



**PORT OF TACOMA  
REQUEST FOR PROPOSALS  
No. 070930**

**Rail Track Inspection System**

Issued by  
Port of Tacoma  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

<b>RFP INFORMATION</b>	
Contact:	Juli Tuson, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Phone:	(253) 383-9436
Submittal Due Date	<b>JULY 12, 2018 @ 2:00 PM (PST)</b>

PLEASE SUBMIT ALL CORRESPONDENCE AND PROPOSALS  
VIA E-MAIL DIRECTLY TO THE PROCUREMENT CONTACT LISTED ABOVE  
AND INCLUDE 'RAIL TRACK INSPECTION SYSTEM' IN THE SUBJECT LINE

PORT OF TACOMA  
Request for Proposals (RFP) #070930  
Rail Track Inspection System

Through this RFP, the Port aims to select a Rail Track Inspection software solution.

**A. BACKGROUND**

The Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos and heavy-lift cargo. Created by Pierce County citizens in 1918, the Port of Tacoma has become one of the largest container ports in North America and one of the top 50 in the world. The Port of Tacoma manages a diverse set of business operations relating to maritime trade. To learn more about the Port of Tacoma, visit [www.portoftacoma.com](http://www.portoftacoma.com).

The Port of Tacoma owns approximately 70 miles of track in Tacoma, WA. The Port currently executes track inspection manually (pen and paper). This means that if Federal Railroad Administration (FRA) regulations need to be consulted, it cannot be done in the field. In addition, long term trends about rail issues are difficult to analyze. The Port anticipates a need to move to automation in order to achieve these objectives.

The Port anticipates awarding a single contract to the selected vendor. The period of performance of the contract is three (3) years, with an option to extend for three (3) additional two (2) year terms (for a total of 9 years) as mutually agreed upon by both parties. Any contract awarded from this RFP may be subject to Port of Tacoma Commission approval.

The Port's Standard Terms and Conditions are included as part of Attachment B to this RFP. By submitting a Proposal, the Proposer represents that it has carefully read and agrees to be bound by the Port's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language and describe why it is in the Port's best interests to adopt the alternative language.

Proposals submitted with altered or conditioned Terms and Conditions or bid documents without prior written agreement from the Port will be considered non-responsive and not considered for evaluation.

**B. SCOPE OF SERVICES:**

Proposers are to provide Rail Track Inspection Software solution with a preference to SaaS based solutions (extra points will be given for SaaS based solutions).

The overall services include:

- Software solution meeting the requirements as defined in Attachment D.
- Implementation services which could include Project management and Business Analyses services
- Product/Solution training
- Technical support (break/fix and escalated) and system maintenance services
- Other related services as required

### **C. DELIVERABLES:**

Deliverables will include:

For solution -

- Software solution meeting the requirements as defined in Attachment D.

For Implementation Services -

- An issue tracking system for the duration of the project implementation for the logging, management and closure of all issues and resolutions with comprehensive notes.
- Installation and configuration support.
- Installation and configuration documentation.
- Technical and user acceptance test plans.
- Training documentation.
- Training session(s) given either on site or remote.
- PM deliverables such as project plan, risk/issue logs.

For Support services -

- Technical support services delivered within the terms of an agreed and documented service level agreement.

### **D. RFP ELEMENTS & EVALUATION CRITERIA:**

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the firm's/team's abilities to meet the requirement of this RFP. Emphasis will be on completeness of content. The written proposals should be prepared in the sequential order as outlined below.

Proposals are limited to 20 numbered pages (8 ½ by 11 inch) **including** the cover letter and all appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. Proposals that do not follow this format will not be reviewed.

The cover letter shall include the RFP title and number as well as the name, title, email address, phone number and address of the proposing team's main contact and include the following information:

- Describe any claim submitted by any client against the firm within the past two years related to the services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 5% of the firm's fee for the services provided.
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.
- A statement indicating acceptance of the Port's Terms and Conditions and acknowledgement of any addenda issued.

**Proposals are to address, and will be evaluated upon, the following criteria:**

INITIAL EVALUATION PHASE

1. Qualifications & Experience.....10 PTS
  - Describe the qualification and experience of the firm submitting the proposal, including:
    - Length of time in business; length of time offering software and services similar to those proposed; market/vertical specializations.
    - Number of customers; number of current, active users of the proposed software.
  
2. Solution.....40 PTS
  - Complete requested information on the Requirements Matrix (ATTACHMENT D)
  - Describe in detail the solution proposed, including: both software and hardware components
  - Describe in detail the solution provisioning model proposed. Include information on service type (SaaS, hosted, etc.), infrastructure utilized, security and redundancy considerations, multi-tenancy environments, data centers including third party information and physical locations, etc.
  - If solution is a SaaS solution then complete requested information in Port of Tacoma SaaS Requirements (ATTACHMENT E). (Extra points will be given for SaaS based solutions.)
  
