

## City of Seattle

### CONTRACT TERMS AND CONDITIONS

This Contract ("Contract" or "Vendor Contract") is made and entered into effective as of February 29, 2008 ("Effective Date") by and between City of Seattle ("Seattle" or "the City"), a Washington municipal corporation; and Cognos Corp., a **corporation** of the State of Delaware, and authorized to do business in the State of Washington ("Contractor" or "Supplier").

Contractor: Cognos Corp.  
Representative: Daniel Tennant  
Address: 15 Wayside Rd, Burlington MA 01803  
Phone: 208-890-3217  
Fax: 847-240-0252  
E-mail: [daniel.tennant@cognos.com](mailto:daniel.tennant@cognos.com)

WHEREAS, the purpose of this contract is to purchase software and support and any additional support requested beyond the warranty period. Training may be requested at the discretion of the City.

WHEREAS, Contractor was selected as a result of a Request for Proposal #SCL-457 process initiated October, 2007.

WHEREAS, funds for this purpose are authorized through City of Seattle annual budget;

**NOW, THEREFORE**, in consideration of the terms and conditions listed below, and Cognos "Order Agreement" and as Supplements and made a part hereof, Seattle and Contractor mutually agree as follows:

1. **Term of Contract. (software, support and training)**

This Contract shall be effective for an initial term commencing on the Effective Date and extending for five (5) years from the Effective Date. The term may be extended by the City for three (3) additional years by providing Contractor with written notice at least thirty (30) days prior to the expiration of the then current term.

2. **Deliverables**

Contractor shall furnish certain software (the "Software") and support services ("Support") and consulting, training or professional services ("Services") as set forth on a purchase order issued pursuant to Section 3 hereof.

3. **Purchase Order Process**

The Contractor shall furnish all software and support and other services pursuant to purchase orders issued under this Contract. Each purchase order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Contractor shall furnish all the goods and services ("deliverables") specified in the purchase order in an aggregate, single, complete transaction and not as separate items unless otherwise agreed, or the items by their nature are intended to be delivered separately.

Purchase orders under this Contract may be generated by the City under the following conditions:

- (1) A post-warranty annual maintenance agreement is accepted by the City;
- (2) The City issues a request to add, upgrade software, or to change quantities of any deliverable;
- (3) The City may add consulting, professional services and training at its discretion.

A Purchase Order transaction is not complete unless and until an authorized purchasing representative of the City also executes an Order Agreement referencing the terms and conditions of this Agreement (referred to as an "Order Agreement"), which contains a description of the mutually agreed fees, license restrictions, support, statement of work, and other applicable terms pertaining to the Software, Support and Services ordered. In the event of any conflict between the terms of an Order Agreement and this Agreement, the terms of the Order Agreement will control solely with respect to the items on that Order Agreement. Conflicts between Order Agreements will be resolved in favor of the most recent.

**4. Documentation**

At the time of delivery, Contractor shall provide City with all associated documentation and user manuals for each licensed Software in hard copy or electronic format (the "Documentation") for each and for any modification or enhancement thereof. The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives a copy of the Documentation associated with the same.

**5. Payment/Payment Procedures.**

Contractor shall only invoice upon the shipment of the deliverable, and in the case of Support renewal, in advance of the provision of Support for the renewal period. Each invoice will refer to the Vendor Contract. The City will provide payment to the Contractor within thirty (30) days from the receipt of invoice. The aggregate amount set forth in the Vendor Contract (including commitments for Support and Services during the Term) represents the full and final amount to be paid by the City.

**6. Taxes, Fees and Licenses.**

- A. Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.
- B. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to promptly comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.
- C. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

**7. License for Use; Support; Services**

As part of the price of the Software, the Contractor hereby grants to the City, and the City accepts from the Contractor, subject to compliance with the provisions hereof a non-exclusive, royalty free, perpetual, non-transferable license to use of the Software described in a Purchase Order and Order Agreement in the applicable jurisdiction. Each copy of the Software and any upgrade or new release of the Software provided to the City is subject to the provisions of this license. Contractor will deliver to the City a set of master media for the current version of each item of Software from which the City may copy the Software as licensed.

