RFP- 87747 IT Information Technology Service Management Solution
Addendum #3
Dated on 05/7/2020

The following is additional information regarding **RFP – 90144** titled **Information Technology Service Management Solution. The due date and time for responses remains 5/13/2020 (PDT).** This addendum includes both questions from prospective proposers and the Port's answers, and revisions to the RFP. This addendum is hereby made part of the RFP and therefore, the information contained herein shall be taken into consideration when preparing and submitting information.

Item #	Date Received	Date Answered	Vendor's Question	Port's Answer	RFP Revisions
1.	4/23/20	4/28/20	How many total employees do you have in your IT Department?	23	
2	4/24/20	4/28/20	Is there further scope to increase the number of pages that the proposal must adhere to from the current stipulated 30? The solution proposal document prior to entering any responses totals 15 pages including both the attachment D and F requirements as well as the supplementary questions posed in the evaluation criterion (excluding title, contents and cover page) and therefore this leaves little room for responses and/or screenshots given that the proposal must strictly adhere to portrait format?		RFP 90144, page 3, section E Document format is revised to read: Proposals are limited to <u>30 numbered pages</u> (8 ½ by 11 inch) **not** including the cover letter and attachments D, F and H. All pages shall be in portrait orientation with 1-inch margins. Font size shall be 11 point or larger. Proposals that do not follow this format will not be reviewed.
3	4/24/20	4/28/20	With regards to IT Asset Management is the port looking for native auto-discovery or integration e.g. SCCM as per your current technical environment?	Native is the preferred method	
4	4/24/20	4/28/20	When would the port like to go live if the anticipated start date of the contract is Q3 2020?	Late Q3 or early Q4	

5	4/24/20	4/28/20	Is it permissible to the Port that the solution proposal, compensation proposal and supplementary appendices be supplied in the submission email via a web transfer service with a link to download the documentation e.g. DropBox, WeTransfer etc. in order to alleviate concerns surrounding the 9MB stated limit as advised in the solicitation? If this is permissible, does the 9MB size limitation still apply?	Use of DropBox and WeTransfer services are not permitted.	RFP 90144, page 7 Attachment A, section: Submittal Process is revised to read: Please submit one electronic copy in Adobe Acrobat PDF format, including all appendices. Submittals to be limited to **35 MB in total email size**. It is the Proposer's responsibility to verify the receipt of the submittal. Electronic verification will be provided upon request.
6	4/24/20	4/28/20	Could the Port clarify that the proposal should form one PDF document including appendices within or can appendices be referenced in the proposal and attached as separate documents e.g. Appendix A, Appendix B etc? In addition, the Port stipulate that the Compensation Proposal should be a separate document to that of the main solution proposal therefore one single PDF document cannot be submitted, please confirm.	The proposal along with required attachments may be submitted as one PDF document except for Attachment H which shall be submitted as a separate document. If you run into file size limitations submit your proposal, the attachments D & F and Attachment H- price as separate files.	
7	4/28/20	5/5/20	I have a question regarding your IT Service Management RFP 90144. I understand you are looking for fixed bid implementation services for this software. To help us understand the scope of the implementation, I'd like to	Initial Implementation Modules • Incident Management	

			understand which modules and functionality you'd like to initially implement. You've listed interested in the all of the following modules/functionality. Will you please tell me which of these should we implement initially and which would you like to implement at a later time as a future phase? • Incident Management • Service Desk • Change Control • IT Asset Management • Service Catalog Management • Problem Management • Service Configuration Management • Service Level Management • Monitoring and Event Management • Knowledge Management • Availability Management Specifically, regarding IT Asset Management, which of these items should be included in initial implementation and which may be implemented in a later phase at a later time: • Inventorying end user devices, networking gear, switches/routers and virtual servers, etc. • Solution should provide third party asset management integration – are there any third-party asset management integrations you want us to include in the initial implementation?	• Service Desk • Change Control • IT Asset Management • Service Catalog Management • Problem Management • Service Configuration Management Everything else will be implemented at a later date. For IT Asset Management we would like to inventory end user devices as a port of this engagement.	
8	4/29/20	5/5/20	In terms of initial and anticipated future growth; is the Port of Tacoma looking for a solution that brings the initial needs and anticipated future growth in a single SaaS platform?	Yes	

9	4/29/20	5/5/20	Will there be consideration to integrate Monitoring and Event Management with the [new] ITSM solution? or does it required to be an all-in-one platform?	The Port would consider integrating Monitoring and Event Management- in a future phase.	
10	4/29/20	5/5/20	Can we provide multiple ITSM solutions/vendors as part of the response?	Yes, as long as the proposal stays within the page limitations	
11	4/29/20	5/5/20	Key Personnel: There is mention of subs, but just checking to make sure; are there any issues with BCE sub-contracting a third party ITSM vendor/solution?	The Port does not specifically restrict subcontracting. However, we will hold RFP respondent accountable for all services.	
12	4/29/20	5/5/20	The "intention" is to not do any data migration; however, and just in case, should we consider adding said data migration effort (partial or full)?	No	
13	4/29/20	5/5/20	What is the growth rate (percentage wise) for year 2 through 5 (users, service tickets, concurrent users)?	The Port anticipates limited employee growth. There will likely increase in service tickets and IT employee usage of the system.	
14	4/29/20	5/5/20	Planned timeline: What is the duration of the project and by when is it expected to have the ITSM solution deployed/implemented?	The project is expected to have a planned duration of 3 months. With an anticipated start date in July 2020, we would expect to deploy the solution in September 2020.	
15	4/29/20	5/5/20	Inventory: Will the new solution be reusing same access control(s), service accounts to discover listed assets? Or will this be a green-field deployment?	The Port preferers a Green Field Development.	
16	4/29/20	5/5/20	Does fixed price include taxes?	Yes	

