



ConverterTechnology, Inc. MASTER SERVICES AND SOFTWARE LICENSE AGREEMENT

This Master Services and Software License Agreement (the "Agreement"), effective as of this 1st day of November, 2008 (the "Effective Date"), is entered into by and between ConverterTechnology, Inc., with a principal place of business at 39 Simon Street, Unit 12, Nashua NH 03060 ("ConverterTechnology"), and the End User Customer: City of Seattle, with a principal place of business at 700 Fifth Ave, Suite 2700, Seattle Municipal Tower, Seattle, WA 98124 ("Licensee"). Mailing address for Licensee is PO Box 94709, Seattle, WA 98125-94709.

1. **DEFINITIONS.** Capitalized terms referred to in this Agreement and not defined herein shall have the meanings set forth in the Definition Appendix attached hereto as **Appendix 1**.
2. **LICENSE TERMS.**
 - 2.1. **License.** Subject to the terms and conditions of this Agreement and payment of all applicable License Fees, ConverterTechnology grants to Licensee a non-exclusive, non-transferable license to install, execute and use the Licensed Software (in object code form only).
 - 2.2. **Use Restrictions; Copies.** The Licensed Software may only be used by or on behalf of a User and only up to the number of Users equal to the number of Microsoft Office Licenses (as such terms are defined below in this Section). In addition, Licensee may only (i) install the Licensed Software on computers owned or leased by it and (ii) use the Licensed Software on files owned by it and used in its facilities. "User(s)" shall mean an employee or consultant of Licensee and "Microsoft Office Licenses" shall mean the number of Microsoft Office Licenses specified in **Appendix 4**.
 - 2.3. **Delivery.** ConverterTechnology shall make available to Licensee for download the Licensed Software. Delivery shall be deemed to have occurred upon receipt of electronic confirmation by ConverterTechnology that the electronic mail to Licensee containing the instructions for downloading the Licensed Software and Documentation from an FTP site has been sent.
 - 2.4. **Beta/Early Adopter Products.** Licensee agrees to participate in an early adopter program, at the parties' discretion, where the Licensee shall have pre-release access to versions of ConverterTechnology software in advance of the general commercial release date. For such pre-release software, ConverterTechnology makes no warranties including without limitation any implied warranties regarding the fitness of the software for any particular purpose. Versions of the software licensed by the Licensee hereunder as commercially released and generally available will be subject to an additional license fee as specified herein or agreed to by the parties and subject to the terms and conditions of this Agreement including the warranties defined in Section 6 herein.
3. **OWNERSHIP; PROTECTION OF SOFTWARE.**
 - 3.1. **Ownership.** Ownership of the Licensed Software, any related Documentation, copies, modifications and derivatives of the Licensed Software or Documentation (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of ConverterTechnology and/or its licensors. ConverterTechnology reserves all rights not expressly granted by it to Licensee under this Agreement. There are no implied rights.
 - 3.2. **Restrictions.** Licensee shall not and shall not allow any third party to (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Licensed Software or any portion thereof, or otherwise derive its source code; (ii) modify, translate, or create derivative works of the Licensed Software or Documentation; (iii) sell, lease, license, sublicense, copy (except as permitted in Section 2.2 above), market or distribute the Licensed Software or Documentation; or (iv) use the Licensed Software for any timesharing, service bureau, subscription, rental or similar uses without the express prior written consent of ConverterTechnology. Licensee shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Licensed Software.
 - 3.3. **Certification and Audit.** At ConverterTechnology's written request and no more than once every six (6) months, Licensee shall provide ConverterTechnology with a signed certification (i) verifying that the Licensed Software is being used pursuant to the provisions of this Agreement, including the number of Users that the Licensed Software has been and is being used by or on behalf of, and (ii) listing Licensee's locations at which the Licensed Software resides. In addition to the foregoing, ConverterTechnology may, upon written notification to Licensee, perform an audit, not more than once per each six (6) month period, of Licensee's use of the Licensed Software and Documentation and Licensee's compliance with the provisions of this Agreement. Any such audit shall be made at ConverterTechnology's expense and shall occur during the Licensee's normal business hours. ConverterTechnology shall notify Licensee, in writing, ten (10) days prior to such audit. Such audit shall not unreasonably interfere with Licensee's business operations and Licensee agrees to cooperate with ConverterTechnology in any such audit.
 - 3.4. **Confidentiality.** Except as reasonably required to exercise its rights under this Agreement, each party shall maintain the Confidential Information of the other party in confidence. Each party agrees to use commercially reasonable efforts to prevent and restrain any unauthorized disclosure, communication, copying, use, distribution, installation or transfer of possession of Confidential Information by any of its employees, consultants, and agents to others or use it for any purpose, except pursuant to and in order to carry out, the terms and objectives of this Agreement. At a minimum, each party shall maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own. A party's Confidential Information shall not include any information which: (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party from a third party without any breach of confidentiality to the party to whom the information relates; (iii) is disclosed by a party to a third

