

Contract Number T09-MST-153

for

Data At Rest Encryption Software

between the

**Washington State Department of Information
Services**

&

Credant Technologies, Inc.

Effective Date: 4/30/09

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- Exhibit B: **Vendor's Response**

CONTRACT NUMBER T09-MST-153

for

DATA AT REST ENCRYPTION SOFTWARE

PARTIES

This Master Contract (Contract) is entered into by and between the state of Washington, acting by and through The Department of Information Services, an agency of Washington State government (Purchaser or DIS) located at 1110 Jefferson St. SE, Olympia, WA 98504-2445 and Credant Technologies, Inc., a corporation licensed to conduct business in the state of Washington (Vendor or Credant), located at for the purpose of purchasing Software licenses for Data At Rest Encryption Software.

RECITALS

The state of Washington, acting by and through The Department of Information Services issued a Request for Qualifications and Quotation (RFQQ) dated October 20, 2008 (Exhibit A) for the purpose of purchasing Software licenses for Data At Rest Encryption Software in accordance with its authority under chapter 43.105 RCW.

Credant Technologies, Inc. submitted a timely Response to the DIS's RFQQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQQ and has identified Credant Technologies, Inc. as an apparently successful Vendor. Vendor's Response was evaluated as satisfying the RFQQ's minimum mandatory requirements. DIS has determined that entering into a Master Contract with Credant Technologies, Inc. will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, Purchaser awards to Credant Technologies, Inc. this Master Contract, the terms and conditions of which shall govern Vendor's furnishing to DIS the Data At Rest Encryption Software licenses and Services. This Contract is not for personal use.

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

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

1. Definition of Terms

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

"Acceptance" shall occur when the Products are delivered.

"Acceptance Date" shall mean the date Vendor delivers the Products.

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 6:00 p.m., Central Time, except for holidays observed by the state of Washington.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social

Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data.

"Contract" or "Master Contract" shall mean this document, all schedules and exhibits, and all amendments hereto.

"Delivery Date" shall mean the date by which the Products ordered hereunder must be delivered to Purchaser by Vendor.

"DIS Contract Administrator" shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

"Effective Date" shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract. **"End User"** shall refer to the Purchasers hereunder who shall be the licensees of the Software.

"Exhibit A" shall mean the RFQQ

"Exhibit B" shall mean Credant's Response.

"Help Desk" shall mean a service provided by Vendor for the support of Vendor's Products. Purchaser shall report warranty or maintenance problems to Vendor's Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

"Installation Date" shall mean the date by which all Software ordered hereunder shall be in place.

"License" shall mean the rights granted to Purchaser to use the Software that is the subject of this Contract.

"Order" or "Order Document" shall mean any official document and attachments thereto specifying the Software and/or Services to be licensed or purchased from Vendor under this Contract.

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

"Product(s)" shall mean any Vendor-supplied Software and documentation.

"Proprietary Information" shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"Purchaser(s)" shall mean DIS and those government or nonprofit entities who purchase Data At Rest Encryption Software under this Master Contract and who have an active Interlocal or Customer Service Agreement (CSA) with DIS. DIS maintains a searchable database of current customers at: <http://techmall.dis.wa.gov/csa1/csasearch.aspx>.

"RCW" shall mean the Revised Code of Washington.

"RFQQ" shall mean the Request for Qualifications and Quotation used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“**Response**” shall mean Vendor’s Response to Purchaser’s RFQQ for Data At Rest Encryption Software Exhibit B hereto.

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

“**Services**” shall mean those Services provided under this Contract and related to the Software License(s) being purchased that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

“**Software**” shall mean the object code version of the Enterprise Server Software, Compliance Reporter Software, Gatekeeper Software, and Shield Software for which the Purchaser has acquired the right to use under this Contract. Software also means the source code version, where provided by Vendor. Software includes all prior, current, and future versions of the Software provided to Purchaser in accordance with Maintenance and Support and all maintenance updates and error corrections.

“**Specifications**” shall mean the written technical and other specifications set forth in the documentation provided by Vendor with the Software, including the technical descriptions of Vendor’s Software set forth in Vendor’s Response to the RFQQ.

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

“**Vendor**” shall mean Credant Technologies, Inc., its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract on behalf of Vendor. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“**Vendor Account Manager**” shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“**Vendor Contracting Officer**” shall mean Vendor’s General Counsel, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

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

“**Warranty Period**” shall mean the period of time as set forth in the section titled **Software Warranty** wherein Vendor warrants that the Software shall be in good operating condition and shall conform to the Specifications.

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

Contract Term

2. Term

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

2.2 This Contract's term may be extended by three (3) additional one (1) year terms, provided that the extensions shall be at DIS's option and shall be effected by DIS giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing by both parties.

