the names and/or contact information of the individuals designated in this section as the proper receipients of legal or other notices required by this Contract must be provided to the other party to this contract promptly in writing and delivered as would any other notice required by this Contract. No amendment to this Contract is required in order to effectively implement a change of persons to be notified.

# Contractor Account Manager

Contractor shall appoint an Account Manager for the State’s account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor’s Account Manager will be the principal point of contact for CTS concerning Contractor’s performance under this Contract. Contractor shall notify the CTS Contract Administrator, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

|  |
| --- |
| Contractor Account Manager:  |
| Address:  |
| Phone:  | Fax:  | E-mail:  |

# Contractor Project Manager

Contractor shall assign a Contractor Project Manager for each Purchaser project. Purchaser shall have approval rights over the Contractor Project Manager, or any replacements thereof. The Contractor Project Manager shall be the principal point of contact for Purchaser and shall coordinate Contractor’s activities. The Contractor Project Manager shall produce and maintain a complete plan for all Contractor-related activities concerning installation and training.

# Section Headings, Incorporated Documents and Order of Precedence

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

## Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

### a) Schedules A, B, C, D, E, F;

### b) CTS’RFQ (Exhibit A);

### c) Contractor’s Response to CTS’ RFQ (Exhibit B);

## In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

### a) Applicable federal and state statutes, laws, and regulations;

### b) Sections of this Contract;

### c) Schedules A, B. C. D. E. F;

### d) CTS’RFQ (Exhibit A);

### e) Contractor’s Response to CTS’ RFQ (Exhibit B);

# Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, and conditions, of this Contract will be effective without the written consent of both parties. Any additional terms contained on either Parties Order documents will have no legal effect.

# 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 CTS and Contractor.

# Additional Products and Services

Contractor may submit new Products and Services with associated Discounts or prices to the CTS Contract Administrator. New or changed Products and Services submitted by Contractor shall meet all mandatory requirements of the RFQ and the sole product determination. Additional Products or Services that are determined by CTS to be appropriate to the scope of this Contract, may be added to this Contract by an instrument in writing, signed by both Contractor and CTS. Such writing shall include a specific description of the additional Products and/or Services, pricing, and additional terms and conditions as relevant.

# Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. 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. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW (State Civil Service Law) or Title 51 RCW (Industrial Insurance).

# Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

# Rule of Construction as to Ambiguities

Each party to this Contract acknowledges that such party has reviewed this Agreement and participated in its drafting and agrees that no provision of this Contract shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have drafted, structured or dictated such provision or provisions.

# Subcontractors

## Contractor may, with prior written permission from CTS Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor’s duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor’s duties. For purposes of this Contract, Contractor shall be liable for any loss or damage to Purchaser, subject to the Limitation of Liability section of the agreement, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser’s Confidential Information**,and **Software Ownership** sections of this Contract occasioned by the acts or omissions of Contractor’s Subcontractors, their agents or employees. The **Patent and Copyright Indemnification**, **Protection of Purchaser’s Confidential Information**, **Software Ownership**, **Publicity** and **Review of Contractor’s Records** sections of this Contract shall apply to all Subcontractors.

## Contractor may request new or additional Subcontractors be added to the Contract at any time. Contractor shall submit the request to the TSD Contract Administrator, identifying any Subcontractor limitations in the request. Approval shall be documented through an amendment to the Contract.

# Assignment

## With the prior written consent of CTS Contracting Officer, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder prior to the date of assignment, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff prior to the date of assigment.

## Upon advance written notice, CTS 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 Purchaser of any of its duties and obligations hereunder.

# Publicity

## The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor’s products by CTS and shall not be so construed by Contractor in any advertising or other publicity materials.

## Contractor agrees to submit to CTS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product or Services furnished by Contractor wherein CTS’ name is mentioned, language is used, or Internet links are provided from which the connection of CTS’ name with Contractor’s Products or Services may, in CTS’ judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of CTS *prior* to such use.