party without any obligation of confidentiality to the party to whom the information relates; (iv) is independently developed without reference to Confidential Information; or (v) is disclosed in accordance with judicial or other governmental order. Notwithstanding the foregoing, either party shall be permitted to disclose the terms and conditions of this Agreement in conjunction with legal due diligence proceedings, but not otherwise. Without limiting the generality of the foregoing, Licensee shall take all reasonable steps to prevent any personnel or user from removing any proprietary or other legend or restrictive notice contained or included in any material provided by ConverterTechnology. Either party may publicly disclose the existence of this Agreement, but neither party shall disclose details of the Agreement without written consent from the other party.

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 ideas, concepts, know-how or techniques related to 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, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Vendor's Understanding and Obligations

1. Vendor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by the City even if the Vendor 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. Vendor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. Vendor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Vendor believes are exempt from disclosure. Vendor 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 Vendor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.

3. If the City notifies the Vendor of a public disclosure request, and the Vendor believes records are exempt from disclosure, it is the Vendor responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Vendor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent

notification to the Vendor. It is the Vendor's discretionary decision whether to file the lawsuit.

4. If Vendor does not timely obtain and serve an injunction, the Vendor is deemed to have authorized releasing the record.

5. Notwithstanding the above, the Vendor must not take any action that would affect (a) the City's ability to use goods and services provided under this Contract or (b) the Vendor's obligations under this Contract.

6. Vendor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

The City's Obligations

1. The City will disclose those parts of records the Vendor has marked as "proprietary information" only to authorized persons unless:

- (a) The City receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
- (b) The Vendor has given The City express advance written permission to disclose the records.

"Authorized persons" means those City officers, employees, Vendors and consultants for whom the proprietary information is necessary to perform their duties or obligations to The City. 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 the City receives a public disclosure request for records that Vendor has marked as "proprietary information," the City promptly notifies the Vendor of the request. The City will postpone disclosing these records for ten business days after it has sent notification to the Vendor, in order to allow the Vendor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Vendor's discretionary decision whether to file the lawsuit.

3. If the City has notified Vendor of a public disclosure request, and the Vendor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City may disclose the record.

4. The City has no other obligations concerning records the Vendor has marked as "proprietary information" under this Contract. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Vendor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

3.5. **Injunctive Relief.** Both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions

(without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

- 3.6. **Export; Government Restricted Rights.** Licensee acknowledges that the export of any Licensed Software is subject to export or import control and Licensee agrees that any Licensed Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Licensee obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

4. **SOFTWARE MAINTENANCE, PRODUCT SUPPORT, AND PROFESSIONAL SERVICES.**

- 4.1. **Software Maintenance.** Licensee may purchase software maintenance for the Licensed Software for so long as ConverterTechnology continues to maintain such Licensed Software, in accordance with ConverterTechnology's then current maintenance policies as described on **Appendix 2** to this Agreement (the "Software Maintenance and Support Services"). ConverterTechnology's Software Maintenance Services are provided only for the standard version of the Licensed Software made generally available by ConverterTechnology and do not apply to interfaces or any other custom software deliverables that may be provided by ConverterTechnology to Licensee as part of Professional Services.

- 4.2. **Product Support.** During the 60-day period commencing on the Effective Date, ConverterTechnology shall provide product support services as described on **Appendix 2** to this Agreement (the "Product Support Services"). If Licensee requires additional Product Support Services beyond such initial 60-day support period Licensee may purchase additional Product Support Services at ConverterTechnology's then prevailing hourly support rates.

- 4.3. **Professional Services.** Licensee may purchase professional services in accordance with ConverterTechnology's then current professional services policies as described on **Appendix 3** ConverterTechnology or its designated subcontractors shall make available to Licensee certain professional services, such as project planning, management, installation, integration, configuration, consulting and/or training services, if and as specified on an SOW (the "Professional Services"). Such Professional Services shall be subject to the terms and conditions of this Agreement, including the additional terms set forth on **Appendix 3**.

5. **FEES AND PAYMENT TERMS.**

- 5.1. **License Fees.** In consideration of the licenses granted by ConverterTechnology under this Agreement, Licensee agrees to pay ConverterTechnology all license fees set forth on **Appendix 4** hereto ("License Fees"). Licensee agrees that notwithstanding any other provision of this Agreement, License Fees are fully earned by ConverterTechnology upon delivery of the Licensed Software to Licensee, and such License Fees are due and payable by Licensee without any further performance by ConverterTechnology. ConverterTechnology is expressly authorized by Licensee to deliver the Licensed Software and invoice for the Licensed Software listed on **Appendix 4** hereto upon execution of the Agreement by the parties.