3. Survivorship

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Invoice and Payment; Overpayments to Vendor; License Grant; Software Ownership; Ownership/Rights in Data; Data Warranty; No Surreptitious Codes Warranty; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's/Purchaser's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability**, and shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Vendor agrees to provide the Products and Services at the Prices set forth in Schedule A. No other Prices shall be payable to Vendor for implementation of Vendor's Response.
- 4.2. Upon election by Purchaser to receive maintenance and support Services from Vendor, Purchaser shall pay maintenance and support fees to Vendor at the Prices set forth below or in Schedule A.
- 4.3. Discount levels for Products may not be decreased and Services Prices for Services may not be increased during the initial term of the Contract.
- 4.4. If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchasers shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the DIS Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.

- 4.5. At least one hundred twenty (120) calendar days prior written notice to DIS, Vendor may propose Service rate increases by written notice to the DIS Contract Administrator. Any such percentage increase shall not be greater than five percent (5%) plus the percentage increase in the Consumer Price Index (as reported by the Bureau of Labor Statistics) over the prior annual reporting period. Price adjustments will be taken into consideration by DIS when determining whether to extend this Contract.
- 4.6. Vendor agrees that if during the Term of this Contract Vendor reduces its list price for Software, the Purchaser shall receive the benefit of such reduction on purchases consummated after the date of such list price reduction, and if Vendor reduces its list price for Software across the board on a percentage basis, the same percentage reduction shall apply to Purchaser's purchases, if any .
- 4.7. Vendor shall *not* be reimbursed for any expenses related to travel, i.e., per diem, meals, lodging, etc.

5. Advance Payment Prohibited

No advance payment shall be made for the Software and Services furnished by Vendor pursuant to this Contract, with the exception of maintenance services. If mutually agreed with Purchaser (such agreement to be evidenced by the shipping of Software against a Purchase Order), Contractor may invoice the Purchaser in advance for up to, but not more than a one year period for maintenance services.

6. Taxes

- 6.1. Purchaser will pay federal, state, provincial, value-added and local sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

7. Invoice and Payment

- 7.1. Vendor will submit properly itemized invoices to Purchaser at the address specified by purchaser. Invoices shall provide and itemize, as applicable:

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Vendor name, address, phone number, and Federal Tax Identification Number;

Description of Software, including quantity ordered;

Date(s) of delivery and/or date(s) of installation and set up;

Price for each item, or Vendor's list Price for each item and applicable discounts;

Maintenance charges;

Net invoice Price for each item;

Applicable taxes;
Shipping costs;
Other applicable charges;
Total invoice Price; and

Payment terms including any available prompt payment discounts.

- 7.2. Payments shall be due and payable within thirty (30) calendar days after receipt of Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Purchaser shall pay maintenance and support charges on an annual basis, in accordance with Section 5 (Advance Payment Prohibited). Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.
- 7.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.5. The Purchaser Contract number T09-MST-153 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.7. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of receipt of the Software or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

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

Software License

9. License Grant

- 9.1. Subject to the terms and conditions of this Contract, Vendor grants to Purchaser a non-exclusive, perpetual (except as provided in Section 25 Software Warranty and Section 44 Patent and Copyright Indemnification), non-transferable (except as among Washington State Agencies), internal license to (a) use the Enterprise Server Software and Compliance Reporter Software on no more than the number of computers licensed to Purchaser, (b) use no more copies of the Gatekeeper Software than what has been licensed to Purchaser, and (c) use no more copies of the Shield Software than what has been licensed to Purchaser. Vendor grants Purchaser a nonexclusive, nontransferable, nonassignable license to use the results of the Services solely with the Software and pursuant to the terms and conditions of this Contract and not for distribution or resale to third parties.

- 9.2. Reserved.
- 9.3. Purchaser will not, reverse engineer decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Vendor or Software owner. Purchaser does not acquire any rights, express or implied, in the Software, other than those rights specified in this Contract. Vendor or its third party licensors shall own and retain ownership of all right, title, and interest in and to (i) the Services and the Software and any copies, modifications, enhancements, and derivative works thereof; (ii) the Documentation and any copies thereof; (iii) any ideas, suggestions, or feedback directly relating to the foregoing ("Feedback") provided that this Section 9.3(iii) shall not obligate the Purchase to conduct reviews or provide reports to Vendor with respect to any such information; and (iv) all intellectual property rights embodied within the foregoing (i)-(iii). Purchaser shall not copy, modify, adapt or merge copies of the Software except as provided in this Contract.
- 9.4. Purchaser may copy each item of Software to a single hard drive.
- 9.5. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site(s)' employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when Purchaser's facilities, or any portion thereof, are inoperable due to emergency situations.
- 9.6. Freedom of Use. Vendor understands that Purchaser may provide information processing services to other users that are agencies of state government and other tax-supported entities. Vendor further understands that Purchaser or other users that are agencies of state government and other tax-supported entities may provide services to the public through Internet applications. Software delivered hereunder may be used in the delivery of these services. Vendor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