3. Work Approach.....20 PTS
  - Describe the companies proposed project management approach. Include a draft project plan defining project phases, tasks, resources (both consultant and Port) and anticipated task durations.
  - Assumptions and Risks: Define the assumptions made regarding accomplishing the Scope of Services. Define the factors the consultant believes are risks to the successful completion of this project and proposed mitigation strategies.
  - Coordination & Communication: Provide a plan for communications and coordination between the Consultants team and the Port.
  - Describe the consultants considerations for onsite or remote access performance of project tasks.
  - Include a summary of innovative ideas and suggestions for enhancing the scope of services.
  - Technical Support: Define the consultant's experience providing technical support services and describe the organizational support structures and processes established.

4. Compensation.....30 PTS

**Compensation information MUST be provided on Attachment C and submitted separately from the proposal, in an individual PDF document.**

All rates and costs/fees quoted shall be:

- **Fixed, fully burdened, including, but not limited to, administrative overhead and all direct/indirect expenses.**
- Quoted in US Dollars,
- Full cost inclusive of sales tax and other government fees, taxes and charges, and
- Valid throughout the contract period unless otherwise amended and agreed to by both parties in writing.

NOTE: THE PORT OF TACOMA RESERVES THE RIGHT TO AWARD CONTRACTS FROM THE INITIAL EVALUATION PHASE TO THE TOP RANKED FIRM. IF THIS RIGHT IS NOT EXERCISED, THE PORT MAY REQUEST REFERENCES FROM AND INTERVIEW THE TOP RANKED FIRMS. THE REFERENCES AND INTERVIEWS WILL BE SCORED AS INDICATED BELOW IN THE FINAL EVALUATION PHASE. THE AWARD WILL THEN BE BASED ON THE FINAL, ACCUMLATIVE SCORE.

FINAL EVALUATION PHASE (if applicable)

5. References.....50 PTS

Ensure completion of a minimum of 3 maximum of 5 references submitted using Reference Form forwarded at time of final evaluation phase. The Port will evaluate the reference checks to assess the proposed team’s overall performance and success of previous, similar work. Reference checks will also be utilized to validate information contained in the proposal. The Port may contact submitted reference sites directly to accomplish this.

6. Interviews including a demonstration.....100 PTS

Interviews may be conducted with the top-ranked proposers. Failure to participate in the interview process will result in the proposer’s disqualification from further consideration. Interviews will be held at the Port of Tacoma, Tacoma, WA. Travel costs will not be reimbursed for the interview.

**Attachments:**

**ATTACHMENT A – INSTRUCTIONS FOR PROPOSING**

**ATTACHMENT B – SAMPLE PERSONAL SERVICES AGREEMENT INCLUDING TERMS AND CONDITIONS**

**ATTACHMENT C – RATE SHEET**

**ATTACHMENT D – SYSTEM REQUIREMENTS MATRIX**

**ATTACHMENT E – SaaS REQUIREMENTS**

**ATTACHEMENT F – SAMPLE SaaS AGREEMENT**

## **RFP PROCESS**

### **SOLICITATION TIMELINE:**

Issuance of RFP	JUNE 25, 2018
Last Day To Submit Questions	JULY 6, 2018
<b>Bid packets due</b>	<b>JULY 12, 2018 @ 2:00 PM (PST)</b>
Review/Shortlist*	<b>JULY 26, 2018</b>
Interviews (if required)*	WEEK OF AUGUST 6, 2018
Final Selection*	AUGUST 13, 2018
Execute Contract*	AUGUST 20, 2018

\*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the [Port's website for this solicitation](#).

### **VENDOR OBLIGATION**

Port of Tacoma's (Port) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Contracts'; 'Procurements'.

When viewing the details page for this procurement on the Port's Website firms have the option of subscribing to the Holder's List.



By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

**\*Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

### **COMMUNICATION / INQUIRES**

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the Port, other than the Procurement Representative listed on the RFP may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department, [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com) (**Solicitation Name** in the subject line).

Proposers who may have questions about provisions of these documents are to email their questions by the date listed above. The Port will respond to all written questions submitted by this deadline.

## **ADDENDA**

The Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the Port will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List. Acknowledgement of addenda is required in cover letter.

## **SUBMITTAL PROCESS**

Proposals must be received via email on or before the date and time outlined on the front page of this proposal. Send your electronic submittal to:

[procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)

Name of Firm, RFP Title (Subject Line)

Please submit proposal, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**. It is the **Consultant's responsibility to verify the receipt of the submittal**. Electronic verification will be provided upon request.

