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| **Exhibit \_\_\_\_\_\_\_**  **SaaS** |  | City of Lynnwood **Procurement Services Division** 425-670-5000 |

**THIS** **CONTRACT #\_\_\_\_\_\_\_\_\_\_\_\_\_\_** ("Contract") is entered into by the **City of Lynnwood**,Washington (City), and       (the "Contractor"), whose address is      . The City is undertaking certain activities related to       and, the City desires to engage the Contractor to provide work in connection with such undertakings of the City,

**NOW, THEREFORE**, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

I. CONTRACT DOCUMENTS

The Contractor shall provide all work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

Contract, which consists of this page, the Terms and Conditions, and the following:

* + - 1. Contract Amendment(s)
      2. Contract, with its Terms and Conditions, and the following:

Scope of Work Exhibit A

Price Exhibit B

Certificate(s) of Insurance and Policy Endorsement Exhibit C

[Additional Exhibits TBD] Exhibit TBD

* + - 1. Request for Proposal (if applicable - as modified by any addenda)
      2. Contractor's Proposal (if applicable)

II. CONTRACT TERM

This Contract shall be effective when countersigned by the City and shall expire number (0) years after the date of the City’s signature, unless extended or terminated earlier pursuant to the terms and conditions of this Contract. The Warranty Period begins at Final Acceptance and continues for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement begins and continues biannually unless terminated described in this Contract. Any Software License provided under this Contract shall be perpetual.

III. ACKNOWLEDGEMENT AND AUTHORITY

The parties acknowledge that they have consulted with their respective attorneys and have had the opportunity to review this Contract. Therefore, the parties expressly agree that this Contract shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

The parties executing this Contract have authority to sign and bind its represented party to this Contract.

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| --- | --- | --- | --- | --- | --- |
| **COMPANY NAME** | |  | **THE CITY OF LYNNWOOD** | | |
| Authorized Signature | |  | Authorized Signature | | |
|  | |  |  | | |
| Name and Title (Print or Type) | |  | Nicola Smith, Mayor | | |
| Date Accepted: |  |  | Date Accepted: | |  |
|  | |  | |  | | |

**TERMS AND CONDITIONS**

1. DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the City’s determination that the Contractor's Work has been completed in accordance with the Contract.

Buyer: Individual designated by the City to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the City and the Contractor for completion of the Work under the Contract as set forth on Page 1 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the City for the performance of Services or Work under the Contract.

City: The City of Lynnwood and its officers, employees, agents, contractors, and subcontractors.

Data: Any information created or provided under this Contract.

Day: Calendar day.

Documentation: Technical publications and/or documentation relating to the use of the Software or SAAS to be Provided and delivered by Contractor under this Contract, such as reference manuals, training manuals, user manuals, maintenance manuals, installation, systems administration and technical guides designed to instruct the City on the features, uses, and functions of the Software or SAAS.

Effective Date: The date the Contract is countersigned by the City.

Enhancement: Technical or functional additions to the Software or SAAS to improve Software or SAAS functionality and/or operations. Enhancements are delivered with new releases of the Software or SAAS.

Error: An unanticipated Software or SAAS problem resulting in program behavior not following the Software’s logical design and/or the Contract.

Final Acceptance: The point when The City of Lynnwood acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the City to manage the project on a daily basis and who may represent the City for Contract administration. This Contract may be part of a larger City project.

RCW: The Revised Code of Washington.

SaaS: Software as a service.

Scope of Work (SOW)**:** An Exhibit to the Contract consisting of written descriptions of the Software or SAAS to be performed or provided or the technical requirements to be fulfilled under this Contract.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, localized versions of the computer Software programs and Enhancements thereto,

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Update: All published revisions to the Documentation and copies of the new release of the Software, which are not designated by Contractor as new products.

Upgrade: Subsequent releases of the Software or SAAS and Documentation that generally have a new major version number, i.e. version 6.3 to version 7.0 or minor releases, such as 6.3 to 6.4.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Software, SAAS, Hardware and Services specified under this Contract, including Contract Amendments and settlements.

1. GENERAL PROVISIONS
   1. Administration

The Contractor shall be responsible for performing the Work. The City is not a party to defining the division of work between the Contractor and its Subcontractors, if any.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform the work under this Contract.

* 1. Acceptance Testing

The City may give iterative acceptances as the work is accomplished either by phase or milestone. The Contractor will give the City “notice of completion” of work related to a specific milestone following the Contractor’s completion of all such work in accordance with the payment schedule and delivery requirements in the Contract.