17	4/29/20	5/5/20	Does the ITSM solution require topology and/or relationship mapping for future growth?	It is not required at this time. A solution with relationship mapping as a roadmap feature would be acceptable.	
18	4/29/20	5/5/20	Please see our questions related to the Port of Tacoma RFP #90144 Could you please provide documents to be completed in an editable format?	Yes, an editable document will be uploaded.	
19	4/29/20	5/5/20	Page 23 - Solution must have the ability to access devices without a client. **Question:** Could you please clarify the requirement?	We prefer the asset inventory to be clientless.	
20	4/29/20	5/5/20	Page 32 - 10.2: termination for convenience. **Question:** Is the Port Authority open to negotiation on this clause?	No	
21	4/30/20	5/5/20	Please see one additional question form FMX and easyVista related to the Port of Tacoma RFP #90144 Page 4 -:"include costs for 20, 25 and 30 licenses" **Question:** Is the Port Authority expecting pricing for concurrent or named licenses?	Named Licenses would be preferred but you could also provide a cost for concurrent licenses. See question 28.	
22	4/30/20	5/5/20	Can you provide clarification around Attachment C – References Questionnaire? It is our understanding that our references do not need to complete this questionnaire until TeamDynamix has received a request from the Port. Is that the case?	Yes, you are correct, no references are to be submitted until requested by the Port.	
23	4/30/20	5/5/20	How do we access a version of the RFP that does not have the "Draft" watermark on it?	Please download the RFP posted the watermark was removed.	
24	4/30/20	5/5/20	What type of PII is the Port looking to store?	The Port would not store PII as part of this solution.	

25	4/30/20	5/5/20	We would like to review your SLAs if possible.	We currently do not have SLA defined.	
26	4/30/20	5/5/20	How large is the Port's IT department?	See response to item #1	
27	4/30/20	5/5/20	How many people work on the help desk?	4	
28	4/30/20	5/5/20	It was mentioned more users will be involved then access the current tool. What is the total number of users that will be accessing the system as a Licensed User? Of those what is your average concurrent use?	20-30 users. Current concurrent usage is approximately 10 however we expect the new tool to rise to 15-20.	
29	4/30/20	5/5/20	How many assets are you looking to manage in the solution? For how many endpoints (desktops, laptops, servers) do you want to discover and monitor software compliance? Please provide breakdown by OS (e.g. Windows, Mac, Chrome, etc.)	We have approximately 500 active user endpoints (laptops/desktops). Approximately 150 servers. At a later date we would also like to add approximately 700 network devices. We are all windows OS except a handful of Linux servers.	
30	4/30/20	5/5/20	Is the Port seeking a solution to integrate with a purchasing/procurement system? Or will the Port be entering purchasing information into the selected system?	Purchasing information will be entered.	
31	4/30/20	5/5/20	How does the Port currently manage IT assets?	Track-it and Excel spreadsheets	
32	4/30/20	5/5/20	What tools does the Port currently have for IT asset discovery? What types of devices are discovered by these tools?	We are currently using Track-IT and only discovering User computers.	

33	4/30/20	5/5/20	Which of these discovery tools is the Port looking to retire?	None.	
34	4/30/20	5/5/20	Which of these discovery tools is the Port looking to integrate with the selected solution?	We prefer native discovery.	
35	4/30/20	5/5/20	"Solution must have the ability to access devices without a client." – Is the Port looking for a solution that can discover all necessary assets without an agent? Or is the Port looking to be able to remote into an asset through the solution?	A solution that can discover all necessary assets without an agent for inventory.	
36	4/30/20	5/5/20	Which of these discovery tools is the Port looking to integrate with the selected solution?	Our preference would be to use the tools native discovery tool.	
37	4/30/20	5/5/20	What tool(s) (if any) is/are being used to fulfill the functionalities being requested?	Track-IT and SharePoint are currently being used for	
38	4/30/20	5/5/20	Is there a prevailing event/initiative/etc. that triggered the creation and release of this solicitation?	In 2019 the Port identified the need for a new ITSM system. The new Port IT Director fully supports an ITIL/ITSM program.	
39	4/30/20	5/5/20	If there is a particular process that the Port currently does not have established/documented, is the design of that process part of the scope of this project?	We only have a documented process for Change Control, but it is not complete	
40	4/30/20	5/5/20	What different ways are tickets created? (Phone, portal, email, etc)	Phone, portal and email	
41	4/30/20	5/5/20	Does the Port currently have a well-defined Service Catalog?	The Port has recently identified 64 core IT Services consisting of critical infrastructure and application services.	

					We plan that those services would be reflected in the service catalog.	
42	4/30/20	5/5/20	Does the Port currently have a Self-Service Portal? If yes, what challenges do you have with it? Any functionality you'd be looking to keep?		Yes, but it is very simple. Enter a ticket and look at the user's tickets with details and status.	
43	4/30/20	5/5/20	Is the Port looking for a simple Portal with just a few places to click around, or a more robust interface with a Service Catalog, Knowledge searching, "This affects me too" feature, etc.?		The Port is looking for a robust Portal interface.	
44	4/30/20	5/5/20	Does the Portal currently have a Problem Management process in place? Is this done in the same tool as Incident?		We are using the same tool today.	
45	4/30/20	5/5/20	Is the Portal currently able to link Incidents to Problems?		No	
46	4/30/20	5/5/20	Do customers have visibility into Problems?		No	
47	4/30/20	5/5/20	Does the Port have a Knowledge Management process in place? If so, where? (OneNote, some other tool)		SharePoint/OneNote	
48	4/30/20	5/5/20	Is there any structured review/approval process?		No	
49	4/30/20	5/5/20	What types of changes does the Port have? (Emergency, Normal, Standard).		Emergency and normal are currently being actively used.	
50	4/30/20	5/5/20	Do the different change types all have unique approval workflows?		Yes	
51	4/30/20	5/5/20	Does the Port hold a weekly Change Advisory Board meeting?		Yes	
52	4/30/20	5/5/20	What are the Port's pain points with your current tool?		The current tool does not meet the requirements we	

				have for ITIL 4 and the practices we are implementing.	
53	4/30/20	5/5/20	Does the Port currently have their Configuration Item (CI) types identified (i.e. Server, Computer, Telephony…)? If so, please provide the list.	No	
54	4/30/20	5/5/20	What data sources does the Port of Tacoma have for CI data such as SCCM. Which systems are in scope for integrating into the solution to populate the CMDB?	SCCM and Intermapper but we are not looking to integrate these tools initially.	
55	4/30/20	5/5/20	Has the number of teams/groups been identified? If so, please provide a total count	No, there would probably be 5 or 6 groups.	
56	4/30/20	5/5/20	Has the number of security roles been identified? If so, please provide a total count	Administrator Practice Lead/Administrator Technician User	
57	4/30/20	5/5/20	What integrations are in scope of this project? The Port lists "Exchange, System Center Configuration Manager, Active Directory / Azure Active Directory, Azure, Power Platform (Power Apps, Power BI, Power Automate), Microsoft 365 to include Dynamics CRM and SharePoint, SolarWinds" – are each of these in the scope of this engagement? Could the Port please list the applications required, and in what way they are to communicate with the tool?	Exchange – email Active Directory / Azure Active Directory - SSO/Authentication Power Platform (Power Apps, Power BI, Power Automate) - for dashboarding. All other would be future integrations.	
58	4/30/20	5/5/20	Could you please provide a use case or user story that is representative of each of the integrations desired?	See line 57	