**\*Late proposals will not be accepted by the Port. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

## **EVALUATION AND AWARD PROCESS**

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the proposals and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The Port intends to select the Proposer who represents the best value to the Port. The Port reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the Port may require. The Port reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

### **Procedure When Only One Proposal is received**

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the Port to analyze the proposal. The Port reserves the right to reject such proposals for any reason.

### **GENERAL INFORMATION**

News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the Port.

### **COSTS BORNE BY PROPOSERS**

All costs incurred in the preparation of a Proposal and participation in this RFP and negotiation process shall be borne by the proposing firms.

### **PROTEST PROCESS**

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the Port's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com).

Consideration. Upon receipt of the written protest, the Port will consider the protest. The Port may, within three (3) business days of the Port's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the Port, the Contracts Director of the Port or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the Port's receipt of the protest. (If more than one (1) protest is filed, the Port's decision will be provided within six (6) business days of the Port's receipt of the last protest.) If no reply is received from the Port during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

### **SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES**

The Port of Tacoma encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or



contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

**PUBLIC DISCLOSURE**

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “TRADE SECRET” on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the Port by the stated deadline, the Port will release the requested portions of the proposal. By submitting a response the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.



## Attachment B

### **PERSONAL SERVICES AGREEMENT NO. 070930**

---

**PROJECT:** Rail Track Inspection System

**CONSULTANT:** Company, Address, City, State, Zip

**PROJECT MANAGER:** PM **GL ACCOUNT NO.** 10-6005-70-0000-00

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (*hereinafter referred to as the "Port"*) and **xxCOMPANYxx** (*hereinafter referred to as the "Consultant"*) for the furnishing of **xxTITLExx** Personal Services (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

#### **SCOPE OF WORK**

Consultant to provide Rail Track Inspection Software solution with a preference to SaaS based solutions . The overall services may include:

- Software solution meeting the requirements as defined in attachment?
- Implementation services which could include Project management and Business Analyses services
- Product/Solution training
- Technical support (break/fix and escalated) and system maintenance services
- Other related services as required

#### **DELIVERABLES**

Deliverables will include:

For solution -

- Software solution meeting the requirements as defined in Attachment D.

For Implementation Services -

- An issue tracking system for the duration of the project implementation for the logging, management and closure of all issues and resolutions with comprehensive notes.
- Installation and configuration support.
- Installation and configuration documentation.
- Technical and user acceptance test plans.
- Training documentation.
- Training session(s) given either on site or remote.
- PM deliverables such as project plan, risk/issue logs.

For Support services -

- Technical support services delivered within the terms of an agreed and documented service level agreement.

**COMPENSATION**

This will be accomplished on fully burdened, fixed basis and will not exceed \$00,000.00 without prior written approval from the Port.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

All invoices shall be emailed to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com). The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

Consultant agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

The length of this agreement is from the date of execution to **xxDATExx**.

This agreement is expressly conditioned upon the **Terms and Conditions and Guidelines for Consultant Fees and Reimbursable Items** attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

**AGREED**

**PORT OF TACOMA**

**CONSULTANT (LEGAL NAME)**

By \_\_\_\_\_ Date \_\_\_\_\_  
Name  
Title

By \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Print Name Title

## Port of Tacoma Terms And Conditions Personal Services Agreement

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

### 1. Key Personnel

The Consultant and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the Port.

### 2. Relationship of the Parties

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

### 3. Conflicts of Interest

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

### 4. Compliance with Laws

Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service.

### 5. Records and other Tangibles

The Port of Tacoma is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56 and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

### 6. Ownership of Work

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

disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the Port.

## 7. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the Port.

## 8. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement. Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Consultant's expenses will be reimbursed at cost, subject to attached guidelines, with the exception of all third party costs which will be reimbursed at cost plus the negotiated percentage markup.

## 9. Payment Schedule

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, work order number, title of project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate and all authorized expenses itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the month to be paid by the end of the

current month, unless other terms are agreed to by the parties.

## 10. Costs and Disbursements

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

## 11. Insurance - Assumption of Risk

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

i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

ii. Automobile Liability: ISO Form Number CA 00 01 covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident.

iii. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.

iv. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$1,000,000 per claim.

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

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

d) All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VI or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. The Port shall be

named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Additionally, except for Workers Compensation, waivers of subrogation shall be provided by endorsement to all policies.

