

**Request for Proposal: eDiscovery Tool**

**Attorney General's Office**

STATE OF WASHINGTON

**Request for Proposal (RFP)**

**TITLE: eDiscovery Tool**

RFP Number  
**AGO.PSC.011**

Proposal Due Date & Time  
**February 8, 2013 at 5:00 PM**

**Please return proposals to:**

**Mail to:**

**Attorney General's Office  
ATTN: Kim Miller  
PO Box 40107  
Olympia WA 98504-0107**

**Ship to:**

**Attorney General's Office  
ATTN: Kim Miller  
7141 Cleanwater Ln SW  
Olympia, WA 98501**

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**Prepared by:  
Office of the Attorney General  
Phone : (360) 586-3433  
Fax : (360) 586-9676  
Email : KimM@atg.wa.gov**

# **1 INTRODUCTION**

## **1.1 SOLICITATION**

The Washington State Office of the Attorney General (AGO) initiates this Request for Proposal (RFP) to solicit responses from qualified Vendors for electronic discovery (eDiscovery) tools. Each Vendor submitting a Response to this RFP is required to read and understand all information incorporated into this bid package. The Competitive Procurement Standards which are referred to in this bid package are not automatically printed or sent out with this RFP. By responding to this RFP the Vendor agrees to read and understand these documents. These documents are available on the Department of Enterprise Service (formerly the Department of General Administration) website at <http://www.ga.wa.gov/business/cps.htm>.

## **1.2 OFFICE OF THE ATTORNEY GENERAL BACKGROUND**

The AGO is an independent constitutional office and legal counsel to the state of Washington. Its mission is to serve the citizens of the state by adhering to the highest standards of excellence, ethics and effectiveness and to deliver the highest quality legal services to the public officials, agencies, boards and commissions who are its clients. The AGO is comprised of more than 1100 attorneys and professional staff who work in 27 separate legal divisions located in twelve different cities across the state, and who provide legal services to more than 230 state agencies, boards and commissions.

The AGO, the largest law firm in the state, processes a large number of eDiscovery requests annually. Client records are provided to the AGO in hard copy or electronically via email or portable storage device. When client records are provided in hard copy, AGO personnel scan the records and convert them to PDF format. Once the client records are in electronic format, they are uploaded to AGO servers. Exhibit B provides information on the total volume of the AGO's electronically stored information.

The AGO anticipates that the eDiscovery tools it acquires will also be utilized to help it access its own records in response to public records requests. AGO electronic data is stored in six separate systems. In order to respond to public records requests, each system must be separately searched; the AGO does not have automated software that will search, collect, process, analyze or manage all of its electronic records.

## **1.3 General System Requirements**

The current AGO production computing environment is described in Exhibit B, Current State, which is incorporated herein by this reference.

The AGO computing environment is based on Microsoft operating systems and server software products. The following operating system and software products are

currently used by the AGO. All eDiscovery software must be “compatible” with this environment. The AGO has no intentions of setting up a special computing environment (Linux based, etc) to support an eDiscovery solution. Compatibility includes the ability to integrate with or capable of being used together without special modification or adaptation.

- Microsoft Server 2003, Microsoft Server 2008, Microsoft Server 2008 R2 (32 bit and/or 64 bit) network operating system in a Windows and Ethernet networked environment;
- Microsoft WindowsXP and Windows7 desktop operating systems;
- Microsoft Office 2007 and 2010;
- Microsoft Exchange v2003 and 2010;
- Microsoft Outlook 2007 and 2010;
- Microsoft SharePoint 2007;
- Summation;
- Concordance.

In addition to the requirements listed above, your eDiscovery solution must be Active Directory integrated and must be hosted on the AGO’s wide area network (WAN).

***Vendors that fail to meet the active directory and compatibility requirements will be disqualified.***

#### **1.4 OBJECTIVE**

The AGO is interested in acquiring eDiscovery tools from one or more Vendors so that the AGO may more efficiently and reliably process ESI for litigation discovery. The eDiscovery tools may also be used to assist the AGO in processing public records requests. The specifics of the AGO’s eDiscovery needs are set forth in Appendix B, *Business Requirements*. In summary, the AGO seeks solution(s) that will assist it in: 1) identifying, preserving and collecting records in its possession, and 2) processing, analyzing, reviewing and producing those records.

#### **1.5 CONTRACT SCOPE**

The selected Vendor(s) will be required to supply the purchased eDiscovery tool(s) and to provide training to AGO users across the state, to otherwise support AGO implementation(s), and to provide product maintenance throughout the contract term, including any contract extension(s).

## 1.6 CONTRACT TERM

Any maintenance or software related service contract issued as part of this procurement will have an initial term of two years, beginning on or about October 1, 2013. Extensions may be allowed as provided in the Proposed Contract, Exhibit A.

## 1.7 OVERVIEW OF SOLICITATION PROCESS

Bid responses will be evaluated using a four-phase process.

**Phase 1 Administrative Review:** The first phase of the evaluation will consist of an administrative review to determine whether the response conforms to all bid requirements.

**Phase 2 Evaluation Team Review:** The second phase is a review and scoring of bid response by evaluation teams, with one group of team members scoring sections 1, 2, and 4 of Appendix B, *Business Requirements*, and with section 3 of Appendix B being evaluated by technical experts only. Up to the highest scoring six responses will proceed to the next tier (Phase 3) of the evaluation.

**Phase 3 End-User Review:** The third phase of the evaluation process will be conducted by a group of AGO employees/product end-users. This group will use the products and provide the evaluation team with an assessment of feature verification and usability of the various components of each of the six eDiscovery solutions.

**Vendors must provide this group of AGO employees access to their proposed eDiscovery solution for the four week period selected by the AGO so that this end-user evaluation may occur. The product supplied must be a fully functional, production level solution, not a demonstration version.**

**Phase 4 Final Review Team Selection of ASV(s):** In the fourth and final phase of the evaluation, a Final Review Team will review the Phase 3 End-User Scores, client references and cost and select ASV(s).

## 1.8 FUNDING, LAWS AND GUIDELINES

This RFP is being issued prior to the commencement of the 2013 legislative session; the AGO has not received, nor can it promise it will receive, an appropriation for the purchase of eDiscovery tools. **Any contract issued as a result of this RFP is contingent upon the availability of funding.**

RCW 39.26.070 and RCW 39.26.080 apply to this procurement 2013 and to any contract that may be issued as a result of this RFP. AGO will adhere to the requirements of those statutes and to the rules, policies and guidelines that may be issued pursuant to their authority by the Department of Enterprise Services.

**1.9 PUBLIC DISCLOSURE**

To the extent permitted by law, bid information, including price sheets, will not be available for public disclosure until after award of the Contract.

**1.10 WEBS: WASHINGTON’S ELECTRONIC BUSINESS SOLUTION**

Washington’s Electronic Business Solution (WEBS) is an Internet vendor registration and bid notification system. The system offers one central location where vendors register to receive notification of government bidding opportunities and access bid documents and their related attachments posted to WEBS by government organizations. WEBS is the central location for bid posting activities in Washington State. To register in WEBS go to <http://www.ga.wa.gov/Business/3start.htm>. For more information about WEBS please contact WEBS Customer Service by phone (360) 902-7400 or email [webcustomerservice@ga.wa.gov](mailto:webcustomerservice@ga.wa.gov).

**1.11 DEFINITIONS**

*See Exhibit C, Definitions, incorporated herein by this reference.*

**2 SCHEDULE**

This RFP is issued under the following estimated Schedule of Events. The bid response deadline is mandatory and non-negotiable. Failure to meet any of the required deadlines will result in disqualification from participation. Unless otherwise indicated, all required deadlines are 5:00 p.m. PST.

<u>Date</u>	<u>Event</u>
January 2, 2013	Issue RFP in WEBS
January 9, 2013	Written Vendor Questions, Comments and Complaints due
January 16, 2013	Written Responses to Vendor Questions, Comments and Complaints
January 25, 2013	Issue Amendments (if necessary)
<b>February 8, 2013</b>	<b>Vendor Responses Due (REQUIRED DEADLINE)</b>
February 13, 2013	Administrative Evaluation Completed
February 20, 2013	Evaluation Team Review Completed
February 21, 2013	Up to the Six Highest Scoring eDiscovery Solutions Identified.

February 22, 2013	Vendors Notified of Highest Scoring eDiscovery Solutions.
March 3, 2013	Vendor 1 Evaluation Begins
March 11, 2013	Vendor 1 Product Demonstration for End Users
April 1, 2013	Vendor 2 Evaluation Begins
April 8, 2013	Vendor 2 Product Demonstration for End Users
May 6, 2013	Vendor 3 Evaluation Begins
May 13, 2013	Vendor 3 Product Demonstration for End Users
June 3, 2013	Vendor 4 Evaluation Begins
June 10, 2013	Vendor 4 Product Demonstration for End Users
July 8, 2013	Vendor 5 Evaluation Begins
July 15, 2013	Vendor 5 Product Demonstration for End Users
August 5, 2013	Vendor 6 Evaluation Begins
August 12, 2013	Vendor 6 Product Demonstration for End Users
August 23, 2013	End User Evaluation Completed
August 29, 2013	Final Review Team Selection Completed
August 30, 2013	Notification of Apparent Successful Vendor(s)
September 6, 2013	Vendor Requests for Debriefing Due (Optional)
September 13, 2013	Vendor Debriefings (Optional)
September 20, 2013	Signed contract(s) due
October 1, 2013	Contract start date

**AGO, at its sole discretion, reserves the right to revise the above schedule.**

### **3 ADMINISTRATIVE REQUIREMENTS**

#### **3.1 RFP COORDINATOR (PROPER COMMUNICATION)**

Upon release of this RFP, all Vendor communications concerning this solicitation must be directed to the RFP Coordinator listed below. Unauthorized contact regarding this solicitation with other state employees involved with the solicitation may result in disqualification. All oral communications are unofficial and non-binding on the State. Vendors shall rely only on written statements issued by the RFP Coordinator.

Kim Miller, RFP Coordinator  
Attorney General's Office

Telephone: (360) 586-3433  
FAX: (360) 586-9676  
Email: <mailto:KimM@atg.wa.gov>

Mailing Address:  
PO Box 40107  
Olympia, WA 98504-0107

Personal Delivery Address:  
7141 Cleanwater LN SW  
Olympia, WA 98501

### **3.2 VENDOR QUESTIONS**

Vendor questions regarding this RFP will be allowed until the date and time specified in the *Schedule* (Section 2 of this RFP). Vendor questions must be submitted in writing (email acceptable) to the RFP Coordinator. An official written AGO response will be provided for Vendor questions received by this deadline. Written responses to Vendor questions will be posted on WEBS.

The Vendor that submitted the questions will not be identified. Oral responses to questions will be considered unofficial and non-binding. Only written responses posted to WEBS will be considered official and binding.

### **3.3 VENDOR COMMENTS INVITED**

Vendors are encouraged to review the requirements of this RFP carefully and submit any comments and recommendations to the RFP Coordinator. Where requirements appear to prohibit or restrict Vendor participation in the RFP, an explanation of the issue with suggested alternative language should be submitted in writing to the RFP Coordinator by the deadline for Vendor Questions, Comments, and Complaints in the *Schedule* (RFP Section 2).

### **3.4 VENDOR CONCERNS REGARDING REQUIREMENTS AND SPECIFICATIONS**

Vendors are expected to raise any questions, exceptions, or additions they have concerning the RFP requirements early in the RFP process. Vendors may submit specific concerns to the RFP Coordinator, if a Vendor believes the RFP unduly constrains competition or contains inadequate or improper criteria. Concerns must be raised by writing to the RFP Coordinator before the Response due date set forth in the *Schedule* (RFP Section 2). The solicitation process may continue pending the AGO response to a Vendor's concern(s).

Should a Vendor concern identify an issue that would be in the best interest of the AGO to address, the AGO may modify this RFP accordingly. The AGO decision regarding concerns raised is final, and no further administrative review by the AGO is available.

### **3.5 DELIVERY OF RESPONSES**

The Response, in its entirety, must be received by AGO no later than the time indicated in the *Schedule* set forth in RFP Section 2. All Responses must be personally delivered, or mailed, to the RFP Coordinator at the address provided in RFP Section 3.1. The official time stamp will be the date/time the document is stamped received by AGO reception personnel, located at 7141 Cleanwater LN SW, Olympia WA.

**Vendors should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. Late Responses will not be accepted and will be automatically disqualified from further consideration. Additionally, responses may not be submitted via facsimile or email.**

### **3.6 RESPONSE CONTENTS**

The response must contain information responding to all requirements in RFP Sections 3.8, 3.12 (if applicable), and 5, including all subparts to these Sections, and Appendices A, B, C, D, E, F, and G. All required Appendices must include the signature of an authorized Vendor representative where indicated.