59	4/30/20	5/5/20	Does the Port currently have an event management tool such as OpsRamp, or BigPanda? If so, what tool is in use, and is integrating the tool in scope for this project?	This is out of scope for this project but could be in scope for the future. Current tool is SolarWinds	
60	4/30/20	5/5/20	Does the Port use a pure Azure Active Directory or a hybrid Azure on-premises configuration? If the Port of Tacoma is using a pure Azure AD, do you have Azure Active Directory Domain Services enabled?	Hybrid Azure The Port uses Azure Active Directory Domain Services enabled.	
61	4/30/20	5/5/20	Does the Port have multiple Active Directory environments?	No, only one.	
62	4/30/20	5/5/20	Will there be multiple business units (such as Facilities or HR) using this for processing tickets? If so, will these need to be broken out? Will they need separate service catalogs? Will they need separate portals?	This tool is being implemented for IT only.	
63	4/30/20	5/5/20	Has a budget for this project been determined? If so, what is the budget for this project?	The RFP contains the budget range for this project.	
64	4/30/20	5/5/20	Does the Port have a target Go-Live date for the selected solution? What is driving this target date? (E.g. upcoming renewal of existing solution, budget cycle, etc.)	See question 4	

65	4/30/20	5/5/20	Page 4-
			  When talking about current number
			  of "customers" – can you describe
			  what is meant by "customer"
				Customer are defined as Port employee with an Active Directory Account.	

66	4/30/20	5/5/20	Page 5, section 2 - What is meant by the bulleted item? *"Provide the number of IT service practitioners based in the United States, broken down by Project Manager, Business Analyst and Implementation Technician"*	Please provide us with the number of your employees that fit the defined roles that are based in the United States.	

67	4/30/20	5/5/20	Page 20 – Attachment D - Requirements - Who are the users of Tier 0 self-service as described in the requirement below: "Solution must provide **Tier 0 support** capabilities such as self-serve…"	This would be all Port of Tacoma employees.	
68	4/30/20	5/5/20	Page 20 – Attachment D - Requirements - Please describe what is meant by: "Solution must provide OOTB ITIL 4 aligned enterprise application management solutions"	The solution must be aligned with ITIL 4 best practices.	
69	4/30/20	5/5/20	Page 22 – Attachment D - Requirements Is Port of Tacoma willing to pay for additional licenses as described below – even if these are not part of the initial implementation? (Event Management is part of ITOM and has an additional cost) *The solution should provide functionality for the follow future ITIL 4 practice areas:* ▪ Service Configuration Management ▪ *Service Level Management* ▪ Monitoring and Event Management ▪ *Knowledge Management* ▪ *Availability Management*	We would like the system to be able to handle these practices but there is no expectation these will be covered with the current licensing contract.	

70	4/30/20	5/5/20	Page 22 – Attachment D - Requirements - To what degree is the Port of Tacoma willing to change its processes to align with OOB workflows as described below? *"Solution should provide OOTB ITIL 4 workflows that are ready to be used and/or workflows that are configurable"*	The Port understands that processes need to change to accommodate newly implemented systems. We will remain flexible throughout the implementation.	
71	4/30/20	5/5/20	Page 22 – Attachment D - Requirements - Describe the requirement for "near real time" as listed below: *"Solution must provide exporting and importing of data in near real time"*	The Port would like to have access to live data for exporting and importing into third party business intelligence reporting tools (e.g. Power BI).	
72	4/30/20	5/5/20	Page 23 – Attachment D - Requirements - Describe what is meant by "database" as listed below: *"Solution should provide access directly to the database"*	Database is referring to the access to the Port data through alternative means other than through the application. For the purpose of exporting relevant data sets.	
73	4/30/20	5/5/20	Page 23 – Attachment D - Requirements - What is included in "etc" as listed below: *"Solution must have asset management functionality including inventorying end user devices, networking gear, switches/routers and virtual servers, etc.*	Items listed are the main physical inventory items we are concerned with. Beyond that would be consider a plus for the tool.	

74	4/30/20	5/5/20	Page 23 – Attachment D – Requirements- What functionality is required as listed below: "Solution may provide asset disposal management functionality"	Ability to set the status of the asset as removed from active inventory but still available for historical purposes.	
75	4/30/20	5/5/20	Page 23 – Attachment D – Requirements-What functionality is required as listed below: "Solution may provide software license management functionality"	Software, License and assignment	
76	4/30/20	5/5/20	Page 23 – Attachment D – Requirements- What is your use case/specific requirement for the statement below: "Solution may provide software usage analysis capabilities including application usage and compliance management"	The Port would like to monitor the usage of the software and manage licensing.	
77	4/30/20	5/5/20	Reporting/Dashboards-What are your requirements for reporting, dashboards and analyzing performance?	The Port needs KPI dashboards for implemented ITIL Practice. The KPIs will be defined during implementation.	
78	4/30/20	5/5/20	Processes-What process documentation do you have for Incident Management today?	None	
79	4/30/20	5/5/20	Processes- What process documentation do you have for Service Desk today?	None	
80	4/30/20	5/5/20	Processes- What process documentation do you have for Change Control today?	A documented process to handle Normal Changes with our existing SharePoint list	
81	4/30/20	5/5/20	Processes- What process documentation do you have for IT Asset Management today?	None	
82	4/30/20	5/5/20	Processes- What process documentation do you have for Service Catalog Management today?	See the answer to Question 41.	
83	4/30/20	5/5/20	Processes- What process documentation do you have for Service Request Management today?	None	

