SAMPLE CONTRACT 19-XXX-XX

RFP NO. 19-01

CONTRACT FOR SERVICES BETWEEN

THE STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

AND

[CONTRACTOR]

[DATE]
TABLE OF CONTENTS

1. INTRODUCTION ................................................................................................................................ 6
2. DEFINITIONS..................................................................................................................................... 6
3. TERM OF CONTRACT; SURVIVAL OF TERMS .................................................................................... 6
   3.1 TERM OF CONTRACT ........................................................................................................... 6
   3.2 SURVIVAL OF TERMS ........................................................................................................... 7
4. ADMINISTRATION; NOTICES AND COMMUNICATIONS ............................................................... 7
   4.1 ADMINISTRATION ............................................................................................................... 7
   4.2 NOTICES AND COMMUNICATIONS ..................................................................................... 8
5. CONTRACTOR SERVICES ................................................................................................................... 8
   5.1 SERVICES TO BE PERFORMED BY CONTRACTOR ................................................................. 8
   5.2 SERVICE LOCATION REQUIREMENTS ................................................................................ 10
6. CONTRACTOR REPRESENTATIONS AND WARRANTIES .................................................................. 11
   6.1 REPRESENTATIONS AND WARRANTIES ............................................................................. 11
7. CHANGES........................................................................................................................................ 12
8. EXPIRATION AND TERMINATION ................................................................................................... 13
   8.1 TERMINATION FOR CONVENIENCE ................................................................................... 13
   8.2 TERMINATION FOR REDUCTION IN FUNDING OR WITHDRAWAL OF AUTHORITY........... 13
   8.3 TERMINATION FOR BREACH ............................................................................................. 13
   8.4 TERMINATION BY MUTUAL CONSENT .............................................................................. 14
   8.5 TERMINATION FOR MERGER OR ACQUISITION ................................................................ 14
   8.6 TERMINATION-RELATED OBLIGATIONS ANTECEDENT TO DATE OF TERMINATION ............. 14
   8.7 TERMINATION PROCEDURE AND EFFECT OF TERMINATION ........................................... 14
9. RIGHTS AND REMEDIES .................................................................................................................. 15
   9.1 OPPORTUNITY TO CURE .................................................................................................... 15
   9.2 REMEDIES FOR CHANGES TO KEY PERSONNEL ................................................................. 16
   9.3 REMEDIES FOR SECURITY INCIDENTS ................................................................................ 16
   9.4 WITHHOLDING OF PAYMENTS .......................................................................................... 16
   9.5 OFFSET .............................................................................................................................. 17
   9.6 CUMULATIVE REMEDIES ................................................................................................... 17
10. ACCEPTANCE ................................................................................................................................. 17
10.1 ACCEPTANCE OF DELIVERABLES ........................................................................................................... 17
11. PHASE ACCEPTANCE AND COMPLETION ................................................................................................. 18
  11.1 PHASE ACCEPTANCE ............................................................................................................................ 18
  11.2 PHASE COMPLETION ............................................................................................................................ 18
12. DISPUTE RESOLUTION ............................................................................................................................... 18
  12.1 PROBLEM RESOLUTION AND DISPUTES ......................................................................................... 18
  12.2 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS ................................................................. 19
13. CONFIDENTIALITY ....................................................................................................................................... 19
  13.1 RECORDS AND INFORMATION ................................................................................................................. 19
  13.2 IT SECURITY ............................................................................................................................................ 20
  13.3 OWNERSHIP .......................................................................................................................................... 20
  13.4 DRS PROPERTY ..................................................................................................................................... 21
  13.5 SOFTWARE MAINTENANCE ....................................................................................................................... 23
14. PAYMENT and PRICING ............................................................................................................................... 23
  14.1 PAYMENT ................................................................................................................................................ 23
  14.2 PRICING .................................................................................................................................................. 23
  14.3 PRICE INCREASES ................................................................................................................................. 23
  14.4 MOST FAVORABLE TERMS ....................................................................................................................... 23
  14.5 FEES ARE ALL INCLUSIVE ....................................................................................................................... 24
  14.6 FEES FOR ADDITIONAL SERVICES .................................................................................................... 24
  14.7 INVOICES ............................................................................................................................................... 24
  14.8 PAYMENT TERMS ................................................................................................................................. 24
  14.9 NO ADVANCE PAYMENT ....................................................................................................................... 24
  14.10 PARTIAL PAYMENTS PERMITTED .................................................................................................... 24
  14.11 OVERPAYMENTS TO CONTRACTOR ................................................................................................. 25
  14.12 TAXES .................................................................................................................................................. 25
  14.13 CONTRACTOR LIABILITY ...................................................................................................................... 25
  14.14 REGISTRATION .................................................................................................................................... 25
15. NONDISCRIMINATION ................................................................................................................................. 25
16. GIFTS, GRATUITIES AND CONFLICTS OF INTEREST ............................................................................. 25
17. INSURANCE .................................................................................................................................................. 26
18. MAINTENANCE OF RECORDS, AUDITS BY DRS, PUBLIC RECORDS ....................................................... 26
  18.1 MAINTENANCE OF RECORDS ................................................................................................................ 26

Exhibit C – Sample
Request For Proposals No. 19-01, Mainframe Rehosting
Page 3 of 44
18.2 AUDITS BY DRS .................................................................................................................. 26
18.3 PUBLIC RECORDS............................................................................................................... 27
19. INDEMNIFICATION ............................................................................................................. 28
19.1 INDEMNIFICATION OBLIGATIONS .................................................................................. 28
19.2 INDEMNIFICATION PROCEDURES ................................................................................. 29
20. LIMITATION OF LIABILITY ................................................................................................... 29
21. GENERAL PROVISIONS ........................................................................................................ 29
21.1 INCORPORATED DOCUMENTS ....................................................................................... 29
21.2 entire agreement ............................................................................................................... 30
21.3 ORDER OF PRECEDENCE .............................................................................................. 30
21.4 AMENDMENTS ................................................................................................................ 30
21.5 NON-ENDORSEMENT, MEDIA, AND PUBLICITY .............................................................. 30
21.6 CONSENT ......................................................................................................................... 31
21.7 HEADINGS ....................................................................................................................... 31
21.8 SEVERABILITY .................................................................................................................. 31
21.9 WAIVER ............................................................................................................................ 31
21.10 FORCE MAJEURE ............................................................................................................ 31
21.11 ATTORNEYS’ FEES AND COSTS ................................................................................... 32
21.12 GOVERNING LAW AND VENUE .................................................................................... 32
21.13 ASSIGNMENT ................................................................................................................ 32
21.14 SUBCONTRACTING ........................................................................................................ 32
21.15 INDEPENDENT CAPACITY .......................................................................................... 33
22. CONTRACT EXECUTION ....................................................................................................... 33
22.1 COUNTERPARTS .............................................................................................................. 33
22.2 APPROVAL ....................................................................................................................... 33
22.3 SIGNATURE ....................................................................................................................... 33
22.4 SIGNATURE BLOCKS ........................................................................................................ 34
ATTACHMENT 1 ....................................................................................................................... 35
ATTACHMENT 2 ....................................................................................................................... 37
ATTACHMENT 3 ....................................................................................................................... 40
PAYMENT SCHEDULE ............................................................................................................ 40
1. **INTRODUCTION**

This Contract ("Contract") is made and entered into as of [insert date] to be effective on [insert date] ("Contract Effective Date"), by and between the State of Washington, Department of Retirement Systems, hereinafter referred to as the “Agency” or “DRS”, and [insert name of Contractor], hereinafter referred to as the “Contractor.”

WHEREAS, the purpose of this Contract is for mainframe rehosting services, to migrate DRS’ applications off legacy mainframe technology into a new non-mainframe Linux environment without modifying the applications’ functionality.

WHEREAS, DRS issued a Request for Proposal (RFP) dated [insert date], for the purpose of obtaining professional services in connection with the Mainframe Rehosting Project ("Project").

WHEREAS, _________________ is the successful bidder.

WHEREAS, the State of Washington, acting by and through DRS, hereby awards this Contract to _________________, subject to and in accordance with the terms set forth herein.

NOW, THEREFORE, the Parties agree to the terms and conditions in this Contract.

2. **DEFINITIONS**

Capitalized terms used but not defined in this Contract have the meanings given in Exhibit A - Definitions.

3. **TERM OF CONTRACT; SURVIVAL OF TERMS**

3.1 **TERM OF CONTRACT**

3.1.1 The term of this Contract is from the date of execution (Contract Effective Date) through June 30, 2023 (“Initial Term”).