***Failure to follow these requirements will result in Vendor disqualification.***

### **3.7 NUMBER OF RESPONSE COPIES REQUIRED [MANDATORY REQUIREMENT]**

Two (2) hard copies and one (1) CD-ROM or electronic media (e.g. USB drive) version of the Response, including required appendices, that is exactly the same as the paper copy.



### 3.8 RESPONSE PRESENTATION AND FORMAT [MANDATORY REQUIREMENT]

- 3.8.1** Proposals must be written in English. Hard copy responses should be prepared on loose-leaf paper and placed in three-ring binders, as needed, with tabs separating the major sections of the Response. Pages must be numbered consecutively within each section of the Response showing Response section number and page number. The paper upon which hard-copy documents are made should be white, 8 ½ x 11 and preferably recycled.
- 3.8.2** Vendors must submit with the hard copy response, an electronic version of the response. Electronic responses must be in MS Word and/or Excel and provided on CD-ROM, DVD or similar electronic storage device (e.g., a USB drive). After documents that require signatures are completed and signed the documents should be scanned and provided in PDF format as well as providing the unsigned MS Word and/or Excel versions. The electronic version of the Response and required appendices must be exactly the same as the paper copy. ***AGO will not accept zipped files.***
- 3.8.3** The Vendor name and the name, address, email, facsimile and telephone number of the Vendor's authorized representative must be identified at the beginning of the Response.
- 3.8.4** Figures and tables must be numbered and referenced in the text of the Response by the numbers assigned within this RFP. Foldouts containing charts, spreadsheets, and oversize exhibits are permissible.
- 3.8.5** The following materials must be completed and signed by a representative authorized to bind the company to the offer, and provided to the RFP Coordinator in the order listed:
- 3.8.5.1 The *Executive Summary* required by RFP Section 5.1.1.
  - 3.8.5.2 *Certifications and Assurances*, (Appendix A to this RFP), which must include all vendor exceptions, if any, to the *Proposed Contract* (Exhibit A).
  - 3.8.5.3 The Vendor's technical proposal, using the *Business Requirements* form (Appendix B to this RFP).
  - 3.8.5.4 *Client References* (Appendix C to this RFP).
  - 3.8.5.5 *Authorization to Release Information*. (Appendix D to this RFP).
  - 3.8.5.6 *Purchasing Card Acceptance and Prompt Payment Discount* (Appendix E to this RFP).

3.8.5.7 *Statement of Understanding and Ability* (Appendix F to this RFP).

3.8.5.8 Identify, on Appendix G to this RFP, *Vendor Account Manager*, the individual who will provide oversight of the Vendor contract activities and act as the principle point of contact on behalf of the Vendor.

***Failure to provide any requested information in the prescribed format may result in disqualification of the Vendor.***

### **3.9 MULTIPLE (ALTERNATIVE) RESPONSES**

Multiple or Alternative Responses from a Vendor will be permissible; however, each Response must conform fully to the requirements for Response submission. Each such Response must be submitted separately and labeled as Response #1, Response #2, etc. on each page included in the Response.

### **3.10 COST OF RESPONSE PREPARATION**

AGO will not reimburse Vendors for any costs associated with preparing or presenting a Response to this RFP.

Vendor assumes all of Vendor's costs associated with the preparation of this RFP, site visits, and related expenses and providing access to Vendor's solution during the End-User review process.

### **3.11 RESPONSE PROPERTY OF AGO**

All materials timely submitted in response to this solicitation become the property of AGO. Materials untimely submitted will be returned to the sender.

### **3.12 VENDOR PROPRIETARY OR CONFIDENTIAL INFORMATION**

Any information in the proposal that the Vendor desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of the information, must be clearly designated. Each page containing the information claimed to be exempt from disclosure must be identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire Response or entire sections of the response as proprietary, confidential, or exempt from disclosure will not be honored. **Vendors must state in their *Executive Summary* (see RFP Section 5.1.1, below) whether their Response contains any proprietary or confidential information.**

**AGO will not honor any Vendor Responses indicating that pricing is proprietary or confidential, and if a request for release of a Vendor's pricing is made, the**

**AGO will release such information in a manner consistent with public records law, ordinarily after completion of this RFP process.**

If a public records request is made to obtain or view information contained in a Response that Vendor has marked confidential or proprietary, the AGO will notify Vendor of the request and of the date that the records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor does not obtain a court order enjoining disclosure, AGO will release the requested information on the date specified.

The AGO's sole responsibility shall be limited to maintaining the information marked proprietary in a secure area and notifying Vendor of any request(s) for disclosure as long as the AGO retains Vendor's proprietary marked information. Failure to so label such information or failure to timely respond after notice of a public records request has been given shall be deemed a waiver by Vendor of any claim that such information is proprietary and exempt from disclosure under RCW 42.56 or other laws.

### **3.13 WAIVE MINOR ADMINISTRATIVE IRREGULARITIES**

AGO reserves the right to waive minor administrative irregularities contained in any Response. Additionally, AGO reserves the right, at its sole option, to make corrections to Vendors' Responses when an obvious mathematical error has been made in the price quotation. Vendors will not be allowed to make changes to their quoted price after the Response submission deadline.

### **3.14 ERRORS IN RESPONSE**

Vendors are liable for all errors or omissions contained in their Responses. Vendors will not be allowed to alter Response documents after the deadline for Response submission. AGO is not liable for any errors in Responses. AGO reserves the right to contact Vendor for clarification of Response contents.

In those cases where it is unclear to what extent a requirement or price has been addressed, the RFP Coordinator may contact a Vendor to clarify specific points in the submitted Response. However, under no circumstances will the responding Vendor be allowed to make changes to the proposed items after the deadline stated for receipt of Responses.

### **3.15 AMENDMENTS AND REVISIONS**

AGO reserves the right to change the *Schedule* (RFP Section 2) or other portions of this RFP at any time. AGO may correct errors in the solicitation document identified by AGO or a Vendor. Any changes or corrections will be by one or more written amendment(s), dated, and attached to or incorporated in and made a part of this solicitation document, and will be posted on WEBS. **Vendors are responsible to**

**check this site for changes and are encouraged to do so frequently.** AGO will not be responsible for notifying Vendors of changes in any other manner. All changes must be authorized and issued in writing by the RFP Coordinator. If there is any conflict between amendments, or between an amendment and the RFP, whichever document was issued last in time shall be controlling.

### **3.16 RIGHT TO CANCEL**

With respect to all or part of this RFP, AGO reserves the right to cancel or reissue at any time without obligation or liability.

### **3.17 INCORPORATION OF DOCUMENTS INTO CONTRACT**

This solicitation document, including any amendments or revisions, and the Response will be incorporated into any resulting Contract.

### **3.18 NO OBLIGATION TO CONTRACT/BUY**

AGO reserves the right to refrain from contracting with any and all Vendors for eDiscovery tools. Additionally, the AGO shall have no obligation to make any purchases once it has provided the notice of intent to terminate required by any resulting Contract.

### **3.19 NO COSTS OR CHARGES**

No costs or charges under a proposed Contract may be incurred before a Contract is fully executed.

### **3.20 WITHDRAWAL OF RESPONSE**

Vendors may withdraw a Response that has been submitted at any time up to the Response due date and time identified on the *Schedule* (RFP Section 2). To accomplish response withdrawal, a written request signed by an authorized Vendor representative must be submitted to the RFP Coordinator. After withdrawing a previously submitted Response, Vendor may submit another Response at any time up to the Response submission deadline.

### **3.21 NON-ENDORSEMENT AND PUBLICITY**

In selecting a Vendor under this RFP, the AGO is neither endorsing a Vendor's product and/or services nor suggesting that a Vendor is the best or only solution to the AGO's needs. By submitting a Response, Vendor agrees to make no reference to the AGO or the State of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the AGO.

### **3.22 OPTIONAL VENDOR DEBRIEFING**

Only Vendors who submit a Response may request an optional debriefing conference to discuss the completed evaluation of the Vendor's Response. Requests must be made in writing, and the requested debriefing conference must occur on or before the date specified in the *Schedule* (RFP Section 2). The request must be in writing (facsimile or email acceptable) addressed to the RFP Coordinator.

The optional debriefing will not include any comparison between the Vendor's Response and any other Vendor Responses submitted. However, the AGO may discuss the factors considered in the evaluation of the Response and address questions or concerns about Vendor's ability to perform pursuant to this RFP and the Vendor's Response.

### **3.23 PROTEST PROCEDURES**

All protests shall be processed in accordance with WAC 200-300-130 through WAC 200-300-140.

Only Vendors who have submitted a Response to this solicitation and have had a debriefing conference may make protests. Upon completion of the debriefing conference, a Vendor is allowed five (5) Business Days to file a formal protest of the solicitation with the RFP Coordinator.

### **3.24 NOTIFICATION OF APPARENT SUCCESSFUL VENDOR(S) (ASV)**

All Vendors responding to this solicitation will be notified by email when the AGO has selected the ASV(s). The date of announcement of the ASV(s) will be the date the e-mail is sent.

### **3.25 ELECTRONIC AVAILABILITY**

The contents of this RFP and any amendments and written answers to questions will be available on WEBS. The document(s) will be available in Microsoft Word. **Vendors are responsible for checking this site for notices and changes and should do so frequently.**

## **4 VENDOR REQUIREMENTS**

### **4.1 VENDOR RESPONSIBILITY FOR RFP**

Vendors are required to read and understand all information contained within the entire RFP package. Some incorporated documents are not provided including, but not necessarily limited to, the Competitive Procurement Standards (which consists of Standard Definitions, Standard Instructions to Vendor, and Standard Terms and Conditions). See Definition of “Contract,” Exhibit C. It is important that you read and understand these documents. These documents are available on the Department of Enterprise Services (formerly General Administration) website at <http://www.ga.wa.gov/business/cps.htm>. Appendix A, *Certification and Assurances* attesting that Vendors have read and understand the documents referred to in this section, must be submitted with Vendor’s response.

### **4.2 VENDOR LICENSED TO DO BUSINESS IN WASHINGTON**

Within thirty (30) days of being identified as an ASV, Vendors must be licensed to conduct business in Washington, including registering with the Washington State Department of Revenue. If the Vendor has not received a formal UBI number at time of Response, Vendor must affirm that it will become licensed in Washington within thirty (30) calendar days of being selected as an ASV. For more information related to becoming licensed to conduct business in Washington, visit the following website, <http://dor.wa.gov/content/doingbusiness/registermybusiness/default.aspx>. AGO will verify the licensing status of ASV(s) prior to executing a contract.

### **4.3 TAXES**

The Vendor is responsible to collect and report all applicable taxes.

### **4.4 ASSIGNMENT OR SUBCONTRACTING; AFFILIATES (APPLICABLE TO CONTRACTS IN WHICH THE VENDOR INTENDS TO SUBCONTRACT A PORTION OF THE WORK)**

**4.4.1** AGO will accept Responses that include third party involvement only if a) the Vendor submitting the Response agrees to take complete responsibility for all actions of such Subcontractors and/or Affiliates, and b) Vendor identifies the Subcontractor or Affiliate as the supplier of any portion of the eDiscovery solution, with specificity as to which line item the third party will provide on Appendix B, *Business Requirements*.

**4.4.2** Except as set forth in RFP Section 4.4.1, Vendor shall not Subcontract, assign, or otherwise transfer its obligations under any Contract issued as a result of this RFP without the prior written consent of the AGO Contract Administrator, as set forth in the *Proposed Contract* (Exhibit A).

#### **4.5 INSURANCE**

All ASVs will be required to obtain insurance to protect the State should there be any claims, suits, actions, costs, or damages or expenses arising from any negligent or intentional act or omission of the Vendor or its Subcontractor(s) or Affiliates, or their agents, while performing work under the terms of any Contract resulting from this solicitation. Vendors will find a complete description of the insurance requirements in the proposed contract terms in Exhibit A, *Proposed Contract*.

#### **4.6 COVENANT AGAINST CONTINGENT FEES**

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, the AGO shall have the right to terminate the Contract in accordance with the termination clause and, in its sole discretion, to deduct from this Contract's price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **4.7 DUTY TO PROTECT AGO RECORDS**

AGO data is likely to be protected by legal privilege. Accordingly, Vendor is required to protect against unauthorized disclosure all data and information of any nature relating to an AGO client or the AGO's operations that may be made available to the Vendor as a result of a Contract entered pursuant to this RFP. Vendor may disclose such information and data only as required by law or judicial or administrative process or where release is authorized in advance in writing by the AGO. The Vendor shall not be required under the provisions of this section to keep confidential any data or information which is already rightfully in the Vendor's possession, is independently developed by the Vendor outside the scope the Contract, or is rightfully obtained from third parties.

