

	SERVICE CONTRACT BUSINESS & TECHNOLOGY MODERNIZATION (BTM) PROJECT SUPPORT & TECHNICAL CONSULTING SERVICES		DEPARTMENT Contract Number: K5099 Resulting From Procurement Number:
This Contract is between the State of Washington Department of Licensing (DEPARTMENT) and the CONTRACTOR identified below, and is governed by chapter 39.29 RCW.			
CONTRACTOR NAME Couloir Consulting		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS P.O. Box 13337 Olympia, WA 98508		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) 602 206 750	CONTRACTOR Contract Number:
CONTRACTOR CONTACT Steve Giesecke	CONTRACTOR TELEPHONE (360) 561-3803	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS couloir@comcast.net
DEPARTMENT Washington State Department of Licensing		DEPARTMENT/DIVISION Business and Technology Modernization	
DEPARTMENT CONTACT NAME AND TITLE Erik Anderson BTM Project Manager		DEPARTMENT CONTACT ADDRESS P.O. Box 8150 Olympia, WA 98502-8150	
DEPARTMENT CONTACT TELEPHONE (360) 664-6625	DEPARTMENT CONTACT FAX	DEPARTMENT CONTACT E-MAIL ADDRESS erik.anderson@dol.wa.gov	
CONTRACT START DATE July 1, 2014	CONTRACT END DATE June 30, 2015	CONTRACT MAXIMUM AMOUNT \$280,800.00	
EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference: EXHIBIT A – STATEMENT OF WORK			
The terms and conditions of this Contract are an integration of and constitute the final, entire and exclusive understanding of the agreement between the parties, superseding and merging all previous agreements, writings, and communications between the parties made prior to or at the signing of this Contract. The parties signing below warrant they have read and understand this Contract, and have authority to enter into this Contract.			
CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED	
DEPARTMENT SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED	

TABLE OF CONTENTS

GENERAL TERMS AND CONDITIONS

1	DEFINITION OF TERMS	1
2	TERM	3
3	PRICING, INVOICE AND PAYMENT	3
3.1	PRICING	3
3.2	ADVANCE PAYMENTS PROHIBITED	4
3.3	TAXES	4
3.4	BILLING (INVOICE) & PAYMENT	4
3.5	WITHHOLDING PAYMENT	4
3.6	OVERPAYMENT TO THE CONTRACTOR	4
4	CONTRACTORS RESPONSIBILITIES	5
4.1	COMMENCEMENT OF WORK.....	5
4.2	SPRINTS.....	5
4.3	SUPPLEMENTAL CONTRACTS.....	6
4.4	SITE SECURITY	6
5	CONTRACT ADMINISTRATION	6
5.1	CONTRACT MANAGEMENT	6
5.2	DEPARTMENT PROJECT MANAGER.....	6
5.3	RECORDS MAINTENANCE.....	6
5.4	RIGHT OF INSPECTION.....	7
5.5	ACCESS TO FACILITIES, TOOLS, & EQUIPMENT	7
5.6	TREATMENT OF ASSETS.....	7
6	DELIVERABLES	8
6.1	GENERAL	8
6.2	DELIVERY.....	8
6.3	ACCEPTANCE PROCESS FOR DELIVERABLES.....	9
7	CHANGES	9
7.1	ISSUANCE OF CHANGE REQUESTS	9
7.2	CONTRACTOR RESPONSE TO CHANGE REQUEST.....	9
7.3	AGREEMENT ON CHANGE ORDER.....	9
7.4	CONTRACTOR SUBMISSION OF CHANGE REQUEST	10
8	DISPUTES AND REMEDIES	10
8.1	DISPUTE RESOLUTION	10
8.2	ATTORNEYS' FEES	10
8.3	WITHHOLDING PAYMENTS.....	10
8.4	REDUCTIONS IN PAYMENTS DUE	11
8.5	SUSPENSION FOR CONVENIENCE	11
8.6	NON-EXCLUSIVE REMEDIES.....	11
8.7	SAVE HARMLESS	11
8.8	LIMITATION OF LIABILITY	11

