

State of Washington  
Department of Retirement Systems

***DRAFT Contract #24-11***

By and between The State of Washington-  
Department of Retirement Systems  
and iTalent Digital

January 10, 2025



# Table of Contents

<b>PURPOSE</b>	<b>4</b>
<b>SOFTWARE SUBSCRIPTION TERMS</b>	<b>4</b>
<b>PERIOD OF PERFORMANCE</b>	<b>4</b>
<b>COMPENSATION</b>	<b>4</b>
<b>BILLING PROCEDURE AND PAYMENT</b>	<b>4</b>
<b>CONTRACT MANAGEMENT</b>	<b>5</b>
<b>CONTRACT AMENDMENTS</b>	<b>5</b>
<b>INSURANCE</b>	<b>5</b>
1. Commercial General Liability Insurance Policy .....	5
2. Authorized in Washington.....	6
<b>ASSURANCES</b>	<b>6</b>
<b>ORDER OF PRECEDENCE</b>	<b>6</b>
<b>13. ENTIRE AGREEMENT</b>	<b>6</b>
<b>14. CONFORMANCE</b>	<b>6</b>
<b>15. APPROVAL</b>	<b>6</b>
<b>EXHIBIT A - GENERAL TERMS AND CONDITIONS</b>	<b>8</b>
1. DEFINITIONS .....	8
2. ADVANCE PAYMENTS PROHIBITED .....	8
3. AMENDMENTS .....	8
4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35.....	8
5. ASSIGNMENT .....	8
6. ATTORNEYS' FEES.....	8
7. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION .....	9
8. CONFLICT OF INTEREST .....	9
9. COPYRIGHT PROVISIONS.....	9
10. COVENANT AGAINST CONTINGENT FEES .....	10
11. DISALLOWED COSTS .....	10
12. DISPUTES .....	10
13. DUPLICATE PAYMENT.....	10
14. GOVERNING LAW .....	11
15. INDEMNIFICATION .....	11
16. INDEPENDENT CAPACITY OF THE CONTRACTOR .....	11
17. INDUSTRIAL INSURANCE COVERAGE .....	11
18. LICENSING, ACCREDITATION AND REGISTRATION.....	12
19. LIMITATION OF AUTHORITY .....	12

20. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS ..... 12

21. NONDISCRIMINATION ..... 12

22. PRIVACY ..... 12

23. PUBLICITY ..... 12

24. RECORDS MAINTENANCE ..... 13

25. REGISTRATION WITH DEPARTMENT OF REVENUE..... 13

26. RIGHT OF INSPECTION ..... 13

27. SAVINGS ..... 13

28. SEVERABILITY ..... 13

29. SITE SECURITY ..... 13

30. SOLE SOURCE ..... 13

31. SUBCONTRACTING ..... 14

32. TAXES..... 14

33. TERMINATION FOR CAUSE..... 14

34. TERMINATION FOR CONVENIENCE ..... 14

35. TERMINATION PROCEDURES ..... 15

36. TREATMENT OF ASSETS ..... 15

37. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL..... 16

38. WAIVER..... 16

**EXHIBIT B – SOFTWARE SUBSCRIPTION TERMS 17**

## DRS DRAFT Contract Number 24-11

This Contract is made and entered into by and between the state of Washington, Department of Retirement Systems, hereinafter referred to as the "AGENCY" and the below name firm, hereinafter referred to as "CONTRACTOR."

CONTRACTOR:	AGENCY:
iTalent Digital	Department of Retirement Systems
300 Orchard City Drive, Ste 136, Campbell, CA 95008	6835 Capitol Blvd South
WA State UBI No.: 604 014 333	PO Box 48380
Federal EIN: 47-0866092	Olympia, WA 98504

## PURPOSE

The purpose of this contract is to purchase Annual "Plus" License Tier -25 Active Project Max software to access and use Chama Software on an ongoing basis.

## SOFTWARE SUBSCRIPTION TERMS

AGENCY agrees to the Chama Subscription Terms incorporated herein as **Exhibit C**.

## PERIOD OF PERFORMANCE

The period of performance under this contract will be the date of execution through January 10, 2027, with the option to renew for an additional 3 years.

## COMPENSATION

Total compensation payable to CONTRACTOR for providing Plus" License Tier -25 Active Project Max software shall be \$50,000 excluding sales tax, which shall be inclusive of all other fees and expenses. Additional years shall be \$25,000 excluding sales tax per year, which shall be inclusive of all other fees and expenses.

## BILLING PROCEDURE AND PAYMENT

CONTRACTOR will register with the Office of Financial Management to obtain a statewide vendor number.

AGENCY will pay CONTRACTOR upon acceptance of services provided and receipt and approval of properly completed invoice, which shall be submitted to the Contract Manager.