* + 1. **Acceptance Process**. Upon completion of either the phase or milestone, the Contractor will notify the City and the Acceptance process will commence. Acceptance shall be based on conformance with the phase or milestone requirements set forth in the Contract. After notice by Contractor of completion of the phase or milestone, City will issue a written notice of phase or milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
    2. **Correction of Deficiencies Process**. If the work of the phase or milestone is rejected, Contractor will have ten (10) Days to correct items documented in the City’s notification of rejection. Following the delivery of Contractors’ notice that the work has been corrected, the Acceptance test will start again, and the City will either issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining work not in compliance with the phase or milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the work fails to comply with the phase or milestone after Contractor’s second attempt to correct the work and no clear plan can be agreed upon between the City Project Manager and the Contractor’s Project Manager, the City will determine the appropriate corrective action(s), up to and, including declaring a material breach of Contract.
  1. Final Acceptance Testing

The City shall begin the Final Acceptance testing as follows:

* + 1. The parties shall agree on the start date for the Acceptance test.
    2. The Acceptance test shall include ninety (90) Days of continuous operation of the Work without material defect in accordance with the Contract in the City’s fully implemented production environment.
    3. If the City Accepts the Work, the City will send a notice of Final Acceptance to the Contractor.
    4. If the City determines that the Work is not Acceptable, the City shall notify the Contractor, describing the deficiencies.
    5. The Contractor shall either Provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period. The parties shall mutually agree on a start date for beginning another Acceptance test.
    6. Another ninety (90) Day successful operation period shall follow any corrections or replacements to the Work.
    7. If the City Accepts the Work following a second or subsequent Acceptance test, the City will send a notice of Final Acceptance to the Contractor.
    8. If the Contractor does not correct or replace the unacceptable Work, the City may declare a material breach of Contract.
  1. Warranty
     1. No Waiver of Warranties and Contract Rights

Conducting of tests and inspections, review of Scope of Work or plans, payment for Work, or Acceptance or Final Acceptance of the Work by the City shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

* + 1. Warranty Term

The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the City. Any Work corrected shall be subject to this paragraph to the same extent as the Work initially Provided.

* + 1. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the City by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the City in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

* 1. Express Warranties for Service and SAAS
     1. Contractor warrants that during the Contract term, the Service and SAAS provided hereunder shall be free from significant programming errors and when used in accordance with this Contract shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in this Contract and all supplemental information provided by Contractor.
     2. Contractor warrants that it has full power and authority to license or sublicense the Software and or SAAS, and any applicable third-party software, to the City without the consent of any other person.
     3. Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract.
     4. Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services.
     5. Contractor warrants that the Software and or SAAS, the License to the City to use the Software and or SAAS, instructions for use of the Software and or SAAS, Documentation and the performance by Contractor of the Software and or SAAS, shall be in compliance with all applicable laws, rules and regulations.
     6. Contractor warrants the tapes, CD’s, DVD’s or other media delivered to the City to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the City.
     7. Contractor warrants that the Software and or SAAS Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as “backdoor shutdown mechanisms”, “time bombs”, “automatic unauthorized connection to outside systems”, programming that responds to or Provides information to outside systems’ “pinging”, and features that can “retire”, “shut down”, “cripple” or “stop” the Service. Contractor further warrants that neither the Software and or SAAS alone or through Contract with the Contractor is capable of electronic self-help that may deprive the City of the use of the licensed Service.
     8. Contractor warrants that future maintenance of Software and or SAAS releases shall not degrade the Software and or SAAS, cause a breach of any other warranty or require the City to purchase new or additional hardware or Software and or SAAS for continued operation of the Software and or SAAS.
     9. The Contractor warrants functionality as described in the Scope of Work and represents that the configuration identified in the Contract has been specifically selected and designed for the City as being an operationally efficient integration of hardware, Software and or SAAS.
     10. Contractor shall be responsible for providing and implementing a Software and or SAAS system that is successfully integrated into the existing system environment of the City and meets the functional requirements as specified in this Contract.
     11. The Express Warranties Set Forth In This Section Are In Lieu Of All Other Warranties, Express Or Implied, Including But Not Limited To The Implied Warranties Of Merchantability And Fitness For A Particular Purpose.
  2. Warranty Remedies
     1. If at any time during the twelve (12) month period immediately following Final Acceptance of any Work covered by this Contract, Contractor or the City discovers one or more material defects or errors in the work or any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the City, correct the defect, error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.
     2. During the sixty (60) Day media warranty period, the City may return defective media to Contractor and it shall be replaced without charge to the City.
     3. In order to qualify for remedial action under these warranties, the City shall report a warranty failure to the Contractor in writing within thirteen (13) months from the date of Final Acceptance. The Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the City or anyone other than the Contractor or its Subcontractors, unless under Contractor’s or its Subcontractor’s direction.
     4. The City shall give written notice of any defect to the Contractor. If the Contractor has not corrected the defect within thirty (30) Days after receiving the written notice, the City, in its sole discretion, may correct the defect itself. In the case of an emergency where the City believes delay could cause serious injury, loss or damage, the City may waive the written notice and correct the defect. In either case, the City shall charge-back the cost for such warranty repair to the Contractor.
     5. The Contractor is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements or Scope of Work, including shipping charges, for work found defective within the warranty period, regardless of who actually corrects the defect.
  3. Defective Work