84	4/30/20	5/5/20	Portal- What is in place today for a portal for incident, request, catalog, tier 0 self-service?	Incident / Request submission on the same form.	
85	4/30/20	5/5/20	Overall Project- Can you share the relevant Key Performance indicators used currently?	None	
86	4/30/20	5/5/20	Project Management- Do you have a required IT Project Management process/toolset that would be required to be used in this project?	The Port has an established PMO with a defined project management methodology. This project has a project manager assigned with time allocation at 33%. The Port uses Microsoft Project 2016 to manage projects	
87	4/30/20	5/5/20	Current Processes for development and change to existing systems - What is your experience with Agile/iterative development and deployment? What tools are in place for use today?	The Port has limited experience with Agile/interative development and deployment. The Port currently uses Azure DevOps in some areas.	
88	4/30/20	5/5/20	Organizational Change Management - Do you have an Organizational Change Management team to help provide project communications?	Yes	
89	4/30/20	5/5/20	Successful Adoption- Do you have an active continual improvement methodology in place?	No formal methodology but a goal to improve to improve from an ITIL practice perspective.	
90	4/30/20	5/5/20	Successful Adoption- How do you measure successful project/system implementations today?	The Port uses a set of standard project metrics to monitor inflight projects. In	

					addition, each project passes through a Benefits Realization stage as part of closeout where results are measured against the objectives defined in the Business Case.	
91	4/30/20	5/5/20	Steady State – Business as Usual- How do you determine when "Go Live Support" can end?		The Port anticipates a post Go Live support period of 60 days to identify, document and resolve system bugs.	
92	4/30/20	5/5/20	Legacy System Data- Is there a requirement to convert/migrate data from the TrackIT system? If so, please define what is required		No Data will be migrated.	
93	4/30/20	5/5/20	Growth- What is the anticipated growth in the number of devices supported over the next 3 years?		Minimal maybe up to 20%	
94	4/30/20	5/5/20	TrackIT capability - Is TrackIT being used as an "RMM" --- the agents on each PC to do patch management, monitoring, etc.?		Track-IT is not being used in that way.	
95		5/5/20				See revision of Terms and Conditions for RFP 90144 ITSM Attachment B
96		5/7/20				See revision of Attachment E, Port of Tacoma Software as a service Agreement

ATTACHMENT B – SPECIAL & PURCHASED SERVICES TERMS AND CONDITIONS

Special Terms and Conditions
Insurance - Assumption of Risk

a)   As a further consideration in determining compensation amounts, the Contractor shall procure and maintain, during the life of this Agreement, such commercial general, IT Professional or Cyber Liability, and automobile liability insurance as shall protect Contractor and any sub-Contractors performing work under this Agreement from claims for damages from bodily injury, including death, resulting there from as well as from claims for property damage and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control which may arise under this Agreement, whether arising from operations conducted by the Contractor, any sub-Contractors, or anyone directly or indirectly employed by either of them.

b)   With respect to claims other than professional liability claims, Contractor and its sub-Contractors agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's professional services. Contractor shall indemnify and hold the Port of Tacoma [and Northwest Seaport Alliance] harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

c)   With respect to professional liability claims only, Contractor and its sub-Contractors agree to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's professional services. Contractor shall indemnify and hold the Port of Tacoma [and Northwest Seaport Alliance] harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control. The Port will indemnify the Contractor if an IP infringement is caused because of the Port's modification, alteration or combination of the use of the product and the use of the Contractors applications, or Port's improper use of the provided service.

Purchased Services Terms and Conditions

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port of Tacoma (POT) to the Contractor, it is agreed that:

1. Key Personnel

The Contractor and/or its subcontractors' key personnel, as described in its Contractor selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the POT, or unless such key personnel leave the employ of the Contractor and informs the POT such key personnel no longer work for the Contractor.

2. Relationship of the Parties

Contractor, its subcontractors and employees, is an independent Contractor. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

3. Conflicts of Interest

Contractor warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. Contractor warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

4. Compliance with Laws

This Agreement shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington. Contractor agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Contractor shall obtain all professional licenses and permits required to complete the scope of work as defined.

5. Records and other Tangibles

Contractor shall maintain all records and documents, including financial data and other evidence directly pertinent to performance of the work under this Agreement in accordance with Generally Accepted Accounting Principles and Practices consistently applied and as further specified below. Contractor shall provide the Port, or its designated agent, with access to or copies of records and other tangibles upon written request.

The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

6. Ownership of Work

The services to be performed or provided by Contractor shall be deemed instruments of service for purposes of the copyright laws of the United States. The POT has ownership rights to the plans, specifications, and other products prepared by the Contractor. Contractor shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Contractor. Contractor shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the POT's prior consent. Notwithstanding anything to the contrary in this Agreement, Contractor and its

personnel are free to use and employ their general skills, know how, and expertise, and use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned ~~during the course of~~during this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the POT ~~or Port~~. Contractor owns and controls its service product, however if during providing the service using the Port's data it develops derivative works, that derivative work may not be resold and belongs to the Port.

7. Disclosure

All information developed by the Contractor, all analyses or opinions reached by the Contractor (Subject Data) and all information made available to the Contractor by the Port (Port Data), shall not be disclosed by the Contractor without the written consent of the Port.

8. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Contractor as specified in the Agreement. Payment shall be due upon acceptance of the service along with a portion of the annual license and service fees.

Contractor is responsible for working within the agreement amount. Should the contractor incur costs beyond the agreement amount without an executed amendment to this agreement, the Contractor is solely responsible for the additional costs.

Invoices shall be submitted to cpinvoices@portoftacoma.com each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Contractor agrees to submit monthly invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment. Under no circumstances will the Port pay interest on payments.

Un-invoiced services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Contractor is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

9. Payment Schedule

Contractor shall submit detailed numbered invoices showing contract number, description of work items being invoiced, title of project, total authorized, total current invoice, balance of authorization, hours, hourly rate by the 10th of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

10. Costs and Disbursements

Contractor shall pay all costs and disbursements required for the performance of its services under this Agreement.

11. Insurance - Assumption of Risk

a) As a further consideration in determining compensation amounts, the Contractor shall procure and maintain, during the life of this Agreement, such commercial general and automobile liability insurance as shall protect Contractor and any subcontractors performing work under this Agreement from claims for damages from bodily injury, including death, resulting there from as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Contractor, any subcontractors, or anyone directly or indirectly employed by either of them.

b) With respect to claims other than professional liability claims, Contractor and its subcontractors agree to defend, indemnify and hold harmless the POT, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's professional services.

c) With respect to professional liability claims only, Contractor and its subcontractors agree to indemnify and hold harmless the POT, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's professional services.