9	INDEMNIFICATION AND INSURANCE	12
9.1	INDEMNIFICATION.....	12
9.2	WAIVER OF STATUTORY IMMUNITY.....	12
9.3	INSURANCE.....	13
9.4	INDUSTRIAL INSURANCE COVERAGE.....	13
10	CONFIDENTIAL AND PROPRIETARY INFORMATION	14
10.1	SAFEGUARDING DEPARTMENT INFORMATION.....	14
10.2	PROPRIETARY RIGHTS.....	14
10.3	CONTRACTOR’S PROPRIETARY INFORMATION.....	14
10.4	INJUNCTIVE RELIEF AND INDEMNITY.....	15
10.5	NONDISCLOSURE OF OTHER DEPARTMENT INFORMATION.....	15
10.6	EXCEPTIONS.....	15
10.7	SURVIVAL.....	16
11	CONTRACT TERMINATION	16
11.1	TERMINATION FOR CAUSE.....	16
11.2	TERMINATION FOR CONVENIENCE.....	16
11.3	TERMINATION FOR WITHDRAWAL OF AUTHORITY.....	17
11.4	TERMINATION FOR NON-ALLOCATION OF FUNDS.....	17
11.5	TERMINATION FOR CONFLICT OF INTEREST.....	17
11.6	TERMINATION PROCEDURE.....	17
11.7	PAYMENT IN THE EVENT OF TERMINATION.....	18
11.8	COVENANT AGAINST CONTINGENT FEES.....	18
12	GENERAL	19
12.1	AMENDMENTS.....	19
12.2	ASSIGNMENT.....	19
12.3	COOPERATION OF PARTIES.....	19
12.4	COUNTERPARTS.....	19
12.5	DEBARMENT AND SUSPENSION.....	19
12.6	DES FILING REQUIREMENT.....	19
12.7	ENTIRE AGREEMENT.....	19
12.8	FORCE MAJEURE.....	19
12.9	GOVERNANCE.....	20
12.10	HEADINGS.....	20
12.11	INDEPENDENT CAPACITY.....	20
12.12	ORDER OF PRECEDENCE.....	20
12.13	REMEDIES.....	20
12.14	SEVERABILITY.....	20
12.15	SOVEREIGN IMMUNITY.....	20
12.16	SUBCONTRACTING.....	21
12.17	SUBPOENA.....	21
12.18	WAIVER.....	21
13	EXHIBITS	22
13.1	EXHIBIT A – STATEMENT OF WORK.....	22

GENERAL TERMS AND CONDITIONS

1 DEFINITION OF TERMS

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

Acceptance Criteria shall mean the Specifications against which each Deliverable shall be evaluated in accordance with the section titled **ACCEPTANCE PROCESS FOR DELIVERABLES** and the Performance Standards, warranties and other requirements described in the Contract, and the DEPARTMENT's satisfaction for Services which are not subsumed in a Deliverable.

Actual Dates shall mean the dates identified in the Work Plan which accurately reflect when activities, tasks, events, and Services actually occurred.

Business Days and Hours shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

Change Order shall mean a written form, in response to a Change Request, which is mutually agreed to in writing by the DEPARTMENT and CONTRACTOR that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of the section titled **CHANGES**.

Change Request shall mean a written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of the section titled **CHANGES**.

Confidential Information shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 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, agency source code or object code, agency security data,

Contract shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

CONTRACTOR shall mean that firm, provider, organization, individual or other entity performing services under this Contract, and shall include all employees of the CONTRACTOR.

Debarment shall mean an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.

Deficiency shall mean a failure of a Deliverable or the Services or an omission, defect or problem in a Deliverable or Services, which causes it not to conform to its Specifications.

Deliverables shall mean CONTRACTOR's products which result from the Services and which are prepared for the DEPARTMENT (either independently or in concert with the DEPARTMENT or third parties) during the course of CONTRACTOR's performance under this Contract, including without limitation deliverables which are described in Exhibit A, Annual Business Plans, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

DEPARTMENT OR DOL shall mean the Washington State Department Licensing (DOL), any division, section, office, unit or other entity thereof or any of the officers or other officials lawfully representing the DEPARTMENT.

DEPARTMENT Project Manger shall mean the person designated by DEPARTMENT who is assigned as the primary contact person whom CONTRACTOR shall work with for the duration of this Contract.

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

Documentation shall mean all operations, technical and User manuals used in conjunction with the System, in whole and in part, including without limitation manuals provided by licensors of the Transfer Software and Third-party Software.

Effective Date shall mean the date of execution of the Contract by the Department.

Maximum Amount shall mean the maximum amount payable by the DEPARTMENT to CONTRACTOR under this Contract as described in Exhibit A.

Personal Information shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

Services shall mean professional or technical expertise provided by CONTRACTOR to accomplish a specific study, project, task or duties as set forth in this Contract or a Statement of Work.

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

Projected Dates shall mean the dates identified in the Work Plan which are updated as tentative projections for planning purposes during the Project, as events occur, and which are intended to reflect the then-current anticipated dates for activities, tasks, events, Services.

Property shall mean all DEPARTMENT Equipment and other DEPARTMENT real and personal property.

Proprietary Information shall mean information owned by the CONTRACTOR to which the 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.

RCW shall mean the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute..

Regulation shall mean any federal, state, or local regulation, rule, or ordinance.

Report(s) shall mean documents provided by CONTRACTOR to the DEPARTMENT regarding Project activities, events and Services provided.

Schedule: The dates described in the Work Plan for performance of Services and other Project events and activities, including Scheduled Dates, Projected Dates, and Actual Dates.

Services shall mean those services provided under this Contract and related to the scope of this Contract and includes such things as installation services, maintenance, training, etc.

State shall mean the State of Washington, including without limitation the DEPARTMENT and all of the State's other agencies.

Statement of Work or **SOW** shall mean a separate statement of the work to be accomplished by the CONTRACTOR under the terms and conditions of this Contract. A template SOW is attached an exhibit to this contract.