## **12. Standard of Care**

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

## **13. Time**

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

## **14. Assignability**

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

## **15. Term of this Agreement**

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

## **16. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related

to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

## **17. Extent of Agreement**

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

**Attachment "C"**

**HOURLY RATES**

**Consultant**  
**Rail Track Inspection System**  
**PSA No. 070930 / GL Account No. XXXXXX**

<b><u>Deliverable</u></b>	<b><u>Cost*</u></b>
Solution	\$
Implementation Services	\$
Support Services	\$
	\$
	\$

\*Costs are fixed, fully burdened



**Attachment D**

Each requirement in this section is preceded by a priority, and then followed by a description, coded response, and vendor comments. Please read the priority definitions below:

Priority	Description
<b>Mandatory</b>	The system will fail if it cannot meet this requirement.
<b>High</b>	This feature is highly desirable and should be implemented as long as it is feasible to do so.
<b>Medium</b>	This feature is desired, but if the work required to implement the feature is too great, it will be sacrificed.
<b>Beneficial</b>	This feature is “nice to have.” It will be implemented as long as it does not require significant additional costs or work.

Proposer must enter the most appropriate Code in the ‘Coded Response’ column for each requirement listed. Use only the Codes listed below provide a response for each row and only list one Coded Response per row. Include additional information in the ‘Proposer Comment’ column as indicated or for further description.

Coded Response	Description
<b>F</b>	<b>Fully provided out-of-the-box (no modification or customization)</b>
<b>M</b>	Provided with modifications (describe in Proposer Comments)
<b>C</b>	Requires customization at POS cost (explain in Proposer Comments)
<b>A</b>	POS option to develop functionality via use of vendor-supplied API or SDK
<b>R</b>	Met by use of reporting tool
<b>TP</b>	Met w/ third party s/w (specify in Proposer Comments)
<b>NV</b>	Next version/release (specify in Proposer Comments)
<b>NA</b>	Not available

No.	Priority	Description	Coded Response	Proposer Comments
		<b>Functional Requirements – Hardware/Device</b>		
1	Mandatory	Usable on a mobile device (i.e. Tablet, Phone)		
2	Mandatory	If mobile device is included in the solution it must have cell connectivity		
3	Mandatory	If mobile device is included in the solution it must be usable in all weather (MIL-STD-810G, IP65 standards)		
4	Mandatory	Mobile devices must be able to function while offline (loss of connectivity)		
		<b>Functional Requirements – Software/System</b>		
5	High	Gives automatic pending inspection date notification for rail elements		
6	High	Gives overdue inspection notices for rail elements		
7	Medium	Is SaaS (Software as a Solution)		

8	High	Can exclude and account for sections of rail for specific time periods (for example if maintenance/inspection was being performed by a third party)		
9	High	It is possible to import outside/external reports into system using standard formats (i.e. csv)		
10	High	System generates repair countdown calendar for remedial action/repairs found because of inspection		
11	Mandatory	System can import rail elements from the IBM product Maximo		
		<b>Functional Requirements – Reporting/Compliance</b>		
12	Mandatory	System must have FRA regulations built into it. Rail Inspector must be able to access regulations from within the product		
13	Mandatory	Generates reporting of fault and inspection statistics which include frequency, location and types of defects		
14	Mandatory	Meets SaaS rules as defined in attachment E (SaaS requirements)		
15	Mandatory	Can generate printable reports		
16	Mandatory	Is compliant with FRA electronic record keeping rules (CFR-2010-title49-vol4-part217)		

17	High	Has a mgmt. console which can be used by a supervisor to monitor activities and work output		
		<b>Other Requirements</b>		
18	Mandatory	Includes 2 days of user training including documentation		

## **ATTACHMENT E – Port of Tacoma General SaaS Requirements**

The following table describes the general requirements for SaaS services at the Port of Tacoma. **If the solution being proposed is a SaaS solution then it must comply with these requirements.**

<b>Requirement</b>
The system shall be capable of supporting 24/7 365 availability
The system shall be protected by current virus and malware protection software
The system shall be protected by firewalls that serve to prevent unauthorized access and attacks
The system shall be capable of providing an audit log of:
All users with general access
All users with superuser access
All users with system level access
All users with database level access
All users with server level access
The system shall be capable of providing an audit log of access for all users
The system shall be supported by data centers located in the continental United States
The system shall have redundancy protocols in place that support
Less than 15 minute downtime for users
Less than 30 minute loss of data for users
Do not require users or PoT staff to update configuration settings
The system shall have backup protocols in place that support
A restore/ image point for data taken once per hour
A restore/ image point for system and data taken once per day
A restore/ image point for system and data taken once per week
A restore/ image point for system and data taken once per month in an additional format [such as tapes] in the event of a total loss of the system
The system shall be physically protected by:
On premise security personnel
Controlled access
Continuous video surveillance
Seismically braced server racks
Fire suppression systems
Continuous monitoring of server operations
The system shall be supported by a disaster recovery plan
That is tested at minimum of 1x per year
Testing shall be of minimum impact to PoT users
The system shall be able to ensure that no data belonging to the PoT is shared with other customers
The system shall be supported by a penetration testing plan
That is tested at minimum of 1x per year
Testing shall be of minimum impact to PoT users
Testing shall not require PoT staff to support