Prior to the City’s use of the Software and/or SAAS, when and as often as the City determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within ten (10) Days of receiving such notification, the Contractor shall correct items documented in the City’s notification or supply the City with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The City may reject or accept this plan at its discretion. If the City rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the City by law, including those available under the Uniform Commercial Code, Title 62A RCW.

* 1. Payment Procedures; Prompt Payment of Subcontractors

For work accepted by the City the Contractor shall furnish invoices to The City of Lynnwood, [insert address], Seattle, WA  98104. All invoices shall include: purchase order and/or contract number, invoice date, number, and total. For each item invoiced, provide the complete description of the products, services, phases or milestones accepted, hours worked and any applicable Contract hourly rates, or authorized fees.

The City will not be bound by prices contained in an invoice that are higher than those in Exhibit B, or if not used as part of this Contract, then the current price list for this Contract approved by the City. Within thirty (30) Days after receipt of an invoice, the City shall pay the Contractor for accepted work, upon acceptance of payment Contractor waives any claims for the work covered by the invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the City will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the City.

* 1. Pricing

Prices shall remain firm for the duration of the Contract. After the initial number (0) year term, if the contract is extended by the City, the Contractor may request a price change(s) in writing delivered to the City.

The Contractor shall provide documentation satisfactory to the City in support of its request, such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s). The City reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about modifications to the request, or deny the request in its entirety. Any change in pricing granted by the City shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

* 1. Contract Amendment

All changes to the Contract shall be made in writing through a Contract Amendment. No oral statement or other conduct by the City shall change or modify the Contract. The City may perform an analysis of cost, price or schedule to determine the reasonableness of the proposed change to the Contract.

* 1. Changed Requirements

New federal, state and City laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well.

* 1. Taxes, Licenses, and Certificate Requirements

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the City immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

* 1. Notices

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

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| **THE CITY OF LYNNWOOD** | **CONTRACTOR** |
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|  |  |
|  |  |
|  |  |
|  |  |
| [xxx@lynnwoodwa.gov](mailto:xxx@lynnwoodwa.gov) |  |

1. LEGAL RELATIONS; INDEMNITY and INSURANCE
   1. Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

* 1. Evidence and Cancellation of Insurance
     1. Prior to execution of the Contract, the Contractor shall file with the City evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the City shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
     2. The Contractor shall, upon demand of the City, deliver to the City all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
     3. Failure to Provide such insurance in a timeframe acceptable to the City shall enable the City to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.
  2. Insurance Requirements

Refer to RFP 3178, Exhibit F, Technology Insurance and Indemnity Requirements.

* 1. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

* 1. Work Site Safety

The Contractor shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor’s compliance with these provisions.