# Review of Contractor’s Records

## Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women’s Business Enterprise participation (if applicable), protection and use of Purchaser’s Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

## 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 CTS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract’s term, Contractor shall provide access to these items within Thurston County or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

## Contractor shall incorporate in its subcontracts this section’s records retention and review requirements.

## It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor’s cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser’s review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

# Right of Inspection

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

General Provisions

# Patent and Copyright Indemnification

## Contractor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product or Work Product supplied hereunder, or Purchaser’s use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys’ fees awarded by a court or incurred by Purchaser provided that Purchaser:

### Promptly notifies Contractor in writing of the claim, but Purchaser’s failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and

### Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.

## If such claim has occurred, or in Contractor’s opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product or Work Product and provide Purchaser a refund. In the case of Work Product, Contractor shall refund to Purchaser the entire amount Purchaser paid to Contractor for Contractor’s provision of the Work Product. In the case of Product, Contractor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of three (3) 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 three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Contractor.

## Contractor has no liability for any claim of infringement arising solely from:

### Contractor’s compliance with any designs, specifications or instructions of Purchaser;

### Modification of the Product or Work Product by Purchaser or a third party without the prior knowledge and approval of Contractor; or

### Use of the Product or Work Product in a way not specified by Contractor;

unless the claim arose against Contractor’s Product or Work Product independently of any of these specified actions.

# Save Harmless

Contractor and CTS shall protect, indemnify, and save each other harmless, to the extent permitted by law, from and against any claims, damages, losses, liabilities or expenses including reasonable attorneys’ fees resulting from any third-party claims, for any or all bodily injuries to persons or damage to tangible personal property (excluding lost data) arising from intentional, willful or negligent acts or omissions of the indemnifying party, its officers, employees, or agents, or subcontractors. In the event of a third-party claim, the damages and expenses, including reasonable attorneys’ fees, shall be allocated between the parties in proportion to the relative fault of each party, its officers, employees, agents, or subcontractors.

# Insurance

31.1. Contractor shall, during the Term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington

31.1.a. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to CTS within thirty (30) business days of Contractor’s receipt of such notice. Failure to buy and maintain the required insurance may, at CTS’ sole option, result in this Contract’s termination.

31.1.b. The minimum acceptable limits shall be as indicated below:

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

31.1.c Contractor shall pay premiums on all insurance policies. Such insurance policies certificate(s) shall name CTS as an additional insured on all general liability coverage, but only to the extent of liabilities falling within Contractor’s indemnification obligations under the Contract. Such insurance certificates shall also reference this Contract number 24-XXX.

31.1.d. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State subject to the hold harmless/indemnification agreements under this Contract and shall include a severability of interests (cross-liability) provision.

31.1.e Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

31.1.f. Contractor shall furnish to CTS copies of certificates of all required insurance within thirty (30) calendar days of this Contract’s Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this Contract is in full force and effect. Failure to provide evidence of coverage may, at CTS’ sole option, result in this Contract’s termination.

31.1.g By requiring insurance herein, CTS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the State in this Contract.

# Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

# OSHA/WISHA

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

# Antitrust Violations

Contractor and Purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Contractor hereby assigns to 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 Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

# Compliance with Civil Rights Laws

During the performance of this Contract, Contractor 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 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 under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with the State.

# Nondiscrimination

38.1 Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

38.2 Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

38.3 Default. Notwithstanding any provision to the contrary, CTS may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until CTS receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified in RCW 49.60.530(3), CTS may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

38.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract 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, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

# Severability

If any term or condition of this Contract or the application thereof 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.

# 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.

# Treatment of Assets

## Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment** section. As used in this section **Treatment of Assets**, if the “property” is Contractor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

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

## Contractor shall be responsible for any loss of or damage to tangible property of Purchaser that results from Contractor’s negligence or that results from Contractor’s failure to maintain and administer that property in accordance with sound management practices.

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

## Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.

## All reference to Contractor under this section shall also include Contractor’s employees, agents, or Subcontractors.

# Contractor’s Proprietary Information

Contractor acknowledges that Purchaser is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor’s Proprietary Information, Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

Disputes and Remedies

# Disputes

## In the event a bona fide Dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, either party may initiate the Dispute resolution procedure provided herein.The parties agree that the Dispute resolution process set forth herein is non-binding.

## 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 five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the Dispute.

### a) If the Dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute resolution panel within the next five (5) Business Days.