The system shall be able to ensure that no data belonging to the PoT leaves the continental United States
The system shall be composed of components in accordance with NIST Special Publication 800-53r4 including but not limited to:
Code base
Application
Servers
Web servers
Web Servers will additionally conform to most up-to-date SSL certificate standards
Databases
Database names shall be encrypted
Stored data
Data shall be encrypted using a minimum of
256-bit encryption
All client data elements shall be encrypted
Transmitted data
Data shall be encrypted using a minimum of
256-bit encryption
Transport Layer Security [TLS]
Transparent Data Encryption [TDE]
Network infrastructure
The system shall be capable of supporting secure passwords by:
Encrypting all user passwords
Secured database for storage
The system shall be supported by a documented Security Plan
The system shall be able to keep confidential data related to:
Port sensitive data
Personally identifiable information
The vendor shall be able to provide an annual audit to support the following items:
Security Vulnerability
SSAE16
The system vendor shall have the following notification obligations to the PoT:
Immediate notification in the event of a system failure
Immediate notification upon the discovery of a virus attack
Root cause analysis documentation within several hours of the virus attack effects being reduced
Immediately in the event of a security breach
Immediately if an acceptable use breach is detected
2 hours in the event of a client data breach
Within five (5) business days any remediation items needed as a result of the Security Vulnerability Audit
Immediately by phone in the event of a Force Majeure resulting in a system outage
In writing subsequent to phone call with details of the outage
Notifications of upgrades/ patches etc. that may alter or change the user experience
Notifications of upgrades/ patches etc. that may alter or change the security infrastructure





PSA No: \_\_\_\_\_

PORT OF TACOMA SOFTWARE AS A SERVICE AGREEMENT  
(Software)

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

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

1. SOFTWARE AS A SERVICE AGREEMENT
2. PSA
3. RFP
4. Vendor’s Proposal

**RECITALS**

- A. The Port desires to enter into this Software as a Service Agreement with Vendor to provide Hosted Software Services as described in RFP XXXXXX.
- B. Vendor desires and agrees to perform the Services as outlined in RFP XXXXXX.

**TERMS OF SERVICE**

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

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

- 1.1. “AUP” means Vendor’s Acceptable Use Policy dated \_\_\_\_\_ currently posted at \_\_\_\_\_.
- 1.2. “Acceptance” means written confirmation by the Port that the Vendor’s software has met the requirements stated in RFP XXXXXX and in its RFP Proposal.



- 1.3. "Anniversary Date" means the date that is 365 days after the Effective Date, and each anniversary thereafter of the date that is 365 days after the Effective Date, during this Agreement's Term.
- 1.4. "Client Data" means the data that Designated Users transmit and/or enter into the database provided as part of the Vendor's system in connection with their use of the SaaS Software pursuant to this Agreement.
- 1.5. "Deliverables" means the Services and all software that Vendor is required to deliver to the Port under this Agreement.
- 1.6. "Designated User" means Port authorized personnel who have access the Vendor's SaaS Software for business purposes.
- 1.7. "Documentation" means all documents, including documents that are Deliverables described in this Agreement and includes, but is not limited to, any and all operator's or user's manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of services that are to be delivered by the Vendor under this Agreement.
- 1.8. "Effective Date" means the date of the last party signature on this Agreement.
- 1.9. "Force Majeure Event" means neither party shall be liable or deemed to be in default for any delay in performance occasioned by unforeseeable causes beyond the contract and without the fault or negligence of the parties, including but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantines, restrictions, strikes or labor disputes, embargoes, sabotage, cable cut not caused by Vendor, or usually severe weather; provided that in all cases of delay in performance, the Vendor shall immediately notify the Port by telephone, of such delay, and follow up such oral notice with prompt written notice detailing the cause for delay. The Vendor shall make every reasonable effort to complete performance as soon as possible. This clause does not apply to Service issues involving network outages cause by or related to a network that is not owned or controlled by the Vendor.
- 1.10. "Party" and "Parties" means the Port and Vendor.
- 1.11. "SaaS Software Application", "SaaS Solution" and "SaaS Software" mean the computer software listed on a SaaS subscription schedule to which Vendor has granted the Port access and use as part of the subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc., related to the software that Vendor develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of Vendor for any of the software, customization, other derivative works, upgrade, releases, fixes, patches, etc.
- 1.12. "SLA" means Port's standard service level agreement, as set forth in Exhibit B, Port of Tacoma Service Level Agreement (SLA).
- 1.13. "System" means the Port's access to and use of and Vendor's SaaS Software Applications and other services listed in this Agreement (Exhibit A, Licensed Software and Fee Schedule), in accordance with the terms and conditions set forth in this Agreement.