The City's use of Software is limited to the hardware (computers, CPU's or servers), the number of copies or users, and such other restrictions, as are set out in an Order Agreement, except that additional copies may be made for archival or back-up purposes. The City is responsible for installing the Software and for copying and installing any upgrades or new releases of the Software.

The City will use the Software only for its own internal data processing purposes, and the City will not sublicense, distribute or otherwise make the Software available to any unrelated third party subject to the Public Disclosure Law (RCW 42.56) (including, without limitation, any contractor, franchisee, agent or dealer) without first obtaining the written agreement of (a) Contractor to that use, and (b) the third party to comply with this Contract.

The City acknowledges Contractor's representation that the Software contains confidential and proprietary information and trade secrets belonging to Contractor and its licensors, and that title in and rights to the Software remains exclusively with Contractor. The City's rights to the Software are strictly limited to those granted in this Contract. The City will not decompile, disassemble or otherwise reverse engineer the Software. If the foregoing provision is prohibited by applicable law, The City will provide Contractor with advance written notification of (a) its intention to decompile, disassemble or otherwise reverse engineer the Software, and (b) the nature of the work involved. Cognos will be given the right of first refusal to perform such work at its

prevailing rates and prices.

The City will ensure that, to the extent permitted hereunder, the Software (and any direct products thereof) is exported or re-exported in compliance with applicable statutes or regulations (including U.S. export laws) relating to the country of destination, or to the users or uses of the Software.

Contractor will provide the level of Support for the Software set forth in the Order Agreement in accordance with the prevailing Cognos Support guide. The Cognos Support guide is a document issued by Contractor describing Support options and procedures and may be amended from time to time by Contractor. Any changes to the Cognos Support guide shall become effective upon the next annual support term. Requests for Support will be directed through the City's authorized contacts to the Cognos Support Centers identified in the Cognos Support guide. Support will commence on delivery of the Software to the City. The City may cancel Support at any time by giving Contractor not less than 30 days written notice and the City shall receive a prorated refund of any unused support services after the expiration of the 30 day notice period.

Contractor will perform the Services (consulting, training, education or other Services), if any, described in a Purchase Order and Order Agreement. Consultant may assign the performance of any Services to any contractor, with the consent of Licensee (which will not be unreasonably withheld). Consultant does not guarantee any estimates but will notify the City as soon as practicable if an estimate will be exceeded. The City may cancel any Service by providing ten (10) days written notice to Consultant. The City will pay for Services performed before termination. For a period ending six (6) months after the completion of any Services, neither party will knowingly either directly or indirectly solicit or induce away from the other any employee or sub-contractor of the other who has provided those Services.

## **8. Escrowing of Source Language of Licensed Software**

Contractor has deposited the source code for the Software with Lincoln-Parry Associates Inc., 352 8th Street West, Owen Sound, Ontario N4K 3M5 Canada ("Lincoln-Parry"). By executing this Contract, the City becomes, or has the right to become, a beneficiary under the source code escrow agreement between Contractor and Lincoln-Parry. The City shall have the right to receive the source code of the Software licensed hereunder upon Contractor (i) filing a petition in bankruptcy for liquidation or an assignment for the benefit of creditors; (ii) ceasing normal business operations; or (iii) failing to provide support for the Software required under a valid maintenance agreement between Contractor and the City for a fifteen day period after receipt of notice by Contractor from the City.

## **9. Warranties**

### **9.1 Warranty of the System**

Commencing on the initial delivery of the Software and extending for a period of thirty (30) days, Contractor warrants that the Software furnished hereunder shall operate in conformity with the performance capabilities, specifications, functions and other descriptions and standards as set forth in the Documentation.

### **9.2 Warranty Against Planned Obsolescence**

Reserved.

### **9.3 No Surreptitious Code Warranty**

The Contractor warrants to the City that at the time of delivery no copy of the licensed Software provided to the City contains or will contain any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines designed to permit unauthorized access to, disable, erase, or otherwise harm Software, or data or to

perform any other actions. The term Unauthorized Code does not include Self-help Code.