The Project as described in Exhibit B – Scope of Services will begin immediately following the date of execution of this Contract, and must be completed no later than June 30, 2021.

3.1.2 Upon mutual agreement, as evidenced by a formally executed amendment to this Contract, the term may be renewed for one or more additional periods (each, a “Renewal Term”) not to exceed three years in the aggregate, for a maximum term
length of seven years. The Initial Term and each Renewal Term (if any) are collectively referred to as the “Term.”

3.1.3 At DRS’ discretion, ongoing contracted services, as described in Exhibit J – Ongoing Support Fee Schedule, may be required during the Term.

3.2 SURVIVAL OF TERMS

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, and not necessarily exclusively, the terms and conditions of the sections or subsections titled Treatment of Assets/Ownership Rights; Safeguarding of Information; Non-endorsement and Publicity; Records Retention; Media Contact; Public Records Procedure; Hold Harmless and Indemnification; and Dispute Resolution, will survive the termination of this Contract.

4. ADMINISTRATION; NOTICES AND COMMUNICATIONS

4.1 ADMINISTRATION

4.1.1 Contractor will appoint an individual who will be Contractor’s Account Manager for the DRS account. Contractor’s Account Manager will be the principal point of contact for DRS concerning Contractor’s performance hereunder. Contractor’s Account Manager will also serve as the focal point for business matters, support coordination and administrative activities. Contractor will notify DRS, in writing, if a new Account Manager is assigned.

4.1.2 The DRS Contract Administrator will be the Project Director and will manage this Contract on behalf of DRS, and will be the principal point of contact for Contractor concerning Contractor’s performance hereunder. The DRS Contract Administrator may from time to time delegate signing authority and any other responsibilities under this Contract to other DRS personnel, in their sole discretion. DRS will notify Contractor, in writing, in the event that there is a change in staffing and a new DRS Contract Administrator is assigned to this Contract.

4.1.3 The DRS Contract Coordinator will be the DRS Project Manager and will coordinate the day to day operations of the Services to be provided by Contractor and will coordinate issues and resolutions of such issues between DRS and Contractor.

4.1.4 The DRS Contract Coordinator is not authorized to manage or revise the terms of this Contract. Facilitation and operation matters may include, but will not be limited to, facilitating process changes. Any issue related to this Contract must be
addressed to the DRS Contract Administrator and sent to the notice address set forth in Section 4.2.

4.2 NOTICES AND COMMUNICATIONS

Any notice or demand which, under this Contract or applicable Laws and Regulations, must or may be given by Contractor or DRS, will be in writing, properly addressed, and as an alternative to personal delivery, made by the most expeditious means available, with regard given to the time sensitivity of notice or demand being made. Any and all communication regarding this Contract must be delivered as indicated below, in addition to delivery to any other relevant individual within DRS or Contractor as may be required under this Contract:

Contractor:

DRS:

If by mail:
Washington State Department of Retirement Systems

Attention: Contract Administrator [TBD]
PO Box 48380
Olympia, WA 98504

If by email: [TBD]

5. CONTRACTOR SERVICES

5.1 SERVICES TO BE PERFORMED BY CONTRACTOR

5.1.1 Contractor agrees to provide the Services detailed in Exhibit B - Scope of Services ("Scope of Services") attached hereto as Attachment [●], the RFP, and the response to the RFP, in compliance with Exhibit G – Technical Requirements and the terms of this Contract and any amendments hereto. Contractor will perform all work and provide all resources, including personnel, and otherwise do all things necessary for or incidental to the performance of Services under this Contract. The Scope of Services may only be modified by execution of an amendment or a Change Order in accordance with the terms of this Contract.

5.1.2 In addition to the Services described in Section 5.1.1 above, DRS may request Contractor to provide additional services ("Additional Services"). Contractor will provide the Additional Services to DRS in accordance with the terms and conditions of this Contract as the Parties may from time to time agree and specify in written “Work Orders” executed by both Parties, which will be binding upon execution by both Parties and will be incorporated into this Contract by this reference. For any
Additional Services requested by DRS that are not described in the Contract, DRS will provide business requirements to Contractor, who will provide an estimated cost and timeline to complete the project for DRS’ review and approval. Prior to the commencement of any Additional Services, Contractor will notify the DRS Contract Administrator of any requests for Additional Services. Upon approval by the DRS Contract Administrator, the Agency will make additional payments to Contractor as provided in Section 15.6 of this Contract for the performance of such Additional Services. Each Work Order will include a specific description of the scope and requirements of Additional Services, pricing, delivery dates, and additional terms and conditions as relevant. The Additional Services will be performed under the terms and conditions of this Contract except as specifically amended between the Parties.

5.1.3 If DRS requests a change to any Services that are significant modifications that were not contemplated by the Parties in the Scope of Services or any Work Order, DRS will submit a written proposal to Contractor describing such modifications in appropriate detail (each, a “Change Request”). If a Change Request requires that Contractor incur additional material costs or expenses, then Contractor will provide DRS with a good faith written assessment of (a) its increased costs and expenses, (b) the time required to perform the modifications required by the Change Order and (c) any associated impact to the Services schedule, Deliverables, milestones, and associated timelines and due dates, in each case within 10 Business Days of its receipt of the Change Request. No Change Request or response is effective until agreed upon and signed by the Parties substantially in the form attached as Attachment [●] (each a “Change Order”). Contractor’s implementation of a Change Order will not delay the performance of Services or the delivery of Deliverables not reasonably affected by and identified in a Change Order.

5.1.4 "Services" includes all services described in the Scope of Services and any Additional Services, including any services in a Change Order, as any of the foregoing may be amended in accordance with the Contract. Contractor will exercise due care in performing any and all Services hereunder. DRS and Contractor agree to provide Services and exchange information in a timely manner to meet time-critical deadlines.

5.1.5 Key personnel whose performance or administrative obligations may be significant to the Services will be identified in the applicable Scope of Services or an applicable Work Order or Change Order ("Key Personnel"). Notwithstanding anything to the contrary in this Contract, all of Contractor’s Key Personnel assigned to perform Services under this Contract will be subject to interview and acceptance by DRS in DRS’ sole discretion. Contractor will not remove any Key Personnel from the project.
or substantially reduce any Key Personnel’s participation in the project without DRS’ prior written consent. Notwithstanding the foregoing, Contractor may remove Key Personnel for reasons out of Contractor’s reasonable control, such as a serious illness, resignation and serious family emergencies. Contractor will notify DRS as soon as possible in the event such a removal is required. If Key Personnel become unavailable for any reason at any time during the period of performance of the Services, DRS may exercise any remedies available to it.

5.1.6 DRS in its discretion may request removal of any of the Contractor’s personnel providing Services under this Contract, including any Contractor personnel performing Services on DRS’ premises, and Contractor will remove and promptly replace such personnel in accordance with each such request as soon as reasonably practicable, but in no event later than five Business Days after the request for removal or replacement. Contractor will manage the transition of replacement personnel to minimize impact on Services. In the event of transition for any reason, Contractor will not charge DRS for time spent facilitating the transition of replacement Personnel (for example, project background or knowledge transfer).

5.1.7 Services and Deliverables are subject to the Acceptance process set forth in Sections 10 – Acceptance, and 11 – Phase Acceptance and Completion, and Bug and Defect resolution as described in this Contract Attachment 4 – Bug and Defect Management.

5.2 SERVICE LOCATION REQUIREMENTS

5.2.1 Work will be performed in Tumwater, Washington at the DRS building located at 6835 Capitol Boulevard SE, Tumwater WA 98501, unless otherwise specified in writing by DRS.

5.2.2 The Contractor’s Project Manager is required to work onsite during core business hours, 8:00 am to 5:00 pm Monday through Friday for the duration of the project, unless otherwise approved by DRS.

5.2.3 Other Contractor personnel must be available as required during core business hours but do not have to be onsite at all times.

5.2.4 While onsite, Contractor Personnel will follow DRS policies for behavior required by DRS Personnel.

5.2.5 DRS will provide standard workspace for Contractor Personnel.
5.2.6 The Contractor will not be allowed to connect non-agency owned equipment to the DRS network. DRS will work with Contractor to ensure secure access to DRS systems.

5.2.7 Special equipment, software, and supplies required for Contractor resource accommodations must be provided by the Contractor.

6. CONTRACTOR REPRESENTATIONS AND WARRANTIES

6.1 REPRESENTATIONS AND WARRANTIES

6.1.1 Contractor is duly organized, validly existing, in good standing and duly licensed, and has procured and will maintain during the Term all necessary licenses, registration, approvals, consents, and any other permits in each jurisdiction as required to enable Contractor to perform its obligations under this Contract.