- 5.2. **Software Maintenance Fees.** For each Maintenance Period, Licensee agrees to pay to ConverterTechnology the Maintenance fee set forth on **Appendix 4** hereto ("Maintenance Fee"). The Maintenance Fee for the initial Maintenance Period shall be the applicable amount set

forth on **Appendix 4** hereto, which amount shall be payable, in full, upon the execution of the Agreement by the parties. The Maintenance Fee for each subsequent Maintenance Period, shall be payable on the later of (i) the commencement date of such Maintenance Period, or (ii) the thirtieth (30th) day following Licensee's receipt of ConverterTechnology's invoice for such Maintenance Fee.

- 5.3. **Product Support Fees.** Licensee agrees to pay to ConverterTechnology the Product Support fee set forth on **Appendix 4** hereto ("Product Support Fee"). The Product Support Fee for the initial period shall be the applicable amount set forth on **Appendix 4** hereto, which amount shall be payable, in full, upon the execution of the Agreement by the parties. The Product Support Fee for each subsequent Support Period, shall be payable on the later of (i) the commencement date of such Support Period, or (ii) the thirtieth (30th) day following Licensee's receipt of ConverterTechnology's invoice for such Product Support Fee.

- 5.4. **Professional Services Fees.** Licensee shall pay ConverterTechnology the Professional Services Fees specified on **Appendix 4** hereto or in an SOW ("Professional Services Fees") and travel as defined in 5.5.

- 5.5. **Travel.** If certain travel is pre-approved by the City, the City will compensate travel expenses not to exceed actual travel costs given the following limitations. Vendor and the City shall determine the need for on-site presence and the City shall pre-approve travel. Vendor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.
- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."
- **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in effect at the time the mileage expense is incurred (currently at 58.5 cents a mile).
- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.

The City will reimburse the Consultant at actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

5.6. **Payment Terms.** Payment terms for all purchases hereunder shall be net thirty (30) days after the date of ConverterTechnology's invoice and, unless otherwise agreed in writing, shall be paid in U.S. Dollars. Any Licensee purchase order, which may or may not become available, is an administrative document only and any provisions in such purchase order at variance with this Agreement shall not be binding on the parties unless otherwise mutually consented upon. Overdue balances are subject to a service charge of one percent (1%) per month, but not more than that allowed by law. Licensee shall be responsible for any and all taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, excluding any tax based on ConverterTechnology's net income. In the event that ConverterTechnology is required at any time to pay any such tax, assessment, fee, or charge, other than relating to ConverterTechnology's net income, Licensee shall promptly reimburse ConverterTechnology for such payments, plus interest. Except as otherwise specifically set forth in this Agreement, all License Fees, Maintenance Fees and Professional Services Fees are non-refundable.

6. LIMITED WARRANTY: LIMITATION OF WARRANTIES.

6.1. **Product Warranty.** ConverterTechnology hereby grants to Licensee a sixty (60) day Product Warranty, as defined below, commencing on the date that the Licensed Product is delivered to (or is deemed delivered in accordance with Section 2.3 hereof) Licensee by ConverterTechnology and continuing for sixty (60) consecutive days thereafter (the "Warranty Period"). ConverterTechnology warrants that during the Warranty Period the Licensed Software Product will perform in accordance with the then-current Documentation in all material respects (the "Product Warranty"). This Product Warranty does not cover any copy of the Licensed Software, which has been altered or changed in any way by a party other than ConverterTechnology.

6.2. **Product Warranty Remedy.** Licensee's sole and exclusive remedy for any breach of the Product Warranty shall be to have ConverterTechnology or its representatives, at their option, modify such Licensed Software Product to correct the defect giving rise to such breach within a reasonable period, not to exceed ninety (90) days from ConverterTechnology's receipt of written notification of such defect from Licensee (the "Cure Period"). If, within the Cure Period as defined above, ConverterTechnology is unable to modify the defective Licensed Software Product in such a way as to correct the said defect, then, unless ConverterTechnology is able to provide Licensee with another method of achieving the desired effect, Licensee shall be entitled to terminate the Agreement by giving written notice thereof to ConverterTechnology within ten (10) days following the end of the Cure Period. In such event, Licensee shall be entitled to a refund, of any License Fees paid by Licensee to ConverterTechnology for such defective Licensed Software Product together with any

unused, prepaid Maintenance Fees paid by Licensee to ConverterTechnology for such defective Licensed Software.