WAC shall mean the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

Work Plan shall mean the overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as submitted with the Response and as updated. The Work Plan shall be incorporated herein as part of the Contract, and each revised Work Plan shall be incorporated herein upon its Acceptance by the DEPARTMENT.

Work Product shall mean all data and products produced 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.

2 TERM

The term shall begin on the Effective Date and expires on June 30, 2015, and an additional 5 one-year option periods. The one-year option periods shall be exercised at the DEPARTMENT's sole discretion by the DEPARTMENT providing 30 calendar days written notice to CONTRACTOR of such exercise.

In addition, the Parties reserve the right to amend the Contract to add additional option periods.

3 PRICING, INVOICE AND PAYMENT

3.1 PRICING

The CONTRACTOR agrees to provide the Services at the Prices set forth on page one of this Contract. No other prices shall be charged by the CONTRACTOR for implementation of the CONTRACTOR's response.

The Maximum Amount payable under the terms of this Contract shall not exceed Two Hundred Eighty One Thousand Eight Hundred (\$280,800.00) dollars.

3.2 ADVANCE PAYMENTS PROHIBITED

No advance payment shall be made for services furnished by the CONTRACTOR pursuant to this Contract. Except as otherwise provided herein, such payments shall be due and payable within thirty (30) days after performance of such services or after receipt of properly prepared and submitted invoices, whichever is later.

3.3 TAXES

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

3.4 BILLING (INVOICE) & PAYMENT

Invoices for work performed shall be submitted, in writing to the DEPARTMENT Contact, in a format designated by DEPARTMENT. In addition to agreed upon charges, invoices shall include such information as is necessary for DEPARTMENT to determine the exact nature of all expenditures and shall reference this Contract number. Additional payment terms or invoice instructions may be as set forth in the Statement of Work executed by and between the parties.

Payment shall be considered timely if made by DEPARTMENT within thirty (30) days after receipt and acceptance of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR on Page one of this Contract.

Incorrect or incomplete invoices will be returned by DEPARTMENT to the CONTRACTOR for correction and reissue.

DEPARTMENT may at its sole discretion, withhold payment claimed by the CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.

The DEPARTMENT will return incorrect or incomplete invoices to the CONTRACTOR for corrections and reissue.

All invoices are subject to approval by the DEPARTMENT's Project Manager, or designee, prior to payment.

3.5 WITHHOLDING PAYMENT

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

3.6 OVERPAYMENT TO THE CONTRACTOR

The CONTRACTOR shall promptly refund to the DEPARTMENT the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which the CONTRACTOR is not entitled, as determined by the DEPARTMENT. If the CONTRACTOR fails to make timely refund, the DEPARTMENT may charge CONTRACTOR one percent (1%) per month on the amount due, until paid in full.

4 CONTRACTORS RESPONSIBILITIES

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

4.1 COMMENCEMENT OF WORK

Under the provisions of chapter 39.26 RCW, this Contract is required to be filed with the Department of Enterprise Services (DES). No contract required to be so filed is effective, and no work shall be commenced nor payment made, until ten (10) Business Days following the date of filing and, if required, until approved by DES. In the event DES fails to approve the Contract, the Contract shall be null and void.

4.2 SPRINTS

All Services shall be performed pursuant to the terms of this Contract and shall be documented in a Statement of Work (SOW) attached to this Contract and in individual Sprints established between the DEPARTMENT and CONTRACTOR. To facilitate the CONTRACTORS work the DEPARTMENT has structured the Contract in a way to allow flexibility in identifying deliverables, performance and acceptance in each Sprint while avoiding duplication of generally applicable terms and conditions. This process is accomplished through the use of a Sprint document.

For each Sprint the DEPARTMENT elects to have the CONTRACTOR provide under this Contract, the DEPARTMENT will issue a Sprint document. Each Sprint document will be attached as an Exhibit to the Contract on an on-going basis. The specific requirements, expected deliverables, performance standards and acceptance criteria, for each Sprint will be set forth in the Sprint document. The price the DEPARTMENT will pay to the CONTRACTOR for each Sprint shall be determined in accordance with the price schedule set forth in this Contract.

The Sprint document shall at a minimum:

- Reference this Contract number K5099
- Define project or task objectives;
- Describe the scope of Services or work to be performed;
- Identify deliverables;
- Specify a timeline and period of performance (e.g. two week sprint period);
- Specify compensation and payment, e.g., the hourly rate and total CONTRACTOR hours to be provided or the fixed price for a deliverable, (whichever is applicable), total cost of the project, and reimbursable CONTRACTOR expenses, if any;
- Describe CONTRACTOR's roles and responsibilities and identify specific CONTRACTOR staff;
- Describe DEPARTMENT's roles and responsibilities;
- Provide signature block for both parties.

The terms and conditions of any Sprint document cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

4.3 SUPPLEMENTAL CONTRACTS

The DEPARTMENT may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. CONTRACTOR shall cooperate with such other contractors and the DEPARTMENT in all such cases. CONTRACTOR shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that CONTRACTOR shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that CONTRACTOR shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of CONTRACTOR.