### b) 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.

### c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

## Both parties agree to exercise good faith in Dispute resolution and to settle Disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in Dispute.

## Purchaser and Contractor agree that, the existence of a Dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the Dispute.

## If the subject of the Dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the Dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

# Non-Exclusive Remedies

Unless it is stated to be exclusive, the remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

# Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, CTS shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar daysfrom the date of the written notice Contractor still has not performed, then CTS may withhold all monies due and payable to Contractor, without penalty to CTS, until such Failure to Perform is cured or otherwise resolved.

# Limitation of Liability

## The parties agree that neither Contractor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Contractor’s Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

## Contractor and CTS shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or CTS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than CTS 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 Contractor or CTS or their respective Subcontractors.

## If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

## Neither Contractor nor CTS 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 Termination

# Termination for Default

## If either Purchaser or Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner obligations owed to the other party under this contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible partywill correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If such the failure or violation 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. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of any alleged Contractor compliance breach and pending corrective action by Contractoror a decision by Purchaser to terminate the Contract.

## In the event of termination of this Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (ii) 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, (iii) any other costs to Purchaser resulting from Contractor’s breach. Purchser shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe Purchaser for Contractor’s default.

## If 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**.

## This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

# Termination for Convenience

When, at the sole discretion of CTS, it is in the best interest of the State, the CTS Contracting Officer may terminate this Contract, in whole or in part, by fourteen (14) calendar day’s written notice to Contractor.

# Termination for Withdrawal of Authority

In the event that CTS’ authority 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, CTS may terminate this Contract by seven (7) calendar dayswritten notice to Contractor. No penalty shall accrue to CTS in the event this section shall be exercised. This section shall not be construed to permit CTS to terminate this Contract in order to acquire similar Products or Services from a third party.

# Termination for Non-Allocation of Funds

If funds are not allocated to CTS to continue this Contract in any future period, CTS may terminate this Contract by seven (7) calendar dayswritten notice to Contractor or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. CTS will not be obligated to pay any further charges for Products or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. CTS agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to CTS in the event this section shall be exercised. This section shall not be construed to permit CTS to terminate this Contract in order to acquire similar Products or Services from a third party.

# Termination for Conflict of Interest

CTS may terminate this Contract by written notice to Contractor if CTS determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, CTS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

# Termination Procedure

## Upon termination of this Contract, CTS, in addition to any other rights provided in this Contract, may require Contractor to deliver any property or work product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

## Unless otherwise provided herein, CTS shall pay to Contractor the agreed-upon Price, if separately stated, for the Products and Services received by CTS, provided that in no event shall CTS pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. CTS may withhold from any amounts due Contractor such sum as CTS determines to be necessary to protect CTS from potential loss or liability.

## Contractor shall pay amounts due CTS as the result of termination within sixty (60) calendar days of notice of the amounts due. If Contractor fails to make timely payment, CTS may charge interest on the amounts due at one percent (1%) per month until paid in full.

# Covenant Against Contingent Fees

## Contractor 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 Contractor.

## In the event Contractor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser’s discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

# Authority to Bind

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

# 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.

# Facsimile Execution

The parties agree that this Contract may be executed by facsimile signature, and shall be effective as of the date of such facsimile signature. If executed by facsimile, the parties agree to provide original signature pages within ten (10) business days of facsimile execution.

***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** |  | **Approved** |
| State of WashingtonConsolidated Technology Information Services |  | . |
|  |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Print or Type Name Date* |  | *Print or Type Name Date* |
|  |  |  |
| *Title* |  | *Title*  |

|  |  |  |
| --- | --- | --- |
| **Approved as to Form** |  | **Contractor Information** |
| State of Washington |  | Contractor’s UBI Number:  |
| Office of the Attorney General |  |  |
|  |  |  |
|  |  |  |
|  |  | Minority or Woman Owned Business Enterprise |
| *Signature* |  |  |
|  |  | Yes No [ ]  |
| *Print or Type Name* |  | (Certification Number) |
|  |  |  |
| *Title Date* |  |  |

**Schedule A**

**Authorized Product and Price List**

**Attached separately.**

**Schedule B**

**SCHEDULE C**