6.3. **Exclusions and Contingencies.** Licensee's remedy and ConverterTechnology's liability under this Section 6 are expressly contingent upon: (i) Licensee notifying ConverterTechnology in writing of the claim within the Warranty Period and furnishing ConverterTechnology with adequate supporting documentation and details to substantiate the claim and to assist ConverterTechnology with the identification and detection of the cause of the problem, (ii) the problem being capable of reproduction on properly functioning equipment by ConverterTechnology; (iii) the Licensed Software having not been altered or changed in any way by a party other than ConverterTechnology; (iv) the Licensed Software having been properly installed and operated in accordance with the Documentation; (v) the latest generally released and received version of the Licensed Software has been installed, (vi) the Licensee has installed the latest generally released Microsoft's Operating System and Service Packs (based on minimum specifications provided by ConverterTechnology) and (vii) the Licensed Software having not experienced interference from products, applications, or configurations provided by Licensee or third parties.

6.4. **Services Warranty.** ConverterTechnology warrants that any Services provided hereunder shall be provided in a competent and workmanlike manner in accordance with industry standards. Any work product provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set forth in the SOW. If the Services are not performed as warranted or the work product does not so comply, and such non-compliance can be reasonably reproducible or validated by ConverterTechnology, then, upon Licensee's written request, ConverterTechnology shall remedy any non-compliance of such Services, at no additional charge to Licensee (exclusive of any travel or other related costs). Such warranties and other obligations shall only survive for thirty (30) days following the completion of the Services or the delivery of each applicable portion of the work product, as the case may be. Such re-performance shall be Licensee's exclusive remedy and ConverterTechnology's sole liability for any such non-performance.

6.5. **Errors.** ConverterTechnology does not warrant that the functions contained in the Licensed Software will meet the requirements of Licensee or that the operation of the Licensed Software will be interruption or error-free. ConverterTechnology is not responsible for problems caused by changes in, or modifications to, the operating characteristics of any computer hardware, operating system, or networking for which the Licensed Software is procured, nor is ConverterTechnology responsible for problems which result from the use of the Licensed Software in conjunction with software of third parties or with hardware which is incompatible with the computer hardware, operating system or networking for which the Licensed Software is being procured.

6.6. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS SECTION 6, CONVERTERTECHNOLOGY MAKES AND LICENSEE RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO ANY LICENSED SOFTWARE, DOCUMENTATION, SOFTWARE MAINTENANCE SERVICES, SUPPORT SERVICES, PROFESSIONAL SERVICES, THIRD PARTY SOFTWARE, OR OTHER SERVICES. CONVERTERTECHNOLOGY SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES

ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. THE STATED PRODUCT WARRANTY IS IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF CONVERTERTECHNOLOGY FOR DAMAGES.

7. INDEMNIFICATION.

- 7.1. **Indemnity.** ConverterTechnology will defend and indemnify, at its own expense, any third party claim against Licensee that arises due to (i) any bodily injury, death or damage to tangible personal property caused by the negligent acts or omissions of ConverterTechnology or its employees or subcontractors in the performance of Professional Services or (ii) a claim that the Licensed Software infringes a valid United States patent or copyright or involves the misappropriation of a trade secret. ConverterTechnology will pay such damages or costs as are finally awarded against Licensee or agreed to in settlement for such claim provided that Licensee gives ConverterTechnology: (a) prompt written notice of any such claim or threatened claim; (b) sole control of the defense, negotiations and settlement of such claim; and (c) full cooperation in any defense or settlement of the claim (at ConverterTechnology's cost).
- 7.2. **Further Obligations.** Should any Licensed Software become, or in ConverterTechnology's opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation as set forth above, ConverterTechnology shall, at its option and expense either: (i) procure for Licensee the right to continue to use the infringing Licensed Software, or (ii) replace or modify the infringing Licensed Software to make its use non-infringing without loss of substantial functionality. Notwithstanding the foregoing, if ConverterTechnology, in its sole discretion, determines that neither of the said options is reasonably available to it, ConverterTechnology, at its option, may terminate Licensee's license for the infringing Licensed Software, in which event ConverterTechnology shall refund to Licensee (i) a pro rata portion, if any, of the License Fees paid by Licensee for the infringing Licensed Software, which pro rata portion shall be a fraction, the numerator of which shall be equal to the number of months, if any, remaining from the date the termination becomes effective until the occurrence of the second (2nd) anniversary of the date of this Agreement, and the denominator of which shall be equal to twenty four (24), and (ii) a pro rata portion of any prepaid unused Maintenance Fees for the infringing Licensed Software, which pro rata portion shall be based on the remaining term of the then-current Maintenance Period.
- 7.3. **Exclusions.** Regardless of the foregoing, ConverterTechnology shall have no liability or obligation to Licensee with respect to any claim if such a claim is based on (i) Licensee's use of any non-current or altered version of the Licensed Software, to the extent that Licensee's liability for such claim would have been avoided by the use of a more recent and unaltered version of the Licensed Software which had been provided by ConverterTechnology to Licensee, or (ii) the combination, operation, or use of the Licensed Software with software or equipment which was not provided by ConverterTechnology, to the extent that Licensee's liability for such claim would have been avoided in the absence of such combination, operation, or use.
- 7.4. **Sole Obligation.** This Section 7 states ConverterTechnology's sole obligation and Licensee's sole remedy in the event that the Licensed Software infringes or misappropriates any intellectual or proprietary rights of any third party.