#### **9.4 Title Warranty and Warranty against Infringement**

The Contractor warrants and represents that the Software provided under this Contract is the sole and exclusive property of the Contractor and/or that the Contractor is authorized to grant the rights granted by this Contract to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City asserting a patent, copyright, trade secret, or proprietary right violation involving the Software acquired by the City hereunder or any portion thereof, Contractor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that Contractor is notified by the City in writing promptly after the City first receives written notice of any such claim, action, or allegation of infringement, and gives Contractor sole control of the defense and negotiations for its settlement or compromise. In the event a final injunction or order is obtained against the City's full use of either the Software or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, Contractor shall, at Contractor's option and at Contractor's expense:

- 1) procure for the City the right to continue full use of the Software; or
- 2) replace or modify the same so that it becomes non-infringing but performs the same functions in an equivalent manner ; or
- 3) if neither of the foregoing options are feasible in Contractor's sole discretion, Contractor will refund to the City the license fees paid in respect of the Software.

Contractor will have no liability for, and no obligation to defend the City against, any infringement claim to the extent such claim is based on (i) use of the Software outside the scope of this Contract, (ii) use of other than a prevailing release of the Software (if the claim could have been avoided by use of the prevailing release), or (iii) any use or modification of Software not approved in writing by Contractor.

In no event shall the City be liable to Contractor for any support payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the Software is required pursuant to this paragraph, Contractor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that admits liability on the part of the City or that would otherwise have a material adverse effect on the City shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

THIS SECTION STATES THE ENTIRE RESPONSIBILITY OF CONTRACTOR CONCERNING INFRINGEMENT CLAIMS.

#### **9.5 No Liens**

The Contractor warrants that the Software at the time of delivery is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract.

#### **9.6 Prices and Charges**

Reserved.

#### **9.7 Merchantability and Fitness Warranty**

Reserved.

#### **9.8 Compliance with Applicable Law**

The Contractor warrants that at the time of delivery the Software, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

### **9.9 Survival of Warranties and Representations**

The representations and warranties of the Contractor made pursuant to this Contract shall survive the delivery of the Software, the payment of the purchase price, and the expiration or earlier termination of this Contract.

### **9.10 Remedies**

If the warranties in Section 9.1, 9.2 and 9.3 are breached, Contractor will, at its option and at no cost to the City, (a) provide remedial services necessary to enable the Software or Support to conform to the warranty, or (b) replace any defective Software or media, or (c) refund amounts paid in respect of the defective Software, Support or Services. Contractor's warranty obligations will only extend to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by Contractor or with its approval. The City will notify Contractor promptly in writing of any breach of warranty. The City will provide Contractor with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are the City's sole remedies for breach of such warranties.

### **9.11 Disclaimer**

THE WARRANTIES IN THIS SECTION 9 ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

### **10. Risk of Loss, Freight, Overages or Underages.**

Freight terms will be FOB destination, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations to deliver the Software hereunder. Shipping costs under this Contract will be paid by the City. Shipments shall match the Vendor Contract and Order Agreement; any unauthorized advance or excess shipment is returnable at Contractor's expense.

### **15 Contract Notices, Deliverable Materials and Invoices Delivery**

Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

**If delivered by the U.S. Postal Service, it must be addressed to:**

Michael Mears  
City of Seattle Purchasing & Contracting Svcs  
PO Box 94687  
Seattle, WA 98124-4687

**If delivered by any other company, it must be addressed to:**

Michael Mears  
City of Seattle Purchasing & Contracting Svcs  
700 5<sup>th</sup> Ave., Suite 4112  
Seattle, WA 98104-5042

Phone: 206-684-4570  
Fax: 206-233-5155  
E-Mail: michael.mears@seattle.gov

Order acknowledgments, invoices and any other communications shall be delivered to the City Project Manager:

Seattle City Light Corporate Performance Div.  
P.O. Box 34023  
Seattle, WA 98124-4023

Notices to Contractor shall be delivered to the following address:

Cognos Corporation  
15 Wayside Road

Burlington, MA 01803  
Attn: Corporate Counsel

All notices will be in writing and given by: hand delivery, registered or certified mail (postage prepaid). Notices will be deemed to be received: on delivery or on the fifth (5th) business day after mailing, as the case may be.