10. Software Ownership

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Software to Purchaser as provided in this Contract and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights in accordance with Section 42 below and. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or

administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

11. Ownership/Rights in Data

- 11.1. Purchaser and Vendor agree that all data and work products created solely for the benefit of and paid for by Purchaser to Vendor (collectively called "Work Product") produced pursuant to this Contract during any consulting engagement hereunder for such Work Product shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. Notwithstanding the foregoing, this Section shall not be construed so as to give Vendor any right, title or interest in any Purchaser data or proprietary information.
- 11.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 11.3. Vendor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section for such Work Product.
- 11.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 11.5. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall retain all right, title and interest in and to all Preexisting Material developed by or for Vendor prior to commencement of the Services hereunder. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide

received by Vendor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

12. Software Specifications

All Software will conform to its Specifications as described in Section 25. Vendor warrants that the Software delivered hereunder shall perform in conformance with the Specifications as described in Section 25.

13. Compliance with Standards

Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall be warranted as set forth in Section 25.

14. Date Warranty

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. Purchaser must report in writing any breach of the warranties contained in this Section. Purchaser's sole remedy and Vendor's sole liability for the breaches of this Section 14 is for Vendor to correct or provide a workaround for reproducible Software errors that cause breach of this warranty, or if Vendor is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Purchaser, Purchaser shall be entitled to return the Software to Vendor and recover any damages resulting from such noncompliance of this warranty. In the event of a breach of any of these representations and warranties, Purchaser shall be permitted to pursue whatever rights and remedies against Vendor as shall be available at law and in equity, including remedies associated with harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

15. Physical Media Warranty

15.1. Vendor warrants to Purchaser that each licensed copy of the Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by Purchaser.

15.2. Purchaser must report in writing any breach of the warranties contained in this Section 15. Purchaser's sole remedy and Vendor's sole liability for the breaches of this Section 15 is that Vendor shall replace, at Vendor's expense including shipping and handling costs, any Software copy provided by Vendor that does not comply with this warranty.

16. No Surreptitious Code Warranty

- 16.1. Vendor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below except as in accordance with the Documentation. Vendor further warrants that Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict Purchaser's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 16.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
- 16.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 16.4. Purchaser must report in writing any breach of the warranties contained in this Section 16. Purchaser's sole remedy and Vendor's sole liability for the breaches of this Section 16 is that Vendor shall cause the immediate replacement of all copies of the affected Software in the possession of Purchaser with copies that do not contain such Self-Help Code or Unauthorized Code. In the event of a breach of any of these representations and warranties, Purchaser shall be permitted to pursue whatever rights and remedies against Vendor as shall be available at law and in equity, including remedies associated with harm, injury, damages, costs and expenses incurred by Purchaser arising out of such breach.

17. Reauthorization Code Required

Vendor's Software shall not require a reauthorization code in order for the Software to remain functional upon Purchaser's movement of the Software to another computer system.

18. Software Documentation

Vendor will provide two (2) complete sets of documentation for each Software order, including technical, maintenance, and installation information. Vendor shall also provide two (2) complete sets of documentation for each updated version of Software that Vendor provides pursuant to the **Software Upgrades and Enhancements** section. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for easy reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the

obligations set forth in this section by providing Purchaser access to its web-based documentation information. Vendor may also provide such information on CD-ROM. Vendor grants Purchaser the right to copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

Vendor's Responsibilities

19. Shipping and Risk of Loss

Vendor shall ship all physical copies, if any, of Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After Delivery the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.

20. Purchaser Eligibility

In order to be eligible to purchase under this Master Contract, Purchasers shall have a Customer Service Agreement (Interlocal Agreement) with DIS. Contractor shall be responsible for verifying Purchaser eligibility. Contractor may use the search feature on the DIS website:<http://techmall.dis.wa.gov/CSA1/CSASearch.asp> or may contact the Office of Legal Services within DIS at 360-902-355 1 to ascertain Purchaser eligibility.

21. Delivery

- 21.1. Vendor shall deliver the Products ordered pursuant to this Contract within a commercially reasonable time after Purchaser places an order – the Delivery Date. For any exception to this Delivery Date, Vendor must notify Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and Vendor may be subject to termination of an order or of this Contract and/or other damages available under law for failure to deliver on time.
- 21.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 21.3. Vendor shall maintain a web site from which Purchaser may download the Software if that is the chosen method of delivery. Such web site shall be of a design approved by both Vendor and Purchaser prior to this Contract's execution. Vendor shall not materially change such web site without written notice to Purchaser. Time is of the essence with respect to delivery and Vendor may be subject to other damages available under law for failure to maintain an operable web site.