12. Standard of Care

Contractor shall perform its work to conform to generally accepted professional standards. Contractor shall, without additional compensation, correct or revise any errors or omissions in such work.

The Port's approval of plans, drawings and specifications shall not relieve Contractor of responsibility for the adequacy or accuracy thereof. The Contractor shall remain liable for damages and costs incurred by the Port arising from the Contractor's errors, omissions or negligent performance of services furnished under this Agreement.

13. Time

Time is of the essence in the performance by the Contractor of the services required by this Agreement.

14. Assignability

~~Contractor shall~~Neither Party shall ~~not~~ assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the ~~POT~~ other parties.~~.~~

15. Term of this Agreement

The effective dates of this Agreement are as specified. This Agreement may be terminated by the POT for cause when the POT deems continuation to be detrimental to its interests or for failure of the Contractor to perform the services specified in the Agreement. The POT may terminate this Agreement at any time for government convenience in which case it shall provide notice to the Contractor and reimburse the Contractor for its costs and fees incurred prior to the notice of termination.

16. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The POT reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Contractor agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

17. Extent of Agreement

This Agreement represents the entire and integrated understanding between the POT and Contractor and may be amended only by written instrument signed by both the POT and Contractor.

18. Venue & Governing Law

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

19. Integration and Merger/ Extent of Agreement

This Agreement represents the entire and integrated understanding between the Port and Contractor, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Contractor. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of Contractor prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

20. Non-Discrimination

Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Contractor and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

21. Equal Employment Opportunity Efforts: The Contractor and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

The Contractor and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination.

22. Indemnity / Hold Harmless Clause

The Contractor shall indemnify, defend and hold harmless the Port of Tacoma and its officers, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees, costs caused by or arising out of the negligence, recklessness, or intentional wrongdoing of Contractor or its officers, employees, subcontractors, or agents under this Agreement; or arising from the Contractor's, its' officers, employees, subcontractors, or agent's failure to comply with any applicable state, federal, local, law, statue, rule, regulation or act.

This duty to indemnify, defend and hold harmless shall not apply to claims which arise out of the sole negligence on the part of the Port of Tacoma, and this duty shall survive the termination or expiration of this Agreement.

Contractor specifically assumes potential liability for actions brought by Contractor's own employees against the Port and, solely for the purpose of this indemnification and defense, Contractor specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Contractor recognizes that this waiver was the subject of mutual negotiation.

23. Miscellaneous Provisions

    A. **Remedies Cumulative:** Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
    B. **Captions:** All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
    C. **Severability:** Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.

D. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by Contractor after the time the same shall have become due nor payment to Contractor for any portion of the Work shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

E. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.

F. No Personal Liability: No officer, agent or authorized employee of either Port or Contractor shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

ATTACHMENT E – PORT OF TACOMA SOFTWARE AS A SERVICE AGREEMENT

PORT OF TACOMA SOFTWARE AS A SERVICE AGREEMENT

(Software)

This Port of Tacoma Software as a Service Agreement ("Agreement") is by and between the Port of Tacoma ("Port") (on behalf of the Northwest Seaport Alliance (NWSA)) and _____ hereby known as the "~~Vendor~~Contractor." This Agreement is effective when fully executed and approved in accordance with applicable laws, rules and regulations ("Effective Date"). This Agreement is in relation to the Software as a Service Licensing only. Any services or products necessary for Implementation will be performed or obtained in accordance with a separate Personal Services Agreement ("PSA") XXXXXX.

THE SOFTWARE AS A SERVICE AGREEMENT IS MADE IN CONJUNCTION WITH THE TERMS AND CONDITIONS SET FORTH IN THE PSA RESULTING FROM REQUEST FOR PROPOSAL ("RFP") XXXXX.   IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND THE PSA, AND/OR THE RFP, THE TERMS AND CONDITIONS OF THE FOLLOWING SHALL BE CONTROLLING IN THE PRIORITY SET FORTH BELOW, WITH NUMBER 1 BEING THE MOST CONTROLLING AND NUMBER 3 BEING THE LEAST CONTROLLING:

1. SOFTWARE AS A SERVICE AGREEMENT

2. PSA

3. RFP

4. ~~Vendor~~Contractor's Proposal

RECITALS

A. The Port desires to enter into this Software as a Service Agreement with ~~Vendor~~Contractor to provide Hosted Software Services as described in RFP XXXXX.

B. ~~Vendor~~Contractor desires and agrees to perform the Services as outlined in RFP XXXXX.

TERMS OF SERVICE

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON ~~VENDOR~~CONTRACTOR'S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND THE ~~VENDOR~~CONTRACTOR TO THESE TERMS AND CONDITIONS.

1. DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

1.1. "AUP" means ~~Vendor~~Contractor's Acceptable Use Policy dated_____currently posted at _____.

1.2. "Acceptance" means written confirmation by the Port that the ~~Vendor~~Contractor's software has met the requirements stated in RFP XXXXX and in its RFP Proposal.

1.3. "Anniversary Date" means the date that is 365 days after the Effective Date, and each anniversary thereafter of the date that is 365 days after the Effective Date, during this Agreement's Term.

1.4. "Client Data" means the data that Designated Users transmit and/or enter into the database provided as part of the ~~Vendor~~Contractor's system in connection with their use of the SaaS Software pursuant to this Agreement.

1.5. "Deliverables" means the Services and all software that ~~Vendor~~Contractor is required to deliver to the Port under this Agreement.

1.6. "Designated User" means Port authorized personnel who have access the ~~Vendor~~Contractor's SaaS Software for business purposes.

1.7. "Documentation" means all documents, including documents that are Deliverables described in this Agreement and includes, but is not limited to, any and all operator's or user's manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of services that are to be delivered by the ~~Vendor~~Contractor under this Agreement.

1.8. "Effective Date" means the date of the last party signature on this Agreement.