8. LIMITATION OF LIABILITY.

- 8.1. **Limitation of Liability.** Except for (i) a party's breach of its obligations under Section 3.4 above, (ii) in connection with a breach by either party of the intellectual property rights of the other party or (iii) a breach by Licensee of Section 3.2 above, in no event will either party, or their respective Affiliates, employees or agents, or ConverterTechnology's suppliers, be liable for loss of profits, business, use or data, or for interruption of business, or any other indirect, incidental, consequential or punitive damages even if advised of the possibility of such damages, regardless of the form of action, notwithstanding the failure of essential purpose of any limited remedy. Except for ConverterTechnology's indemnification obligation specified in Section 7 herein, in no event will ConverterTechnology's aggregate, cumulative monetary liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence), exceed the License Fees actually paid by Licensee to ConverterTechnology for the applicable Licensed Software that is related to the claim or the Professional Services fees actually paid by Licensee to ConverterTechnology for the applicable Professional Services. Nothing in this Agreement shall operate so as to restrict or exclude the direct damages of a party resulting from the death or personal injury caused by the negligence of such party.

9. TERMINATION.

- 9.1. **Termination by the Parties.** Either party may terminate this Agreement for cause immediately by written notice upon the occurrence of any of the following events:
- (i) if the other party ceases to do business, or otherwise terminates its business operations;
 - (ii) if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing; or
 - (iii) if the other party breaches any material provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing such breach provided, however, that a breach by ConverterTechnology of its obligations under Section 6.1 or 6.4 shall not be deemed to be a material breach but instead shall be subject to the exclusive remedies set forth in Section 6, as the case may be.
 - (iv) For City's Convenience: The City may terminate this Contract at any time, without cause and for any reason including the City's convenience, upon written notice to the Vendor.
 - (v) Nonappropriation of Funds: The City 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.
- 9.2. **Effect of Termination.** Upon termination of this Agreement, regardless of the cause, all licenses granted under this Agreement shall be immediately revoked.
- 9.3. **Destruction of Software.** Licensee agrees that, in the event of any termination of the Agreement, Licensee shall, within fifteen (15) days from the date of such termination, purge all copies of such Licensed Software and Documentation from all computers and storage media on which Licensee has maintained them, destroy all copies of such Licensed Software and Documentation provided to or made by Licensee under this Agreement, and promptly certify in

writing to ConverterTechnology that the same have been purged and destroyed.

9.4. **Non-renewal of Maintenance and Support.** Licensee shall have no obligation to renew and ConverterTechnology shall have no obligation to provide Software Maintenance Services and Support Services for any additional annual terms.

9.5. **Survival.** Termination of this Agreement shall not relieve either party of any payment or other obligation under this Agreement which was to have been performed by such party prior to the termination. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement (including, without limitation, the provisions of Sections 3, 6, 7, 8, 9 and 10) shall survive such termination.

10. **GENERAL PROVISIONS.**

10.1. **Entire Agreement and Controlling Documents.** This Agreement (including any Appendices and Appendixes) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement and is duly signed by both authorized representatives of both parties may amend this Agreement. The terms and conditions contained in any purchase order issued by Licensee shall be of no force or effect, even if the order is accepted by ConverterTechnology. This Agreement shall apply to all software and services ordered by Licensee or delivered to Licensee by ConverterTechnology, except for services which are explicitly supplied under a separate written services agreement between the parties.

10.2. **Assignment.** This Agreement shall be binding upon and for the benefit of ConverterTechnology and Licensee and their respective legal representatives, successors, and assigns; provided, that Licensee shall not assign, sublicense, delegate, or otherwise transfer any of its rights or obligations under this Agreement without ConverterTechnology's prior written consent.

10.3. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to (i) its conflict of law provisions, and (ii) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods. Each party consents to, and agrees that each party is subject to, the exclusive jurisdiction of the state and federal courts of the State of New Hampshire with respect to any actions for enforcement of or breach of this Agreement.

10.4. **Headings; Counterparts.** The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.

10.5. **Relationship of the Parties.** ConverterTechnology and Licensee are independent contractors, and nothing in this Agreement shall be construed as making them partners or as creating the relationships of employer and employee, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other

obligations, express or implied, in the other party's name or on its behalf.

10.6. **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.

10.7. **Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

10.8. **Notices.** Any demand, notice, consent, or other communication required by this Agreement to be given in writing shall be given either (i) by being hand-delivered to the receiving party, or (ii) by being deposited in the mail (registered or certified) or delivered to a recognized private express common carrier, postage or freight prepaid, addressed to the receiving party at its address set forth in the introductory paragraph to this Agreement. Either party may change its address by giving written notice to the other party of the changed address.