1.14. "Term" is defined in Section below.

## **2. THE SYSTEM.**

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

- 2.1. Use of the System. During the Term, the Port may access and use the System pursuant to the terms the Vendor's AUP.
- 2.2. Service Levels. Vendor shall provide the remedies listed in Exhibit B, Port of Tacoma SLA, attached hereto and incorporated herein, for any failure of the System listed in the SLA. Such remedies are Port's remedies for any failure of the System. Credits issued pursuant to the SLA apply to outstanding or future invoices and may be deducted from any final payment upon termination of this Agreement. Vendor is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of this Agreement.
- 2.3. Application Support Hours The Vendor's application core support hours must be from 07:00 to 18:00 PST/PDT, Monday through Friday (excluding Port holidays). The Port's holidays are New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Day after Thanksgiving, Christmas Eve Day, and Christmas Day. For Severity Levels 1 and 2 (as documented in Exhibit B, Service Level Agreement), the Vendor must be available during non-core support hours.)
- 2.4. Virus Protection. The Vendor will use the most robust up-to-date virus and malware protection software and/or technology solutions available. The Vendor agrees to prevent viruses from being loaded into the SAAS Solution and into the Port's own standard IT environment through its software. If a virus is inadvertently introduced, the Vendor will take immediate and appropriate steps to reduce the effects of the virus and will notify the Port immediately upon discovery of the virus. The Port expects the Vendor to take immediate steps to respond to the virus, and for root cause analysis to be performed at a later reasonable time, i.e., within hours after the effects of the virus are reduced. Upon completion of the analysis, the results of the Vendor's root cause analysis will be shared with the Port, in writing.
- 2.5. Software and Hardware Updates / Patches. The Vendor is responsible for ensuring that systems, applications, database, operating systems and firewalls receive regular updates and/or patches for SaaS system high availability and protection.
- 2.6. Data Centers / Disaster Recovery. Any and all data centers utilized must be located within the continental United States. Data centers, server, storage and network infrastructure utilized must provide high levels of redundancy and availability. The Vendor will provide system restore/image, snapshots and backups on an hourly, daily, weekly and monthly schedule for recovery. In addition, the Vendor will ensure that network, server and storage infrastructure is actively monitored and managed for availability and performance which includes site security including but not limited to: on-premises security personnel, continuous video surveillance, screening of all people entering or exiting the premises, seismically braced server racks, high-tech fire suppression systems and round-the-clock monitoring of server operations. Disaster

Recovery and penetration testing exercises must be documented along with a plan to fix any deficiencies. The outcome of these exercises must be available to the Port upon request. All client data must be stored and remain in the continental United States.

- 2.7. Documentation: The Port may reproduce and use the documentation solely as necessary to support Designated Users' use of the System.
- 2.8. Designated System Revisions. The Port recognizes the Vendor may revise System features and functions at any time. If any such revision to the System materially reduces features or functionality mutually agreed upon by the Parties, the Port may within 30 days of notice of the revision terminate this Agreement without cause. If any such revision to the SLA materially reduces service levels mutually agreed upon by the Parties, the Port may within 30 days of notice of revision terminate this Agreement without cause.

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

- 3.1. Implementation Schedule. For purposes of a first time set-up and/or implementation for the Port, Vendor will provide a schedule for the implementation, including the milestones that must be met and hard dates by which the milestones must be met.
- 3.2. Milestone Payments. Payment for first time implementation for the Port will be tied to successful completion of milestones associated with hard dates or deadlines. A payment schedule is provided in Exhibit A, Licensed Software and Fee Schedule.