The invoice shall describe and document, to the AGENCY'S satisfaction, a description of the work performed and the fees. The invoice shall include reference to Contract No. 24-11

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of the properly completed invoice. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payment in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

## CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Administrator for DRS:	Contract Manager for Contractor:
Name: Wendy Kancianich	Name: Marek Bachtik
Address: PO Box 48380 Olympia, WA 98504	300 Orchard City Drive, Ste 136, Campbell, CA 95008
Telephone Number: 360-664-7307	Telephone: 408-496-6200 x4
Email: <a href="mailto:wendy.kancianich@drs.wa.gov">wendy.kancianich@drs.wa.gov</a>	Email: <a href="mailto:marek@italentdigital.com">marek@italentdigital.com</a>

## CONTRACT AMENDMENTS

The contract may be changed, modified, or amended only by written agreement executed by both parties.

## INSURANCE

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

### 1. Commercial General Liability Insurance Policy

Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

## 2. Authorized in Washington

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents, and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

## ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current deferral, state and local laws, rules, and regulations.

## ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special terms and conditions as contained in this basic contract instrument
- Exhibit A - General Terms and Conditions
- Exhibit B – Chama Subscription Terms
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

## 13. ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

## 14. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 15. APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

<b>DRS:</b>	<b>Contractor:</b>
Signed Name	Signed Name
Printed Name Amy McMahan	Printed Name Marek Bachtik
Date	Date
Telephone 360.664.7307	Telephone 408.496.6200 x4

# EXHIBIT A - GENERAL TERMS AND CONDITIONS

## 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- a) "AGENCY" shall mean the Department of Retirement Systems of the State of Washington, any division, section, office, unit, or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- b) "AGENT" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- c) "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract and shall include all employees of the CONTRACTOR.
- d) "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

## 2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

## 3. AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

## 4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

## 5. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred, or assigned by the CONTRACTOR without prior written consent of the AGENCY.

## 6. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.



## **7. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

## **8. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

## **9. COPYRIGHT PROVISIONS**

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the AGENCY.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

## 10. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## 11. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

## 12. DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

- a) The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;
  - State the CONTRACTOR'S name, address, and contract number; and
  - Be mailed to the AGENT and the other party's (respondent's) contract manager within three business days after the parties agree that they cannot resolve the dispute.
- b) The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
- c) The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period, if necessary, by notifying the parties.
- d) The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

## 13. DUPLICATE PAYMENT

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

#### **14. GOVERNING LAW**

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### **15. INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

#### **16. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

#### **17. INDUSTRIAL INSURANCE COVERAGE**

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

## **18. LICENSING, ACCREDITATION AND REGISTRATION**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.

## **19. LIMITATION OF AUTHORITY**

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

## **20. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **21. NONDISCRIMINATION**

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations, and policies.

## **22. PRIVACY**

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification, or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors, or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

## **23. PUBLICITY**

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned, or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

## **24. RECORDS MAINTENANCE**

The CONTRACTOR shall maintain books, records, documents, data, and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation, or agreement.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **25. REGISTRATION WITH DEPARTMENT OF REVENUE**

The CONTRACTOR 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.

## **26. RIGHT OF INSPECTION**

The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

## **27. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the three-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

## **28. SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

## **29. SITE SECURITY**

While on AGENCY premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

## **30. SOLE SOURCE**

The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES

approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

Additionally, under the provisions of RCW 39.36.140, this sole source contract award must be approved by the Washington State Department of Enterprise Services (DES). No work will commence or payment be made under the terms of this contract until it is approved by DES. In the event DES does not approve, the contract will not be executed.

### **31. SUBCONTRACTING**

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

### **32. TAXES**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

### **33. TERMINATION FOR CAUSE**

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract immediately upon written notice.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault, or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

### **34. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, the AGENCY may, with three (3) calendar days written notice, beginning on the day after the mailing, terminate this contract, in whole or in part. If this

contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

### **35. TERMINATION PROCEDURES**

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

- a) Stop work under the contract on the date, and to the extent specified, in the notice;
- b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c) Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e) Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
- f) Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- g) Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

### **36. TREATMENT OF ASSETS**

- a) Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property



furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.

- b) Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- c) The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d) If any AGENCY property is lost, destroyed, or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- e) The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination, or cancellation of this contract
- f) All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents, or SUBCONTRACTORS.

### **37. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL**

The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the agency will download the current OFAC SDN file and compare it to agency and statewide vendor files. In the event of a positive match, the agency reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment. The agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

### **38. WAIVER**

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.



## EXHIBIT B – SOFTWARE SUBSCRIPTION TERMS

See attached pdf document: *Chama License Subscription Terms (To be Attached once approved)*.