6.1.2 The execution, delivery, and performance of this Contract by Contractor and the performance by Contractor of the transactions contemplated in this Contract have been duly and validly authorized by all necessary action, corporate or otherwise, on its part, and this Contract constitutes the valid, legal, and binding obligation of Contractor.

6.1.3 Contractor is not and will not be subject to any agreement or other constraint that does, would, or with the passage of time would prohibit or restrict Contractor’s right or ability to enter into or carry out its obligations hereunder and Contractor is not aware of any third party claims concerning the Services or Deliverables, which if true, would constitute a violation of the representations and warranties set forth herein.

6.1.4 Contractor is and will be in compliance with all applicable Law and Regulations.

6.1.5 Contractor will deliver to DRS each Deliverable set forth in the Scope of Services and any Work Order or Change Order by the milestone due date for the milestone connected with that Deliverable.

6.1.6 The Services will be performed diligently, and in a timely, professional manner, and all work performance and Deliverables will be of the highest quality in every respect and the Deliverables will strictly conform to approved samples, designs, and specifications and will be free from defects in materials and workmanship.

6.1.7 The Services, Solution and Deliverables and their use as permitted hereunder does not and will not infringe, violate, or misappropriate any Intellectual Property Rights of any third party.
6.1.8 Contractor has or will obtain sufficient rights from its personnel within the scope of their employment and from all contractors as necessary to grant to DRS the rights in the Deliverables as required by this Contract.

6.1.9 Contractor has title to and all rights necessary to deliver the Solution to DRS, and has obtained rights to deliver other software to DRS for any third party software included in Contractor’s Solution.

6.1.10 To the extent the Deliverables include software, the software does not and will not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door or other software code or routine that: (i) damages, destroys, or alters any software or hardware; (ii) reveals, damages, destroys, or alters any data; (iii) disables any computer program automatically; or (iv) permits unauthorized access to any software or hardware.

6.1.11 Contractor presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of Services required under this Contract.

6.1.12 Contractor represents, covenants and warrants that the Services, Solution and Deliverables will comply with Exhibit G – Technical Requirements and Attachment 1- Security Requirements.

6.1.13 [NOTE: RETAIN OR STRIKE DEPENDING ON BIDDER’S CERTIFICATION] As previously certified in Contractor’s bid submission, Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. (See Governors’ Executive Order 18-03 – Workers’ Rights.) Contractor further represents and warrants that, during the Term of this Contract, Contractor shall not, as a condition of employment for its employees, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

7. CHANGES

Contractor will within five Business Days, notify the Agency in writing:
• If any of the representations and warranties of Contractor set forth in this Contract cease to be true at any time during the Term.
• Of any material change in Contractor’s Senior Staff or Key Personnel. All written notices regarding changes in Senior Staff or Key Personnel will contain the same information about newly assigned Senior Staff or Key Personnel as was requested by the Agency.
in the RFP and such additional information as may be requested by the Agency. For purposes herein, the term “Senior Staff” means those persons identified as senior management in any response to the Request for Proposals by Contractor, or who otherwise will exercise a major administrative role or major policy role to the provision of Contractor’s Services hereunder. Key Personnel is defined in Section 5.1.5.

- Of any change in control of Contractor or in the business structure of Contractor; or of any other material change in Contractor’s business, partnership or corporate organization relating to this Contract or that might affect the provision of Services under this Contract. All written notices regarding changes in control of Contractor will contain the same information about any new controlling entity as was requested by the Agency in the RFP 19-01 regarding Contractor and such additional information as may be requested by the Agency.

8. **EXPIRATION AND TERMINATION**

In addition to the expiration of the Contract, the Contract may be terminated for the following reasons:

8.1 **TERMINATION FOR CONVENIENCE**

DRS may terminate this Contract, in whole or in part, at any time and for any reason by giving 30 Calendar Days’ written termination notice to the Contractor. Also, DRS may terminate this Contract upon notice after Completion of Phase 2 as described in Exhibit B - Scope of Services.

8.2 **TERMINATION FOR REDUCTION IN FUNDING OR WITHDRAWAL OF AUTHORITY**

In the event that any funding from the State is withdrawn, reduced, or limited, or the authority of DRS to perform any of its duties is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to its normal completion, DRS may terminate or suspend this Contract or any Work Order, in whole or in part, at any time by giving seven Calendar Days’ written termination notice to Contractor.

8.3 **TERMINATION FOR BREACH**

DRS shall be entitled, by written notice of termination to Contractor, to cancel this Contract in its entirety or in part, for breach of any of the terms herein, and to retain all other rights against the Contractor, including but not limited to assistance in creating a successful transition, by reason of the Contractor’s breach as provided by law.

“Breach” shall mean one or more of the following events: (1) the Contractor fails to perform the Services by the time and date required; (2) the Contractor breaches any warranty, or
fails to perform or comply with any term in this Contract; or (3) the Contractor fails to exercise Due Care as to any aspect of this Contract.

If it is subsequently found that the Contractor was not in breach, the rights and obligations of the Parties shall be the same as if a notice of termination had been issued pursuant to Section 8.1 (Termination for Convenience).

To the extent a party elects to cure any failure by it to comply with its obligations under the Contract, all costs and expenses associated with such cure shall be borne solely by the curing party.

8.4 TERMINATION BY MUTUAL CONSENT

DRS and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

8.5 TERMINATION FOR MERGER OR ACQUISITION

The Contractor may propose the substitution of another qualified organization to act as Contractor under this Contract in the event of a merger or acquisition involving the Contractor, provided that the proposed successor can meet all required terms of the Contract and that DRS’ Contract Administrator is given written notice by the Contractor not less than 60 Calendar Days prior to the effective date of such merger or acquisition. If the substitution is approved by DRS, the provisions of Sections 5.1.5 and 5.1.6 shall apply to the Contractor and any successor Contractor. In this event, the successor Contractor shall agree to be bound by all terms of this Contract and provide an automatic continuation of Services to be rendered under this Contract. However, DRS reserves the right to terminate the Contract in the event a successor Contractor is substituted.

8.6 TERMINATION-RELATED OBLIGATIONS ANTECEDENT TO DATE OF TERMINATION

Prior to the expiration of the Term or termination of the Contract, the Contractor shall take all reasonable and prudent measures to facilitate and ensure the orderly conclusion of this Contract.

8.7 TERMINATION PROCEDURE AND EFFECT OF TERMINATION

8.7.1 In addition to the procedures set forth below, if DRS terminates this Contract or a Work Order, Contractor will follow any procedures DRS specifies in its notice of termination.

8.7.2 Upon termination of this Contract or any Work Order, Contractor will deliver to DRS all Deliverables whether complete or not, including work in progress. DRS, in addition to any other rights provided in this Contract, may require Contractor to
deliver to DRS any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

8.7.3 Upon any termination of the Contract or any Work Order, DRS is only liable to pay for Services performed and Deliverables accepted prior to expiration or termination. DRS will pay to Contractor the agreed upon price, if separately stated, for completed Deliverables and Services accepted by DRS, and the amount agreed upon by Contractor for: (a) completed Deliverables and Services for which no separate price is stated, (b) partially completed Deliverables and Services, (c) other property or Services which are accepted by DRS, and (d) the protection and preservation of property; unless the termination is for default, in which case DRS will determine the extent of the liability of Contractor. DRS may withhold from any amounts due to Contractor such sum as DRS determines to be necessary to protect DRS against potential loss or liability.

8.7.4 The rights and remedies of DRS provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

9. RIGHTS AND REMEDIES

If any Services or Deliverables are found to be defective or not in conformity with the requirements of this Contract or the applicable Change Order, including any warranties or specifications thereunder, DRS may in its sole discretion and at Contractor’s expense (a) require Contractor to promptly and satisfactorily correct any such Services or Deliverables, (b) take such actions as may be required to cure any such Services or Deliverables, or (c) accept such Services or Deliverables as performed with an equitable reduction in price to account for the diminished value of such Services.

In the event of any claim for default or breach, no provision in this Contract will be construed, expressly or by implication, as a waiver by DRS of any right to insist upon the strict performance of any term or condition of this Contract or to exercise, or delay the exercise, of any right or remedy provided in the Contract or by law, or as the acceptance of (or payment for) Services, or to release Contractor from any responsibilities or obligations imposed by this Contract or by law. Acceptance by DRS of unsatisfactory performance with or without objection or reservation will neither waive the right to exercise its remedies pursuant to this Contract for breach nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

9.1 OPPORTUNITY TO CURE

In the event of a breach of contract or any other form of noncompliance, the DRS Contract Administrator may issue a written notice of Breach providing a period not to exceed 30
Calendar Days in which the Contractor shall have an opportunity to cure. Time allowed for
cure shall not diminish or eliminate the Contractor’s liability for damages.