1.9. "Force Majeure Event" means neither party shall be liable or deemed to be in default for any delay in performance occasioned by unforeseeable causes beyond the contract and without the fault or negligence of the parties, including but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantines, restrictions, strikes or labor disputes, embargoes, sabotage, cable cut not caused by ~~Vendor~~Contractor, or usually severe weather; provided that in all cases of delay in performance, the ~~Vendor~~Contractor shall immediately notify the Port by telephone, of such delay, and follow up such oral notice with prompt written notice detailing the cause for delay. The ~~Vendor~~Contractor shall make every reasonable effort to complete performance as soon as possible. This clause does not apply to Service issues involving network outages cause by or related to a network that is not owned or controlled by the ~~Vendor~~Contractor.

1.10. "Party" and "Parties" means the Port and ~~Vendor~~Contractor.

1.11. "SaaS Software Application", "SaaS Solution" and "SaaS Software" mean the computer software listed on a SaaS subscription schedule to which ~~Vendor~~Contractor has granted the Port access and use as part of the subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc., related to the software that

~~Vendor~~Contractor develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of ~~Vendor~~Contractor for any of the software, customization, other derivative works, upgrade, releases, fixes, patches, etc.

1.12. "SLA" means Port's standard service level agreement, as set forth in Exhibit B, Port of Tacoma Service Level Agreement (SLA).

1.13. "System" means the Port's access to and use of and ~~Vendor~~Contractor's SaaS Software Applications and other services listed in this Agreement (Exhibit A, Licensed Software and Fee Schedule), in accordance with the terms and conditions set forth in this Agreement.

1.14. "Term" is defined in Section below.

2. THE SYSTEM.

The System is defined as the Port's access to and use of and ~~Vendor~~Contractor's provision of the SaaS Software Applications and other services listed in this Agreement, in accordance with the terms and conditions set forth in this Agreement. (See Definitions, 1.13.,"System")

2.1. Use of the System. During the Term, the Port may access and use the System pursuant to the terms the ~~Vendor~~Contractor's AUP.

2.2. Service Levels. ~~Vendor~~Contractor shall provide the remedies listed in Exhibit B, Port of Tacoma SLA, attached hereto and incorporated herein, for any failure of the System listed in the SLA. Such remedies are Port's remedies for any failure of the System. Credits issued pursuant to the SLA apply to outstanding or future invoices and may be deducted from any final payment upon termination of this Agreement. ~~Vendor~~Contractor is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of this Agreement.

2.3. Application Support Hours. The ~~Vendor~~Contractor's application core support hours must be from 07:00 to 18:00 PST/PDT, Monday through Friday (excluding Port holidays). The Port's holidays are New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Day after Thanksgiving, Christmas Eve Day, and Christmas Day. For Severity Levels 1 and 2 (as documented in Exhibit B, Service Level Agreement), the ~~Vendor~~Contractor must be available during non-core support hours.

2.4. Virus Protection. The ~~Vendor~~Contractor will use the most robust up-to-date virus and malware protection software and/or technology solutions available. The ~~Vendor~~Contractor agrees to prevent viruses from being loaded into the SAAS Solution and into the Port's own standard IT environment through its software. If a virus is inadvertently introduced, the ~~Vendor~~Contractor will take immediate and appropriate steps to reduce the effects of the virus and will notify the Port immediately upon discovery of the virus. The Port expects the ~~Vendor~~Contractor to take immediate steps to respond to the virus, and for root cause analysis to be performed at a later reasonable time, i.e., within hours after the effects of the virus are reduced. Upon completion of the analysis, the results of the ~~Vendor~~Contractor's root cause analysis will be shared with the Port, in writing.

2.5. Software and Hardware Updates / Patches. The ~~Vendor~~Contractor is responsible for ensuring that systems, applications, database, operating systems and firewalls receive regular updates and/or patches for SaaS system high availability and protection.

2.6. Data Centers / Disaster Recovery. Any and all data centers utilized must be located within the continental United States. Data centers, server, storage and network infrastructure utilized must provide high levels of redundancy and availability. The ~~Vendor~~Contractor will provide system restore/image, snapshots and backups on an hourly, daily, weekly and monthly schedule for recovery. In addition, the ~~Vendor~~Contractor will ensure that network, server and storage infrastructure is actively monitored and managed for availability and performance which includes site security including but not limited to: on-premises security personnel, continuous video surveillance, screening of all people entering or exiting the premises, seismically braced server racks, high-tech fire suppression systems and round-the-clock monitoring of server operations. Disaster Recovery and penetration testing exercises must be documented along with a plan to fix any deficiencies.   The outcome of these exercises must be available to the Port upon request. All client data must be stored and remain in the continental United States.

2.7. Documentation: The Port may reproduce and use the documentation solely as necessary to support Designated Users' use of the System.

2.8. Designated System Revisions. The Port recognizes the ~~Vendor~~Contractor may revise System features and functions at any time. If any such revision to the System materially reduces features or functionality mutually agreed upon by the Parties, the Port may within 30 days of notice of the revision terminate this Agreement without cause. If any such revision to the SLA materially reduces service levels mutually agreed upon by the Parties, the Port may within 30 days of notice of revision terminate this Agreement without cause.

3. SYSTEM FEES. The Port shall pay ~~Vendor~~Contractor the fee set forth in Exhibit A, Licensed Software and Fee Schedule, attached hereto and incorporated herein.

3.1. Implementation Schedule. For purposes of a first time set-up and/or implementation for the Port, ~~Vendor~~Contractor will provide a schedule for the implementation, including the milestones that must be met and hard dates by which the milestones must be met.

3.2. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Contractor as specified in the Agreement. Any configuration or installation payments shall be due upon acceptance of the service along with any annual license or service fees.

Contractor is responsible for working within the agreement amount. Should the contractor incur costs beyond the agreement amount without an executed amendment to this agreement, the Contractor is solely responsible for the additional costs.

Invoices shall be submitted to cpinvoices@portoftacoma.com each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Contractor agrees to submit monthly invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment. Under no circumstances will the Port pay interest on payments.