4.4 SITE SECURITY

While on the DEPARTMENT's premises, the CONTRACTOR, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

5 CONTRACT ADMINISTRATION

5.1 CONTRACT MANAGEMENT

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the addresses identified on the cover page of this contract.

Such communications shall be effective upon the earlier of receipt or three (3) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

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.

5.2 DEPARTMENT PROJECT MANAGER

DEPARTMENT shall appoint a Project Manager for this Contract who will provide oversight of the activities conducted hereunder. DEPARTMENT Project Manager will be the principal contact for CONTRACTOR concerning business activities under this Contract. DEPARTMENT shall notify CONTRACTOR, in writing, when there is a new DEPARTMENT Project Manager assigned to this Contract

5.3 RECORDS MAINTENANCE

The CONTRACTOR shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. The CONTRACTOR shall retain such records for a period of six (6) years. At no additional cost, these records, including materials generated under the Contract, shall

be subject at all reasonable times to inspection, review or audit by the DEPARTMENT, personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

5.4 RIGHT OF INSPECTION

The CONTRACTOR shall provide right of access to its facilities to the DEPARTMENT, or any of its 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.

5.5 ACCESS TO FACILITIES, TOOLS, & EQUIPMENT

The DEPARTMENT shall provide, at no cost to the CONTRACTOR, such reasonable and necessary access to agency facilities, tools, and equipment as may be required for the performance of the CONTRACTOR's obligations; *Except that*, parking facilities shall be provided subject to the specific terms and conditions described below in the sub-section titled "Parking." In the event the CONTRACTOR should describe a need to utilize specialized tools or equipment, including but not limited to computer hardware or software, the CONTRACTOR shall identify such tools, and prepare a request and justification for the same subject to the discretionary approval of the Project Manager. The acquisition or procurement of any such tools or equipment will be conducted by the DEPARTMENT, and shall be determined to be an asset of the DEPARTMENT and treated as such at the expiration or termination of the contract.

The CONTRACTOR further agrees to utilize access to agency facilities, tools, and equipment in such a manner which is in accordance with federal, state, and local laws, administrative regulations, and DEPARTMENT policy; and applies in particular, but is not limited to: access to voice and electronic mail systems, telephone and data communication systems, and information contained on agency databases.

Parking:

Upon the mutual agreement of both parties, and subject to availability, the CONTRACTOR, on behalf of its employees, agents, Subcontractors, or assigns, may enter into an agreement for parking privileges with the DEPARTMENT. Such parking privileges shall be granted only upon the CONTRACTOR's reimbursement to the DEPARTMENT of the DEPARTMENT's costs for procurement, acquisition, and maintenance of such parking. Notwithstanding the language of this section, the DEPARTMENT does not warrant that parking space, as distinct from parking privileges, will be available at all times or in all locations. In event that parking space is temporarily unavailable, the DEPARTMENT shall not be held responsible for the refund of fees, inconvenience, loss of work time, or other adversities suffered by the CONTRACTOR in consequence thereof.

5.6 TREATMENT OF ASSETS

Title to all property furnished by the DEPARTMENT shall remain in the DEPARTMENT. Title to all property furnished by the CONTRACTOR, for which the CONTRACTOR is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the DEPARTMENT. As used in this section, if the "property" is the CONTRACTOR's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the DEPARTMENT.

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

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

Upon loss, or destruction of, or damage to any DEPARTMENT property, the CONTRACTOR shall notify the DEPARTMENT thereof and shall take all reasonable steps to protect that property from further damage.

The CONTRACTOR shall surrender to the DEPARTMENT all property of the DEPARTMENT prior to settlement upon completion, termination, or cancellation of this Contract.

All reference to the CONTRACTOR under this section shall also include the CONTRACTOR's employees, agents, or Subcontractors.

6 DELIVERABLES

6.1 GENERAL

CONTRACTOR shall provide the DEPARTMENT with the Deliverables according to Sprint based periods of performance as described in section 4.2, as mutually agreed upon in writing with the Project Manager. CONTRACTOR shall utilize the Contract Specifications, the Statement of Work, the Sprint documents, the Deliverables for which the DEPARTMENT has previously accepted, CONTRACTOR's professional knowledge, and this Contract as the basis of subsequent Deliverables. CONTRACTOR shall retain backup copies in writing and on electronic media of all Deliverables until 180 days after termination or expiration of this Contract and shall provide the DEPARTMENT on its request with a copy thereof until that time.

All Deliverables shall be subject to the DEPARTMENT's Acceptance, including without limitation Deliverables provided pursuant to Sprint documents and Change Orders. At the discretion of the Project Manager, the deliverables specified in the Sprints may be compiled retrospectively into a comprehensive Work Plan for the contract option period of performance.

6.2 DELIVERY

CONTRACTOR shall deliver the Deliverables pursuant to this Contract on or before the applicable Delivery Dates in the associated Sprint documents. All such deliveries made pursuant to this Contract must be complete. CONTRACTOR shall deliver hard copy and electronic versions of the Deliverables in formats agreed to by the parties.