**18. Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non discrimination in providing services**

- A. Employment Actions: Pursuant to the requirements of SMC Ch. 14.04, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.
- B. In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.
- C. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Executive Administration shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
- D. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

**19. Equal Benefits.**

- A. Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its ~~employeess with spouses~~. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:

- a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
- b. Terminate the Contract; or
- c. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
- d. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

## **20. General Legal Requirements.**

**General Requirement:** Contractor, at no expense to Seattle, shall comply with all applicable laws of the United States and the State of Washington; the applicable provisions of the Charter and ordinances of Seattle; and applicable rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.

- A. **Licenses and Similar Authorizations:** Contractor, at no expense to Seattle, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- B. **Performance Standard.** All duties by Contractor or designees shall be performed in a manner consistent with generally accepted software industry standards.
- C. **Use of Recycled Content Paper:** Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.
- D. **Americans with Disabilities Act:** Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability to the extent required under the ADA. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. **Fair Contracting Practices Ordinance:** Contractor shall comply with applicable provisions of the Fair Contracting Practices Ordinance of Seattle of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

## **21. Indemnification and Liability.**

Contractor shall protect, defend, indemnify and hold the City harmless from and against all third party claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and reasonable attorney fees, resulting from the injury or death of any person or the damage to or destruction of tangible property arising from the negligent actions or inactions of Contractor, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City.

Contractor will not be liable to the City for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including costs or legal expenses, in connection with the supply, use or performance of the Software or the performance of its other obligations pursuant to this Contract, even if it is aware of the possibility of the occurrence of such damages.

In any event, the total liability of Contractor (including the licensors of products forming part of the Software) to the City for any claim under this Contract, whether it arises by statute, contract or otherwise, will not exceed the amounts paid to Contractor by the City under this Contract for the Software, Support or Services which form the

subject of the claim. The foregoing limit does not apply to (i) the intellectual property infringement indemnity given in Section 9.4, or (ii) death or personal injury arising from negligence of Contractor, or (iii) in respect of accidental loss of, or damage to the City's tangible property, to the extent caused by the negligent actions or inactions of Contractor, its employees or subcontractors. In the event of accidental loss of or damage to the City's tangible property, to the extent caused by the negligence of Contractor, its employees or subcontractors, the limit of liability is \$1,000,000.

## **22. Insurance.**

### **Insurance Required**

Upon award of the contract, Contractor shall, at its sole expense and for the entire term of the contract, maintain in force minimum coverages and limits of liability of insurance as specified below or the City may withdraw its intent to award:

(1) Commercial General Liability (CGL) Insurance including Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual, Independent Contractors, Fire/Tenant Legal and Stop Gap/Employers Liability with minimum limits of liability of \$ 1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage except:

\$ 1,000,000	Each Offense Personal/Advertising Injury
\$ 100,000	Each Occurrence Fire Damage/Tenant Liability
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	General Aggregate
\$1,000,000	Each Accident/ Disease-Policy Limit/ Disease-Each Employee Stop Gap (may be covered under Part B "Employers Liability" of a Workers Compensation insurance policy where applicable)

(2) Non-owned Automobile Liability insurance, including coverage as required for non-owned or hired vehicles as appropriate, with a minimum limit of liability of 1,000,000 each accident combined single limit bodily Injury and property damage.

(3) Technical Errors and Omissions (Professional Liability) insurance with a minimum limit of liability of \$1,000,000 each claim.

### **Terms and Conditions of Required Insurance.**

(1) CITY OF SEATTLE AS ADDITIONAL INSURED: The CGL and Non-owned Automobile liability insurance shall include the City of Seattle as an additional insured for primary and non-contributory limits.

(2) NO LIMITATION OF LIABILITY: Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. They shall not be construed to limit the liability of Contractor or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by Contractor, whether those limits are primary, excess, contingent or otherwise.

(3) CLAIMS MADE FORM: If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Contractor shall provide the City with evidence of insurance for each annual renewal for the term of this contract.

(4) REQUIREMENT FOR WORKERS COMPENSATION INSURANCE: The State of Washington is a monopolistic state where organizations are required to purchase workers' compensation insurance from the state unless they are an authorized self-insurer. The Contractor shall insure its liability for industrial injury to its employees in accordance with statutory requirements.

(5) Reserved.