* 1. Endorsements

Additional Insured Endorsement shall be included with the certificate of insurance. **The City requires this Endorsement to complete the Contract.**

1. CONFLICTS of INTEREST and NON-COMPETITIVE PRACTICES
   1. Conflicts of Interest and Non-Competitive Practices
      1. Conflict of Interest - By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the City. The City shall require that the Contractor take immediate action to eliminate the conflict.
      2. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Contractor represents that:
         1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
         2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the City or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
         3. Any Person having an existing contract with the City or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the City by offering any valuable consideration, thing or promise, in any form to any City official or employee shall have his or her current contracts with the City canceled and shall not be able to bid on any other City contracts for a period of two (2) years.
      3. Disclosure of Current and Former City Employees - To avoid any actual or potential conflict of interest or unethical conduct:
         1. City employees or former City employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the City or within one (1) year after leaving City employment if he/she participated in determining the Work to be done or processes to be followed while a City employee.
         2. Contractor shall identify at the time of offer current or former City employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former City employees involved in this Contract may result in termination of this Contract.
         3. After Contract award, the Contractor is responsible for notifying the City’s Project Manager of current or former City employees who may become involved in the Contract any time during the term of the Contract.
2. RECORDS and AUDITS
   1. Retention of Records, Audit Access and Proof of Compliance with Contract
      1. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

* + 1. Audit Access

The Contractor shall provide access to its facilities, including those of any Subcontractors, to the City, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The City shall give reasonable notice to the Contractor of the date on which the audit shall begin.

* 1. Audit Exception

The Contractor agrees that it is financially responsible for and will repay the City all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

* 1. Federal Funding Audit

If the Contractor expended a total of $500,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133 , which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO’s Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than $500,000.00. The Contractor shall provide one copy of the audit report to each City division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor’s fiscal year.

* 1. Public Records Requests

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the “Act”).

If the Contractor considers any portion of any record provided to the City under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” If a request is made for disclosure of such portion, the City will determine whether the material should be made available under the Act. If the City determines that the material is subject to disclosure, the City will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the City will release the portions of record(s) deemed by the City to be subject to disclosure. The City shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.”

1. INTELLECTUAL PROPERTY
   1. Patents, Copyrights and Rights in Subject Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the City. The City in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the City.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the City, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the City. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the City prior to printing.

The Contractor shall ensure that the substance of the foregoing subsections is included in each subcontract for the Work under this Contract.

* 1. Nondisclosure of Data

Data provided by the City either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the City data in any form without the prior express written approval of the City.

* 1. Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data, sealed court records, and other materials described as “Confidential”, “Proprietary” or “Business Secret”. The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the City or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the City’s or the third party’s confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the City of such requirement prior to disclosure.

1. NONDISCRIMINATION
   1. Nondiscrimination and Equal Employment Opportunity
      1. Nondiscrimination in Employment

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

* + 1. Nondiscrimination in Subcontracting Practices

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in City contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

* + 1. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA)

Pursuant to Title II of the ADA, and Section 504, The City of Lynnwood must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to City employees or members of the public under this Contract in the same manner as The City of Lynnwood is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

* + 1. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law

1. CLAIMS AND APPEALS; DISPUTE RESOLUTION
   1. Claims and Appeals

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Buyer and Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract documents. The City reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement Manager on claims for additional time or compensation shall be a condition precedent to litigation.

At all times, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this Section 8.1 as to any claim and appeal shall operate as a waiver and release of that claim and appeal and an acknowledgment of prejudice to the City.

* 1. Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through the required claims and appeal process set forth in Section 8.1, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative dispute resolution process prior to commencing litigation.

* 1. Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in Snohomish County Superior Court or U.S. District for the Western District of Washington, in Seattle.

1. TERMINATION
   1. Termination for Convenience/Default/Non-Appropriation
      1. Termination for Convenience

This Contract may be terminated by the City without cause, in whole or in part, upon providing the Contractor ten (10) Days' advance written notice of the termination. If the Contract is terminated pursuant to this Section 9.1.A, the City will be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination.

* + 1. Termination for Default

If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the City may terminate this Contract, in whole or in part, for default as follows:

* + - 1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 2.14. The Contractor shall have ten (10) Days from the date of receipt to cure the default or, at the City's discretion, provide the City with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
      2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the City, the City may terminate the Contract by serving a "notice of termination" in accordance with Section 2.14 setting forth the manner in which the Contractor is in default and the effective date of termination.
      3. The Contractor shall only be paid for Work performed and Accepted less any damages to the City caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the City to verify compliance with the Contract, applicable laws and regulations.
      4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the City hereunder in any manner.
    1. Termination for Non-Appropriation
       1. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the City may, upon written notice to the Contractor, terminate this Contract in whole or in part.

If the Contract is terminated pursuant to this Section 9.1.C: 1) the City shall be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination; and, 2) the Contractor shall be released from any obligation under this Contract affected by the termination or a related purchase order to provide further Work pursuant to the Contract.

* + - 1. Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the City Council of sufficient funds to support the Work described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year.