22. Site Security

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

23. Installation

All installation of the Software purchased pursuant to this Contract for use by Purchaser will be by and at the sole expense of Purchaser.

24. Reserved.

25. Software Warranty

- 25.1. **Software Warranty.** Vendor warrants that for a period of ninety (90) days from the date of each purchase each item of Software will perform in substantial accordance with the documentation delivered with such Software.
- 25.2. **Exceptions to Warranty.** Notwithstanding the foregoing, Vendor shall have no obligation to fix errors in the Software caused by accident, misuse, abuse, improper operation, misapplication, or any other cause external to the Software.
- 25.3. **Remedy for Breach of Warranty.** Vendor's exclusive liability and the Purchaser's sole and exclusive remedy for breach of the provisions of this warranty section shall be, at Vendor's option, to (i) repair or replace the Software which does not meet Vendor's warranty and which is returned to Vendor, or (ii) take return of the Software and refund the license fees paid by Purchaser to Vendor for the Software.

26. Software Upgrades and Enhancements

Vendor shall provide Purchaser with Software upgrades and enhancements in accordance with the Support and Maintenance terms in Schedule B, attached hereto, Software Maintenance and Support Services.

27. Software Maintenance and Support Services

- 27.1 Vendor shall provide Purchaser with Software Maintenance and Support Services in accordance with the Support and Maintenance terms in Schedule B attached.
- 27.2 When Vendor performs Services pursuant to this Contract that require the use of Purchaser's equipment, Purchaser agrees to make the equipment available at reasonable times and in reasonable time increments, and in no event will Purchaser charge Vendor for such use.
- 27.3 Help Desk Services: Vendor shall offer Help Desk Services for reporting errors and malfunctions and trouble shooting problems. Vendor's Help Desk Services shall be *by toll-free telephone lines, online and/or via email.*

28. Vendor Commitments, Warranties and Representations

Any written commitment by Vendor under the terms of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render

Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor as described in Section 25.

29. Training

Vendor agrees to provide training as set forth in Exhibit B, in accordance with the requirements set forth in Exhibit A.

30. Reserved.

31. Protection of Confidential Information

- 31.1 Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes (“Confidential Information”). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 31.2 Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser’s option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser’s Confidential Information.
- 31.3 If officially notified in writing that it is receiving specific Confidential Information hereunder, Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor’s records shall be subject to inspection, review or audit in accordance with **Review of Vendor’s Records**.
- 31.4 Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The

monitoring, auditing, or investigating may include, but is not limited to, salting databases.

- 31.5 Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 31.6 Subject to Section 56, Purchaser acknowledges that the Software (and any information incorporated therein or related thereto) is the Confidential Information of Vendor. Purchaser shall retain the Confidential Information of Vendor in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Contract. Purchaser shall only disclose Confidential Information of Vendor to those of its employees with a need to know such Confidential Information. Purchaser shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use or disclosure of Vendor's Confidential Information.

Purchaser shall not be bound by any obligations restricting disclosure and use set forth in this Contract with respect to Confidential Information of Vendor, or any part thereof, which:

was known to Purchaser prior to disclosure;

was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Contract;

was disclosed to Purchaser by a third-party, provided that such third-party is not in breach of any confidentiality obligation in respect of such information; or

is independently developed by Purchaser without the use of Vendor Confidential Information.

If the receiving party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information of the disclosing party, the receiving party shall use reasonable efforts, subject to Section 56, to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to the disclosing party to allow the disclosing party to seek protective or other court orders.

Contract Administration

32. Legal Notices

- 32.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:

Credant Technologies, Inc.

Attn: General Counsel

15303 Dallas Parkway, Suite 1420
Addison, TX 75001

Phone: 972-458-5492

Fax: 866-859-1548

E-mail: dlinebarger@credant.com

To Purchaser at:

State of Washington
Department of Information Services

Attn: TSD Contract Administrator

If by US Postal Service: *If by Overnight Courier:*

PO Box 42445 2411 Chandler Court SW
Olympia, WA 98504-2445 Olympia, WA 98502

Phone: 360-725-4200

Fax: 360-664-0711

E-mail: mcadmin@dis.wa.gov

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

32.3 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

33. Vendor Account Manager

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

Vendor Technical Manager: Joe Brady

Address: Credant Technologies, Inc, 15303 Dallas Parkway, Suite 1420, Addison, TX 75001

Phone: (206) 706-8023

Fax:

E-mail:

jbrady@credant.com

Vendor Account Manager: John Albertoli

Address: Credant Technologies, Inc, 15303 Dallas Parkway, Suite 1420, Addison, TX 75001

Phone: (949) 489-5663

Fax:

E-mail:

jalbertoli@credant.com

34. Section Headings, Incorporated Documents and Order of Precedence

- 34.1 The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 34.2 Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
 - a) Schedules A and B;
 - b) DIS' RFQQ dated October 20, 2008;
 - c) Vendor's Response to DIS' RFQQ dated December 5, 2008;
 - d) The terms and conditions contained on Purchaser's purchase documents, if used; and
 - e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Software to Purchaser.
- 34.3 In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
 - a) Applicable federal and state statutes, laws, and regulations;
 - b) Sections of this Contract;
 - c) Schedule A and B;
 - d) DIS's RFQQ dated October 20, 2008
 - e) Vendor's Response to DIS' RFQQ dated December 5, 2008;
 - d) The terms and conditions contained on Purchaser's order documents, if used; and
 - e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Software to Purchaser.

35. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties. For avoidance of doubt, all terms and conditions on a Purchaser, or Vendor purchase order document which conflicts with, or in any way purports to amend this Agreement, except to the extent that it is required by law, shall be of no contractual effect between the parties.

36. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Vendor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or

apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Purchaser.

37. Additional Products and Services

Vendor may submit new Products and Services with associated discounts or prices to the DIS Contract Administrator. New Products or Products which have had their names changed by Vendor and Services submitted by Vendor shall meet all applicable mandatory requirements of the RFQQ. Additional Products or Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to this Master Contract (Schedule A) by an instrument in writing, signed by both Vendor and DIS. Such writing shall include a specific description of the additional Services and/or Products, pricing, and additional terms and conditions as relevant.

38. Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor 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.

39. Governing Law

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

40. Subcontractors

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

41. Assignment

- 41.1 With the prior written consent of the DIS Contract Administrator, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff. Notwithstanding the foregoing, Vendor may assign this Contract to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction.
- 41.2 Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

42. Publicity

- 42.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.
- 42.2 Vendor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.

43. Review of Vendor's/Purchaser's Records

- 43.1 Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 43.2 All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

- 43.3 Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 43.4 It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.
- 43.5 A chartered or certified public accountant selected by Vendor may, upon reasonable notice and during normal business hours, but no more often than once a year, inspect Purchaser's records maintained pursuant to this Agreement. Purchaser shall provide such information to Vendor and certify that it has paid all fees required within 30 business days of such a request, provided that no more than 2 requests are made annually per Purchaser. If Vendor should choose to audit Purchaser's Software record, such audit will be at Vendor's expense. If an audit reveals any reproduction, use or distribution of the Software that is in excess of the number of Licenses owned by Purchaser, Purchaser shall promptly make an additional payment for the additional licenses pursuant to Schedule A.

General Provisions

44. Patent and Copyright Indemnification

- 44.1 Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
- a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor;
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations; and
 - c) has not compromised or settled the claim.
- 44.2 If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Software is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and provide Purchaser a refund. In the case of Software, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Software, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of

purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Software has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

- 44.3 Vendor has no liability for any claim of infringement arising solely from:
- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
 - b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
 - c) Use of the Product in a way not specified by Vendor; or
 - d) The claim relates to the use of any version of the Software other than the current, unaltered release, if such Claim would have been avoided by the use of a current unaltered release of the Software at no additional charge to Purchaser; or
 - e) unless the claim arose against Vendor's Product independently of any of these specified actions.
- 44.4 THE PROVISIONS OF THIS ARTICLE 43 STATE THE SOLE AND EXCLUSIVE LIABILITY OF VENDOR, AND THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER WITH RESPECT TO ANY CLAIM OF THE NATURE DESCRIBED HEREIN INCLUDING ANY CLAIMS ARISING UNDER SCETION 10 (SOFTWARE OWNERSHIP).

45. Save Harmless

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

46. Insurance

- 46.1 Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within ten (10) Business Days of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.
- 46.2 The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease; and
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000 and coverage of not less than \$1 million per occurrence/\$1 million general aggregate.

46.3 Reserved.

46.4 Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number T09-MST-153 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.

46.5 All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

46.6 Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

46.7 Vendor shall furnish DIS with copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.

46.8 By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

47. Industrial Insurance Coverage

For Vendors that have operations in Washington, prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

48. Licensing Standards

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

The Software and related information is subject to export and import restrictions. Purchaser shall comply with any laws that may impact Purchaser's right to export, import or use the Software or related information (including, without limitation, United States export laws). Purchaser shall not use the Software or related information for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Purchaser shall be responsible for procuring all required permissions for any subsequent export, import or use of the Software or related information.