If the issue remains, after the Contractor has been provided the opportunity to cure, DRS
may do one or more of the following:

- Exercise any remedy provided by law, including but not limited to strict performance
- Terminate this Contract and any related contracts or portions thereof, by written notice
- Seek damages
- Withhold any further payments until Contractor cures the issue or otherwise comes to
  an agreement with DRS to create an alternative to remedy the non-compliance

9.2 REMEDIES FOR CHANGES TO KEY PERSONNEL

If Key Personnel become unavailable for any reason at any time during the period of
performance of the Services, the following remedies will apply: (i) Contractor will, subject
to DRS approval of the personnel, replace personnel at Contractor’s cost; (ii) reduce the
fees to account for delay and any and all costs of replacement and training for the new
personnel; (iii) reimburse DRS for any work needed by DRS personnel to accommodate
replacement personnel; and (iv) issue DRS a credit for delays caused in delivery of
deliverables or meeting milestones due to transitions or unavailability of Key Personnel.

9.3 REMEDIES FOR SECURITY INCIDENTS

Contractor will reimburse DRS for actual costs (including all costs of notice and/or
remediation) incurred by DRS in responding to or mitigating damages caused by a Security
Breach that the vendor was responsible for due to some action or inaction. “Security
Breach” means any act or omission that compromises either the security, confidentiality or
integrity of DRS Data or the physical, technical, administrative or organizational safeguards
put in place by the Contractor or any Subcontractor that relate to the protection of the
security, confidentiality or integrity of DRS Data and Confidential Information.

9.4 WITHHOLDING OF PAYMENTS

DRS reserves the right to withhold payment for non-compliance and/or non-performance
with the terms and Scope of Services of this Contract or for rejection of a Deliverable.
Payment will not be unreasonably withheld. Nothing herein restricts or limits the right of
DRS to terminate this Contract as set forth in Section 8. If payment(s) will be delayed due
to noncompliance and/or nonperformance, written notification to Contractor will be
provided within 10 Calendar Days from the date of such determination by DRS.
9.5 **OFFSET**

DRS reserves the right to offset any delinquent payment due to DRS from Contractor against payments due from DRS to Contractor. For these purposes, a payment is delinquent if it is not paid within 30 Calendar Days of transmittal to Contractor of an invoice setting forth the amount due and the justification therefore.

9.6 **CUMULATIVE REMEDIES**

Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of this Contract or available to a party is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will 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 one or more remedies by either party will not constitute a waiver of the right to pursue other available remedies.

10. **ACCEPTANCE**

10.1 **ACCEPTANCE OF DELIVERABLES**

Except as otherwise specified in a Work Order or Change Order, within 30 Calendar Days of Contractor’s delivering a Deliverable to DRS (along with the results of any required testing), DRS will examine the Deliverable and DRS:

(i) may accept;

(ii) may reject the Deliverable for noncompliance with the Contract or for defects or errors, or

(iii) may direct the Contractor to correct the noncompliance or errors or defects, if any, in which case Contractor (at its cost) will correct the noncompliance, errors and defects within the period determined by DRS and, in no case, more than 15 Calendar Days.

This process will be repeated until DRS rejects the Deliverable or notifies Contractor in writing of its Acceptance.

DRS’ Acceptance or decision not to reject a Deliverable does not discharge Contractor’s obligation to provide a Deliverable that conforms to the applicable requirements of this Contract. Acceptance of any Deliverable or portion thereof does not constitute acceptance of future Deliverables, the Solution or an applicable Phase. Failure to obtain acceptance of any milestone (and all associated Deliverables) by the milestone due date applicable to that milestone is a breach by Contractor of this Contract.
11. **PHASE ACCEPTANCE AND COMPLETION**

11.1 **PHASE ACCEPTANCE**

Specific Deliverables and activities are required for each Phase. As each Deliverable is completed, the Contractor will submit the work to DRS for review. At the end of each Phase, the Contractor will notify DRS of the Phase completion. DRS will provide in writing either approval or notify the Contractor of deficiencies. Acceptance of the Phase will be based on the Phase Exit Plan developed in Phase 1 - Initiation and compliance with all requirements of this Contract. The Contractor will address identified deficiencies, if any, and notify DRS when they are addressed.

If the Phase is approved, Contractor will submit an invoice to receive a milestone payment in accordance with Attachment 3. At the conclusion of each Phase, DRS, at its sole discretion, will determine whether to proceed to the next Phase of the Project.

DRS will have the right to accept or reject a Phase even if it has previously accepted any individual Deliverables that are part of the Phase.

11.2 **PHASE COMPLETION**

The following conditions are required for a Phase to achieve “Completion”:

a. Contractor has provided to DRS all written and electronic materials and other Deliverables relating to the Solution and Services listed in this Scope of Services.

b. Written Acceptance by DRS Project Manager.

c. The DRS Project Sponsor or her or his designee has provided her or his written confirmation that the conditions specified in subsections (a) and (b) have been satisfied.

Nothing else, including DRS’ use of the Solution, or any component thereof, in a live, production environment shall constitute Acceptance or Completion, or affect any rights and remedies that may have been available to DRS under law or in equity.

12. **DISPUTE RESOLUTION**

12.1 **PROBLEM RESOLUTION AND DISPUTES**

12.1.1 Problems arising out of the performance of this Contract will be resolved in a timely manner. Either party may elect non-binding mediation, binding arbitration, or resolution in a court of competent jurisdiction in accordance with this Section 12.1 or Section 22.12.

12.1.2 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party. The responding party will respond in writing within five...
Business Days. The initiating party will have three Business Days to review the response. If after this review a resolution cannot be reached, both Parties will have three Business Days to negotiate in good faith to resolve the dispute, which will normally include escalating the issue within each party’s organization.

12.1.3 If a problem persists and cannot be resolved through negotiation after three Business Days, the Parties may agree to participate in mediation and/or arbitration in good faith. The mediator will be chosen by mutual agreement of the Parties. If the Parties cannot agree on a mediator or arbitrator, the Parties will use a mediation or arbitration service that selects the mediator or arbitrator for the Parties. Each party will equally share the cost of the mediator or arbitrator.

12.1.4 The request for a mediation or arbitration must:
• Be in writing;
• State the disputed issue(s);
• State the relative positions of the Parties;
• State Contractor’s name, address and a reference to this Contract; and
• Be mailed to the other party’s (the responding party’s) DRS Administrator or Account Manager.

12.1.5 The Parties 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.

12.1.6 If the subject of the dispute is the amount due and payable by DRS for materials or Services supplied by Contractor, Contractor will continue providing materials and Services pending resolution of the dispute provided DRS pays Contractor the amount it, in good faith, believes is due and payable.

12.2 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the Parties engage in any form of alternative dispute resolution to resolve a dispute in lieu of litigation, both Parties will share equally in the cost of the alternative dispute resolution method, including the cost of the mediator or arbitrator. In addition, each party will be responsible for its own attorneys’ fees incurred as a result of the alternative dispute resolution method.

13. CONFIDENTIALITY

13.1 RECORDS AND INFORMATION

13.1.1 “Confidential Information” of DRS means all confidential or proprietary information, including all information not generally known to the public, trade
secrets, and DRS Data. “DRS Data” means all data and information that is submitted, directly or indirectly, to Contractor by DRS or obtained or learned by Contractor in connection with the Services provided by Contractor under this Contract, including information relating to DRS’ technology, operations, facilities, systems, procedures, security practices, business methodologies, improvements, trade secrets, copyrightable subject matter, employees and customers, and other proprietary information. All DRS Data is and will remain the property of DRS and will be protected as described in this section 13.1. Without limiting the foregoing, Confidential Information will include all such information provided to Contractor by DRS.

13.1.2 Notwithstanding anything apparently to the contrary in the preceding provisions of this section, Contractor may release the material and information described in this section: (a) only as is necessary pursuant to a court order, subpoena or other legal process, provided that prior to any such disclosure, Contractor will use best efforts to provide DRS with a true and complete copy of such court order, subpoena or other legal process, within two Business Days following receipt thereof by Contractor and in the event Contractor is unable to provide prior notice, Contractor will provide notice to DRS as soon as possible after such disclosure; or (b) to employees or agents under the control of Contractor who have a need to access such information in connection with performing obligations under this Contract.