3.2.   Un-invoiced services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Contractor is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year. ~~Milestone Payments. Payment for first time implementation for the Port will be tied to successful completion of milestones associated with hard dates or deadlines. A payment schedule is provided in Exhibit A, Licensed Software and Fee Schedule.~~

4. CYBERSECURITY AND CLIENT DATA PRIVACY.

4.1. Cybersecurity. All solution components, including code base, application, servers, web servers, databases, data at rest and in motion, and network infrastructure including firewalls, are developed, configured and maintained using industry standard cybersecurity best practices in accordance with NIST Special Publication 800-53r4 (or successor publications). For the web servers, the ~~Vendor~~Contractor will use SSL certificate to secure connectivity for users. The ~~Vendor~~Contractor will maintain a documented Security Plan that it will supply to the Port upon request. The ~~Vendor~~Contractor will undergo Security Vulnerability Audits annually, and supply audit reports to the Port upon request. Once the Security Vulnerability Audit is completed, the ~~Vendor~~Contractor will create a remediation plan and implement the plan to address any failed areas. Within five (5) business days, the Port will receive a copy of the ~~Vendor~~Contractor's remediation plan. The ~~Vendor~~Contractor will notify the Port immediately of any security breach of the ~~Vendor~~Contractor's SaaS infrastructure or unauthorized access to the Port's data; will work immediately and without interruption to resolve the breach and the vulnerability; and will provide the Port with a copy of an incident review.

4.2. Use of Client Data. Unless it receives the Port's prior written consent, ~~Vendor~~Contractor: (a) shall not access, process, or otherwise use Client Data other than as necessary to facilitate the System; and (b) shall not grant any third party access to Client Data, including without limitation ~~Vendor~~Contractor's other customers. Notwithstanding the foregoing, ~~Vendor~~Contractor may disclose Client Data as required by applicable law or by proper legal or governmental authority. ~~Vendor~~Contractor shall give the Port prompt notice of any such legal or governmental demand and reasonably cooperate with the Port in any effort to seek a protective order or otherwise to contest such required disclosure.

4.3. Protection of Client Data Stored Within the SaaS Solution. The Port's confidential information, sensitive data and/or personally identifiable information may be stored within the SaaS Software. The Port requires that the ~~Vendor~~Contractor understand that (1) the Port owns its own data, (2) the ~~Vendor~~Contractor will provide protection against the release or transfer of

that data, (3) the ~~Vendor~~Contractor is required to notify the Port within two (2) hours of any breach and will provide the Port with the specific steps that will be taken if a security breach occurs or is suspected.

4.4. Data Encryption. ~~Vendor~~Contractor shall ensure that all data transfers, i.e., data moving or data at rest, will be encrypted. For data in transit, the ~~Vendor~~Contractor will ensure encryption with 256-bit encryption and Transport Layer Security (TLS) and file-level encryption will be performed via Transparent Data Encryption (TDE). In order to ensure client anonymity, the ~~Vendor~~Contractor will encrypt the database names. Data at rest will have a robust encryption method in place to encrypt all Client data elements. In addition, the ~~Vendor~~Contractor will encrypt all user passwords with a form-based system login and store all encrypted user passwords in a secure database.

4.5.

Records Retention. In accordance with the Revised Code of Washington § 42.56, Washington Open Records Act, the Contractor agrees to maintain accurate records of all work done in providing services specified by this Agreement for a period of ~~Until the expiration of~~ six years after the term of this Agreement, ~~Vendor agrees to maintain accurate records of all work done in providing services specified by this Agreement,~~ including the Port's client data hosted, stored, or maintained by ~~Vendor~~Contractor, and to deliver such records to the Port upon termination of this Agreement or otherwise as requested by the Port.

4.6. Risk of Exposure. The Port recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, the Port assumes such risks. ~~Vendor~~Contractor warrants that it will make all commercially available efforts to ensure that Client Data will not be exposed or disclosed through errors or the actions of third parties. The ~~Vendor~~Contractor must ensure that it has performed all commercially available efforts to protect the Port's client data in accordance with Section 2. The System, and Section 2.5 Cybersecurity.

4.7. Data Accuracy. ~~Vendor~~Contractor shall have no responsibility or liability for the accuracy of data uploaded to the System by the Port, including without limitation Client Data and any other data uploaded by Designated Users.

4.8. SSAE16 Audits. During the term of this Agreement, and so long as SSAE16 remains a current and industry standard auditing standard, ~~Vendor~~Contractor agrees to annually undertake an audit in accord with the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements No. 16 or a successor standard ("SSAE16") with respect to the services offered in Exhibit A. Upon the Port's request, and no more than annually, ~~Vendor~~Contractor agrees to provide a copy of its then-current SSAE16 audit report for the Port's review. Additionally, the Port requires the ~~Vendor~~Contractor to perform an annual Cybersecurity Vulnerability assessment performed at the same intervals as the audit and the findings relating to Port's SaaS system will be shared with the Port.

5. THE PORT'S RESPONSIBILITIES & RESTRICTIONS.

5.1. Acceptable Use. The Port shall comply with the AUP identified in Section 1.1. The Port shall not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party, subject to the Port's obligations set forth in Section 11.10; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Designated Users, ~~Vendor~~Contractor will immediately notify the Port of any breach for unauthorized use.

5.2. Unauthorized Access. The Port shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. The Port shall notify ~~Vendor~~Contractor immediately of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.

5.3. Designated Users & System Access. The Port is responsible and liable for: (a) Designated Users' use of the System, including without limitation unauthorized Designated User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to the Port; and (b) any use of the System through Port's account, whether authorized or unauthorized, except to the extent said use is performed by persons or entities not employed by or affiliated with the Port.

6. INTELLECTUAL PROPERTY (IP).

6.1. IP Rights to the System. ~~Vendor~~Contractor retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. This Agreement does not grant the Port any intellectual property license or rights in or to the System or any of its components, except to the extent this Agreement provides the Port with the right to use the System as expressly provided herein. The Port recognizes that the System and its components are protected by copyright and other laws.

7. CONFIDENTIAL INFORMATION. "Confidential Information": Pursuant to this Agreement, ~~Vendor~~Contractor may collect, or the Port may disclose to ~~Vendor~~Contractor, financial, personnel or other information that the Port regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the Port. ~~Vendor~~Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the Port to any third party, except with the Port's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the Port. The Port may require that ~~Vendor~~Contractor's officers, employees, agents or sub-~~vendor~~Contractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the Port upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that: (a) is or was in the possession of ~~Vendor~~Contractor before being furnished by the Port, provided that such information or other data is

not known by ~~Vendor~~Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the Port; (b) becomes generally available to the public other than as a result of disclosure by ~~Vendor~~Contractor, or; (c) becomes available to ~~Vendor~~Contractor on a non-confidential basis from a source other than the Port, provided that such source is not known by ~~Vendor~~Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the Port.