#### **4. CYBERSECURITY AND CLIENT DATA PRIVACY.**

- 4.1. Cybersecurity. All solution components, including code base, application, servers, web servers, databases, data at rest and in motion, and network infrastructure including firewalls, are developed, configured and maintained using industry standard cybersecurity best practices in accordance with NIST Special Publication 800-53r4 (or successor publications). For the web servers, the Vendor will use SSL certificate to secure connectivity for users. The Vendor will maintain a documented Security Plan that it will supply to the Port upon request. The Vendor will undergo Security Vulnerability Audits annually, and supply audit reports to the Port upon request. Once the Security Vulnerability Audit is completed, the Vendor will create a remediation plan and implement the plan to address any failed areas. Within five (5) business days, the Port will receive a copy of the Vendor's remediation plan. The Vendor will notify the Port immediately of any security breach of the Vendor's SaaS infrastructure or unauthorized access to the Port's data; will work immediately and without interruption to resolve the breach and the vulnerability; and will provide the Port with a copy of an incident review.
- 4.2. Use of Client Data. Unless it receives the Port's prior written consent, Vendor: (a) shall not access, process, or otherwise use Client Data other than as necessary to facilitate the System; and (b) shall not grant any third party access to Client Data, including without limitation Vendor's other customers. Notwithstanding the foregoing, Vendor may disclose Client Data as required by applicable law or by proper legal or governmental authority. Vendor shall give the Port prompt notice of any such legal or governmental demand and reasonably cooperate with the

Port in any effort to seek a protective order or otherwise to contest such required disclosure.

- 4.3. Protection of Client Data Stored Within the SaaS Solution. The Port's confidential information, sensitive data and/or personally identifiable information may be stored within the SaaS Software. The Port requires that the Vendor understand that (1) the Port owns its own data, (2) the Vendor will provide protection against the release or transfer of that data, (3) the Vendor is required to notify the Port within two (2) hours of any breach and will provide the Port with the specific steps that will be taken if a security breach occurs or is suspected.
- 4.4. Data Encryption. Vendor shall ensure that all data transfers, i.e., data moving or data at rest, will be encrypted. For data in transit, the Vendor will ensure encryption with 256-bit encryption and Transport Layer Security (TLS) and file-level encryption will be performed via Transparent Data Encryption (TDE). In order to ensure client anonymity, the Vendor will encrypt the database names. Data at rest will have a robust encryption method in place to encrypt all Client data elements. In addition, the Vendor will encrypt all user passwords with a form-based system login and store all encrypted user passwords in a secure database.
- 4.5. Records Retention. Until the expiration of six years after the term of this Agreement, Vendor agrees to maintain accurate records of all work done in providing services specified by this Agreement, including the Port's client data hosted, stored, or maintained by Vendor, and to deliver such records to the Port upon termination of this Agreement or otherwise as requested by the Port.
- 4.6. Risk of Exposure. The Port recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, the Port assumes such risks. Vendor warrants that it will make all commercially available efforts to ensure that Client Data will not be exposed or disclosed through errors or the actions of third parties. The Vendor must ensure that it has performed all commercially available efforts to protect the Port's client data in accordance with Section 2. The System, and Section 2.5 Cybersecurity.
- 4.7. Data Accuracy. Vendor shall have no responsibility or liability for the accuracy of data uploaded to the System by the Port, including without limitation Client Data and any other data uploaded by Designated Users.
- 4.8. SSAE16 Audits. During the term of this Agreement, and so long as SSAE16 remains a current and industry standard auditing standard, Vendor agrees to annually undertake an audit in accord with the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements No. 16 or a successor standard ("SSAE16") with respect to the services offered in Exhibit A. Upon the Port's request, and no more than annually, Vendor agrees to provide a copy of its then-current SSAE16 audit report for the Port's review. Additionally, the Port requires the Vendor to perform an annual Cybersecurity Vulnerability assessment performed at the same intervals as the audit and the findings relating to Port's SaaS system will be shared with the Port.

## **5. THE PORT'S RESPONSIBILITIES & RESTRICTIONS.**

- 5.1. Acceptable Use. The Port shall comply with the AUP identified in Section 1.1. The Port shall not:

(a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party, subject to the Port's obligations set forth in Section 11.10; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Designated Users, Vendor will immediately notify the Port of any breach for unauthorized use.

- 5.2. Unauthorized Access. The Port shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. The Port shall notify Vendor immediately of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.
- 5.3. Designated Users & System Access. The Port is responsible and liable for: (a) Designated Users' use of the System, including without limitation unauthorized Designated User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to the Port; and (b) any use of the System through Port's account, whether authorized or unauthorized, except to the extent said use is performed by persons or entities not employed by or affiliated with the Port.

## **6. INTELLECTUAL PROPERTY (IP).**

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

**7. CONFIDENTIAL INFORMATION.** "Confidential Information": Pursuant to this Agreement, Vendor may collect, or the Port may disclose to Vendor, financial, personnel or other information that the Port regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the Port. Vendor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the Port to any third party, except with the Port's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the Port. The Port may require that Vendor's officers, employees, agents or sub-vendors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the Port upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that: (a) is or was in the possession of Vendor before being furnished by the Port, provided that such information or other data is not known by Vendor to be subject to another confidentiality agreement with or other obligation of secrecy to the Port; (b) becomes generally available to the public other than as a result of disclosure by Vendor, or; (c) becomes available to Vendor on a non-confidential basis from a source other than the Port, provided that such source is not known by Vendor to be subject to a confidentiality agreement

with or other obligation of secrecy to the Port.