13.2 **IT SECURITY**

13.2.1 Contractor will comply with all security requirements as set forth in Attachment 1–Security Requirements.

13.3 **OWNERSHIP**

13.3.1 DRS will own the DRS Data used to perform Contractor’s obligations under this Contract, regardless of the software used to manage the data or the media upon which it is stored or used. With DRS’ consent, Contractor may convert the data to other software or format. Contractor will be responsible for the safekeeping and accurate maintenance of the data, and will provide copies to DRS, or its agents or contractors, as authorized by DRS.

13.3.2 All documents, data, records, programs, software, tools, inventions, and any other items, materials or deliverables produced by Contractor and any experts or consultants in carrying out the obligations and Services hereunder, whether preliminary or final, and all Intellectual Property Rights therein (except for Contractor’s Pre-Existing Work), are and will become and remain the property of DRS. “Intellectual Property Rights” means any patents, copyrights, trademarks,
service marks, mask works, trade secrets, moral rights, and any other intellectual property or proprietary rights under the law of any jurisdiction. Regardless of the Deliverables described in the Scope of Services or any Work Order or Change Order, the term “Deliverable” means all items or materials provided by or on behalf of Contractor (or that Contractor is obligated to provide) to DRS under this Contract, the Scope of Services, or any Work Order or Change Order.

13.4 **DRS PROPERTY**

13.4.1 Title to all property furnished by DRS will remain with DRS. Any DRS property furnished to Contractor will, unless otherwise provided herein or approved by DRS, be used only for the performance of this Contract.

13.4.2 Contractor will be responsible for any loss or damage to property of DRS which results from Contractor’s negligence or which results from Contractor’s failure to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

13.4.3 If any DRS property is lost, destroyed, or damaged, Contractor will immediately notify DRS and will take all reasonable steps to protect the property from further damage.

13.4.4 DRS will have the right to use all such Deliverables in any manner it deems appropriate, without restriction or limitation and without additional compensation to Contractor and any experts or consultants, and Contractor and any experts or consultants will have no right or interest therein. This includes the right to copy, modify, prepare derivative works from, and publish and distribute (to the extent consistent with ethical obligations), any component of the Deliverables.

13.4.5 All DRS Data and derivative work thereof, such as reports and data exports, are the property of DRS and may be reproduced, shared and transmitted according to its needs. In addition, DRS may also reproduce, share and transmit all training materials developed by Contractor for DRS according to its needs.

13.4.6 DRS and Contractor agree that all data and work products produced by Contractor pursuant to this Contract incorporated in a Deliverable (collectively “Work Product”) 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 DRS. 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. This provision shall not be interpreted to give DRS any ownership rights in Contractor’s preexisting material as defined below.

13.4.7 If for any reason the Work Product is not considered a work made for hire under applicable law, Contractor and DRS shall mutually agree upon who owns the Work Product and shall reduce such agreement to writing and attach to this Contract. Thereupon, the Parties shall, as agreed and as appropriate, assign and transfer rights, title and interest in and to the Work Product including any registrations and copyright applications relating thereto and any renewals and extensions thereof. The Parties shall execute all documents and perform such other proper acts as are deemed necessary to secure for the owner the rights pursuant to this section.

13.4.8 Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”) shall be owned exclusively by the party delivering such material. Contractor grants to DRS a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display and dispose of Contractor’s 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 DRS 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. DRS 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.

13.4.9 Contractor shall use State data only to provide and maintain the services provided under this Contract. Such services shall not capture, maintain, scan, index, share or use State data stored or transmitted by such services, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Contractor shall not use State data stored or transmitted by such services for any advertising or other commercial purpose of Contractor or any third party.
13.5 SOFTWARE MAINTENANCE

Contractor will keep all provided software and software components up-to-date and functional during the Project. The Contractor shall supply current, updated versions of all software and software components provided in accordance with the requirements of this Contract during the Term. This includes but is not limited to patches, fixes, maintenance releases, libraries, frameworks and utilities necessary to successfully operate and maintain the proposed software in current, secure and functional condition.

14. PAYMENT AND PRICING

14.1 PAYMENT

DRS will pay Contractor for the Services as described in the Scope of Services herein and as identified in RFP 19-01. Acceptance of Services and Deliverables will follow the process outlined in Section 10 - Acceptance.

14.2 PRICING

Prices may not be increased for the Services and the software license fees, support and maintenance, unless such increase is agreed upon by the Parties and included in a written, signed amendment to this Contract.

If Contractor reduces its prices for any of the Services, software licenses, support or maintenance during the term of this Contract, DRS shall have the immediate benefit of such lower prices commencing upon the next payment cycle. Contractor shall send notice to the DRS Contract Administrator with the reduced prices within 15 Business Days of the reduction taking effect.

14.3 PRICE INCREASES

At least 120 Calendar Days before the end of the Initial Term or prior to any optional extension provided for herein, Contractor may propose rate increases based on reasonable supporting data, not to exceed a two and a half percent (2.5%) increase over the previously agreed upon rate, whichever is less. Any agreed upon increase shall be in a written amendment to this Contract signed by an authorized agent of both Parties.

14.4 MOST FAVORABLE TERMS

Contractor agrees that all prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the Terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the Term of this Contract, Contractor shall enter into contracts with any other governmental...
entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to DRS for subsequent purchases.

14.5 **FEES ARE ALL INCLUSIVE**

Unless otherwise specified herein, the costs of this Contract are all-inclusive. Contractor understands that DRS will not reimburse Contractor for travel and other expenses to provide the services identified in this Contract, except as specifically stated in the Scope of Services.

14.6 **FEES FOR ADDITIONAL SERVICES**

DRS will compensate Contractor for Additional Services requested that are approved by Work Order. Total compensation will not exceed [dollar amount to be determined] for the life of this Contract. The scope and payment will be mutually agreed upon in an applicable statement of work before any Additional Services are rendered.

14.7 **INVOICES**

Contractor will bill DRS according to the schedule shown in Attachment 3 to this Contract. Each invoice must include the Contractor’s company name, invoice number, Federal Tax Identification Number, contract number, a description of the Project Phase completed or the software fees with begin/end dates, the associated payment amount(s), and an invoice total. Invoices will be directed to [Contact information to be provided].

14.8 **PAYMENT TERMS**

Payment will be considered timely if made by DRS within 30 Calendar Days after completion and acceptance of a milestone and receipt of a properly completed invoice. Payment will be sent to the address/bank account designated by Contractor in the Washington State vendor database.

14.9 **NO ADVANCE PAYMENT**

DRS will not make any payment in advance or in anticipation of Services, Deliverables or supplies to be provided under this Contract.

14.10 **PARTIAL PAYMENTS PERMITTED**

DRS reserves the right, at its sole discretion, to make partial payments to Contractor for work completed prior to an applicable Phase completion.
14.11 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to DRS the full amount of any erroneous payment or overpayment under this Contract within 30 Calendar Days’ written notice. If Contractor fails to make timely refund, DRS may charge Contractor one percent (1%) per month on the amount due, until paid in full.

14.12 TAXES

DRS will pay Contractor sales and use taxes, if any, imposed on the 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. DRS, as an agency of Washington State government, is exempt from property tax.

14.13 CONTRACTOR LIABILITY

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for Contractor or Contractor’s staff will solely be Contractor’s responsibility and liability.

14.14 REGISTRATION

As appropriate, in accordance with the laws of the State of Washington, Contractor will complete registration with the Washington State Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract.

15. NONDISCRIMINATION

Contractor, its Subcontractors, agents, and employees will comply with all federal and state nondiscrimination Laws and Regulations. In the event that DRS determines in good faith that Contractor has failed or refused to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part by DRS and Contractor may be declared ineligible for further service contracts with DRS. In addition, DRS may commence any legal action against Contractor asking the court to require that Contractor strictly perform its obligations under this section, or seek any other relief as appropriate.

16. GIFTS, GRATUITIES AND CONFLICTS OF INTEREST

Contractor will comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it
is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services or anything of economic value in conjunction with state business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, RCW 42.52, state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

Contractor must comply with RCW 42.52, Ethics in Public Service, or any other Laws and Regulations regarding ethics in public acquisitions and procurement and performance of contracts.

Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required under this Contract.