7.1. Non-disclosure. The Port may require a Non-Disclosure Agreement to be signed by the ~~Vendor~~Contractor and its employees.

7.2. Termination & Return. Upon termination of this Agreement, the ~~Vendor~~Contractor and the ~~shall~~Port shall return all copies of the ~~Port's~~other parties data within 5 business days or certify, in writing, the destruction thereof.

7.3. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Parties will retain all right, title, and interest in and to all their Confidential Information.

8. REPRESENTATIONS & WARRANTIES.

8.1. From ~~Vendor~~Contractor. ~~Vendor~~Contractor represents and warrants that it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. In the event of a breach of the warranty in this Section, ~~Vendor~~Contractor, at its own expense, will promptly take the following actions: (a) secure for the Port the right to continue using the System; (b) replace or modify the System to make it noninfringing; or (c) terminate the infringing features of the Service and refund to the Port any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Port's right to terminate for breach where applicable, the preceding sentence states ~~Vendor~~Contractor's sole obligation and liability, and Port's sole remedy, for breach of the warranty in this Section and for potential or actual intellectual property infringement by the System.

8.2. Warranty Period. For the period of one (1) year (Warranty Period), the SaaS Software supplied to the Port shall conform to the Acceptance criteria set forth in the RFP XXXXX and the ~~Vendor~~Contractor's RFP Response and shall be free from error or defect that materially impairs their use.

8.3. Warranty Use. All services and SaaS Software supplied by the ~~Vendor~~Contractor to the Port shall be provided to the Port free and clear of any and all restrictions on or conditions all liens, claims, mortgages, security interests, liabilities and encumbrances of any kind.

9. ~~INDEMNIFICATION~~ INSURANCE.

9.1. ~~Save Harmless. The Vendor shall defend, indemnify and hold the Port harmless from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, to the extent caused by or arising from the negligent or wrongful acts or omissions under this Agreement of the Vendor, its employees, agents, or subcontractors, that cause death or bodily~~

injury, or damage to property, or arising out of a failure to comply with any state or federal statute, law, regulations or act. As further consideration in determining compensation amounts, the Contractor shall procure and maintain, during the life of this Agreement, such commercial general, IT Professional or Cyber Liability, and automobile liability insurance as shall protect Contractor and any subcontractors performing work under this Agreement from claims and damages from bodily injury, including death, resulting there from as well as from claims for property damage and cyber- related risks such as theft, loss or misuse of data, release of private information as result of private information as result of network breach, penetration, compromise, or loss of IT systems control which may arise under this Agreement, whether arising from operations conducted by the Contractor, any subcontractor, or anyone directly or indirectly employed by either of them.

10. Term & Termination.

10.1. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue for a period of ____.   By mutual agreement, this Agreement may be renewed, under the existing terms and conditions, for a period of successive one (1) year periods, not to exceed X years.

10.2. Termination for Convenience. The Port may terminate this Agreement at any time for government convenience upon 30 days' advance written notice. On the date of termination, the Port shall pay the ~~Vendor~~Contractor any outstanding undisputed fees for Services not yet performed.

10.3. Effects of Termination. Upon termination of this Agreement, the Port shall cease all use of the System and delete, destroy, or return all copies of the documentation in its possession or control, subject to the Port's obligations to retain and/or disclose records pursuant to applicable law. The ~~Vendor~~Contractor will return all client data within 5 business days via the last back-up copy of the system database. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of the Port to pay fees incurred before termination; (b) Articles and Sections *IP*, *Confidential Information*, and *Limitation of Liability*.

11. MISCELLANEOUS.

11.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ~~Vendor~~Contractor employee or contractor will be an employee of The Port.

11.2. Notices. ~~Vendor~~Contractor may send notices pursuant to this Agreement to the following Port representative ____, at the following e-mail address:_____ , and such notices will be deemed received 24 hours after they are sent. The Port may send notices pursuant to this Agreement to _____, and such notices will be deemed received 24 hours after they are sent.

11.3. Assignment & Successors. ~~Vendor may not assign this Agreement or any of its rights or obligations hereunder without Port's express written consent. Any attempt to assign this Agreement, without prior written approval, shall result in the termination of this Agreement,~~

~~at the sole discretion of the Port. All rights of action for any breach of this Agreement by the Vendor are reserved by the Port.~~ Neither Party shall assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the other parties.~~.~~

~~11.3.~~11.4. Subcontracting. The ~~Vendor~~Contractor may enter into any subcontract(s) relation to the performance of this Agreement if mutually agreed upon in writing by both parties. The ~~Vendor~~Contractor's use of subcontracts shall not in any way relieve the ~~Vendor~~Contractor of its responsibility for the professional and technical accuracy, adequacy, and timeliness of the work to be performed under this Agreement. The ~~Vendor~~Contractor shall be and remain liable for the performance of the work in accordance with this Agreement, as well as any damages to the Port caused by the negligent performance or non-performance of the ~~Vendor~~Contractor's subcontractor(s).

~~11.4.~~11.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

~~11.5.~~11.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

~~11.6.~~11.7. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Washington. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Pierce County, Tacoma, Washington.

~~11.7.~~11.8. Time is of the Essence. ~~Vendor~~Contractor agrees that time is of the essence in its performance under this Agreement.

~~11.8.~~11.9. Technology Export. The Port shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by ~~Vendor~~Contractor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, The Port shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).

~~11.9.~~11.10. Public Records. The Port has to avail its records to a public inspection. Any and all records, i.e., proposals and pricing provided by the ~~Vendor~~Contractor, this Agreement, client data, and other documentation are considered non-confidential and non-proprietary in nature and will be subject to public records requests, public disclosure, and audit.

~~11.10.~~11.11.   Amendments. Any amendment or modification to this Agreement must be mutually agreed upon by both parties via a written amendment to be effective.

NOTE:

The following referenced Exhibits will be determined during Contract creation and will be mutually agreed to by the Port and the ~~Vendor~~Contractor:

- o **Exhibit A**, Licensed Software and Fee Schedule

- o **Exhibit B**, Port of Tacoma Service Level Agreement (SLA)