(6) NOTICE OF CANCELLATION: Under RCW 48.18.290 (1) (a) and (b) ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 30 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines

placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium). Such notice shall be delivered to the City by mail, fax or electronic transmission (see delivery addresses in Section 1.15.3 below).

(7) **QUALIFICATION OF INSURERS:** Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.

(8) Reserved.

#### **Evidence of Required Insurance**

Contractor shall cause its insurance broker or agent to provide the following insurance certification upon request:

- A Certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein, and listing the City as additional insured as specified herein.

Evidence of required insurance shall be delivered to the City Buyer.

#### **23. Audit.**

Upon request, on at least fifteen (15) days prior notice, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), at their own cost and expense, to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, limited to once annually, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur at Contractor's location, during reasonable business hours. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof, subject to the confidentiality limitations herein. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The City will keep accurate records of the number of copies of Software made and distributed, the number of end users and their location. Contractor may enter the City's premises during business hours on five (5) business days notice for the purpose of examining, or have examined (at Contractor's own expense), the City's relevant books, records and computers to verify the City's fulfillment of its obligations under this Contract.

#### **24. Contractual Relationship**

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

#### **25. Assignment and Subcontracting**

Contractor shall not assign or subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion, and which consent will not be unreasonably withheld. Any subcontract made by Contractor shall incorporate by reference all the applicable terms of this Contract. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

Nothing herein will prohibit Contractor from assigning or otherwise transferring its rights under this Contract to a third party as part of a bona fide internal corporate reorganization on the condition that the third party delivers a duly executed document agreeing to be bound by this Contract.

#### **26. Involvement of Former City Employees**

Contractor shall promptly notify Seattle in writing of any person who is expected to perform any of the Work and who, to Contractor's knowledge, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. Contractor shall use reasonable efforts to ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

**27. No Conflict of Interest.**

Contractor confirms that to its knowledge no Contractor employee involved with the purchasing process for this Contract process has a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

**28. Gratuities.**

Contractor shall not directly or indirectly give, pay, deliver, or perform, or agree to arrange to give, pay, deliver or perform, any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services, or any other thing of value for any purpose, at any time, to any person employed by the City that is intended, or that reasonably may be seen to be intended, to benefit the Contractor by way of award, administration, or in any other way to influence the contract or any future contract. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

**29. Errors & Omissions: Correction.**

Reserved.

**30. Intellectual Property Rights.**

Contractor hereby assigns to Seattle all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of any Services hereunder ("Work"). Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material, products, reports, computer programs (source and object code), deliverables, inventions, tools, software, and standards utilized by Contractor to provide the Services hereunder that was created or produced by Contractor or a third party prior to or separate from this Contract or was preexisting material (not already owned by Seattle). Work shall not include any such pre-existing materials. To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable (subject to compliance with the license terms), non-exclusive, fully-paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material for Seattle's internal business purposes only, but only as an inseparable part of the Work.

Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

Nothing in this Contract will prevent (a) either party from independently developing materials which are similar to or competitive with the Works or (b) either party's personnel from making use of the know-how acquired, principles learned or experience gained during the performance of the Services.

**31. Confidentiality.**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed outside the scope of this Contract without reliance on a party's confidential information, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality. Neither party make use of any of the other party's confidential and

proprietary Information except in the performance of rights or obligations under this Contract. Each party will use at least the same degree of care to avoid disclosure of the other party's confidential and proprietary information as it uses with respect to its own confidential and proprietary information, but in no event shall less than reasonable care be used. It is acknowledged that the Software and Documentation are the confidential and proprietary information of Contractor. The confidentiality obligations herein are subject to the Public Disclosure Law (RCW 42.56) requirements.

#### Contractor's Understanding and Obligations

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to Seattle, or that are used by Seattle even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
2. Contractor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Contractor believes are exempt from disclosure. Contractor is to be familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary only information" that the Contractor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.
3. If Seattle promptly notifies the Contractor of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Contractor must obtain the injunction and serve it on Seattle before the close of business on the tenth business day after Seattle sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.
4. If Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.
5. Contractor will reasonably cooperate with Seattle in identifying and assembling records in case of any public disclosure request.