17. **INSURANCE**

Contractor will, at Contractor’s own expense, obtain and keep in force insurance coverage, which must be maintained in full force and effect during the Term. Contractor must furnish evidence in the form of a Certificate of Insurance that insurance will be provided, and a copy must be forwarded to the Agency within 15 Calendar Days of the Contract Effective Date. Contractor must at all times during the Term carry and maintain insurance with the minimum limits as set forth in Attachment 2 attached to and incorporated into this Contract.

18. **MAINTENANCE OF RECORDS, AUDITS BY DRS, PUBLIC RECORDS**

18.1 **MAINTENANCE OF RECORDS**

Contractor will maintain, and make reasonably available to DRS, appropriate books and records in connection with the Services provided under this Contract. Contractor must maintain a detailed audit trail. All books and records must be held in accordance with this Section 18.

18.2 **AUDITS BY DRS**

18.2.1 Contractor will permit representatives of DRS, an auditor selected by DRS, and/or Auditors of the State of Washington or their authorized assistant to examine the records of Contractor relating to the Services rendered under this Contract. If Contractor has contracted with a Subcontractor, Contractor will require its
Subcontractor to provide similar access to the designated DRS officials or their representatives.

18.2.2 Any audits conducted under this section, which do not necessitate the compilation of records in addition to those which are otherwise required by other sections of this Contract, may be conducted without notice. Any audits conducted under this section which require the compilation of records in addition to those which are otherwise required by this Contract may be conducted upon 10 Calendar Days’ written notice from DRS to Contractor. DRS will bear the cost of conducting audits conducted under this Section 19.2, except that Contractor will bear all costs and expenses of any audits conducted as a result of Contractor’s breach of any provision of this Contract.

18.2.3 The provisions of this Section 18.2 will remain in effect for three years after the termination of this Contract. Records of DRS transactions must be kept for a period of no less than six years beyond expiration of the Contract. If any litigation, claim or audit is started before the expiration of the six year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved.

18.3 PUBLIC RECORDS

18.3.1 Any documents and records that are prepared by Contractor, its agents, contractors, Subcontractors, or consultants and delivered to DRS may be determined to be public records under the Washington Public Records Act, RCW 42.56, and as such may be subject to public disclosure. DRS recognizes that certain documents and records may contain proprietary information exempt from disclosure under the Public Records Act, may constitute trade secrets as defined in RCW 19.108.010(4) and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the following provisions will apply:

18.3.2 The Agency will notify Contractor of such request within five Business Days and the date by which it anticipates producing the requested records.

18.3.3 Contractor must then assert in writing to DRS any claim that such records contain proprietary or confidential information that it believes is exempt from disclosure under the Public Records Act or is subject to protection pursuant to Chapter 19.108 RCW or other law so that DRS may consider such assertion in responding to the requestor.
18.3.4 If Contractor makes no assertion that the requested records should be exempt within eight Calendar Days after the date DRS notifies Contractor of such request, DRS will make the appropriate disclosure without further notice to Contractor.

18.3.5 If Contractor makes a timely assertion that the requested records are or should be exempt from disclosure, and DRS does not agree that a statutory exemption exists to preclude such disclosure, DRS will allow Contractor an additional ten Calendar Days for Contractor to seek judicial protection of the records pursuant to RCW 42.56.540. Such an action will be at Contractor’s expense. If Contractor does not seek judicial protection of the records within ten Calendar Days after notifying DRS of its belief that the records contain proprietary or confidential information or trade secrets, then DRS may release the records to the requestor.

18.3.6 If prior to judicial consideration, DRS, in its sole discretion, believes Contractor does not have a valid claim, it will so notify Contractor no less than five Calendar Days prior to the date DRS intends to make the disclosure to allow Contractor to take such action as it deems appropriate prior to disclosure. DRS will not make such a disclosure while an action to enjoin disclosure is pending under RCW 42.56.540.

18.3.7 In the event Contractor believes that any documents or records subject to transmittal to or review by DRS under the terms of this Contract contains proprietary, trade secret or other materials that are exempt or protected from disclosure pursuant to applicable Laws and Regulations, Contractor will identify and clearly mark such information prior to such transmittal or review.

19. INDEMNIFICATION

19.1 INDEMNIFICATION OBLIGATIONS

Contractor will indemnify, defend, and hold harmless DRS and its employees, agents, successors and assigns (collectively, the “Indemnified Parties”) from and against any and all damages, liabilities, penalties, interest, fines, losses, costs, and expenses, including reasonable attorneys’ fees from any claim, action or allegation arising from or relating to: (a) the Services, Solution, or Deliverables, including any claims of damage to tangible property, bodily injury, or death; (b) negligence or willful misconduct of Contractor, or any of Contractor’s employees, personnel, agents or vendors; (c) Contractor’s breach of any of the representations, warranties, covenants, or obligations under this Contract; (d) infringement, violation, or misappropriation of any Intellectual Property Rights of any third party by the Services, Solution, or any Deliverables; (e) any breach of confidentiality, data breach, or failure to comply with the security requirements set forth in this Contract; or (f) any actual or alleged violation of any foreign federal, state or local government agency, authority or court, including, without limitation, laws, codes, rules, orders, judgments, decrees, ordinances and/or provisions.
19.2 INDEMNIFICATION PROCEDURES

The Indemnified Party agrees to give Contractor prompt written notice of any claim subject to indemnification, provided that the Indemnified Party's failure to promptly notify Contractor will not affect Contractor's indemnification obligations except to the extent that the Indemnified Party's delay prejudices Contractor's ability to defend such claim. Contractor will have the right to defend against any such claim with counsel of its own choosing and to settle such claim as Contractor deems appropriate, provided that Contractor will not enter into any settlement that adversely affects the Indemnified Party's rights without the Indemnified Party's prior written consent. The Indemnified Party agrees to reasonably cooperate with Contractor in the defense and settlement of any such claim, at Contractor's expense.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the Indemnified Parties.

Nothing in this section will be construed to mean either party is prevented from commencing any legal action against the other.

The indemnification provisions are independent of and will not in any way be limited by the insurance requirements of this Contract. DRS approval of insurance contracts required by this Contract does not in any way relieve the Contractor from liability under this section.

20. LIMITATION OF LIABILITY

DRS will not be liable to contractor or to any other party for incidental or consequential damages (including, without limitation, lost profits) arising out of this contract even if the parties have been advised of the possibility of such loss or damages.

21. GENERAL PROVISIONS

21.1 INCORPORATED DOCUMENTS

This Contract will consist of all of the following documents, which are incorporated into this Contract by reference:

a. Applicable Federal, State and Local Statutes and Regulations
b. Amendments to the Contract
c. Change Order and Work Orders
d. The Terms and Conditions of this Contract
e. Attachments and Appendices to this Contract
f. RFP and all Exhibits, Attachments, and Schedules
g. RFP Response
21.2 ENTIRE AGREEMENT

This Contract is the Parties’ entire agreement regarding the subject matter hereof and merges and supersedes all related agreements, oral understandings, representations, prior discussions, letters of intent with respect to the subject matter of this Contract.

21.3 ORDER OF PRECEDENCE

21.3.1 In the event of any inconsistency in this Contract, the inconsistency will be resolved in the order of precedence stated below:
   a. Applicable Federal, State and Local Statutes and Regulations
   b. Amendments to the Contract for Services (in order of most recent to least recent)
   c. Change Orders and Work Orders (in order of most recent to least recent)
   d. Contract for Services
   e. Exhibit B – Scope of Services
   f. Exhibit F – Schedule of Fees
   g. RFP
   h. Contractor’s response to the RFP including assessment material
   i. All other Exhibits, Attachments and Schedules to the Contract

21.4 AMENDMENTS

This Contract may be amended by mutual consent of the Parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties. All amendments, addenda, statements of work, and orders signed during the Term will be governed by this Contract. Only the DRS Contract Administrator, or delegate by writing, will have the express, implied, or apparent authority to alter, amend, modify, assign or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, assignment, modification, or waiver of any clause or condition of this Contract is not effective or binding until made in writing and signed by DRS and Contractor unless otherwise provided herein.

21.5 NON-ENDORSEMENT, MEDIA, AND PUBLICITY

21.5.1 DRS is not endorsing Contractor’s Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DRS in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of DRS.

21.5.2 No statement regarding DRS related matters may be made by Contractor to the press or any other media, on or off the record, unless prior express written approval is secured from DRS. Contractor may be asked on occasion to assist in the
development of media responses. All media inquiries must be immediately reported to the DRS Contract Coordinator.

21.5.3 Contractor will not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from DRS.

21.6 CONSENT

Both Parties agree that whenever a party's consent is required under the terms of this Contract, that consent will not be unreasonably delayed or withheld.