By submitting a Deliverable, CONTRACTOR represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable, the DEPARTMENT represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

6.3 ACCEPTANCE PROCESS FOR DELIVERABLES

Upon delivery of a Deliverable and receipt of Confirmation from CONTRACTOR that the Deliverable meets its Specifications, the DEPARTMENT will, with CONTRACTOR's assistance and in accordance with the applicable Sprint document, promptly review the Deliverable to determine whether the Deliverable conforms to its Acceptance Criteria. The DEPARTMENT will provide Acceptance for a Deliverable if it has no Deficiencies. However, if a Deficiency is found, the DEPARTMENT will notify CONTRACTOR in an email or other document of Deficiencies used as the grounds for the DEPARTMENT's decision not to give Acceptance. CONTRACTOR shall correct Deficiencies and resubmit a corrected Deliverable to the DEPARTMENT which will review the Deliverable to verify whether the Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor will correct noted deficiencies within five business days.

If CONTRACTOR is unable to correct all Deficiencies within five business days of notification, the DEPARTMENT may, at its option: (a) continue reviewing the Deliverable and require CONTRACTOR to continue until Deficiencies are corrected or eliminated; (b) request CONTRACTOR to provide, at its expense, a replacement Deliverable for further review; or (c) after completion of the process set forth in this section and providing Notice of default to Contractor, terminate this Contract as provided for in Section 11.

7 CHANGES

7.1 ISSUANCE OF CHANGE REQUESTS

The DEPARTMENT may, at any time by a written Change Request, request changes within the scope of the Contract. Such changes may include, without limitation, revisions to Deliverables or Services.

7.2 CONTRACTOR RESPONSE TO CHANGE REQUEST

CONTRACTOR shall respond in writing to a Change Request within 10 days of receipt, advising the DEPARTMENT of any cost and Schedule impacts. When there is a cost impact, *i.e.*, increase or decrease in Charges or Purchase Prices, CONTRACTOR shall advise the DEPARTMENT in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of CONTRACTOR and the DEPARTMENT personnel needed to effect this change.

7.3 AGREEMENT ON CHANGE ORDER

The CONTRACTOR and the DEPARTMENT Project Director or designee shall negotiate in good faith and in a timely manner as to the price for change orders and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Contract shall be modified accordingly. The parties will execute a formal Contract amendment for any Change Order that increases or decreases the Maximum Amount. Change Orders must be executed by the DEPARTMENT Project Director. CONTRACTOR will incorporate all Change Orders affecting the Services and Deliverables into applicable Documentation.

7.4 CONTRACTOR SUBMISSION OF CHANGE REQUEST

CONTRACTOR may also submit a Change Request to the DEPARTMENT to propose changes that should be made within the scope of the Contract. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Staff hours by level of CONTRACTOR and the DEPARTMENT personnel needed to effect this change. The DEPARTMENT will attempt to respond to such Change Requests from CONTRACTOR within 10 days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Contract shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by CONTRACTOR, the DEPARTMENT Project Manager will be deemed to have rejected the requested Change Request.

8 DISPUTES AND REMEDIES

8.1 DISPUTE RESOLUTION

In the event a dispute arises under this Contract, a Dispute Resolution Panel shall handle it in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. The DEPARTMENT and the 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.

CONTRACTOR and the DEPARTMENT 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.

8.2 ATTORNEYS' FEES

If any party brings litigation to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with necessary fees, expenses, and costs incurred for such litigation at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

8.3 WITHHOLDING PAYMENTS

If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR's obligations hereunder, the DEPARTMENT shall have the right to withhold any and all payments due hereunder, but only to the extent of the amount in dispute. The DEPARTMENT may withhold any and all

such payments due hereunder to CONTRACTOR, as aforesaid, without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

8.4 REDUCTIONS IN PAYMENTS DUE

Amounts due the DEPARTMENT by CONTRACTOR, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by the DEPARTMENT from any money payable to CONTRACTOR pursuant to this Contract.

8.5 SUSPENSION FOR CONVENIENCE

The DEPARTMENT shall have the right at any time to order the Services of CONTRACTOR fully or partially stopped for its own convenience for up to 15 consecutive days. CONTRACTOR will receive Notice of the reasons for such an order. The Schedule shall be delayed on a day-to-day basis to the extent the DEPARTMENT has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing Services in accordance with the Schedule.

8.6 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law. Termination of this Contract shall release the DEPARTMENT from any and all obligations whatever under this Contract, but shall not bar the DEPARTMENT from pursuing any remedies it would otherwise have against the CONTRACTOR.

8.7 SAVE HARMLESS

CONTRACTOR shall defend, indemnify, and save DEPARTMENT harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of CONTRACTOR, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. CONTRACTOR's obligations to defend, indemnify, and save DEPARTMENT harmless shall not be eliminated or reduced by any alleged concurrent DEPARTMENT negligence.

8.8 LIMITATION OF LIABILITY

The parties agree that neither the CONTRACTOR nor the DEPARTMENT 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.

Neither the CONTRACTOR nor the DEPARTMENT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the CONTRACTOR or the DEPARTMENT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DEPARTMENT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the CONTRACTOR, the DEPARTMENT, or their respective Subcontractors.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

DOL's Limitation of Liability

IN NO EVENT SHALL DOL'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT.