10.9. **Waiver and Severability.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of the subject right or any further right under this Agreement. If any provision of this Agreement or the application thereof to any party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law.

10.10. **Use of Name.** Licensee agrees that ConverterTechnology may upon approval by Licensee (i) use Licensee's name in ConverterTechnology's customer list, (ii) issue a press release generally describing the party's relationship under this Agreement, (iii) obtain Licensee's participation in a case study, and (iv) in a reasonable number of instances, identify Licensee as a reference customer.

10.11. **Additional Terms and Conditions for the City of Seattle.** Other Terms and Conditions for the City of Seattle are specified in **Attachment #5.** All Terms and Conditions in Attachment #5 shall be considered binding and apply shall apply to the Master Services and Software License Agreement between the City of Seattle and Converter Technology.

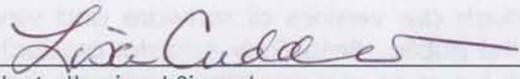
ConverterTechnology and Licensee have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

ConverterTechnology :

Licensee :

ConverterTechnology, Inc.

City of Seattle

By : 
Duly Authorized Signatory

By : _____
Duly Authorized Signatory

Name : Lisa Cuddemi

Name : _____

Title : Mgr. Finance + Admin.

Title : _____

Lisa Cuddemi
Manager, Finance & Administration

Jason Edens
Senior Buyer

ConverterTechnology, Inc.
39 Simon Street, Unit 12
Nashua, NH 03060
(603) 880-9118 x 332

City of Seattle
Purchasing Services
PO Box 94687
Seattle WA 98124-4687
Ph: 206-684-0445

lcuddemi@convertertechnology.com

jason.edens@seattle.gov

Stan Wu
Project Manager

Department of Information Technology
PO Box 94709
Seattle, WA 98124-4709
206-684.0554

Stan.wu@seattle.gov

Appendix 1

Definition Appendix

1. **Affiliates:** Any corporation, partnership or other entity now existing or hereafter organized that is directly or indirectly controlled by a party. For purposes of this definition "control" means the direct possession of at least fifty-one percent (51%) of the outstanding voting securities of an entity.
2. **Beta/Early Adopter Products:** Beta/Early Adopter Products are versions of software and services that precede the release of generally available versions to the public. Beta/Early Adopter products may be offered for the purpose of testing in various environments for errors and any other problems that may not have been discovered in the course of quality assurance efforts. Licensing, product support, and other fees may apply for Beta/Early Adopter Products.
3. **Confidential Information:** All information which is written, graphic, machine readable or other tangible form and is marked "confidential", "proprietary", "source code", or in some other manner to indicate its confidential nature, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Confidential Information shall expressly include the Licensed Software, including all source and object code, Documentation related to such Licensed Software, the Services and the terms and pricing under this Agreement.
4. **Documentation:** The documentation for Licensed Software that generally accompanies the Licensed Software to assist the user in the use of such Licensed Software.
5. **Licensed Software:** The series of computer software programs listed on Appendix 4, and any other computer programs created or commercially licensed by ConverterTechnology and any copies thereof. Licensed Software shall include the Documentation and Upgrades thereto and shall also include any security device (if any) and third party software and documentation (if any) delivered to the end user by ConverterTechnology.
6. **Licensee Fees:** Shall have the meaning ascribed such term in Section 5.1 hereof.
7. **Product Support Period:** The term of the Product Support Services, during which Licensee is entitled to Product Support Services hereunder.
8. **Services:** ConverterTechnology's Professional Service.
9. **Software Maintenance Period:** The term of the Software Maintenance, during which Licensee is entitled to Software Maintenance Services hereunder.
10. **Software Maintenance Program:** ConverterTechnology's Software Maintenance program with respect to the Licensed Software as further described on Appendix 2.
11. **SOW:** A Statement of Work referencing this Agreement and signed by both parties from time to time that sets forth Professional Services and certain other terms related thereto that are agreed between the parties.
12. **Upgrades:** Periodically released versions of the Licensed Software and Documentation, which include updates, modifications, corrections, and feature enhancements to the Licensed Software and Documentation and which ConverterTechnology generally provides to its customers who are enrolled in and fully paid-up under the Maintenance Program. Upgrades do not include new ConverterTechnology products, which either adds new functionality to the Licensed Software or which are marketed and priced separately by ConverterTechnology.