- 7.1. Non-disclosure. The Port may require a Non-Disclosure Agreement to be signed by the Vendor and its employees.
- 7.2. Termination & Return. Upon termination of this Agreement, the Vendor shall return all copies of the Port's data within 5 business days or certify, in writing, the destruction thereof.
- 7.3. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Parties will retain all right, title, and interest in and to all their Confidential Information.

## **8. REPRESENTATIONS & WARRANTIES.**

- 8.1. From Vendor. Vendor represents and warrants that it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. In the event of a breach of the warranty in this Section, Vendor, at its own expense, will promptly take the following actions: (a) secure for the Port the right to continue using the System; (b) replace or modify the System to make it noninfringing; or (c) terminate the infringing features of the Service and refund to the Port any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Port's right to terminate for breach where applicable, the preceding sentence states Vendor's sole obligation and liability, and Port's sole remedy, for breach of the warranty in this Section and for potential or actual intellectual property infringement by the System.
- 8.2. Warranty Period. For the period of one (1) year (Warranty Period), the SaaS Software supplied to the Port shall conform to the Acceptance criteria set forth in the RFP XXXXX and the Vendor's RFP Response and shall be free from error or defect that materially impairs their use.
- 8.3. Warranty Use. All services and SaaS Software supplied by the Vendor to the Port shall be provided to the Port free and clear of any and all restrictions on or conditions all liens, claims, mortgages, security interests, liabilities and encumbrances of any kind.

## **9. INDEMNIFICATION.**

- 9.1. Save Harmless. The Vendor shall defend, indemnify and hold the Port harmless from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, to the extent caused by or arising from the negligent or wrongful acts or omissions under this Agreement of the Vendor, its employees, agents, or subcontractors, that cause death or bodily injury, or damage to property, or arising out of a failure to comply with any state or federal statute, law, regulations or act.

## **10. Term & Termination.**

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

- 10.2. Termination for Convenience. The Port may terminate this Agreement at any time for government convenience upon 30 days' advance written notice. On the date of termination, the Port shall pay the Vendor any outstanding undisputed fees for Services not yet performed.
- 10.3. Effects of Termination. Upon termination of this Agreement, the Port shall cease all use of the System and delete, destroy, or return all copies of the documentation in its possession or control, subject to the Port's obligations to retain and/or disclose records pursuant to applicable law. The Vendor will return all client data within 5 business days via the last back-up copy of the system database. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of the Port to pay fees incurred before termination; (b) Articles and Sections *IP, Confidential Information, and Limitation of Liability.*

## **11. MISCELLANEOUS.**

- 11.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no Vendor employee or contractor will be an employee of The Port.
- 11.2. Notices. Vendor may send notices pursuant to this Agreement to the following Port representative \_\_\_\_\_, at the following e-mail address: \_\_\_\_\_, and such notices will be deemed received 24 hours after they are sent. The Port may send notices pursuant to this Agreement to \_\_\_\_\_, and such notices will be deemed received 24 hours after they are sent.
- 11.3. Assignment & Successors. Vendor may not assign this Agreement or any of its rights or obligations hereunder without Port's express written consent. Any attempt to assign this Agreement, without prior written approval, shall result in the termination of this Agreement, at the sole discretion of the Port. All rights of action for any breach of this Agreement by the Vendor are reserved by the Port.
- 11.4. Subcontracting. The Vendor may enter into any subcontract(s) relation to the performance of this Agreement if mutually agreed upon in writing by both parties. The Vendor's use of subcontracts shall not in any way relieve the Vendor of its responsibility for the professional and technical accuracy, adequacy, and timeliness of the work to be performed under this Agreement. The Vendor shall be and remain liable for the performance of the work in accordance with this Agreement, as well as any damages to the Port caused by the negligent performance or non-performance of the Vendor's subcontractor(s).
- 11.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will

constitute a waiver of any other breach of this Agreement.

- 11.7. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Washington. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Pierce County, Tacoma, Washington.
- 11.8. Time is of the Essence. Vendor agrees that time is of the essence in its performance under this Agreement.
- 11.9. Technology Export. The Port shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Vendor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, The Port shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 11.10. Public Records. The Port has to avail its records to a public inspection. Any and all records, i.e., proposals and pricing provided by the Vendor, this Agreement, client data, and other documentation are considered non-confidential and non-proprietary in nature and will be subject to public records requests, public disclosure, and audit.
- 11.11. Amendments. Any amendment or modification to this Agreement must be mutually agreed upon by both parties via a written amendment to be effective.