Contractor's Limitation of Liability.

IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO DOL UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT.

9 INDEMNIFICATION AND INSURANCE

9.1 INDEMNIFICATION

CONTRACTOR shall, at its expense, indemnify, defend, and hold harmless DEPARTMENT, its employees, officers, directors, CONTRACTORS and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of CONTRACTOR, its officers, employees, agents, or Subcontractors. DEPARTMENT shall promptly give CONTRACTOR notice of such claim. DEPARTMENT 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. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of CONTRACTOR without CONTRACTOR's written consent.

9.2 WAIVER OF STATUTORY IMMUNITY

CONTRACTOR intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein.

THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO DEPARTMENT.

9.3 INSURANCE

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

- **General Liability Insurance:** The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract.
- **Business Automobile Liability Insurance:** (owned or non-owned) covering the risks of public liability and property damage.

The CONTRACTOR shall furnish to DEPARTMENT 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 renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DEPARTMENT's sole option, result in this Contract's termination.

The CONTRACTOR shall pay premiums on all insurance policies. Such insurance policies provided for the DEPARTMENT pursuant to this section shall name the DEPARTMENT as an additional insured and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to the DEPARTMENT by such insurer.

The DEPARTMENT shall be provided written notice before cancellation or non-renewal of any insurance referred to therein.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the DEPARTMENT.

9.4 INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance.

If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the DEPARTMENT may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The DEPARTMENT may

- deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the DEPARTMENT under this Contract, and
- transmit the deducted amount to the DEPARTMENT of Labor and Industries (L&I), Division of Insurance Services

This provision does not waive any of L&I's right to collect from the CONTRACTOR.

10 CONFIDENTIAL AND PROPRIETARY INFORMATION

10.1 SAFEGUARDING DEPARTMENT INFORMATION

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the CONTRACTOR's responsibilities with respect to service(s) provided under this Contract is prohibited except by prior written consent of the DEPARTMENT.

The CONTRACTOR acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance may consist of confidential or sensitive data that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). 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, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Therefore, access to information concerning individual recipients of the DEPARTMENT's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule.

The Contractor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without Department's express written consent or as provided by law. The Contractor agrees to release such information or material only to Subcontractors who have signed a written contract expressly prohibiting disclosure. The Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, the CONTRACTOR shall, at the DEPARTMENT's option: (i) certify to the DEPARTMENT that the CONTRACTOR has destroyed all Confidential Information; or (ii) return all Confidential Information to the DEPARTMENT; or (iii) take whatever other steps the DEPARTMENT requires of the CONTRACTOR to protect the DEPARTMENT's Confidential Information.

10.2 PROPRIETARY RIGHTS

The CONTRACTOR shall not acquire any proprietary rights to the information received under this Contract.

10.3 CONTRACTOR'S PROPRIETARY INFORMATION

The CONTRACTOR acknowledges that the DEPARTMENT is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by the CONTRACTOR to be Proprietary Information must be clearly identified as such by the CONTRACTOR. To the extent consistent with chapter 42.17 RCW, the DEPARTMENT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view the CONTRACTOR's Proprietary Information, the DEPARTMENT will notify the CONTRACTOR of the request and of the date that such records will be released to the requester unless the CONTRACTOR obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the

CONTRACTOR fails to obtain the court order enjoining disclosure, the DEPARTMENT will release the requested information on the date specified.

10.4 INJUNCTIVE RELIEF AND INDEMNITY

CONTRACTOR shall immediately report to the DEPARTMENT any and all unauthorized disclosures or uses of the DEPARTMENT's Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. CONTRACTOR acknowledges that any publication or disclosure of the DEPARTMENT's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to the DEPARTMENT. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information to others without authorization, the DEPARTMENT shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless the DEPARTMENT from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's failure to protect the DEPARTMENT's Confidential Information or Proprietary Information. As a condition to the foregoing indemnity obligations, the DEPARTMENT will provide CONTRACTOR with prompt notice of any claim of which the DEPARTMENT is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim. The DEPARTMENT 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. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of CONTRACTOR without CONTRACTOR's written consent.

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

10.5 NONDISCLOSURE OF OTHER DEPARTMENT INFORMATION

The use or disclosure by CONTRACTOR of any DEPARTMENT information not necessary for, or directly connected with, the performance of CONTRACTOR's responsibility with respect to Services is prohibited, except upon the express written consent of the DEPARTMENT.

10.6 EXCEPTIONS

The following information shall not be considered Confidential Information for the purposes of this Contract:

- information previously known when received from the other party;
- information freely available to the general public;
- information which now is or hereafter becomes publicly known by other than a breach hereof;

- information which is developed by one party independently of any disclosures made by the other party of such information; or
- information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

10.7 SURVIVAL

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

11 CONTRACT TERMINATION

11.1 TERMINATION FOR CAUSE

In the event the DEPARTMENT determines the CONTRACTOR has failed to comply with the conditions of this Contract in a timely manner, the DEPARTMENT has the right to suspend or terminate this Contract. The DEPARTMENT shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated.