49. OSHA/WISHA

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

50. Uniform Commercial Code (UCC) Applicability

- 50.1 Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 50.2 In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

51. Antitrust Violations

Vendor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to DIS any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

52. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

53. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

54. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

55. Treatment of Assets

- 55.1 Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor shall be pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 55.2 Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 55.3 Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 55.4 Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 55.5 Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 55.6 All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

56. Vendor's Proprietary Information

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

Disputes and Remedies

57. Disputes

- 57.1 In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 57.2 The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
- a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 57.3 Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 57.4 Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 57.5 If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

58. Attorneys' Fees and Costs

- 58.1 If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 58.2 In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of

mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

59. Non-Exclusive Remedies

Except as expressly stated herein, the remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

60. Failure to Perform

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

61. Limitation of Liability

- 61.1 The parties agree that neither Vendor, DIS nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Data Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA**, **Termination for Default**, and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section. **EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY PURSUANT TO THIS CONTRACT EXCEED 2X THE FEES PAID AND/OR PAYABLE BY PURCHASER TO VENDOR HEREIN.**
- 61.2 Neither Vendor, DIS nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor, DIS nor Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS or Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, DIS or Purchaser, or their respective Subcontractors.
- 61.30 If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 61.4 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

62. Termination for Default

- 62.1 If either Purchaser or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.
- 62.2 Reserved.
- 62.3 If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 62.4 This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

63. Termination for Convenience

When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contract Administrator may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Vendor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract for Software and Services received by Purchaser prior to the effective date of termination.

64. Termination for Withdrawal of Authority

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party. Notwithstanding the foregoing, Purchaser shall be liable for its obligations through the date of termination.

65. Termination for Non-Allocation of Funds

If funds are not allocated to DIS or Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

66. Termination for Conflict of Interest

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

67. Termination Procedure

- 67.1 In addition to the procedures set forth below, if DIS terminates this Contract, Vendor shall follow any procedures DIS specifies in DIS' Notice of Termination.
- 67.2 Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Vendor to deliver to Purchaser any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 67.3 Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon price, if separately stated, for the Products or Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 67.4 Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.
- 67.5 **Effects of Termination.** In the event of termination of this Contract, Purchaser shall destroy or return immediately the Software and all copies thereof to Vendor.

68. Covenant Against Contingent Fees

- 68.1 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 68.2 In the event Vendor breaches this section, DIS shall have the right to either annul this Contract without liability to DIS, or, in DIS' discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting and Administration Fee

69. DIS Master Contract Administration Fee and Collection

- 69.1 All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Vendor and remitted to DIS.
- 69.2 The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 69.3 Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

70. Activity Reporting

- 70.1 Vendor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Services and Equipment purchased under this Master Contract. The report shall identify:
 - a) This Master Contract number;
 - b) The month in which the purchase occurred;
 - c) Each Purchaser making purchases during each month of that quarter (identified and grouped by state, local or educational entity);
 - d) Total purchaser by each purchaser;
 - e) The total invoice price (excluding sales tax) for each Purchaser;
 - f) The sum of all invoice prices (excluding sales tax) for all Purchasers; and
 - g) The total amount of the DIS Master Contract Administration Fee.
- 70.2 The Activity Report and the DIS Master Contract Administration Fee shall be submitted on a quarterly basis in accordance with the following schedule:
 - For activity in the months: Report & Fee Due:**
 - January, February, March April 15th
 - April, May, June July 15th
 - July, August, September October 15th
 - October, November, December January 15th
- 70.3 Reports are required to be submitted electronically, in either Microsoft Work or Excel format, via email to mcadmin@dis.wa.gov
- 70.4 This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.
- 70.5 Monthly Activity Reports are required even if no activity occurred.
- 70.6 Upon request by DIS, Vendor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

71. Failure to Remit Reports/Fees

- 71.1 Failure of Vendor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Vendor, which may result in DIS terminating this Master Contract with Vendor after written notice with a reasonable opportunity to cure.
- 71.2 Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Vendor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 71.3 The DIS Contract Administrator will notify Vendor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Vendor to a forfeiting Purchaser may be considered failure to perform by Vendor.
- 71.4 If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

Contract Execution

72. Authority to Bind

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

73. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective upon the date of signature of DIS.

Approved
State of Washington
Department of Information Services

Approved
Credant Technologies, Inc.

Signature



Roland Rivera

Print or Type Name

4/30/09

Date

Signature



Daniel M. Brown

Print or Type Name

4/8/09

Date

Assistant Director, DIS Telecom Svcs Div.