Appendix 2

Software Maintenance and Product Support Services

1. SOFTWARE MAINTENANCE

- 1.1 **Software Maintenance.** Upon payment of the annual Software Maintenance Fees listed in this Agreement, ConverterTechnology shall provide Software Maintenance Services for the Licensed Software. ConverterTechnology will use commercially reasonable efforts to address any non-conformant product issues with respect to the Licensed Software. All Software Maintenance Services provided under this Agreement shall be conducted in the English language.
- 1.2 **Upgrades.** So long as Licensee is enrolled in and fully-paid up under ConverterTechnology's Software Maintenance Program, during the Software Maintenance Program, ConverterTechnology shall provide Licensee with all Upgrades to the Licensed Software and Documentation. Licensee can download Upgrades via the customer login area on the ConverterTechnology website, www.ConverterTechnology.com.

2. PRODUCT SUPPORT SERVICES

2.1 Product Support services consist of:

- 2.1.1 **Telephone Support.** During the Product Support Period ConverterTechnology shall provide Licensee with telephone support for two (2) pre-appointed Licensee contacts (appointed as specified in Section 2.2 below). In order to obtain telephone support, a Licensee pre-appointed contact must first submit a support request via the support request form located at the URL: <http://www.convertertechnology.com/resources.cfm?ID=97> which must be accompanied by the license activation key, user name and password. Once a support request is submitted electronically, telephone contact and/or response will become available from 9:00 AM to 5:00 PM, Eastern Standard Time, Monday thru Friday, excluding public holidays ("Daily Coverage Period"). ConverterTechnology agrees to provide a response in accordance with Section 4 below upon notification by Licensee to ConverterTechnology (via telephone, email, or Internet) of questions related to the use of the Licensed Software. Requests received after the Daily Coverage Period shall be deemed to be received during the next business day of ConverterTechnology.
- 2.1.2 **Support Group.** During the Support Period ConverterTechnology shall provide Licensee with access to ConverterTechnology's Support Group for answers to questions related to the functionality and use of the Licensed Software's features for Microsoft Office Applications, and related questions regarding Microsoft Access and Microsoft Visual Basic for Applications (VBA). Support Services does not include writing program code for client applications or other consulting services such as responding to inquiries about MS Visual Basic, or migration from unsupported platforms. Support Services does not include support for DAO to ADO or Lotus to Excel conversions. These requests would be assessed for consideration and, if processed, would be billable services.
- 2.1.3 **Knowledgebase Access.** So long as Licensee is enrolled in and fully-paid up under ConverterTechnology's Product Support Program, during the Product Support Period, Licensee may access ConverterTechnology's knowledgebase and other documentation and tools via the customer login area on the ConverterTechnology website, www.ConverterTechnology.com.
- 2.2 **Pre-appointed Licensee Contacts.** A Licensee employee shall be designated a pre-appointed contact (and therefore be eligible to receive telephone and email support as specified herein) upon their completion of ConverterTechnology's basic web-based training. ConverterTechnology will provide a single web-based training session per Licensee contract ("Training"). If existing pre-

appointed contacts are replaced, or new pre-appointed contacts are appointed, they will need to complete the Training and pay ConverterTechnology the then-current fees for such Training. Training will only be provided to an employee of Licensee and not to a subcontractor, consultant or customer of the Licensee. Upon request, ConverterTechnology may provide training to Licensee's subcontractors, consultants or customers at the prevailing rate for Professional Services.

2.3 Support of Previous Versions of the Licensed Software. During the term of the Agreement, ConverterTechnology shall provide Maintenance Services and Support Services for the current release of the Licensed Software (The "Current Release") and all previous releases up to one minor release prior to the Current Release of the Licensed Software. The "Major Release base number" shall mean the product version number's (i) first positional digit (i.e., "left of the dot") The "Minor Release number" shall mean the product version number's (ii) second positional digit (i.e., the "right of the dot"). For example, if the Current Release is Version 8.4, ConverterTechnology will support only those versions between 8.3 and 8.4. Support Services will be provided for older versions of the Licensed Software when the customer has a valid, paid, and current Product Support contract. Notwithstanding the foregoing, this may be superseded by notification by ConverterTechnology may cease providing Maintenance and/or Support Services for any prior version of the Licensed Software for which ConverterTechnology has generally ceased providing such services.

3. LIMITATIONS.

Support of Customizations, Modifications, or Extensions to Licensed Software: ConverterTechnology will use commercially reasonable efforts to assist Licensee in its attempts to remedy any problems with the Licensed Software resulting from any customizations, modifications, or extensions to the Licensed Software, regardless of by whom such customizations, modifications, or extensions were performed. All associated computer hardware and operating systems must be maintained at the latest version deemed necessary by ConverterTechnology. ConverterTechnology shall not be obligated to provide the services hereunder if service is required as a result of non-ConverterTechnology hardware or software or modifications to the Licensed Software. If Licensee is unable to remedy the said problems, ConverterTechnology will, upon Licensee's request, treat such problems as a Professional Services engagement and shall bill for its services at ConverterTechnology's then-current Professional Services rates.