#### Seattle's Obligations

1. Seattle will disclose those parts of records the Contractor has marked as "proprietary information" only to authorized persons unless:
  - (a) Seattle receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
  - (b) the Contractor has given Seattle express advance written permission to disclose the records.

"Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to Seattle in connection with the performance of rights or obligations under this Contract. The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

2. If Seattle receives a public disclosure request for records that Contractor has marked as "proprietary information," Seattle promptly notifies the Contractor of the request. Seattle will postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.
3. If Seattle has notified Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served Seattle with that injunction by the close of business on the tenth business day after Seattle sent notice, Seattle may disclose the record.

4. Except as set forth in this Section 31, Seattle has no other obligations concerning confidentiality and disclosure of records the Contractor has marked as "proprietary information" under this Contract. Seattle has no obligation to claim any exemption from disclosure. Seattle is not obligated or liable to the Contractor for any records that Seattle releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

**32. Publicity.**

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or any work performed pursuant to this Contract shall be publicly distributed or publicly take place without the prior, specific approval of both Cognos Corporation and the City's Project Director or his/her designee.

**33. Interlocal Agreement Act.**

Reserved.

**34. Dispute Resolution.**

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience. Nothing herein will be construed as restricting a party from seeking equitable relief at any time in a court of competent jurisdiction.

**35. Termination.**

- A. For Cause: Either party may terminate this Contract if the other party is in material breach of any of the terms of this Contract, and such breach has not been corrected within fifteen (15) days of receiving written notice from the non-breaching party detailing the breach.
- B. For City's Convenience: Seattle may terminate this Contract at any time, without cause and for any reason including Seattle's convenience, upon at least thirty (30) days prior written notice to the Contractor.
- C. Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- D. Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign which, in the case of an involuntary proceeding is not stayed or dismissed by a court of competent jurisdiction within 90 days of filing, or is wound up or liquidated, voluntarily or otherwise.
- E. Termination for Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee which constitutes a breach of Section 28 hereof.
- F. Notice: Seattle is not required to provide ~~advance notice of termination~~ except as otherwise provided herein. Notwithstanding, the City may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.
- G. Actions Upon Termination: In the event of termination by either party, Contractor shall be paid as full and

final compensation for the obligations arising, liabilities accrued or amounts payable under this Contract for Support and Services provided by Contractor prior to the effective termination date, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. If the termination is related to other than a material breach by the City, the City shall continue to have the right to use Software licensed prior to the date of termination

**36. Force Majeure– Suspension and Termination.**

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the reasonable control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon giving of such notice, the party shall not be deemed to be in default of any provisions of this Contract and shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

**37. Debarment.**

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Contractor colluded with another contractor to restrain competition.
- g. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. Contractor failed to cooperate in a City debarment investigation.
- i. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

**38. Recycle Products Requirements.**

Whenever practicable, Contractor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business

they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

**39. Miscellaneous Provisions.**

- A. Amendments: The Parties hereto reserve the right to make amendments or modifications to this Contract by written Contract signed by an authorized representative of each party. No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by Seattle of Contractor performance nor payment to Contractor for any portion of Work, shall constitute a waiver by Seattle of the breach or default of any term or condition unless expressly agreed to by Seattle in writing.
- H. Entire Contract: This Contract, including all Supplements referenced herein, constitutes the entire agreement between the City and the Contractor. No verbal agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Attorneys' Fees: Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees, subject to recovery for court awarded costs and attorneys' fees.
- K. Authority: Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

Cognos Corporation

City of Seattle

By *Daniel T. Tennant* 2/29/08  
Signature Date

By *Nancy Locke* 3/10/8  
Signature Date

DANIEL T. TENNANT  
(Printed Name)

NANCY LOCKE, Purchasing Manager

Account Executive  
Title

**ORDER AGREEMENT**

This Order Agreement ("Order Agreement"), effective as of February 29, 2008 ("Effective Date"), is by and between Cognos Corporation, a Delaware corporation located at 15 Wayside Road, Burlington, Massachusetts 01803 ("Cognos") and the business entity identified below ("Licensee") and shall be governed by the City of Seattle Contract Terms and Conditions ("Terms") by and between the parties effective as of February 29, 2008. Capitalized terms in this Order Agreement not otherwise defined shall have the same meanings as set forth in the Terms. In the event of any conflict between the provisions of the Terms and the provisions of this Order Agreement, the provisions of this Order Agreement shall govern.