In addition, before accessing AGO data, Vendors will execute a copy of AGO's confidentiality agreement.

#### **4.8 CONTRACT GENERAL TERMS AND CONDITIONS**

The Apparent Successful Vendor(s) will be expected to enter into a contract with AGO which is substantially the same as the *Proposed Contract* and its general terms and conditions (attached to this RFP as Exhibit A). In no event is a Vendor to submit its own standard contract terms and conditions in response to this solicitation. The Vendor may submit exceptions to the *Proposed Contract* terms and conditions as allowed in the *Certifications and Assurances* form, Appendix A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Appendix A, *Certifications and Assurances* form. AGO will review requested

exceptions and accept or reject the same at its sole discretion. Additionally, any resulting contract may include additional provisions Vendor suggests. AGO will review requested exceptions and additional provisions, and accept or reject the same at its sole discretion.

Failure of an ASV to reach agreement with AGO on contractual terms and conditions will result in cancellation of the Vendor's selection as an ASV.

An ASV will be expected to execute a Contract within ten (10) Business Days of its receipt of the final Contract. If a selected Vendor fails to sign the Contract within the allotted ten (10) day time frame, AGO may elect to cancel the award or cancel or reissue this solicitation. (*see RFP Subsection 3.16, Right to Cancel*).

#### **4.9 STATEWIDE VENDOR REGISTRATION**

Vendors who are awarded a Contract under this RFP must register in the Statewide Vendor Payment Registration. The Department of Enterprise Services maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/isd/Vendors.asp>. The form has two parts; Part 1 is the information required to meet the above mandatory registration requirement. Part 2 allows the state to pay invoices electronically with direct deposit. The State of Washington currently makes direct deposit payments using the CCD (Cash Concentration or disbursement) format and mails invoice / account information to Vendors two days prior to the date of deposit.

### **5 RESPONSE REQUIREMENTS [MANDATORY]**

**5.1** The requirements under Section 5.1 and its subparts are mandatory, but will not be scored. *Failure to provide the information requested or complete any one of the appendices identified in this Section 5.1 and its subparts, using the templates provided with this RFP, will cause the Vendor to be disqualified.*

#### **5.1.1 EXECUTIVE SUMMARY**

5.1.1.1 Vendor's legal status (e.g., corporation, sole proprietorship, partnership, etc.) and the year the Vendor was organized to do business as it currently substantially operates.

5.1.1.2 Vendor's parent company.

5.1.1.3 Vendor's total number of years in business.

5.1.1.4 Number of years Vendor has provided eDiscovery tools.



- 5.1.1.5 Vendor's Washington State Uniform Business Identification (UBI) number. If Vendor does not have a UBI number, the Vendor must state that it will become licensed in Washington within thirty (30) calendar days of being selected as an ASV.
- 5.1.1.6 A statement signed by an individual authorized to contractually bind the Vendor's organization that affirms: a) the Vendor accepts the requirements of this RFP and b) the signatory is authorized to contractually bind the Vendor. The statement must be signed and dated in ink.
- 5.1.1.7 A guarantee that the Vendor's Response, as submitted, will remain in full force and effect through October 1, 2012, unless withdrawn prior to the Response due date and time identified on the Schedule (RFP Section 2) as allowed under Section 3.20 of this RFP.
- 5.1.1.8 Vendor's Federal Tax Identification number.
- 5.1.1.9 Vendor's home office address.
- 5.1.1.10 Vendor's telephone and fax numbers.
- 5.1.1.11 Vendor's website URL.
- 5.1.1.12 The contact information, including name and email address, for Vendor's contact representative regarding this RFP.
- 5.1.1.13 Vendor's organizational chart, including the names and titles of Vendor's principal officers and those authorized to execute contracts for Vendor.
- 5.1.1.14 A brief description of the Vendor organization, including the Vendor's experience and history providing eDiscovery tools similar to those being solicited under this RFP. (Vendors should be specific and should include dates, clients, and the eDiscovery tools it furnished.)
- 5.1.1.15 Identification of any state employees or former state employees employed or on the Vendor's governing board as of the date of the proposal. Include a statement of such employees or officers position and responsibilities within the Vendor's organization. If, following a review of this information, it is determined by AGO that a conflict of interest exists, the Vendor may be disqualified from further consideration for the award of a contract.
- 5.1.1.16 Whether any sections of the Response have been marked "Proprietary" or "Confidential," and the specific location (page number and paragraph) of such section(s).

5.1.1.17 A statement indicating whether Vendor is bidding on Solution A, Solution B, or Solution C, as those solutions are described in Appendix B, *Business Requirements*.

5.1.1.18 If Vendor is bidding on Solution C, Vendor shall note whether it would be willing to accept a contract for Solution A or B only. If it would, its must indicate whether, and how, the costs it bid will be different if it is awarded a contract for only Solution A or B.

5.1.1.19 Any statements the Vendor wishes to convey to the RFP Coordinator and/or the Evaluation Team.

### **5.1.2 CERTIFICATION AND ASSURANCES (APPENDIX A)**

Vendors shall review and sign Appendix A, *Certification and Assurances*. Among other things, the *Certification and Assurances* requires Vendors to identify any exceptions to the Proposed Contract (Exhibit A). Note that AGO's decision to advance Vendor to Phase 3 does NOT mean that the AGO will accept Vendor's exceptions to the Proposed Contract.

### **5.1.3 AUTHORIZATION TO RELEASE INFORMATION (APPENDIX D)**

Vendors shall review and sign Appendix D, *Authorization to Release Information*, which permits the AGO to check client references, including any Vendor clients not listed by the Vendor, but known to the AGO as being a former or current client of the Vendor.

### **5.1.4 PURCHASING CARD ACCEPTANCE AND PROMPT PAYMENT DISCOUNT (APPENDIX E)**

Vendors shall review and complete Appendix E, *Purchasing Card Acceptance and Prompt Payment Discount* and include a signed copy with the Response.

### **5.1.5 STATEMENT OF UNDERSTANDING AND ABILITY (APPENDIX F)**

Vendors shall review and sign Appendix F, *Statement of Understanding and Ability*.

### **5.1.6 VENDOR ACCOUNT MANAGER (APPENDIX G)**

Vendor shall appoint an Account Manager who will provide oversight of Vendor Contract activities. Vendor's Account Manager will be the principal point of contact concerning Vendor's performance under any Contract, resulting from this RFP. Vendor shall review and complete Appendix G, *Vendor Account Manager*, and submit it with their response.

## 5.2 ADDITIONAL MANDATORY REQUIREMENTS [SCORED]

The requirements under Section 5.2 are mandatory and will be scored. **Failure to provide the information requested or complete any one of the appendices identified in Section 5.2 and its subparts, using the templates provided with this RFP, will cause the Vendor to be disqualified.**

### 5.2.1 *Business Requirements/Technical Proposal (Appendix B)*

Vendors seeking to provide all components of the eDiscovery process (“Solution C”, as described in Appendix B, *Business Requirements*), must address all sections of Appendix B in their proposals.

Vendors seeking to provide only the Legal Hold, Identification, Preservation, and Collection components of the eDiscovery process (“Solution A” as described in Appendix B, *Business Requirements*), must address all sections of Appendix B, with the exception of Section 2.

Vendors seeking to provide only the Processing, Analysis, Review, and Production components of the eDiscovery process (“Solution B” as described in Appendix B, *Business Requirements*), must address all sections of Appendix B, with the exception of Section 1.

If the Vendor intends to utilize a Subcontractor or Affiliate to perform any of the items within Appendix B, such intent must be clearly and prominently indicated in the Vendor’s Appendix B Response, and any utilization of a Subcontractor or Affiliate shall be subject to the requirements of RFP Sections 4.4 and 4.5.

### 5.2.2 *Client References (Appendix C)*

Vendor must provide contact information, including phone number, name, and email, for three (3) commercial and/or government clients references, using page 1 of Appendix A, *Client References*.

Each client reference shall be unique. If the Vendor submits contact information for two or more individuals from the same client, only one will be contacted. Vendors submitting contact information for fewer than three (3) unique client references shall receive less than the full evaluation points available for this portion of the evaluation.

Vendor must select clients who respond in a timely manner to telephone and/or email inquiries with objective information regarding the products the client has purchased. If the RFP Coordinator or designee is unable to reach Vendor’s client references after reasonable efforts to do so, Vendor shall receive less

than the full evaluation points available for this portion of the evaluation. Vendors may notify references in advance to inform the client that they may be contacted by the AGO.

The products purchased by the reference clients should be similar to those requested by this RFP. References must not be from a person, company or organization with any special interest, financial or otherwise, in the Vendor.

The RFP coordinator or designee will contact Vendor's client references directly, either by phone or email, and interview each reference. The reference score will be based upon the reference's response to each question.

AGO reserves the right to be one of a Vendor's client references based upon prior AGO experience with the Vendor, and may complete the client reference form based upon that prior experience.

AGO may, at its discretion, contact other Vendor clients not listed by the Vendor as a reference. AGO reserves the right to eliminate from further consideration in the RFP process any Vendor who, in the opinion of AGO, receives an unfavorable report from a client.

## **6 EVALUATION PROCESS**

### **6.1 OVERVIEW**

There may be one or more eDiscovery solutions purchased as a result of this RFP process. The evaluation process is designed to award Contracts to those Vendors with the best combination of Vendor management qualifications, technical proposal, price, product functionality and usability. This process is not designed to award Contracts merely or solely on the basis of the lowest price quotations.

### **6.2 PHASE 1 - ADMINISTRATIVE SCREENING**

Responses will be reviewed initially by the RFP Coordinator and or designee(s) to determine, on a pass/fail basis, whether each Response meets all the requirements set forth in RFP Sections 3.5, 3.6, 3.7, 3.8 and 5, including all subsections thereof. Any response that fails to meet the requirements set forth in these sections will be deemed non-responsive and will not be further evaluated. Evaluation teams will evaluate only those Responses that have passed this Administrative Screening process.

### **6.3 PHASE 2 - EVALUATION TEAM(S)**

The AGO evaluation of responsive proposals will be conducted by an Evaluation Team. The Evaluation Team will score Appendix B, *Business Requirements*, for each proposal and assign scores accordingly. See Exhibit D, *Score Sheet*.

Up to the highest six scoring Vendors will be forwarded for review by a group of AGO employees (“End-Users”). Score from Phase 2 will not carry over into Phase 3.

#### **6.4 PHASE 3 - END-USER EVALUATION(S)**

AGO will select a group of AGO employees to evaluate the forwarded eDiscovery solutions (up to six) for feature verification and usability. This group will: a) listen to Vendor presentations regarding the Vendor’s proposed eDiscovery solution, b) use each eDiscovery solution for a period of four weeks, and c) provide the Evaluation Team with it’s assessment of each eDiscovery solutions. (**Note:** it is anticipated that eDiscovery solutions will be evaluated sequentially, not concurrently. AGO will draw lots to assign Vendors to each four-week evaluation period; but will attempt to accommodate Vendors who indicate in their RFP responses that they are not able to provide their eDiscovery solution during an identified time period.)

End-user scores for each vendor will be averaged together for an overall Phase 3 Score which will carry over into Phase 4.

#### **6.5 PHASE 4 - FINAL REVIEW TEAM SELECTION OF ASV(S):**

The Final Review Team will review the End-User Phase 3 Scores, client references, and cost and select ASV(s) based upon the following best value criteria:

- a) Whether the bid satisfies the needs of the AGO requirements as specified in the solicitation documents;
- b) Whether the bid provides competitive pricing, economies, and efficiencies;
- c) Whether the bid appropriately weighs cost and non-cost considerations; and
- d) Life-cycle cost.

**Additionally, only Vendors whose proposals are within funds appropriated to or otherwise available to the AGO for eDiscovery procurement may be selected as ASVs.**

**APPENDIX A**

**CERTIFICATION AND ASSURANCES  
RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

We make the following certifications and assurances as a required element of the Response to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the RFP are conditions precedent to the award or continuation of a resulting Contract.

1. The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single proposal or bid.
2. The attached Response is a firm offer for a period of 180 days following the Response Due Date specified in the RFP, and it may be accepted by AGO without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 180-day period. In the case of protest, the Response will remain valid for 120 days or until the protest is resolved, whichever is later.
3. In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. We understand that the AGO will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the AGO, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the solicitation document.
5. We understand that any contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the terms and conditions appearing in Exhibit A, the *Proposed Contract*, or substantially similar terms, if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in Appendix A of this solicitation.
6. We (circle one) **are** / **are not** seeking exceptions to the *Proposed Contract*.

If you are seeking exceptions to the Proposed Contract, please attach a separate sheet noting each exception. Label the sheet "Appendix A-1." Ensure that your company name and signature are at the bottom of the page.

The undersigned further represents that he/she has the authority to bind the company named below to the proposal submitted and any contract awarded as a result of this solicitation.