21.7 HEADINGS

All descriptive headings used in this Contract are for convenience of reference only and are not to be used in interpreting the obligations of the Parties under this Contract. The headings used in this Contract will not control or affect the meaning or construction of any of the provisions.

21.8 SEVERABILITY

If any provision of this Contract is deemed to conflict with any statute or rule of law, that provision will be deemed modified to conform to the statute or rule of law. The invalidity or unenforceability of any provision of this Contract, or any terms thereof, will not affect the validity of this Contract as a whole, which will at all times remain in full force and effect.

21.9 WAIVER

In the event of any claim for default or breach of contract, no provision in this Contract will be construed, expressly or by implication, as a waiver by DRS of any right to insist upon the strict performance of any term or condition of this Contract. Further, it will not restrict DRS from exercising or delaying the exercise of any right or remedy provided in this Contract or by law, or as the acceptance of (or payment for) Services, or to release Contractor from any responsibilities or obligations imposed by this Contract or by law.

Acceptance by DRS of breach, or of unsatisfactory or deficient performance, with or without objection or reservation, will neither waive the right to claim damages for breach nor constitute a waiver of requirements for complete and satisfactory performance of any obligation remaining to be performed by Contractor.

21.10 FORCE MAJEURE

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

21.11 ATTORNEYS’ FEES AND COSTS

In the event of any controversy, claim or dispute arising out of this Contract, each party will be solely responsible for the payment of its own legal expenses, including but not limited to, attorney’s fees and costs.

21.12 GOVERNING LAW AND VENUE

This Contract will be governed in all respects by, and construed in accordance with, the laws of the State of Washington. Contractor irrevocably and unconditionally consents and submits to exclusive venue and jurisdiction in the state and federal courts located in Thurston County, Washington. This Contract will not be governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly disclaimed.

21.13 ASSIGNMENT

Neither this Contract nor any rights hereunder or interest herein may be assigned or transferred by Contractor without the prior written consent of DRS Contract Administrator in his or her sole discretion. Any purported assignment without the prior written consent of DRS Contract Administrator will be null and void. This Contract will be binding on the Parties and their respective successors and permitted assigns.

21.14 SUBCONTRACTING

With the prior consent of DRS and subject to the terms of this Contract, including the Services described in Exhibit B – Scope of Services, Contractor may subcontract for the performance of its duties and obligations under this Contract, provided that (a) any Subcontractors must agree to be bound to the same extent as Contractor by all of the provisions of this Contract, including without limitation Attachment 1 - Security Requirements, and (b) Contractor will remain jointly and severally liable with all Subcontractors. Contractor will enter into such subcontract only after receiving prior and specific written authorization from the DRS Contract Administrator upon at least 30 Calendar Days’ notice of the proposed subcontract, provided, however, that failure to obtain such advance written authorization will not relieve either Contractor or the Subcontractor from any of its obligations under this Contract. In no event will the existence of a subcontract operate to release or reduce the liability of Contractor for any breach or deficiency in the performance of Contractor’s duties under this Contract. Contractor
further agrees to indemnify, defend, and hold harmless the Indemnified Parties from and against acts or omissions of all Subcontractors and all Subcontractors’ agents and employees in the manner set forth in this Section.

21.15 INDEPENDENT CAPACITY

Contractor is an independent contractor of DRS and not an employee, agent, partner, joint venture, representative, broker or principal of DRS for any purpose. Contractor and its employees performing under this Contract are not employees of DRS. Neither Contractor nor any employee of Contractor will acquire any of the rights, privileges, powers or advantages of an employee of DRS, including disability insurance, vacation or sick pay, or any other benefits available to DRS employees. Contractor will be solely responsible for all wages, benefits, taxes, withholdings, training and expenses of its employees, including the employees assigned to perform Services under this Contract. Contractor is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing Services under this Contract. No part of Contractor’s compensation will be subject to withholding by DRS for the payment of any Social Security, federal, state or any other employee payroll taxes. Contractor will not hold itself out as nor claim to be an officer or employee of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor whether performed directly by Contractor or by Subcontractors.

22. CONTRACT EXECUTION

22.1 COUNTERPARTS

This Contract is to be executed in duplicate originals and each duplicate will be deemed an original copy of the Contract signed by each party, for all purposes.

22.2 APPROVAL

This Contract will be subject to the written approval of the DRS Director and will not be binding until so approved and executed by an authorized representative of DRS. This Contract may not be altered, amended or waived other than by a written amendment executed by both Parties.

22.3 SIGNATURE

Signatures may be transmitted by facsimile or electronic mail in PDF or other similar format and will be deemed original. A manually signed copy of this Contract or any amendments or other transaction documents delivered by email, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy.

[remainder of this page intentionally left blank - signature page follows]
22.4 SIGNATURE BLOCKS

In Witness Whereof each of the Parties has executed this Contract by its duly authorized representative effective as of the Contract Effective Date.

Department of Retirement Systems

Contractor

Date

Date

APPROVED AS TO FORM

Assistant Attorney General

Date
ATTACHMENT 1

SECURITY REQUIREMENTS

Contractor (which for the purpose of this Attachment includes its agents, employees and Subcontractors) will comply with all security requirements set forth in this Contract, including all Attachments, Exhibits, Amendments and Addenda. Contractor will fully cooperate with DRS in the enforcement of provisions to protect DRS’ facility, property, data and employees.

1. To the extent applicable, all work performed in accordance with this Contract will comply with DRS policies and the Washington State Office of the Chief Information Officer (OCIO) Policy 141 – Securing Information Technology Assets, including all related standards.

2. Physical access to DRS’ facility will be granted to Contractor’s employees and subcontractors who are required to be onsite for the performance of this Contract. While on DRS’ premises, Contractor shall conform in all respects with physical, fire or other security regulations, and will take precautions to prevent the entry of unauthorized individuals when entering or leaving secure areas.

3. All DRS Data, test scripts, programs, utilities and other project artifacts will remain on DRS or state-owned servers, or the servers of a third party cloud provider approved by DRS and maintained within the geographic boundaries of the United States. Approval of any third party cloud provider will be based on DRS’ assessment of the provider’s ability to meet the requirements of OCIO Policy 141 – Securing Information Technology Assets, including all related standards, and DRS policies.

4. Contractor shall take due care and reasonable precautions to protect DRS’ data from unauthorized physical and electronic access. Contractor will meet or exceed the requirements of the State of Washington’s policies and standards for data security and access controls to ensure the confidentiality, availability, and integrity of all data accessed.

4.1. Access will be granted to Contractor’s employees and subcontractors as necessary for the performance of this Contract, only after successfully completing DRS’ mandatory IT security training and providing written acknowledgment, compliance and non-disclosure agreements.

4.2. Contractor shall take precautions to ensure that only authorized personnel are given access to DRS Data.

4.3. Contractor will promptly notify DRS of any departures or reassignments of employees or subcontractors who have been granted access related to the performance of this Contract, so the access can be discontinued.

4.4. Users will not transmit or share identification or password codes to persons other than authorized users or in any way permit the misuse of such codes in order to circumvent the intended and granted access to and use of DRS’ systems and data.
4.5. Contractor’s employees and subcontractors will not connect non-DRS-owned/leased devices to DRS’ or the State’s secure network without prior written authorization by the DRS Chief Information Officer or Chief Information Security Officer. If so authorized, the access must conform to the requirements of DRS policies, OCIO Policy 141 and all related standards, to the extent applicable.

4.6. All business conducted offsite must comply to the same security standards required in this section, including physical security of data and documents, vulnerability patching, protecting computing devices, encrypting all data including that used on telephone/mobile devices and printer/fax/copier equipment; and must use anti-virus software.

4.7. Contractor shall instruct all individuals with access to DRS’ Personally Identifiable Information regarding the confidential nature of the information and the sanctions specified in federal and state laws against unauthorized disclosure of information covered by this Contract.

4.8. Contractor will not change content of DRS Data.

5. Contractor will ensure all Personally Identifiable Information, confidential and sensitive information is encrypted using a current industry-standard encryption algorithm when shared, transmitted and stored.

6. Contractor will communicate any known or suspected data breach, leak, loss or compromise to DRS within one hour of discovery.
ATTACHMENT 2

INSURANCE

1. WORKERS’ COMPENSATION INSURANCE

Contractor will provide or purchase applicable workers’ compensation insurance coverage prior to performing work under this Contract. DRS will not be responsible for payment of industrial insurance premiums for Contractor, any Subcontractor of Contractor or any employee of Contractor, which might arise under the workers’ compensation insurance laws during performance of duties and Services under this Contract. Should Contractor fail to secure workers’ compensation insurance coverage or fail to pay premiums on behalf of employees, DRS may deduct the amount of premiums owing from the amounts payable to Contractor under this Contract and transmit the same to the appropriate workers’ compensation insurance fund.