1. MISCELLANEOUS
   1. Other Public Agency Orders

Other federal, state, City and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The City does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

* 1. Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. If an assignment is approved, it shall be effective upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

* 1. Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the City shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

* 1. HIPAA – Protecting Patient Privacy

The Work under this Contract may require compliance with “The Health Insurance Portability and Accountability Act of 1996” (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

* 1. No Third Party Beneficiary

This Contract is for the sole and exclusive benefit of the City and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

* 1. Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

* 1. Non-Waiver of Breach

No action or failure to act by the City shall constitute a waiver of any right or duty afforded to the City under the Contract; nor shall any such action or failure to act by the City constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the City in writing.

* 1. Background Checks

Contractor warrants and represents that each and every Contractor employee can meet the following requirements: (a) No convictions within the past ten (10) years for crimes involving computers, moral turpitude, including fraud, perjury, dishonesty; and (b) No adverse employment actions within the past ten (10) years regarding dishonesty or the use or misuse of computers.

Contractor personnel needing access to secure areas, records, or systems may be required to complete a security/background check by the City.  The City may require Contractor’s employees, agents, consultants or sub-contractors to complete a brief questionnaire and complete fingerprinting as part of the investigation process.  The required background check will review and evaluate driving records, criminal records, employment histories, military records, personal and employment references and related information.  Contractor staff failing the background check may, at the sole discretion of the City, be restricted from working within secured areas or with City systems in any capacity.  The Contractor will assign alternative staff who have passed the background check to meet the requirements of the Contract.

1. SPECIFIC SAAS CONTRACTUAL TERMS AND CONDITIONS
   1. License

Subject to the terms and conditions set forth in this Contract, including payment of the license fees by City to Contractor, Contractor hereby grants to City a non-exclusive, non-transferable license to use the SAAS during the term of this Contract to achieve the purposes stated herein, as well as any Documentation and training materials.

* 1. Business Continuity

In the event that Contractor’s infrastructure or data becomes lost, damaged or destroyed, Contractor shall immediately, and not longer than one (1) business day, implement the Contractor’s Business Continuity Plan, as set forth in Exhibit 5, in order to continue to provide the SAAS. Contractor’s obligation to reimburse the City’s costs related to lost, damaged or destroyed data shall be determined by the City.

The plan, at a minimum, shall include the services of a third party recovery provider for which the City shall be the first in the order of recovery among Contractor’s customers. The third party recovery provider shall provide and assist Contractor in its operations, system management and technical support.

The Contractor shall include in its Business Continuity Plan a service offering, a distributed IT infrastructure and a mirrored critical system, Contractor will assist the City in providing such a system within one (1) Day of the City’s notification.

In the event that the SAAS is interrupted, the Data may be accessed and retrieved within two (2) hours at any point in time. Additionally, Contractor shall store a backup of Data in an off-site “hardened” facility no less than daily, maintaining the security of Data, the security requirements of which are described herein.

* 1. Enhancements, Upgrades, Replacements and New Versions of SAAS
     1. The Contractor agrees to Provide to the City, at no cost, prior to, and during installation and implementation of the system any Software/firmware Enhancements, Upgrades and replacements which the Contractor initiates or generates that are within the scope of the products licensed and that are made available at no charge to other Contractor customers.
     2. During the term of this Contract, the Contractor shall notify the City of the availability of newer versions of the SAAS and within thirty (30) Days Provide the City with this new version. The Contractor shall Provide any Updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied and reflecting the changes included in the new version of the SAAS as they are made available. The Contractor shall also Provide installation instructions, procedures and any installation program required by the Enhancement, Upgrade, Replacement or new versions of the SAAS.
     3. During the Contract term, Contractor shall not delete a feature or functionality in its SAAS to the City unless the Contractor provides sixty (60) Days advance notice and the City provides written consent to the deleted feature or functionality. Should there be a replacement feature or functionality, the City shall have the sole discretion whether to accept such replacement. The replacement shall be at no additional cost to the City.
  2. Contractor’s Use of Data

Contractor may use the Data strictly as necessary to carry out its obligations under this Contract, and for no other purpose other than the following:

* + 1. May observe and report back to the City on City’s usage of the SAAS, and make recommendations for improved usage of the SAAS;
    2. Ensure that the data center containing City Data meets the following physical and electronic security requirements
       1. Single point of entry;
       2. Main access monitored with additional access for emergency purposes only;
       3. Surveillance cameras in facility;
       4. Access validation with identity check;
       5. Access only to persons on Contractor’s approved access list;
       6. Log-in validation;
       7. Creation of accounts only as verified by Contractor or subcontractor hosting provider;
       8. Access to servers via encrypted means; and
       9. Servers running behind security firewall.
  1. Disposition of Data; Back-up Data

City retains the right to use the SAAS to access and retrieve City content and data stored on Contractor’s infrastructure at its sole discretion.