\_\_\_\_\_  
Vendor Signature

\_\_\_\_\_  
Vendor Company Name

## APPENDIX B

### BUSINESS REQUIREMENTS

#### RFP AGO.PSC.011 eDISCOVERY TOOLS

The Washington Office of the Attorney General (AGO) seeks acquisition of one or more eDiscovery tools that will enable it to more efficiently and reliably process electronic records in response to discovery and public records requests.

Not all eDiscovery products can perform all EDRM components. Some only do a few components and some can do all components. For this reason the AGO will be scoring products separately in two categories: (1) legal hold, identification, preservation, and collection; and (2) processing, analysis, review, and production. If your product does both categories, you may respond to both categories; however, each will be scored separately and you do not have any advantage over other vendors.

You must indicate which category you will be responding to by checking the corresponding box below.

- Solution A: Legal Hold, Identification, Preservation, and Collection (Section 1)
- Solution B: Processing, Analysis, Review, and Production , 3, and 4 (Section 2)
- Solution C: Both (Section 1 and 2)

In addition to responding to Sections 1 and/or 2 (based on your selection above), all Vendors must also respond to Sections 3, and 4. **Failure to provide the requested information may result in disqualification.**

If you are responding to Solution A, you will be scored on Sections 1, 3, and 4 (including all subsections). If you are responding to Solution B, you will be scored on Sections 2, 3, and 4 (including all subsections). If you are responding to Solution C you will receive two scores, one for Solution A (sections 1, 3, and 4) and one for Solution B (2, 3, and 4). Scoring will be done by an evaluation team. Scores will be determined by averaging the points awarded by the evaluation team for each vendor and dividing that by the total points available for each solution. See Appendix D, *Score Sheet*, for further explanation.

**Section 1. Legal Hold, Identification, Preservation and Collection**  
(122 points possible)

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**1.1 Functionality**

Please indicate what functions your product offers below by marking the corresponding checkbox. Any item not checked will be interpreted as a function that your product cannot do. Items marked with an asterisk (\*) are required. *Vendors who do not provide required (\*) functions will be disqualified.*

Each item listed below is worth a maximum of 1 point each.

Total points possible for Section 1.1: 33

Litigation Hold:		
<input type="checkbox"/>	1.1.1	*Automated tracking and reporting
<input type="checkbox"/>	1.1.2	*Custodian audit report
<input type="checkbox"/>	1.1.3	*Ability to send to AGO staff
<input type="checkbox"/>	1.1.4	Ability to send to external client agency staff
<input type="checkbox"/>	1.1.5	In place Hold
<input type="checkbox"/>	1.1.6	Copy Hold
<input type="checkbox"/>	1.1.7	Templates
<input type="checkbox"/>	1.1.8	Auto-reminders
<input type="checkbox"/>	1.1.9	Auto-escalation
<input type="checkbox"/>	1.1.10	Custodian Surveys
Identification, Preservation, and Collection:		
<input type="checkbox"/>	1.1.11	*Multi-keyword search
<input type="checkbox"/>	1.1.12	*Boolean search
<input type="checkbox"/>	1.1.13	*Advanced Search interface
<input type="checkbox"/>	1.1.14	*Ability to search embedded files (e.g., emails and attachments) at least 3 levels deep
<input type="checkbox"/>	1.1.15	*Compound document searching
<input type="checkbox"/>	1.1.16	*Ability to segregate search results by custodian and assign back to custodian for review
<input type="checkbox"/>	1.1.17	*Ability to save searches
<input type="checkbox"/>	1.1.18	*Ability to save search results
<input type="checkbox"/>	1.1.19	*Defensible tracking of culling criteria
<input type="checkbox"/>	1.1.20	*Export search results
<input type="checkbox"/>	1.1.21	*Filtering
<input type="checkbox"/>	1.1.22	Filtering on custodian
<input type="checkbox"/>	1.1.23	Filtering on email sender domain
<input type="checkbox"/>	1.1.24	Filtering on keyword



<input type="checkbox"/>	1.1.25	Filtering on hash value
<input type="checkbox"/>	1.1.26	Filtering on system metadata
<input type="checkbox"/>	1.1.27	Subset Search
<input type="checkbox"/>	1.1.28	Conceptual searching
<input type="checkbox"/>	1.1.29	Find similar search
<input type="checkbox"/>	1.1.30	Search hit highlighting
<input type="checkbox"/>	1.1.31	Portable self-extracting data collection tool
<input type="checkbox"/>	1.1.32	Multi Language support
<input type="checkbox"/>	1.1.33	Relevance ranking of search results

## Section 1.2 Searchability

Please indicate if your product can search the items listed below by both keyword and metadata by marking the corresponding checkbox. Any item not checked will be interpreted as an item that your product cannot search. Items marked with an asterisk (\*) are required. *Vendors who do not provide search capabilities for required (\*) items will be disqualified.*

Each item listed below is worth a maximum of 1 point each.

Total points possible for Section 1.2: 29

<input type="checkbox"/>	1.2.1	*Microsoft Server 2003
<input type="checkbox"/>	1.2.2	*Microsoft Server 2008
<input type="checkbox"/>	1.2.3	*Microsoft Server 2008R2
<input type="checkbox"/>	1.2.4	*Microsoft Exchange v2003
<input type="checkbox"/>	1.2.5	*Microsoft Exchange v2010
<input type="checkbox"/>	1.2.6	*Microsoft Outlook 2007
<input type="checkbox"/>	1.2.7	*Microsoft Outlook 2010
<input type="checkbox"/>	1.2.8	*Microsoft Office 2007
<input type="checkbox"/>	1.2.9	*Microsoft Office 2010
<input type="checkbox"/>	1.2.10	*Microsoft SharePoint 2007
<input type="checkbox"/>	1.2.11	*Symantec Enterprise Vault v9
<input type="checkbox"/>	1.2.12	*SQL Databases
<input type="checkbox"/>	1.2.13	Microsoft Server 2012
<input type="checkbox"/>	1.2.14	Microsoft Exchange v2012
<input type="checkbox"/>	1.2.15	Microsoft SharePoint 2010
<input type="checkbox"/>	1.2.16	Microsoft SharePoint 2013
<input type="checkbox"/>	1.2.17	HP DL 380 servers with attached storage
<input type="checkbox"/>	1.2.18	Network Attached Storage (NAS) devices

<input type="checkbox"/>	1.2.19	Direct Attached Storage (DAS)
<input type="checkbox"/>	1.2.20	Storage Area Network (SAN) devices (block & file)
<input type="checkbox"/>	1.2.21	GroupWise (Lotus Notes)
<input type="checkbox"/>	1.2.22	Live data cloud storage
<input type="checkbox"/>	1.2.23	Individual desktops
<input type="checkbox"/>	1.2.24	Laptops
<input type="checkbox"/>	1.2.25	Video files
<input type="checkbox"/>	1.2.26	Audio files
<input type="checkbox"/>	1.2.27	Facebook
<input type="checkbox"/>	1.2.28	Twitter
<input type="checkbox"/>	1.2.29	You Tube

### 1.3 General Questions

Provide a brief response for each of the following questions listed below.

Each question will be scored on a 0 to 5 scale with the maximum of 5 points awarded per question. Questions will be evaluated based on the completeness of the answer and how the product meets the requirements.

Total points possible for Section 1.3: 60

#### Litigation Hold:

- 1.3.1 Describe your solution's process for issuing, monitoring, and enforcing litigation holds.
- 1.3.2 Describe how your solution adjusts collection search terms based on legal hold responses.
- 1.3.3 Describe how your solution uses legal hold notification templates and how they can be customized.
- 1.3.4 Describe your solution's custodian audit reporting capabilities.

#### Identification, Preservation, and Collection:

- 1.3.5 Describe your solution's process for segregating search results by custodian and assigning back to custodian for review.
- 1.3.6 Describe your solution's search capabilities.
- 1.3.7 Describe how your solution utilizes existing or builds independent indices.
- 1.3.8 Describe how your solution avoids missing potential evidence by supporting compound searches and unpacking and searching embedded files, several layers deep.

- 1.3.9 Describe how your solution provides defensible tracking of culling criteria.
- 1.3.10 Describe your solution’s filtering capabilities.
- 1.3.11 Describe how your solution captures and preserves data, including metadata, to maintain chain of custody and ensure defensibility.
- 1.3.12 Does your solution capture and manage metadata for all file types supported by your solution. If not, list which file types metadata is not captured for.

**Section 2. Processing, Analysis, Review, and Production**  
(140 possible points)

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**2.1 Functionality**

Please indicate what functions your product offers below by marking the corresponding checkbox. Any item not checked will be interpreted as a function that your product cannot do. Items marked with an asterisk (\*) are required. *Vendors who do not provide required (\*) functions will be disqualified.*

Each item listed below is worth a maximum of 1 point each.

Total points possible for Section 2.1: 55

Processing		
<input type="checkbox"/>	2.1.1	*Ability to unpack embedded files (e.g., emails and attachments) at least 3 levels deep and maintain parent/child relationships
<input type="checkbox"/>	2.1.2	*De-NISTing
<input type="checkbox"/>	2.1.3	*De-duplication
<input type="checkbox"/>	2.1.4	*Exception Log
<input type="checkbox"/>	2.1.5	Case De-Duplication
<input type="checkbox"/>	2.1.6	Cross-Custodian De-Duplication
<input type="checkbox"/>	2.1.7	Near De-duplication
<input type="checkbox"/>	2.1.8	Identify password protected documents
<input type="checkbox"/>	2.1.9	Process password protected documents
<input type="checkbox"/>	2.1.10	Identify encrypted files
<input type="checkbox"/>	2.1.11	Process encrypted files
Review & Analysis		
<input type="checkbox"/>	2.1.12	*Multi-keyword search

<input type="checkbox"/>	2.1.13	*Boolean search
<input type="checkbox"/>	2.1.14	*Advanced Search interface
<input type="checkbox"/>	2.1.15	*Ability to search embedded files (e.g., emails and attachments) at least 3 levels deep
<input type="checkbox"/>	2.1.16	*Compound document searching
<input type="checkbox"/>	2.1.17	*Ability to save searches
<input type="checkbox"/>	2.1.18	*Ability to save search results
<input type="checkbox"/>	2.1.19	*Ability to import custom redaction codes
<input type="checkbox"/>	2.1.20	*Tagging
<input type="checkbox"/>	2.1.21	*Custom tags
<input type="checkbox"/>	2.1.22	*TIFF native files
<input type="checkbox"/>	2.1.23	*Filtering
<input type="checkbox"/>	2.1.24	Filtering on custodian
<input type="checkbox"/>	2.1.25	Filtering on email sender domain
<input type="checkbox"/>	2.1.26	Filtering on keyword
<input type="checkbox"/>	2.1.27	Filtering on hash value
<input type="checkbox"/>	2.1.28	Filtering on system metadata
<input type="checkbox"/>	2.1.29	*Ability to import custom redaction codes
<input type="checkbox"/>	2.1.30	*Tagging
<input type="checkbox"/>	2.1.31	*Custom tags
<input type="checkbox"/>	2.1.32	*TIFF native files
<input type="checkbox"/>	2.1.33	*Analysis Reporting
<input type="checkbox"/>	2.1.34	*Redaction
<input type="checkbox"/>	2.1.35	Semi transparent redaction
<input type="checkbox"/>	2.1.36	Auto redaction
<input type="checkbox"/>	2.1.37	Subset Search
<input type="checkbox"/>	2.1.38	Conceptual searching
<input type="checkbox"/>	2.1.39	Find similar search
<input type="checkbox"/>	2.1.40	Search hit highlighting
<input type="checkbox"/>	2.1.41	Multi Language support
<input type="checkbox"/>	2.1.42	Relevance ranking of search results
<input type="checkbox"/>	2.1.43	Decision Tree Tagging
<input type="checkbox"/>	2.1.44	Identification of data gaps
<input type="checkbox"/>	2.1.45	Discussion thread analysis
<input type="checkbox"/>	2.1.46	Topic clustering
<input type="checkbox"/>	2.1.47	Near native viewing/viewer
<b>Production</b>		
<input type="checkbox"/>	2.1.48	*Bates numbering
<input type="checkbox"/>	2.1.49	*Full audit trail reporting – (Defensibility Log)

<input type="checkbox"/>	2.1.50	*Privilege Log Report
<input type="checkbox"/>	2.1.51	*Export metadata
<input type="checkbox"/>	2.1.52	*Export final product in PDF, TIFF, and native
<input type="checkbox"/>	2.1.53	*Ability to create Summation and/or Concordance load files
<input type="checkbox"/>	2.1.54	OCR image files
<input type="checkbox"/>	2.1.55	Ability to create other non-specified load files. Please specify: _____

## 2.2 General Questions

Provide a brief response for each of the following questions.