The DEPARTMENT reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the DEPARTMENT to terminate the Contract.

In the event of termination, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The termination shall be deemed to be a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the DEPARTMENT provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

If it is determined by the DEPARTMENT Contracts Officer or designee that 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 result(s) from the willful or negligent acts or omissions of the aggrieved party.

11.2 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the (DEPARTMENT) may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the (DEPARTMENT) shall be liable only for payment of this Contract for goods and services delivered prior to the effective date of termination.

11.3 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of the DEPARTMENT to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the DEPARTMENT may terminate this Contract upon five (5) days written notice to the CONTRACTOR. No penalty shall accrue to the DEPARTMENT in the event this section shall be exercised. This section shall not be construed so as to permit the DEPARTMENT to terminate this Contract in order to acquire similar Software, Hardware or Services from a third party.

11.4 TERMINATION FOR NON-ALLOCATION OF FUNDS

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

11.5 TERMINATION FOR CONFLICT OF INTEREST

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

In the event this contract is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

11.6 TERMINATION PROCEDURE

Upon termination of this Contract the DEPARTMENT, in addition to any other rights provided in this Contract, may require the CONTRACTOR to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

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

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT, the CONTRACTOR shall:

- Stop work under the Contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the contract had been completed, would have been required to be furnished to the DEPARTMENT;
- Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT;
- Take such action as may be necessary, or as the DEPARTMENT may direct, for the protection and preservation of the property related to this Contract which is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire an interest; and
- Provide written certification to the DEPARTMENT that Contractor has surrendered all such property.

Upon the expiration of this Contract or the termination of this Contract for any reason, the DEPARTMENT's rights to the Contractor Technology will be as follows:

- Unless otherwise agreed to between the parties as part of a turnover plan, CONTRACTOR will provide the DEPARTMENT or its designee a license to use and reproduce for the State's internal purposes Contractor Technology and provide technical and professional support and maintenance at rates negotiated between the parties;
- The DEPARTMENT will have use of the Contractor Technology at no cost to the DEPARTMENT during and after the period of performance, for a period not to exceed ten years;

Upon expiration of the Contract or CONTRACTOR's receipt of notice of termination of the Contract by the DEPARTMENT, CONTRACTOR will provide any turnover assistance Services necessary to enable the DEPARTMENT or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. Within ten days of receipt of the Notice of termination, CONTRACTOR shall provide, in machine readable form, an up-to-date, usable copy of the Data in a format subsequently agreed upon by the parties in writing and a copy of all documentation needed by the DEPARTMENT to utilize the Data. CONTRACTOR will ensure that all consents or approvals to allow CONTRACTOR and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to the DEPARTMENT.

11.7 PAYMENT IN THE EVENT OF TERMINATION

In the event either party without fault on the part of the other party terminates this Contract, each party shall be liable for the actual costs they have incurred during their performance under this Contract except that all fees owed by the DEPARTMENT to the CONTRACTOR for accepted deliverables will be paid in accordance with the terms of the contract.

11.8 COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the CONTRACTOR for the purpose of securing business. The DEPARTMENT shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

12 GENERAL

12.1 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties

12.2 ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

12.3 COOPERATION OF PARTIES

The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Contract.

12.4 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.

12.5 DEBARMENT AND SUSPENSION

CONTRACTOR certifies to the DEPARTMENT that it is not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts.

12.6 DES FILING REQUIREMENT

Under Chapter 39.26 RCW, certain Contracts and amendments must be filed with the state of Washington Department of Enterprise Services (DES). If this Contract must be filed, then it shall not be effective nor shall work commence or payment be made until reviewed or approved by DES.

12.7 ENTIRE AGREEMENT

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

12.8 FORCE MAJEURE

Neither CONTRACTOR nor the DEPARTMENT shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing,

and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

12.9 GOVERNANCE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

12.10 HEADINGS

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

12.11 INDEPENDENT CAPACITY

The parties intend that an independent CONTRACTOR relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the DEPARTMENT. The CONTRACTOR will not hold himself/herself out as nor claim to be an officer or employee of the DEPARTMENT or of the state of Washington.

12.12 ORDER OF PRECEDENCE

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

Applicable federal and State laws, regulations and policies;

- Sections of this Contract, including the General Terms & Conditions;
- Exhibit A – Statement of Work

12.13 REMEDIES

No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

12.14 SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

12.15 SOVEREIGN IMMUNITY

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by the DEPARTMENT or the State of Washington of any immunities from suit or from liability that the DEPARTMENT or the State of Washington may have by operation of law.

12.16 SUBCONTRACTING

In no event shall the CONTRACTOR enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the DEPARTMENT

12.17 SUBPOENA

In the event that a subpoena or other legal process commenced by a third party, in any way concerning this Contract is served upon the CONTRACTOR or the DEPARTMENT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. The CONTRACTOR and the DEPARTMENT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CONTRACTOR for the DEPARTMENT.