Title

General Counsel

Title

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title

Date

Vendor Information
Vendor's UBI Number:602 714 228
Minority or Woman Owned Business Enterprise Yes _____ No <input type="checkbox"/> (Certification Number)

Schedule A Authorized Price List

Effective – March 2009

CREDANT PRICE LIST FOR STATE OF WASHINGTON

CREDANT Perpetual User Software Pricing

CREDANT Enterprise Shield Pricing **

Product Cat	State of Washington Special Pricing Part #	Part Description	MSRP	State of Washington Price
Perpetual Software	EE-SHD-WA-FULL	Credant Technologies' CREDANT Enterprise Edition Shield License (per device).	\$92.00	\$40.00
Perpetual Software	EE-SHD-WA-RM- ONLY	Credant Technologies' CREDANT Enterprise Edition Shield License (per device).	\$50.00	\$15.00

** A minimum number of 100 Shields is required for each order.

CREDANT Enterprise Server Pricing

Product Cat	State of Washington Special Pricing Part #	Part Description	MSRP	State of Washington Price
Perpetual Software	EE-SP00-EE-ENT- SVR	Credant Technologies CREDANT Enterprise Server (per server).	\$35,000.00	\$7,500.00

**ANNUAL SOFTWARE
MAINTENANCE**

Product Cat	State of Washington Special Pricing Part #	Part Description	MSRP	State of Washington Price
Software Maintenance	EE-ESS-STD-EE- SHD-WA-FULL	Standard Maintenance for Credant Technologies' Enterprise Edition Shield License (per device). [Maintenance is a support fee and is required. Maintenance begins on the date of invoice.]	\$18.40	\$8.00
Software Maintenance	EE-ESGS-GLD-EE- SHD-WA-FULL	Gold Level Maintenance for Credant Technologies' Enterprise Edition Shield License (per device). [Maintenance is a support fee and is required. Maintenance begins on the date of invoice.]	\$23.00	\$10.00
Software Maintenance	EE-ESS-STD-EE- SHD-WA-RM-ONLY	Standard Maintenance for Credant Technologies' Enterprise Edition Shield for Removable Media Only License (per device). [Maintenance is a support fee and is required. Maintenance begins on the date of invoice.]	\$10.00	\$3.00
Software Maintenance	EE-ESGS-GLD-EE- SHD-WA-RM-ONLY	Gold Level Maintenance for Credant Technologies' Enterprise Edition Shield for Removable Media Only License (per device). [Maintenance is a support fee and is required. Maintenance begins on the date of invoice.]	\$12.50	\$3.75
Software Maintenance	EE-ESS-STD-ENT- SVR	Standard Maintenance for CREDANT Enterprise Server Pricing. [Maintenance is a support fee and is required. Maintenance begins on the date of invoice.]	7000	\$1,350.00
Software Maintenance	EE-ESGS-GLD-EE- ENT-SVR		8750	\$1,875.00

CREDANT Professional Services
(All services include expenses)

Product Cat	State of Washington Special Pricing Part #	Part Description	MSRP	State of Washington Price
CREDANT Professional Services	PS-000-WA	CREDANT on-site Professional Services (Hourly Rate)	\$300	\$250

CREDANT Training Services
(All services include expenses)

CREDANT Two (2) Day Technical Administrator Training - ONSITE	TR-ETECH-ADMIN-TRNG-ONSITE	CREDANT (2) Day Technical Administrator Training to be held Onsite at State of Washington Facility. Class for a maximum of 10 Students.	\$13,000	\$12,500
CREDANT Two (2) Day Technical Administrator Training - WEBEX	TR-ETECH-ADMIN-TRNG-WEBEX	CREDANT (2) Day Technical Administrator Training to be held via WEBEX for State of Washington employees or affiliates. Class for a maximum of 10 Students.	\$7,000	\$5,000

Schedule B

Maintenance and Support Terms

1. DEFINITIONS

- a) "Code Fix" shall mean the modification of the source code of the Supported Software to correct a Failure.
- b) "Failure" shall mean the Supported Software, when used properly, does not substantially perform in accordance with the documentation associated therewith.
- c) "Level One Support" shall mean the initial response (and any follow-up response as appropriate) to a Purchaser-initiated Support Request. Level One Support includes initial information gathering and may include, without limitation, some or all of the following: verification of entitlements; answering product installation, configuration or usage questions; initial problem information gathering; problem isolation and identification; providing standard fixes, Code Fixes, and Workarounds to known problems.
- d) "Level Two Support" shall mean promptly responding to Support Requests escalated by Level One Support resources by providing Relief reasonably acceptable to Purchaser. Level Two Support is provided by "product specialists" and consists of: additional information gathering and problem isolation; providing Relief for both new and known complex problems; the escalation of Support Requests to Level Three Support when problems remain unresolved or require formal fixes.
- e) "Level Three Support" shall mean promptly responding to Support Requests escalated by Level Two Support resources by providing Relief reasonably acceptable to Purchaser. Level Three Support is provided by well-trained technical support specialists and engineers and consists of: providing temporary Relief if it has not already been provided, including Workarounds and Code Fixes.
- f) "Maintenance Services" shall mean the provision of Releases and Versions for Supported Software in accordance with the terms and conditions of this Agreement.
- g) "Relief" shall mean:
 - 1) an immediate solution, resolution, or Code Fix to a Failure, or
 - 2) a Workaround that substantially avoids the Failure or reduces the impact of such Failure until such time that a Code Fix is available; provided however that Relief does not include recovery (e.g. restoration of a system database or similar capacity), which shall be and remain the responsibility of Purchaser.
- h) "Severity Level" shall mean a tiered system to define the importance and severity of a particular Failure. For purposes of this Agreement, the Severity Levels are:

4	Minor product problems or issues having no operational impact on the company (i.e., requests for information, cosmetic changes, documentation issues, etc.).
3	Relatively minor problems or issues having little impact on the operation of the Software but may impact a few users.
2	Problems or issues having a significant impact on the company's use of the Software.
1	Problems or issues in the Software that seriously interrupt or

	completely prevent the company from performing regular business operations.
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- i) "Support Services" shall mean Level One Support, Level Two Support, and Level Three Support services.
- j) "Support Request" shall mean either a question regarding the use of Supported Software, the reporting of a suspected Failure or defect in the Supported Software, or a request for changes to the Supported Software.
- k) "Supported Software" shall mean the then-current Version of the Software and the Version immediately preceding such release, including all Releases for each such Version (e.g., if the current version is 4.15, then version 3.00 to 4.15 would be supported).
- l) "Release" means a subsequent release of existing Supported Software which will generally contain bug fixes and which will generally not contain major, new functionality. Releases will be designated by a change in the digit of the release number to the right of the first decimal. e.g. X.0.1 to X.0.2.
- m) "Version" means a subsequent release of existing Supported Software, other than those reasonably designated as new products for which Vendor charges separately, which will generally contain new functionality and enhancements in addition to bug fixes. Versions will be designated by a change in the digit of the release number to the left of the first decimal. e.g. 1.X to 2.X.
- n) "Workaround" shall mean the temporary prevention of the reoccurrence of a Failure after implementation of a specific procedural or process change.

2. SUPPORT SERVICES

- 2.01 Support Obligation. Vendor shall use commercially reasonable efforts to provide Purchaser with Support Services.
- 2.02 Response Time. Vendor shall diligently respond to all Support Requests that are properly forwarded to it by Purchaser in accordance with this Schedule during the hours of 8am Pacific Time to 5pm Pacific Time, Monday through Friday, excluding holidays. Support Requests shall be handled in order of Severity Level, with the most immediate attention being given to Failures of Severity Level 1. Without limiting the foregoing, Vendor shall make an initial response (but not necessarily provide Relief) to all Support Requests by the end of the business day that such request was received.
- 2.03 Escalation Procedure. Vendor shall provide the Support Services in accordance with the following escalation procedure: All incoming Support Requests shall initially be assessed and assigned a Severity Level. The Support Request shall then be routed to an appropriate technical person assigned to handle Support. Such person shall use commercially reasonable efforts and resources to provide Relief. In the event that the Level One Support is unable to provide Relief, the request shall promptly escalate to Level Two Support. Level Two Support shall promptly attend to the Support Request and attempt to provide Relief. In the event that the Purchaser still has not obtained Relief from the Level Two Support, a Support Request will be escalated to Level Three Support where commercially reasonable efforts and resources will be used to provide Relief as soon as possible.
- 2.04 Assistance to Vendor. Purchaser agrees to provide reasonable assistance to Vendor concerning the Failure.
- 2.05 Code Fixes. In the event that Vendor determines that a Code Fix is required to correct a Failure of Severity Level 1 or 2, Vendor will use commercially reasonable efforts to provide such Code Fix to the Purchaser experiencing the Failure as soon as practical considering the scope of the Code Fix, the Vendor update schedule, and the Severity Level of the Failure.

2.06 Limitations of Support. Vendor's support obligations hereunder are subject to the following conditions and limitations:

A. Vendor shall not be obligated to provide Support Services relating to other than the Supported Software.

B. Vendor shall not be obligated to provide Support Services if Vendor reasonably believes that (i) the Failure was caused by third party software or hardware not supported per the Documentation or by Purchaser's misuse of the Software; or (ii) Purchaser has materially breached the Agreement.

3. MAINTENANCE SERVICES

3.01 Maintenance Obligation. Vendor shall use commercially reasonable efforts to provide Purchaser with Maintenance Services per this supplement for items purchased within this agreement. (See Schedule A of the Agreement for list of Vendor Software purchased.)

3.02 Releases. Vendor shall provide Purchaser access to Releases when made available and at no additional charge. Vendor shall have no obligation to produce Releases, and decisions to make and release Releases shall be solely made by Vendor.

3.03 Versions. Vendor shall provide Purchaser access to Versions when made available and at no additional charge. Whether a new release is a Release or Version shall be Vendor's sole decision. Vendor shall have no obligation to produce Versions, and decisions to make and release Versions shall be solely made by Vendor.