Each question will be scored on a 0 to 5 scale with the maximum of 5 points awarded per question. Questions will be evaluated based on the completeness of the answer and how the product meets the requirements.

Total points possible for Section 2.2: 85

### Processing:

- 2.2.1 Describe how your solution ensures and tracks data defensibility during processing.
- 2.2.2 Describe how your solution identifies and removes duplicates and (if applicable) near duplicates.
- 2.2.3 Describe how your solution processes email, attachments, and embedded files.
- 2.2.4 Describe your solution's options for converting MS Excel spreadsheets and MS Access databases to TIFF.
- 2.2.5 Describe how your solution imports custom redaction codes.

### Analysis:

- 2.2.6 Describe your solution's analysis reporting capabilities.

### Review:

- 2.2.7 Describe how your solution provides relevance ranking for search results.
- 2.2.8 Describe how your solution provides history, full audit trail, and detailed access controls.

- 2.2.9 Describe your solution’s limitations, if any, on the number of concurrent users doing document review at the same time.
- 2.2.10 Describe your solution’s limitations, if any, on the number of cases that can be in review at one time?
- 2.2.11 Describe how your solution applies the same redaction and/or tag to duplicate documents to eliminate redundant document review?

Production:

- 2.2.12 Describe how your solution exports production search results.
- 2.2.13 Describe how your solution exports metadata fields.
- 2.2.14 Describe how your solution creates exception reports and what information is included.
- 2.2.15 What types of conflict checking are done before productions are generated?
- 2.2.16 What types of quality assurance processes exist to validate production sets before release?
- 2.2.17 Describe how your solution assigns tasks and tracks the status of document review.

**Section 3. Technical System Requirements (54 possible points)**

**3.1 AGO Computing Environment**

Please indicate whether or not your system is compatible/integratable with the items listed below by marking the corresponding checkbox. Any item not checked will be interpreted as an item that is not compatible/integratable with your system. Only items marked with an asterisk (\*) are required. *Vendors who do not provide required (\*) compatibility/integration will be disqualified.*

Each item listed below is worth a maximum of 1 point each.

Total points possible for Section 3.1: 24

<input type="checkbox"/>	3.1.1	*Active Directory
<input type="checkbox"/>	3.1.2	*Hosted on the AGO’s wide area network (WAN)
<input type="checkbox"/>	3.1.3	*Microsoft Server 2003

<input type="checkbox"/>	3.1.4	*Microsoft Server 2008
<input type="checkbox"/>	3.1.5	*Microsoft Server 2008R2
<input type="checkbox"/>	3.1.6	*Microsoft Windows XP (if desktop application)
<input type="checkbox"/>	3.1.7	*Microsoft Windows 7 (if desktop application)
<input type="checkbox"/>	3.1.8	*Microsoft Exchange v2003
<input type="checkbox"/>	3.1.9	*Microsoft Exchange v2010
<input type="checkbox"/>	3.1.10	*Microsoft Outlook 2007
<input type="checkbox"/>	3.1.11	*Microsoft Outlook 2010
<input type="checkbox"/>	3.1.12	*Microsoft Office 2010
<input type="checkbox"/>	3.1.13	*Microsoft SharePoint 2007
<input type="checkbox"/>	3.1.14	Microsoft Server 2012
<input type="checkbox"/>	3.1.15	Microsoft Exchange v2012
<input type="checkbox"/>	3.1.16	Microsoft SharePoint 2010
<input type="checkbox"/>	3.1.17	Microsoft SharePoint 2013
<input type="checkbox"/>	3.1.18	HP DL 380 servers with attached storage
<input type="checkbox"/>	3.1.19	Network Attached Storage (NAS) devices
	3.1.20	Direct Attached Storage (DAS)
<input type="checkbox"/>	3.1.21	Storage Area Network (SAN) devices (block & file)
<input type="checkbox"/>	3.1.22	Live data cloud storage
	3.1.23	Microsoft Hyper V
	3.1.24	VMWARE Vsphere

### 3.2 General Questions

Provide a brief response for each of the following questions.

Each question will be scored on a 0 to 5 scale with the maximum of 5 points awarded per question. Questions will be evaluated based on the completeness of the answer and how the product meets the requirements.

Total points possible for Section 3.2: 30

- 3.2.1 Please provide the minimum and recommended system requirements for your product.
- 3.2.2 Please describe your solution's server requirements (i.e. physical servers, virtual servers, Hyper-V/VMWARE, storage (direct attached, SAN, NAS)).
- 3.2.3 Describe how your solution is implemented in a virtualized server environment.

- 3.2.4 What file types are supported by the application?
- 3.2.5 What is the underlying database and what limitations exist on space capacity, administrative or user capacity, or access?
- 3.2.6 Describe how your solution integrates with Active Directory for permission setting.

## Section 4. Total Cost of Ownership

(54 Points Possible)

### 4.1 Costs

Provide a detailed price quote for the total cost of ownership of your product. This should include all hardware, software, maintenance, training and other costs associated with your product with pricing for each component.

Provide a four year cost summary as displayed below.

Total possible points for Section 4.1: 9

**Assumptions:**

- Solution A:
  - 1,100 Custodians
  - Licensing will be perpetual
- Solution B:
  - 1,100 Licenses
  - Licensing will be perpetual
- Solution C:
  - 1,100 custodians/Licenses
  - Licensing will be perpetual

Four Year Total Cost Summary						
	Costs	Total	Year 1	Year 2	Year 3	Year 4
4.1.1	Software Licensing					
4.1.2	Maintenance					
4.1.3	Hardware					
4.1.4	Implementation					
4.1.5	Integration					
4.1.6	Training					
4.1.7	Documentation					
4.1.8	Project Management					
4.1.9	Miscellaneous					
	<b>Total:</b>					



## 4.2 General Questions

Provide a detailed response for each of the following questions.

Each question will be scored on a 0 to 5 scale with the maximum of 5 points awarded per question. Questions will be evaluated based on the completeness of the answer and how the product meets the requirements.

Total points possible for Section 4.2: 45

- 4.2.1 **Software Licensing:** List, describe, and record the licensing, implementation, maintenance, support, and training fees associated with your proposed software.
- 4.2.2 **Maintenance:** (a) Describe what is included with the annual maintenance cost including software updates and technical assistance. (b) Describe your service call escalation policy for your proposed solution.
- 4.2.3 **Hardware:** List, describe, and record the cost of each piece of hardware that is required to optimally run the software.
- 4.2.4 **Implementation:** Describe your solution's implementation process and methodologies and any labor, equipment, supplies, or other costs associated with implementing your proposed software.
- 4.2.5 **Integration:** Describe any labor, equipment, supplies, or other costs associated with integrating your solution into our current architecture and back-end systems.
- 4.2.6 **Training:** If there are training options associated with our proposed software list, describe, and record the cost of each here.
- 4.2.7 **Documentation:** If there is user or technical documentation available for your solution list describe, and record the cost of each here.
- 4.2.8 **Project Management:** If there are project management fees associated with your proposed software, list and describe them here.
- 4.2.9 **Miscellaneous:** List, describe and record any other costs associated with your proposed software solution here.

(Company Name)	(Typed or Printed Name)
(Address)	(Title)
(City)	(Phone No.)
(Email)	(Vendor's Signature) (Date) Please sign in ink

**APPENDIX C  
CLIENT REFERENCES**

**RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

**This page must be completed and returned to RFP Coordinator as part of RFP response.**

**Vendor Name:** \_\_\_\_\_

Reference business name: _____
Reference Name and title: _____
Telephone number: _____ E-Mail address: _____

Reference business name: _____
Reference Name and title: _____
Telephone number: _____ E-Mail address: _____

Reference business name: _____
Reference Name and title: _____
Telephone number: _____ E-Mail address: _____

---

(Company Name)

---

(Typed or Printed Name)

---

(Address)

---

(Title)

---

(City)

---

(Phone No.)

---

(Email)

---

(Vendor's Signature)  
Please sign in ink

---

(Date)

**APPENDIX D**

**AUTHORIZATION TO RELEASE INFORMATION**

**RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

I, the undersigned, on behalf of \_\_\_\_\_ authorize the Washington State Attorney General's Office (AGO) to contact all client references supplied. This may include information of a sensitive nature, to include experience working with my organization, contacting any references, and/or contacting anyone else who might be familiar with past job performance. I also authorize the AGO to contact any other former or current clients known to the AGO but not specifically identified as a reference.

I knowingly and voluntarily release the State of Washington, the AGO, and its individual employees from any and all known and unknown claims for damages or other relief arising out of the AGO contact of former and current clients pursuant to this authorization to release information for the purposes of Request for Proposal (RFP) number AGO.PSC.011.

A photocopy or facsimile copy of this signed Authorization is as valid as the original and shall be provided to anyone from whom information is requested in determining my job qualifications.

This release will expire \_\_\_\_\_.

_____	_____
(Company Name)	(Typed or Printed Name)
_____	_____
(Address)	(Title)
_____	_____
(City)	(Phone No.)
_____	_____
(Email)	(Vendor's Signature) (Date)
	Please sign in ink

**APPENDIX E**

**PURCHASING CARD ACCEPTANCE AND PROMPT PAYMENT DISCOUNT**

**RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

Will the State's purchasing Visa credit card be accepted? Yes \_\_\_\_\_ No \_\_\_\_\_

This payment process is required for all Vendors providing eDiscovery Tools.

Prompt Payment Discount \_\_\_\_\_% \_\_\_\_\_ Days

**Note:** Prompt payment discount periods equal to (or greater than) 30 calendar days will receive consideration and bid pricing will be reduced (for evaluation purposes only) by the amount of that discount.

Do you accept Electronic Funds Transfers? Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Phone No.)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
(Vendor's Signature)  
Please sign in ink

\_\_\_\_\_  
(Date)

**APPENDIX F**

**STATEMENT OF UNDERSTANDING AND ABILITY**

**RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

I, the undersigned, on behalf of \_\_\_\_\_ state that I am authorized to sign this Statement, and that I have read and understand the requirements outlined in RFP AGO.PSC.011, and that my company is able to fully comply with (1) all items indicated in Appendix B for any Contract that may be executed and (2) all other Requirements identified in this RFP.

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Phone No.)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
(Vendor's Signature)  
Please sign in ink

\_\_\_\_\_  
(Date)

**APPENDIX G**

**VENDOR ACCOUNT MANAGER**

**RFP AGO.PSC.011 eDiscovery Tools**

Issued by the state of Washington, Office of the Attorney General (AGO)

Vendor shall appoint an Account Manager who will provide oversight of Vendor Contract activities. Vendor's Account Manager will be the principal point of contact concerning Vendor's performance under any Contract resulting from this RFP. Vendor shall notify the AGO Contract Manager, in writing, when there is a new Vendor Account Manager assigned to any Contract resulting from this RFP. The Vendor Account Manager information is:

Vendor Account Manager: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Phone No.)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
(Vendor's Signature)  
Please sign in ink

\_\_\_\_\_  
(Date)



**Contract Number *[XXX-XXX-XXX]***

**for**

**eDiscovery Solutions**

**and**

**Maintenance Services**

**between the**

**Washington State Attorney General's Office**

**and**

***[Contractor]***

**Effective Date:** \_\_\_\_\_  
***[Add Effective Date]***

**Prepared by the Information Service Division:  
Office of the Attorney General  
P.O. Box 40119  
1110 Capitol Way South, Suite 150  
Olympia, WA 98504-0119**

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**CONTRACT NUMBER *[XXX-XXX-XXX]***

**for**

**eDiscovery Solutions**

**and**

**Maintenance Services**

**PARTIES**

This Contract (“Contract”) for eDiscovery Solutions is entered into by and between the state of Washington, acting by and through the Office of the Attorney General, an agency of Washington State government (“Purchaser” or “AGO”), located at 1110 Capitol Way South, Suite 150, Olympia, WA 98504-0119, and Contractor, a *[corporation/sole proprietor or other business form]* licensed to conduct business in the state of Washington (“Contractor”), located at *[Contractor address]* for the purpose of acquiring eDiscovery Solutions and related maintenance services, by Purchaser.

**RECITALS**

The state of Washington, acting by and through Purchaser, issued a Request for Proposal (RFP) dated *[date]*, (Exhibit A) for the purpose of acquiring eDiscovery Solutions and related maintenance services in accordance with its authority under RCW 39.26.

Contractor submitted a timely Response to Purchaser’s RFP (Exhibit B).

The Purchaser evaluated all properly submitted Responses to the above-referenced RFP and has identified Contractor as an apparently successful vendor.

The Purchaser has determined that entering into a Contract with Contractor will meet Purchaser’s needs and will be in Purchaser’s best interest.