2. LIABILITY INSURANCE

Commercial General Liability Insurance (CGL): Contractor will maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than $2,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit will be at least twice the “each occurrence” limit. CGL insurance will have products-completed operations aggregate limit of at least two times the “each occurrence” limit. CGL insurance will be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance will cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured’s (cross liability) condition.

Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of any and all subcontracts related to the Services or Deliverables provided pursuant to this Contract.

Business Auto Policy: As applicable, Contractor will maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than $1,000,000 per accident. Such insurance will cover liability arising out of “Any Auto”. Business auto coverage will be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.
3. EMPLOYER’S LIABILITY (“STOP GAP”) INSURANCE

In addition, Contractor will buy employer’s liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

4. ADDITIONAL PROVISIONS

Above insurance policy will include the following provisions:

1. Additional Insured. DRS, its elected and appointed officials, agents and employees will be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Contract will be primary as to any other insurance or self-insurance programs afforded to or maintained by DRS.

2. Cancellation. DRS will be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer will give DRS 45 Calendar Days’ advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, DRS will be given 10 Calendar Days’ advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines):

3. DRS will be given 20 Calendar Days’ advance notice of cancellation. If cancellation is due to non-payment of premium, DRS will be given 10 Calendar Days’ advance notice of cancellation. Contractor will also provide written notice to DRS before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Contractor will give DRS 45 Calendar Days’ advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, DRS will be given 10 Calendar Days’ advance notice of cancellation.

4. Identification. Policy must reference the DRS contract number and DRS name.

5. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception must be reviewed and approved by DRS. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The insurance obligations under this Contract will be: (1) all the insurance coverage and/or limits carried by or available to Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum
required limits, which are applicable to a given loss, will be available to DRS. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor under this Contract.

5. ERRORS, OMISSIONS, OR MALPRACTICE INSURANCE

As applicable, Contractor will carry and maintain Errors & Omissions Insurance or Malpractice Insurance with limits of $10,000,000 aggregate.
**ATTACHMENT 3**

**PAYMENT SCHEDULE**

**PROFESSIONAL SERVICES FEES**

<table>
<thead>
<tr>
<th>ID</th>
<th>Payment Milestone</th>
<th>Estimated Completion Date</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Phase 1 – Planning</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>2</td>
<td>Phase 2 – Analysis and Detailed System Review / Inventory</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>3</td>
<td>Phase 3 – Platform Specification and Design</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>4</td>
<td>Phase 4 – Platform and Application Migration</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>5</td>
<td>Phase 5 – Deployment</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>6</td>
<td>Phase 6 – Stabilization and Closeout</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
</tbody>
</table>

|  |  | Total | [To be inserted.] |

**SOFTWARE LICENSE FEES AND SUPPORT AND MAINTENANCE SERVICE FEES**

<table>
<thead>
<tr>
<th>ID</th>
<th>Component Name</th>
<th>Date</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>2</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
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<td>3</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
<tr>
<td>4</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
<td>[To be inserted.]</td>
</tr>
</tbody>
</table>

|  |  | Total | [To be inserted.] |
ATTACHMENT 4

BUG AND DEFECT MANAGEMENT

1. ISSUE RESOLUTION

DRS shall classify, or reclassify, as applicable, all Bugs and/or Defects as Level 1, Level 2, Level 3 or Level 4 as applicable. Contractor will target to resolve issues using experienced personnel in accordance with the following table, based on the severity level of such Bug or Defect. Contractor shall honor DRS’ classification. If subsequently Contractor disagrees on the classification of any Bug or Defect, such dispute shall be escalated for resolution in accordance with the procedures set forth in 9. Rights and Remedies in this Contract.

2. CORRECTIONS

2.1 SEVERITY LEVELS

When DRS notifies Contractor that DRS detects a Bug or Defect in the Solution, Contractor will fix the Bug or Defect according to the following severity levels set forth in this Attachment. Contractor will coordinate all Bug or Defect isolation, testing and repair work for the Solution. Severity levels will be determined and communicated to Contractor by DRS. During the Bug or Defect isolation and troubleshooting process, Contractor will communicate Bug or Defect resolution progress with DRS and escalate its problem resolution efforts based upon the times specified below. Contractor will provide status updates as described below, which updates will include the following information:
(a) Deliverables that are affected
(b) Time Bug or Defect reported or discovered
(c) Current status of resolution
(d) Estimated time of resolution
<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Impact</th>
<th>DRS Classification</th>
<th>Acknowledgement Response Time</th>
<th>Update Frequency</th>
<th>Issue Resolution Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Critical</td>
<td>Showstopper - Solution is down, unable to proceed, or security breach</td>
<td>Within 30 minutes</td>
<td>Every 2 hours, or as material change occurs, whichever is more frequent</td>
<td>Within 4 hours</td>
</tr>
<tr>
<td>Level 2</td>
<td>High</td>
<td>Disruptive problem to Solution impacting performance, impacting a large number of users</td>
<td>Within 2 hours</td>
<td>Once per 4 hours, or as material change occurs, whichever is more frequent</td>
<td>Within 8 hours, unless notified otherwise</td>
</tr>
<tr>
<td>Level 3</td>
<td>Medium</td>
<td>Some impact to Solution; however, not vital to immediate performance</td>
<td>Within 1 day</td>
<td>Once per day, or as material change occurs, whichever is more frequent</td>
<td>Within 3 days of Acknowledgement, unless notified otherwise</td>
</tr>
<tr>
<td>Level 4</td>
<td>Low</td>
<td>Cosmetic impacts such as text changes or style changes</td>
<td>Planned as agreed to by both parties</td>
<td>Upon material change, or at DRS request</td>
<td>Within 5 days of Acknowledgement, unless notified otherwise</td>
</tr>
</tbody>
</table>

For the purposes of this table, the Acknowledgment Response Time will start when DRS notifies Contractor of a problem, error, failure or deviation, and DRS will initiate the escalation process if acknowledgment is not received within the stated time frame. “Issue Resolution” shall mean when Contractor substantially resolves the issue at its own cost.

### 2.2 ESCALATION PROCEDURES

Contractor and DRS will maintain an escalation process to aid in problem resolution should any outstanding Bugs or Defects warrant, either because Contractor has not responded to a Bug or Defect within the parameters set forth in this Attachment, or because a Bug or Defect has not been resolved within the time period set forth in Section 2.1 above. Contractor and DRS will exchange escalation procedures and contact lists. These lists will be routinely maintained, updated, and republished as changes warrant. As of the Contract Effective Date, the escalation process will use the following contact information:
CONTRACTOR ESCALATION CONTACT LIST

<table>
<thead>
<tr>
<th>Timetable</th>
<th>Contact Name/Title</th>
<th>Business Hours Contact Number</th>
<th>After Hours Contact Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>After issue resolution time is missed</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
</tr>
<tr>
<td>After a period twice the issue resolution time, if no satisfaction from 1st level.</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
</tr>
<tr>
<td>By way of illustration:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 1 – 8 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 2 – 16 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 3 – 6 days</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 4 – 10 days</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional period of twice the issue resolution time, after 2nd level if no satisfaction from 2nd level</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
<td>[Please Insert]</td>
</tr>
<tr>
<td>By way of illustration:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 1 – 16 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 2 – 32 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 3 – 12 days</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Level 4 – 20 days</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. CORRECTIVE ACTION PLAN

If two or more Level 1 events occur in any 30-day period during (a) the Term, or (b) any additional periods during which Contractor does or is required to perform any Services, Contractor will promptly investigate the root causes of these Level 1 events and provide to DRS within five Business Days of its receipt of notice of the second such support request an analysis of such root causes and a proposed written corrective action plan for DRS’ review, comment, and approval, which, subject to and upon DRS’ written approval, shall be a part of, and by this reference is incorporated in, the Contract as the Parties’ corrective action plan (the "Corrective Action Plan").

The Corrective Action Plan shall include, at a minimum: (a) Contractor’s commitment to DRS to devote the appropriate time, skilled personnel, systems support, equipment, and other resources necessary to resolve and prevent any further occurrences of the Bug or Defect giving rise to such support requests; (b) a strategy for developing any
programming, software updates, fixes, patches, etc. necessary to remedy and prevent any further occurrences of such service Bug or Defect; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor’s preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.