12.18 WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the DEPARTMENT.

13 EXHIBITS

13.1 EXHIBIT A – STATEMENT OF WORK

The Technical Project Manager will perform duties as assigned within each sprint by the Project Manager, for the following deliverables:

13.1.1 Request for Proposal / Investment Plans / Decision Packages

- a. Collaborate with the DOL Project Manager and DOL Contracts Office to create necessary Solicitation Documents, Investment Plans, and Decision Packages.
- b. Work with the business and IT staff identified to ensure the completeness and clarity of specific components of the Solicitation Documents. Assist in the development of a streamlined approach to enterprise COTS acquisition.
- c. Assist the DOL Project Manager in drafting Decision Packages for solution funding potentially requiring multiple decision packages across three biennia.
- d. Work with the DOL Project Manager on any feasibility study modifications as needed. Maintain Feasibility Study and Investment Planning documentation including complex spreadsheets identifying project costs for the 10 year project lifecycle.
- e. Monitor and synchronize changes across all project documentation.

13.1.2 Vendor Selection

Assist and support the DOL Project Manager and DOL Contracts Office in effectively staging and coordinating the execution of all steps required in the Vendor Evaluation and Selection process.

13.1.3 Monitor and Report on Vendor's Progress

Weekly review and recommend improvements to the work schedule proposed or modified by the vendor. Provide guidance to the DOL Project Manager on actions needed to keep the schedule up-to-date and the project on schedule.

13.1.4 System Testing and Sign-off

Assure DOL prepares a formal test plan, test scripts and test data needed to meet the business requirements and operates correctly. Track and report on testing progress and the resolution of identified defects.

13.1.5 Deployment Preparations

Assure a formal deployment plan is prepared along with all the detailed technical instructions. Lead any deployment activities to a successful full implementation.

13.1.6 Plan & Monitor:

- a. **Project Schedule** – Assist the DOL Project Manager in developing a detailed Work Plan (using MS Word) and a Project Schedule (using MS Project) that assures on-time completion of the project Provide support to the project manager in producing recurrent project status reports, as requested.
- b. **Project Meetings** - Setup, lead, and publish minutes on project meetings. These may include monthly formal executive Steering Committee meeting, weekly project team meeting, weekly meetings with the DOL Project Manager and technical or stakeholder meetings as required.
- c. **Metrics & Benchmarks** - Identify, monitor and report monthly on metrics directed at quantifying accomplishment of the business objectives of the project as well as metrics that quantify accomplishment of project management methodology activities the assure project success.
- d. **Document Repository** - Monitor and report on documents and information placed into the project's SharePoint repository to ensure all associated business documents and project documents are safely recorded and stored. Regularly report changes in the repository to aid those looking for information.
- e. **Project Risks** - Continuously record and update the status of risks to the project's success and the actions to be taken to mitigate those risks. Take the appropriate action when required. Report the status of risks monthly.
- f. **Communications** - Identify all project participants and stakeholders. Create a plan that identifies what information is needed and at what frequency by each group, and assure high-quality communications are prepared and distributed.

13.1.7 Project Execution:

- a. **Project Issues** – Log and take quick action to address issues and the need for decisions so project progress is not negatively impacted. Report status of issues monthly. Support the PMO director and BTM project manager with program office and project due diligence including developing requests for delegation of authority, project charters, project plans, organization chart and resource assignment (RACI matrix, etc), risk identification and mitigation, maintenance of risk register, including identification/mitigation of project constraints and process bottlenecks
- b. **Data quality/data conversion migration planning and execution** - Perform project management activities for this critical pre-implementation and project execution activity, including: Project plan preparation; Task identification and resource estimation; Risk identification/mitigation; Project Team leadership; Interface with stakeholders and project status reporting
- c. **Action Assignments** – Log, report weekly on status, and escalate action on assignments.

- d. **Decisions** – Log and report weekly on all decisions made, including acceptance of deliverables.
- e. **Change Requests** – Log and lead formal review and acceptance of each change request. Track and report on status of each change request and alert the DOL Project Manager when work is completed, accepted and billable.

13.1.8 Knowledge Transfer

Working in collaboration during the project development to receive knowledge transfer during the project through meetings, work sessions, documentation and various communication activities.

13.1.9 Research

- a. Perform benchmarking activities with other states to obtain lessons learned to avoid costly mistakes in planning that lead to implementation problems and delays
- b. Receive specific information regarding vendor performance and project plan development. Obtain useful guidance from other jurisdictions for streamlining the procurement and COTS implementation process including information specific to data conversion, resource assignment and utilization, risk identification and mitigation and project team composition
- c. Research and develop white papers and presentations on topics germane to motor vehicle COTS implementations, such as state-by-state modernization performance represented on a color-coded U.S. map accurately depicting current modernization status in other jurisdictions

13.1.10 OTHER DUTIES AS ASSIGNED

- a. Additional duties anticipated during the contract period of performance include, but are not limited to:
 - i. Develop and maintain project performance measurement metrics
 - ii. Serve as resource to the project team on COTS solutions and industry best practices as benchmarked with other jurisdictions
 - iii. Package requests for more in-depth review of relevant MV COTS sourcing and implementation from Gartner