NOW THEREFORE, Purchaser awards to Contractor this Contract, the terms and conditions of which shall govern Contractor’s provision of maintenance services on the purchased eDiscovery Solutions to Purchaser. This Contract is not for personal use.

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

## Overview

### 1.1 Contract Purpose

The RFP leading to this contract was issued to acquire software and/or hardware to assist the AGO in more efficiently and reliably process ESI in response to litigation discovery, and to provide the AGO related support and maintenance services, including installation, emergency repair, preventative maintenance, contracted maintenance services, temporary storage, delivery of equipment, and technical support/a help-desk.

### 1.2 Definition of Terms

Any term undefined in this Contract below but defined the RFP and its exhibits (e.g., RFP Exhibit C), shall have the meanings set forth in the RFP.

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

**“Affiliate”** shall mean any private organization, company, entity, Subcontractor, third party or person that is affiliated with the Contractor by way of either a common board, ownership or any other business arrangement between the Contractor and the Affiliate. Use of an Affiliate must be approved in advance in writing by the AGO.

**“AGO” or “Office of the Attorney General”** shall mean the Purchaser.

**“AGO Contract Manager”** shall mean the person designated by AGO as the primary contact person with whom Contractor’s Account Manager shall work for the duration of any Contract awarded and as further defined in the Contract.

**“AGO Contracting Officer”** shall mean *[name of Purchaser’s officer with signature authority]* the AGO contracting officer, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

**“AGO Data”** shall mean electronic data, whether or not consisting of Confidential Information, that is owned by the AGO, or that is in the control or custody of the AGO, copied and stored outside of the AGO’s physical computer network for purposes of the Contractor providing eDiscovery Solutions to the AGO.

**“Business Days and Hours”** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state or federal statutes, including but not limited to HIPAA (defined herein). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, employment records, agency

source code or object code, agency security data, trade secrets, or information identifiable to an individual that relates to any of these types of information.

“**Contract**” shall mean this document, all schedules and exhibits, and all amendments hereto.

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

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

“**Contractor Contracting Officer**” shall mean *[title of Contractor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Contractor Contracting Officer acting within the limits of his/her authority.

“**eDiscovery**” shall mean the process of identifying, preserving, collecting, preparing, reviewing, and producing electronically stored information (“ESI”) in the context of the legal process. See Discovery.

“**eDiscovery Solutions**” shall mean eDiscovery hardware, software, or other tools that enable the user to process ESI in response to eDiscovery requests.

“**Effective Date**” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“**Exhibit A**” shall mean the Purchaser’s RFP # *xxxx*, the RFP issued by Purchaser to acquire eDiscovery solutions.

“**Exhibit B**” shall mean Contractor’s Response.

“**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and any regulations issued thereunder.

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

“**Product(s)**” shall mean any Contractor-supplied equipment, Software, and documentation.

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

**“Purchaser”** shall mean the state of Washington, Office of the Attorney General; any division, section, office, unit or other entity of Purchaser; or any of the officers or other officials lawfully representing Purchaser.

**“Purchaser Contract Manager”** shall mean the AGO Contract Manager.

**“Purchaser Contracting Officer”** shall mean the AGO contracting officer.

**“RCW”** shall mean the Revised Code of Washington.

**“RFP”** shall mean the Request for Proposal used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**“Response”** shall mean Contractor’s Response to Purchaser’s RFP for eDiscovery Solutions, Exhibit B hereto.

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

**“Services”** shall mean installation of hardware and software, emergency repair, preventative maintenance, contracted maintenance services, temporary storage, delivery of equipment, and technical support/a help-desk.

**“Software”** shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**“Specifications”** shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Contractor’s Response, Exhibit B.

**“Subcontractor”** shall mean an entity not in the employment of Contractor, who has been approved by Purchaser in writing in advance to perform all or part of the Services under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

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

## Contract Term

### 2. Term

- 2.1. Term of Contract As part of the acquisition, Purchaser and Contractor are entering a maintenance contract.
- a) This Contract's initial term shall be two (2) years, commencing upon the Effective Date.
  - b) This Contract's term may be extended by two (2) additional one (1) year term[s], provided that the extensions shall be at Purchaser's option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Contractor accepting such extension prior to the then-current Contract term's expiration. The total term of this Contract shall not exceed four (4) years. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.2. Any Services provided during the term of this Contract but beyond the end of the fiscal year (June 30 of each year), or beyond the end of the current biennium (July 1, 2011 – June 30, 2013) are contingent upon the AGO's receipt of funding. *See* Section 51, Termination for Non-Allocation of Funds.

### 3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Contractor; Ownership/Rights in Works for Hire; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.

## Pricing, Invoice and Payment

### 4. Pricing

- 4.1. The total amount to be expended under this Contract shall shall not exceed [ ] dollars (\$ *including expenses if any*). [*Specify maximum dollar amount*].
- 4.2. Contractor agrees to provide the {*fill in software and/or hardware, as acquired*} and the Services at the Prices set forth [*below or in Schedule A*]. No other Prices shall be charged by Contractor for implementation of Contractor's Response.



- 4.3. Prices may not be increased during the initial term of the Contract.
- 4.4. If Contractor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Contractor shall send notice to the Purchaser Contract Manager with the reduced Prices within fifteen (15) Business Days *[or other appropriate time period]* of the reduction taking effect. *[- OR -]* Contractor shall send updated Prices to the Purchaser *[quarterly/semi-annually]*.
- 4.5. Contractor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases.
- 4.6. Purchaser shall reimburse Contractor for travel and other expenses as authorized in writing in advance by Purchaser in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoct.htm>). Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

## 5. Advance Payment Prohibited

No advance payment shall be made for Services or goods furnished by Contractor pursuant to this Contract.

Notwithstanding the above, maintenance payments, if any, may be made on a periodic basis at the beginning of a defined period. Thus, the routine Software and equipment maintenance and support services provided pursuant to this contract shall be compensated in advance as set forth in section 7.4 herein.. *{If payments for software maintenance and support services are being purchased in advance, ensure that the services purchased are sufficiently described in the Contract and/or service appendix so as not to violate the advance payment prohibition.}*

## 6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. 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.

6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

**7. Invoice and Payment** *{NOTE: As drafted, this section anticipates costs for services in addition to routine maintenance costs. It will be modified if all maintenance services are included within a periodic maintenance fee.}*

7.1. Contractor will submit properly itemized invoices no more often than monthly to *[title of person to receive invoices]* at *[provide appropriate address]*. Invoices shall provide and itemize, as applicable:

- a) Purchaser Contract number [XXX-XXX-XXX];
- b) Contractor name, address, phone number, and Federal Tax Identification Number;
- c) Description of Services provided;
- d) Date(s) that Services were provided, including number of hours worked; *[Note: number of hours worked will not be applicable for a deliverable-based or fixed fee contract]*
- e) Contractor's Price for Services;
- f) Net invoice Price for each Service;
- g) Applicable taxes;
- h) Other applicable charges;
- i) Total invoice Price; and
- j) Payment terms including any available prompt payment discounts.

7.2. If expenses are invoiced, Contractor must provide a detailed itemization of those expenses that are reimburseable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. (see section 4.6 above)

7.3. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

7.4. Purchaser shall pay maintenance and support charges, if any, on a monthly basis, in arrears. *[Note: The above sentence will be changed if payment is made in advance as authorized in RCW 43.88.160(5)(e). Maintenance payments may be paid one quarter, semi-annually, or annually—in advance]* Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day.

7.5. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.

- 7.6. The Purchaser Contract number *[XXX-XXX-XXX] [YY-YY]* must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.7. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.8. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.
- 7.9. Overpayments to Contractor  
Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

## **Contractor's Responsibilities**

### **8. Services**

- 8.1. All Services shall be performed pursuant to the terms of this Contract. All services shall be documented on a service log that is provided to Purchaser monthly, or on such other schedule as may be agreed to by the parties. *{Detail will be filled in depending upon pricing schedule and services provided It may include, for example: "The service log shall list: calls to the help desk, including time of call and time to resolve issue."}*

### **9. Commencement of Work**

No work shall be performed by Contractor until this contract has been executed by Contractor and Purchaser and is received by Contractor.

### **10. Ownership/Rights in Works for Hire**

- 10.1. Except as otherwise specified herein (*e.g., section 42, Treatment of Assets*), Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product shall be defined as set forth in section 1.2, Definitions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 10.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

- 10.3. Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 10.4. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 10.5. Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 10.6. Contractor shall maintain all title, copyright, and other proprietary rights in the Software it supplies. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to Purchaser that Contractor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that Contractor has the right to license the Software to Purchaser as provided in this Contract and that Purchaser’s use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party’s trade secret, contract, or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

## **11. Site Security**

While on Purchaser’s premises, Contractor, its agents, employees, affiliates or Subcontractors shall conform in all respects with physical, fire, or other security

regulations, including but not limited to Information Technology Security Standards adopted by the Washington State Office of the Chief Information Officer (OCIO).

## **12. Contractor Commitments, Warranties and Representations**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

## **13. Contractor Performance and Evaluation**

All work is to be performed completely and in a professional manner to the AGO's satisfaction. The Contractor will perform services in accordance with the specifications and provisions of the RFP and this Contract. The AGO will monitor Contractor performance. At its discretion, the AGO may complete a written evaluation of Contractor's performance under the Contract. A copy of written evaluations, if any, of Contractor's performance, may be sent to other State agencies. Contractor may request copies of any written evaluations. Performance will be a factor in evaluation and award of Contract extensions or renewals.

## **14. Protection of Purchaser's Confidential Information**

14.1. **Protection of Confidential Information:** Contractor acknowledges that some of the data that may come into its possession or knowledge in connection with this Contract or its performance may consist of "Confidential Information" as defined in Section 1.2. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract. The Contractor, and any Subcontractor(s) or Affiliates and their agents or employees, must sign a Non Disclosure Agreement (NDA) in a form acceptable to the AGO in situations where they will be given access to Confidential Information. The Contractor agrees to maintain the confidentiality of records it holds as agent for the AGO as required by RCW 42.56, or other state or federal statutes, including but not limited to HIPAA; and to impose the same requirements on Subcontractors and Affiliates.

14.2. **Written Consent Required for Disclosure:** Except as otherwise required by law, the use or disclosure by Contractor of any Confidential Information or other data concerning a State of Washington client or State of Washington employee, for any purpose not directly connected with Contractor's provision of services under this Contract is prohibited except on written consent of (1) the AGO and (2), if the AGO requires, the written consent of the state agency employee, state agency client, their attorney, or their responsible parent or guardian.

**15. Data Breach Notice; Contractor’s Obligations**

- 15.1. Some AGO Data or Confidential Information may constitute personal information subject to the provisions of RCW 19.255.010 and RCW 42.56.590 or other applicable law. Contractor agrees to comply with these provisions. For purposes of this section, “personal information” is defined as set forth in RCW 19.255.010 and RCW 42.56.590.
- 15.2. In the event of a breach of security resulting in the unauthorized disclosure of AGO Data, including but not limited to Confidential Information and “personal information,” Contractor shall give Purchaser notice of the security breach immediately following discovery. If a data compromise and/or identity theft occurs and is found to be the result of Contractor’s failure to take reasonable security precautions, including but not limited to encryption and/or adoption and enforcement of a technology security policy, Contractor will, as directed by Purchaser, assume complete responsibility for notification of persons affected, and be liable for all associated costs, including litigation costs and attorneys fees, incurred by Purchaser (1) in responding to or recovering from said security breach and (2) as a direct result of said security breach.

**Contract Administration**

**16. Legal Notices**

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

**To Contractor at:**

*[Contractor]*

**Attn:**

*[Contractor address]*

**To Purchaser at:**

State of Washington

*[Purchaser]*

**Attn:** *[Purchaser Contract Administrator]*

*[Purchaser address]*

Phone:

Phone:

Fax:

Fax:

E-mail:

E-mail:

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

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

**17. Purchaser Contract Manager**

Purchaser shall appoint *[name]* who will be the Purchaser Contract Manager for this Contract and will provide oversight of the activities conducted hereunder. Purchaser Contract Manager will be the principal contact for Contractor concerning business activities under this Contract. Purchaser shall notify Contractor, in writing, when there is a new Purchaser Contract Manager assigned to this Contract.

**18. Contractor Account Manager**

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

Contractor Account Manager:

Address:

Phone:

Fax:

E-mail:

**19. Post Award Conference**

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss Contract performance requirements. If such a conference is held, the time and place of this conference will be scheduled following Contract award.

## 20. Statewide Vendor Payment Registration

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchaser requires registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/isd/vendors.asp>. The Statewide Vendor Registration form has two parts: Part 1 is the information required to meet the above registration condition; Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment, but this part is not a requirement for payment.