Contractor shall back up Data once in each 24-hour period.

* 1. Infrastructure and Security

Contractor shall take technical and organizational measures to keep Data secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access; and must deal with the Data only in accordance with City’s instructions.

At a minimum, Contractor shall be responsible for establishing and maintaining an information security program that is designed to:

* + 1. Ensure the security and confidentiality of the Data;
    2. Protect against any anticipated threats or hazards to the security or integrity of the Data;
    3. Protect against unauthorized access to or use of the Data;
    4. Ensure the proper deletion of Data;
    5. Ensure that all Contractor’s subcontractors, if any, comply with the foregoing.

In no case shall the safeguards of Contractor’s information security program be less stringent than the information security safeguards used by the City’s Information Security Program.

* 1. Location of Data

Contractor warrants and represents that it shall store and process City data and content only in the continental United States.

* 1. Data Center Audit and Certification

A SOC 3 audit certification shall be conducted annually, and Contractor agrees to provide the City with the current SOC 3 audit certification upon the City’s request.

At its own expense, the City shall have the right to confirm Contractor’s infrastructure and security practices via an onsite inspection at least once a year. In lieu of an on-site audit and upon the City’s request, Contractor shall complete an audit questionnaire regarding Contractor’s information security program.

In addition, Contractor agrees to have an independent third party perform a security audit at least once a year. The audit results and Contractor’s plan for addressing or resolving the audit results shall be shared with the City within ten (10) business days of Contractor’s receipt of the audit results. The audit should minimally check for buffer overflows, open ports, unnecessary services, lack of user input filtering, cross site scripting vulnerabilities, SQL injection vulnerabilities, and any other well-known vulnerabilities.

* 1. Data Breaches

Contractor shall report, either orally or in writing, to the City any use or disclosure of City data or content not authorized by this Contract or in writing by the City, including any reasonable belief that an unauthorized individual has accessed City data or content. Contractor shall make the report to City immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor’s report shall identify (i) the nature of the unauthorized use or disclosure, (ii) the City covered data or content, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the City.

Notwithstanding any other provisions in this Contract, Contractor shall be liable for all damages, fines and corrective action arising from disclosure of such information caused by Contractor’s breach of its data security or confidentiality provisions hereunder.

* 1. Services Provided by a Subcontractor

Prior to the use of any subcontractor for SAAS under this Contract, Contractor shall notify the City of the subcontractor(s) that will be involved in providing any of the SAAS to the City and obtain the City’s written consent. A list of the City-approved subcontractor is detailed in Exhibit 6.

In the event that Contractor terminates its agreement with the subcontractor, Contractor shall first allow the City to assume all of the rights and obligations of Contractor under the agreement and to transfer the agreement to the City, provided there shall be no changes in the services requirement. Contractor shall provide the City with advance written notice of its intent to terminate the agreement and at least thirty (30) Days to respond and indicate whether the City wishes to assume the rights and obligations under the agreement.

* 1. Importation of Data

Within one (1) Day of notification of termination of this Contract, the Contractor shall provide the City with complete, secure and dedicated data and content files suitable for importation into commercially available database software (e.g. MS-Access or MS-SQL), such as XML format, including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. These files will be comprised of Data contained in the Contractor's system. The structure of the relational database will be specific to the Data and will not be representative of the proprietary Contractor database.

* 1. Termination Assistance Services

During the ninety (90) Day period prior to, and or following the expiration or termination of this Contract, in whole or in part, Contractor agrees to provide reasonable termination assistance services at no additional cost to the City, which may include:

* + 1. Developing a plan for the orderly transition of the terminated or expired SAAS from Contractor to the successor.
    2. Providing reasonable training to City staff or the successor in the performance of the SAAS then being performed by Contractor;
    3. Using its best efforts to assist and make available to City any third-party services then being used by Contractor in connection with the SAAS; and
    4. Such other activities upon which the parties may agree.

**End of Terms and Conditions**