1. **Licensee:** **City of Seattle**  
**Seattle Municipal Tower**  
**700 5<sup>th</sup> Avenue, Floor 30**  
**Seattle, WA 98124**

2. **Software License Terms:**

Cognos grants to Licensee a perpetual, non-exclusive, non-transferable (except as otherwise provided in the Terms) license to use the following Software solely for Licensee's internal use in North America:

*License*

Item No.	Software Product	License Type	No. of Named Users/Copies
1	BI Administrator	Named User/Intranet	3

**Licensee shall receive Cognos Standard Support beginning on the earlier of the shipment date of the Software licensed hereunder or the Effective Date (the "Support Commencement Date"), renewable annually.**

**Definitions and Restrictions**

- (i) "Intranet" means use of Software by Licensee's employees using an internal network not accessible to the general public.
- (ii) "Named User" means an individual who is authorized by Licensee to use the specified Software, deployed through a corresponding Related Server, whether or not that individual is logged on to that Software.
- (iii) "Related Server" means a reasonable number of copies of the corresponding network server Software required solely to allow Licensee to deploy and support the applicable Named Users licensed pursuant to this Order Agreement in a production environment.
- (iv) "BI Administrator" license means Licensee may permit the specified number of Named Users to: (i) access through Cognos Connection Portal to select reports, view reports and set personal preferences (for languages, time zones etc.); (ii) run and schedule reports created by a licensed Cognos BI Studio module, interact with prompts, output the reports to other formats such as PDF and CSV, subscribe to a scheduled report, create and manage report folders and portal pages and use the Cognos Connection Portal to create and consume portal pages, including use of all of the portlet types provided with Cognos Connection, personalize standard reports, and receive Event Studio notifications and use the Cognos Go! Office module; (iii) use the Query Studio, Report Studio (including, but not limited to Express Authoring Mode), Analysis Studio, Metric Studio, Metric Designer and Event Studio modules and functionality; (iv) administer the Cognos BI Software environment in relation to server, security and report scheduling administration and the ability to model metadata via Framework Manager; and (v) use the OLAP Builder, OLAP Modeler, Transformer modules on all platforms commercially supported by Cognos and Map Manager modules and functionality; and Licensee will configure the Software to ensure that those users are restricted from using any other Software functionality.

3. **Fees/Payment Terms:**

License Fee\*: \$36,000.00  
\*First Year Support Services included.  
Payment Terms: Net 30 days from the date of Invoice. Shipping and tax not included.

4. **Documentation:**

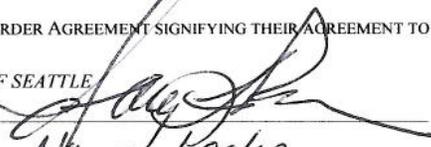
Licensee shall receive one (1) copy of Documentation for each Software item licensed hereunder. Licensee has the right to make extra copies of Documentation up to the number of copies licensed; provided Licensee reproduces all proprietary right notices which appear on the original version of Documentation.

5. **Additional Terms:**

- (i) The terms set forth herein are only valid if Cognos receives an executed copy of this Order Agreement prior to the close of business on February 29, 2008.
- (ii) The annual Support service fee for standard support services for the annual support service term beginning one year from the Support Commencement Date for the Software licensed hereunder shall be 16% of the fees set forth in Section 3 above. For the next two consecutive annual terms of paid support services thereafter, the annual Support services fee for the Software licensed hereunder may not increase by an amount in excess of the percentage increase in the Consumer Price Index for the immediately preceding year.

THE AUTHORIZED REPRESENTATIVES OF COGNOS AND LICENSEE HAVE EXECUTED THIS ORDER AGREEMENT SIGNIFYING THEIR AGREEMENT TO ITS CONTENTS.

COGNOS CORPORATION  
By:   
Name: DAN TENNANT  
Title: Account Executive

CITY OF SEATTLE  
By:   
Name: Nancy Locke  
Title: City Purchasing Mgr