## 21. Washington's Electronic Business Solution (WEBS)

Contractor must be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs), maintained by the Washington State Department of Enterprise Services (fka Department of General Administration). Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

## 22. Section Headings, Incorporated Documents and Order of Precedence

- 22.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 22.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
  - a) Schedule A;
  - b) Purchaser RFP, including all attachments thereto, dated [date] (Exhibit A);
  - c) Contractor's Response to Purchaser RFP dated [date] (Exhibit B);
  - d) The terms and conditions contained on Purchaser's purchase documents, if used; and
  - e) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Software, Hardware and/or Services to Purchaser.
- 22.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
  - a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract;
  - c) Schedule A; [include other Schedules, if appropriate]



- d) Purchaser RFP (Exhibit A);
- e) Contractor's Response to Purchaser RFP dated [*date*] (Exhibit B);
- f) The terms and conditions contained on Purchaser's order documents, if used; and
- g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Services to Purchaser.

**23. Entire Agreement**

This Contract and the documents incorporated by reference hereto set forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

**24. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Contractor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Purchaser.

**25. Independent Status of Contractor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or RCW Title 51.

**26. Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

## 27. Subcontractors

When Contractor intends to utilize a Subcontractor or Affiliate to perform any part of Services under the Contract, and the Subcontractor or Affiliate was not identified in the Response, Contractor must obtain advance approval in writing from Purchaser for use of the selected Subcontractor or Affiliate. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Works for Hire** sections of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Works for Hire, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

## 28. Assignment

- 28.1. With the prior written consent of Purchaser Contracting Officer, which consent shall be at Purchaser's sole option, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 28.2. Purchaser may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

## 29. Publicity

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

### **30. Review of Contractor's Records**

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

### **31. Right of Inspection**

Contractor shall provide right of access to its facilities to Purchaser, or any of Purchaser's 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.

### **General Provisions**

#### **32. Patent and Copyright Indemnification**

- 32.1. Contractor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product or Work Product supplied hereunder, or Purchaser's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:

- a) Promptly notifies Contractor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
  - b) Cooperates with Contractor in its defense of the claim, including related settlement negotiations.
- 32.2. If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product or Work Product and provide Purchaser a refund. In the case of Work Product, Contractor shall refund to Purchaser the entire amount Purchaser paid to Contractor for Contractor's provision of the Work Product. In the case of Product, Contractor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of *[four (4)]* years commencing on the date of purchase and shall be an equal amount per year over said useful life. *[To ensure the accurate useful life, consult the Washington State Administrative and Accounting Manual, Chapter 30 (Fixed Asset Policies) for Fixed Asset Commodity Class Code List and Useful Life Schedule (<http://www.ofm.wa.gov/policy/30.50.htm>).]* The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Contractor.
- 32.3. Contractor has no liability for any claim of infringement arising solely from:
- a) Contractor's compliance with any designs, specifications or instructions of Purchaser;
  - b) Modification of the Product or Work Product by Purchaser or a third party without the prior knowledge and approval of Contractor; or
  - c) Use of the Product or Work Product in a way not specified by Contractor;
- unless the claim arose against Contractor's Product or Work Product independently of any of these specified actions.

### **33. Save Harmless**

Contractor shall defend, indemnify, and save Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligations to defend, indemnify, and

save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

Contractor waives its immunity under RCW Title 51 (Industrial Insurance) to the extent it is required to indemnify, defend and hold harmless Purchaser, the state of Washington and agencies, officials, agents or employees of the state.

### **34. Force Majeure**

- 34.1. Neither Contractor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, Purchaser, or their respective Subcontractors.
- 34.2. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 34.3. The Contractor shall notify Purchaser orally within 24 hours and in writing within one (1) business day of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. The notification shall (i) describe fully the cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as Purchaser may reasonably request. After receipt of such notification, Purchaser may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

### **35. Insurance**

#### **General Requirements:**

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the contract. Within fifteen (15) calendar days of receipt of notice of award, the Contractor shall furnish evidence in the form of a Certificate of Insurance satisfactory to the state that insurance, in the following kinds and minimum amounts has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

**Specific Requirements:**

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The state will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness, and death and property damage arising out of the Contractor's premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) conditions.

Contractor waives all rights against the State for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

Business Auto Policy (BAP): In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Additional Provisions: Above insurance policies shall include the following provisions:

Additional Insured: The State of Washington and all authorized contract users shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of policy(ies) cancellation/non-renewal: For insurers subject to RCW 48.18 (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the State forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

For insurers subject to RCW 48.15 (Surplus Lines) a written notice shall be given to the State twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

If cancellation on any policy is due to non-payment of premium, the State shall be given a written notice ten (10) calendar days prior to cancellation.

Identification: Policy(ies) and Certificates of Insurance must reference the state's bid/contract number.

Insurance Carrier Rating: The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with RCW 48.15 and WAC 284-15.

Excess Coverage: The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts

of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

**36. Industrial Insurance Coverage**

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

**37. Licensing Standards**

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

**38. Antitrust Violations**

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

**39. Compliance with Civil Rights Laws**

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

**40. Severability**

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



#### **41. Waiver**

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

#### **42. Treatment of Assets**

- 42.1. This section shall not apply to Confidential Information or AGO Data.
- 42.2. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Works for Hire** section. As used in this section **Treatment of Assets**, if the “property” is Contractor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 42.3. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 42.4. Contractor shall be responsible for any loss of or damage to property of Purchaser that results from Contractor’s negligence or that results from Contractor’s failure to maintain and administer that property in accordance with sound management practices.
- 42.5. Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 42.6. Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 42.7. All reference to Contractor under this section shall also include Contractor’s employees, agents, or Subcontractors.

#### **43. Contractor’s Proprietary Information**

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

## Disputes and Remedies

### 44. Disputes

- 44.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 44.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall transmit its response in writing within five (5) Business Days. The initiating party shall have five (5) Business Days after receipt to review the response. If after this review a resolution is not be reached, both parties shall have five (5) additional Business Days to negotiate in good faith to resolve the dispute (the “Final Negotiation Period”).
  - a) If the dispute is not resolved during the Final Negotiation Period, either party may request a dispute hearing with the Attorney General or his or her designee. The request for a dispute hearing must:
    - Be mailed to the Attorney General or designee and to the other party’s contract manager within five (5) Business Days of the end of the Final Negotiation Period.
    - Be in writing.
    - State the disputed issues.
    - State the relative positions of the parties.
    - State the contractor's name, address, and contract number.
  - b) The responding party shall send a written answer to the requestor’s statement to both the Attorney General or designee and the requestor within five working days.
  - c) The Attorney General or designee shall review the written statements and reply in writing to both parties within twenty (20) working days. The Attorney General or designee may extend this period by notifying the parties of the extension.
  - d) The decision shall be admissible in any succeeding judicial or quasi-judicial proceeding.
  - e) The parties agree that this dispute process shall precede any request for review by a Dispute Resolution Panel.
- 44.3. If a party is are not satisfied with the decision issued by the Attorney General or Designee, that party may make a written request for a Dispute Resolution Panel. The requesting party shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) Business Days.

- a) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- b) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- c) Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- d) Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- e) Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- f) If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

44.4. Nothing in this Section shall prevent the parties from agreeing to an alternate, mutually acceptable form or dispute resolution.

#### **45. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

#### **46. Failure to Perform**

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

#### **47. Limitation of Liability**

47.1. The parties agree that neither Contractor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default, Protection of Purchaser's Confidential Information, Data Breach Notice, and**

**Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

- 47.2. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

## **Contract Termination**

### **48. Termination for Default**

- 48.1. If either Purchaser or Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of any alleged Contractor compliance breach and pending corrective action by Contractor or a decision by Purchaser to terminate the Contract.
- 48.2. In the event of termination of this Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Contractor's breach. Purchaser shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe Purchaser for Contractor's default.
- 48.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 48.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

### **49. Termination for Convenience**

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar days written notice to Contractor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of

this Contract received and accepted by Purchaser prior to the effective date of termination.

**50. Termination for Withdrawal of Authority**

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

**51. Termination for Non-Allocation of Funds**

If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

**52. Termination for Conflict of Interest**

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

**53. Termination Procedure**

- 53.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Contractor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 53.2. Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Contractor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 53.3. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated.



**Approved as to Form**

State of Washington  
Office of the Attorney General

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_

\_\_\_\_\_ Date

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

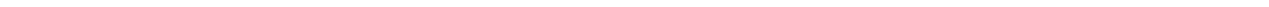
**Schedule A**  
***Authorized Services and Price List***

as of *[date]*

**for**  
**Contract Number *[XXX-XXX-XXX]***  
**with**  
***[Contractor]***

*[Contractor]* is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

*[List information required to be included by the Contractor, e.g., Service categories and descriptions, Prices (hourly rates), and Products (if any), etc.]*





## EXHIBIT B

### CURRENT STATE

#### RFP AGO.PSC.011

Issued by the state of Washington, Office of the Attorney General (AGO)

This Appendix is provided to inform Vendors of the current production computing environment at the AGO. Vendors are expected to use this information as a starting point for developing Proposals to meet AGO's business needs. Below is a simple description of the current AGO environment:

Item	Description	Data
Supported Staff	<ul style="list-style-type: none"><li>▪ 1100+ employees.</li><li>▪ 27 divisions – some requiring screening walls.</li><li>▪ 13 physical locations across the state.</li></ul>	
Email	Microsoft Exchange v2003 and Symantec Enterprise Vault v9 with a combined approximate total of 40 million email messages and 5TB of data.	5TB
Email client	Mixed environment – Microsoft Outlook 2007 and Outlook 2010.	
Operating System	Mixed environment – Microsoft Windows XP and Windows 7.	
Servers	Microsoft Server 2003 Microsoft Server 2008 & 2008R2	
Network Storage	Each AGO location has its own network storage with a combined total of approximately 100 million documents and 34TB of data.  HP DL 380 servers with attached storage Network Attached Storage (NAS) devices Storage Area Network (SAN) devices (block & file)	34TB
Microsoft SharePoint 2007	Approximately 2 million documents and 400GB of data.	400GB
Case Management System	Bridgeway LawManager – SQL Database.	
Public Content	Public Internet content stored in SQL Database – approximately 25GB.	25GB
Social Media	Facebook, Twitter, and You Tube	

**EXHIBIT C**  
**DEFINITIONS**  
**RFP AGO.PSC.011**

Issued by the state of Washington, Office of the Attorney General (AGO)

*Advanced search:* Provides the ability to construct advanced searches for multiple fields using Boolean, stemming, wildcard, fuzzy, and proximity searches.

*Affiliate:* Any private organization, company, entity, Subcontractor, third party or person that is affiliated with the Vendor by way of either a common board, ownership or any other business arrangement between the Vendor and the Affiliate.

*AGO:* Washington Office of the Attorney General, including its divisions, sections, offices, units or any other part thereof.

*AGO Contract Manager:* The person designated by AGO as the primary contact person with whom Contractor's Account Manager shall work for the duration of any Contract awarded and as further defined in the Contract.

*Apparent Successful Vendor (ASV):* A vendor who has been selected, tentatively, as a Vendor under this RFP. Apparent successful vendors must supply proof of insurance and all required certifications before entering into a Contract.

*Assignment:* Transfer by a Vendor of all or part of its right and interest under any Contract entered as a result of this RFP.

*Attachments:* Anything associated with or attached to any document, including an email or other electronic document.

*Audit Log or Audit Trail:* An automated or manual set of chronological records of system activities that may enable the reconstruction and examination of a sequence of events and/or changes in an event.

*Auto Redact:* Accelerated redaction by automatically finding and redacting keywords, phrases, and personal information such as names, Social Security Numbers, credit card numbers and email addresses.

*Bates Number:* Sequential numbering used to track documents and images in production data sets, where each page or file is assigned a unique production number. Often used in conjunction with a suffix or prefix to identify a producing party, the litigation, or other relevant information.

*Boolean Search:* Searches conducted using logical operators such as “and”, “or,” and “not” to include or exclude terms from a search.

*Case De-Duplication:* Elimination of duplicates to retain only one copy of each document per case. For example, if an identical document resides with three custodians, only the first custodian’s copy will be saved.

*Chain of Custody:* Documentation and testimony regarding the possession, movement, handling, and location of evidence from the time it is obtained to the time it is presented in court or otherwise transferred or submitted; used to prove that evidence has not been altered or tampered with in any way; necessary both to assure admissibility and authenticity.

*Comma Separated Value (CSV):* A record layout that separates data fields/values with a comma and typically encloses data in quotation marks.

*Compound Document:* A file that collects or combines more than one document into one, often from different applications, by embedding objects or linked data; multiple elements may be included, such as images, text, animation, or hypertext.

*Concept search:* The use of word meanings to identify documents relevant to a specific query. Word meanings can be derived from any of a number of sources, including dictionaries, thesauri, taxonomies, ontologies, or computed mathematically from the context in which the words occur. Concept searching typically improves the relevance ranking of the search results and can identify additional documents that are meaningfully related to the query even if they do not have the specific query term in them.

*Contract:* A written, binding agreement awarded pursuant to this RFP, together with all incorporated schedules, materials, exhibits and appendices, including this RFP and the Response, Work Orders (to the extent applicable) and all amendments.

*Contractor:* A successful Vendor that has executed a Contract as a result of this RFP.

*Contractor’s or Vendor’s Representative:* An individual designated by the Vendor/Contractor to act on its behalf and provided authority by the Vendor/Contractor to legally bind the Vendor/Contractor concerning the terms and conditions set forth in bid and contract documents.

*Cross-Custodian De-Duplication:* Culling a document to the extent multiple copies of that document reside within different custodians’ data sets.

*Cull (verb):* To remove a document from the collection to be produced or reviewed.

*Data Filtering:* The process of identifying for inclusion or exclusion of specific data based on specified parameters, such as date range, author(s), and/or keyword search terms.

*Data Set:* A named or defined collection of data.

*Decision Tree Tagging:* Creates the ability to tag individual or sets of documents using a multi-layer tree structure.

*De-Duplication (“De-Duping”):* The process of comparing electronic records based on their characteristics and removing or marking duplicate records within the data set. The methodology deployed and definition of “duplicate records” should be agreed upon, i.e., whether an exact copy from a different location (such as a different mailbox, server tapes, etc.) is considered to be a duplicate. De-duplication can be selective, depending on the agreed-upon criteria.

*De-NIST:* The use of an automated filter program that screens files against the NIST list of computer file types to separate those generated by a system and those generated by a user.

*Deletion:* Process whereby data is removed from a computer and rendered inaccessible except when using special data recovery tools designed to recover deleted data.

*Department of Enterprise Services (DES):* The Washington state agency responsible for administering state procurement law and standards, including but not limited to the Competitive Procurement Standards incorporated into this Contract.

*Discovery:* The process of identifying, locating, securing, and producing information and materials for the purpose of obtaining evidence for utilization in the legal process. The term is also used to describe the process of reviewing all materials that may be potentially relevant to the issues at hand and/or that may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories, or allegations. There are several ways to conduct discovery, the most common of which are interrogatories, requests for production of documents, and depositions.

*eDiscovery:* The process of identifying, preserving, collecting, preparing, reviewing, and producing electronically stored information (“ESI”) in the context of the legal process. See Discovery.

*eDiscovery solutions:* eDiscovery hardware, software, or other tools that enable the user to process ESI in response to eDiscovery requests.

*EDRM:* Electronic Discovery Reference Model

*Electronic Discovery:* See eDiscovery.

*Electronically Stored Information:* See ESI.

*Email String:* An electronic conversation between two or more parties via email. Also referred to as an email “thread.”

*Embedded Object:* An object embedded within another object, often appearing as an icon or hyperlink.

*Emergency:* A disaster or unforeseen event causing region-wide road closures or other government-imposed restrictions on movement; or a catastrophic event such as an automobile accident, fire, or flood making travel by a Vendor immediately not possible.

*Encryption:* A procedure rendering the contents of a message or file unintelligible to anyone not authorized to read it.

*ESI:* As referenced in the United States Federal Rules of Civil Procedure, information that is stored electronically, regardless of the media or whether it is in the original format in which it was created, as opposed to stored in hard copy (i.e., on paper).

*Find Similar Search:* Allows reviewers to easily identify and view emails, attachments, and loose files with similar content to the document under review using a dynamically configurable similarity threshold. Reviewing similar documents together accelerates the review process and ensures greater tag consistency.

*Format:* The internal structure of a file, which defines the way it is stored and used. Specific applications may define unique formats for their data (i.e., “Microsoft Word document file format”). Many files may only be viewed or printed using their originating application or an application designed to work with compatible formats. Computer storage systems commonly identify files by a naming convention that denotes the format (and therefore the probable originating application) (i.e., “DOC” for Microsoft Word document files; “XLS” for Microsoft Excel spreadsheet files; “TXT” for text files; and “HTM” (for Hypertext Markup Language (HTML) files such as Web pages). Users sometimes choose alternate naming conventions, but this may affect how the files are treated by applications.

*Hash:* A mathematical algorithm that represents a unique value for a given set of data, similar to a digital fingerprint. Common hash algorithms include MD5 and SHA.

*Legal Hold:* A legal hold is a communication issued as a result of current or reasonably anticipated litigation, audit, government investigation, or other such matter that suspends the normal disposition or processing of records. Legal holds may encompass procedures affecting data that is accessible as well as data that is not reasonably accessible. The specific communication to business or IT organizations may also be called a “hold,” “preservation order,” “suspension order,” “freeze notice,” “hold order,” or “hold notice.”

*Metadata:* Data typically stored electronically that describes characteristics of ESI, found in different places in different forms. Can be supplied by applications, users or the file system. Metadata can describe how, when, and by whom ESI was collected, created, accessed, modified, and how it is formatted. Can be altered intentionally or inadvertently. Certain metadata can be extracted when native files are processed for litigation. Some metadata, such as file dates and sizes, can easily be seen by users; other metadata can be hidden or embedded and unavailable to

computer users who are not technically adept. Metadata is generally not reproduced in full form when a document is printed to paper or electronic image.

*Multi-Keyword Search:* Delivers the ability to run multiple queries simultaneously.

*Native Format:* Electronic documents have an associated file structure defined by the original creating application. This file structure is referred to as the “native format” of the document. Because viewing or searching documents in the native format may require the original application (i.e., viewing a Microsoft Word document may require the Microsoft Word application), documents are often converted to a standard file format (e.g., TIFF) as part of electronic document processing.

*Near Duplicates:* (1) A term used to describe two or more files that are similar to a certain percentage, for example files that are 90% similar are identified as Near Duplicates; used for review to locate similar documents and review at one time; (2) A term used to describe the longest email in an email conversation where the subparts are identified and suppressed in an email collection to reduce review volume.

*Nesting:* Occurs when one document is inserted within another document (i.e., an attachment is nested within an email; graphics files are nested within a Microsoft Word document).

*NIST (National Institute of Standards and Technology):* A federal technology agency that works with industry to develop and apply technology measurements and standards.

*NIST List:* A hash database of computer files developed by NIST to identify files that are system generated and generally accepted to have no substantive value in most instances.

*OCR (Optical Character Recognition):* A technology process that translates and converts printed matter on an image into a format that a computer can manipulate (ASCII codes, for example) and, therefore, renders that matter text searchable. OCR software evaluates scanned data for shapes it recognizes as letters or numerals. All OCR systems include an optical scanner for reading text and software for analyzing images. Most OCR systems use a combination of hardware (specialized circuit boards) and software to recognize characters, although some inexpensive systems operate entirely through software. Advanced OCR systems can read text in a large variety of fonts, but still have difficulty with handwritten text. OCR technology relies upon the quality of the imaged material, the conversion accuracy of the software, and the quality control process of the provider.

*OLE (Object Linking and Embedding):* A feature in Microsoft’s®Windows that allows the linking of different files.

*Office of the Chief Information Officer (OCIO):* The Washington state agency responsible for information technology (IT) planning, policies, and standards.

*PDF (Portable Document Format):* An open technology for formatting documents so that they can be viewed and printed using the Adobe Acrobat reader or similar software.

*PST (Personal Folder File):* The place where Outlook stores data (when Outlook is used without Microsoft® Exchange Server). A PST file is created when a mail account is set up. Additional PST files can be created for backing up and archiving Outlook folders, messages, forms and files. The file extension given to PST files is .pst.

*Redaction:* A portion of an image or document is intentionally concealed to prevent disclosure of specific portions. Usually accomplished by applying an overlay. Often done to protect privileged or irrelevant portions of the document, including highly confidential, sensitive, or proprietary information.

*Request for Proposal (RFP):* This solicitation for eDiscovery solutions, including all Exhibits, Appendixes, and materials incorporated by reference, including the Competitive Procurement Standards available on the Department of Enterprise Service website at <http://www.ga.wa.gov/business/cps.htm>.

*Response:* A Vendor's written offer and bid submission pursuant to this RFP.

*SQL (Structured Query Language):* A database computer language used to manage the data in relational databases. A standard fourth generation programming language (4GL - a programming language that is closer to natural language and easier to work with than a high-level language).

*State:* The state of Washington.

*Statement of Work (SOW):* The discrete services to be performed under a Contract.

*Subcontractor:* One not in the employment of Contractor who is supplying all or part of the solutions under a Contract resulting from this RFP under a separate contract with Contractor.

*TIFF (Tagged Image File Format):* One of the most widely supported file formats for storing bit-mapped images. Files in TIFF format often end with a .tif extension.

*Thread:* A series of technologically related communications, usually on a particular topic. Threads can be a series of bulletin board messages (for example, when someone posts a question and others reply with answers or additional queries on the same topic). A thread can also apply to emails or chats, where multiple conversation threads may exist simultaneously.

*Unstructured Data:* Refers to free form data which either does not have a data structure or have a data structure not easily readable by a computer without the use of a specific program designed to interpret the data. Examples include word processing documents or slide presentations.

*Vendor:* A company or individual responding to this solicitation for eDiscovery tools.





**eDiscovery RFP AGO.PSC.011 Score Sheet**

		Solution A	Solution B	
<b>Phase 1</b>	<b>Administrative Review</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	Pass = move to Phase 2 Fail = vendor disqualification
<b>Phase 2</b>	<b>Evaluation Team Review (Appendix B)</b>	<b>(230 points possible)</b>	<b>(248 points possible)</b>	
	Section 1 (122 points)		N/A	
	Section 2 (140 points)	N/A		
	Section 3 (54 points)			
	Section 4 (54 points)			
	Total			Total Solution A = avg sum of evaluation team scores for sections 1,3,4 Total Solution B = avg sum of evaluation team scores for sections 2, 3, 4
	Total/points possible	Total/230	Total/248	
	<b>Phase 2 Score</b>	<b>0</b>	<b>0</b>	This score is used to determine top vendors to be evaluated.
<i>Scores from Phase 2 do not carry over into phase 3. All vendors start at 0 points in Phase 3.</i>				
<b>Phase 3</b>	<b>End User Evaluation</b>	<b>(73 points possible)</b>	<b>(95 points possible)</b>	
	Feature Validation:			
	App B Section 1.1 (33 points)		N/A	
	App B Section 2.1 (55 points)	N/A		
	Usability:			
	Intuitiveness (10 points)			
	Ease of Use (10 points)			
	Look and Feel (10 points)			
	Activity Response Time (10 points)			
	Total	0	0	Total = avg sum of end user feature validation and usability scores
	Total/points possible	Total/73	Total/95	
	<b>Phase 3 Score</b>	<b>0.00</b>	<b>0.00</b>	
<b>Phase 4</b>	<b>Final Review</b>			
	Phase 3 Score			
	Client Reference score (50 points possible)			
	Best Value Criteria			

**eDiscovery RFP AGO.PSC.011 Score Sheet Example**

		<b>Solution A</b>	<b>Solution B</b>	
<b>Phase 1</b>	<b>Administrative Review</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	Pass = move to Phase 2 Fail = vendor disqualification
<b>Phase 2</b>	<b>Evaluation Team Review (Appendix B)</b>	<b>(230 points possible)</b>	<b>(248 points possible)</b>	
	Section 1 (122 points)	115	N/A	
	Section 2 (140 points)	N/A	133	
	Section 3 (54 points)	50	50	
	Section 4 (54 points)	52	52	
	Total	217	235	Total Solution A = avg sum of evaluation team scores for sections 1,3,4 Total Solution B = avg sum of evaluation team scores for sections 2, 3, 4
	Total/points possible	Total/230	Total/248	
	<b>Phase 2 Score</b>	<b>94.35</b>	<b>94.76</b>	This score is used to determine top vendors to be evaluated.
<i>Scores from Phase 2 do not carry over into phase 3. All vendors start at 0 points in Phase 3.</i>				
<b>Phase 3</b>	<b>End User Evaluation</b>	<b>(73 points possible)</b>	<b>(95 points possible)</b>	
	Feature Validation:			
	App B Section 1.1 (33 points)	28	N/A	
	App B Section 2.1 (55 points)	N/A	52	
	Usability:			
	Intuitiveness (10 points)	8	8	
	Ease of Use (10 points)	5	5	
	Look and Feel (10 points)	7	7	
	Activity Response Time (10 points)	9	9	
	Total	57	81	Total = avg sum of end user feature validation and usability scores
	Total/points possible	Total/73	Total/95	
	<b>Phase 3 Score</b>	<b>78.08</b>	<b>85.26</b>	
<b>Phase 4</b>	<b>Final Review</b>			
	Phase 3 Score			
	Client Reference score (50 points possible)			
	Best Value Criteria			