4. RESPONSE TIMES.

ConverterTechnology shall use commercially reasonable efforts to reply to any support and maintenance inquiries as follows:

1. Acknowledgement of request submitted electronically within one (1) business day.
2. Initial triage completed within one (1) business day.
3. Initial findings and resolution plan within three (3) business days.

Appendix 3

PROFESSIONAL SERVICES

1. **SERVICES.**

1.1 ConverterTechnology will provide project planning, project management, installation, integration, configuration, consulting, training and/or other related Professional Services pursuant to a SOW executed by the parties and referencing this Agreement.

1.2 The Professional Services do not include Software Maintenance Services and/or Product Support Services for any deliverables or work product comprising software delivered by ConverterTechnology as part of Professional Services. Licensee may separately purchase from ConverterTechnology Software Maintenance Services and/or Product Support Services for such deliverables or work product on a time and materials basis, at ConverterTechnology's then prevailing rates.

2. **CHANGE REQUESTS.** Either party may request a change to a SOW or contract and for such purpose shall submit to the other party a written notice ("Change Request") setting forth the requested change and the reason for such request. After the receipt of such Change Request, the parties shall discuss the necessity, desirability and/or acceptability of the Change Request. When and if both parties have agreed in writing upon the changes, and any resulting change in the estimated fees for the project, the SOW will be amended to reflect the agreed upon changes.

3. **CHARGES FOR SERVICES.** Licensee shall pay to ConverterTechnology the fees set forth in the SOW for the Professional Services. If fees for any Professional Service are not specified in the SOW, such Professional Services will be provided on a time and materials basis at ConverterTechnology's then prevailing rates when Professional Services are performed unless the parties otherwise agree in writing. Licensee will reimburse ConverterTechnology for expenses, such as travel, lodging and meals charges, incurred by ConverterTechnology in connection with its performance of Professional Services. ConverterTechnology will invoice Licensee as specified in the contract or SOW, and charges are due and payable upon presentation of the invoice.

4. **SUSPENSION OR TERMINATION OF SERVICES.** ConverterTechnology recognizes that there may be unusual instances where Licensee will, for reasons not anticipated at the time of making this Agreement, find it necessary to halt the Professional Services before ConverterTechnology has completed the Professional Services. In the event that such a cancellation is necessary, Licensee will notify ConverterTechnology in writing and agrees to compensate ConverterTechnology for all Professional Services completed through date of cancellation plus five (5) business days at the rate specified in the SOW and/or contract as well as reimburse ConverterTechnology for all expenses incurred in connection with the Professional Services.

5. **ACCESS TO CUSTOMER'S PROPERTY AND COMPUTERS.** Licensee agrees to provide ConverterTechnology access to Licensee's sites, computers, servers, drives, directories, files, and/or intranet via remote data communications and by visits to Licensee's site as reasonably required to perform under any SOW and/or contract. All supplies, information and computer resources, including software licenses (other than software supplied by ConverterTechnology), required to perform the Professional Services shall be provided to ConverterTechnology at Licensee's expense.

6. **LICENSE; OWNERSHIP.**

6.1 Licensee will have a non-exclusive, non-transferable license to use such work product, programs, interfaces, modifications to programs, reports and documentation developed by ConverterTechnology in the performance of Professional Services and delivered to Licensee, upon Licensee's payment in full of all amounts due hereunder, solely in conjunction with, and consistent in scope with, Licensee's permitted use of the Licensed Software under this Agreement.

6.2 ConverterTechnology retains ownership of all information, Licensed Software and other property

owned by it prior to this Agreement or which it develops independently of this Agreement and all work product received, compiled or developed by ConverterTechnology in the performance of this Agreement, including, but not limited to all configurations to the Licensed Software or any applications. All such information shall be treated as Confidential Information of ConverterTechnology in accordance with Section 3.5 of the Agreement. ConverterTechnology may utilize any and all methods, computer software, know-how or techniques related to programming and processing of data, developed by it while providing the Services and may incorporate the work product in future releases of any of its Licensed Software. Licensee agrees that all intellectual property rights and all other ownership in any ideas, modifications, or suggestions it proposes, creates, or authors relating to the Software ("Suggestions") are hereby assigned to ConverterTechnology and shall be the sole and exclusive property of ConverterTechnology. ConverterTechnology will have sole discretion as to whether and how to implement any such Suggestions into the Licensed Software.

7. **STAFFING.** ConverterTechnology shall have sole discretion regarding staffing for the Professional Services, including the assignment or reassignment of its Services personnel. In addition, ConverterTechnology may, at ConverterTechnology's sole responsibility, retain one or more sub-contractors to provide all or a portion of the Professional Services. Licensee shall provide at least one mutually acceptable contact person to communicate all product development-related activities, and matters concerning the Professional Services, to ConverterTechnology. ConverterTechnology shall be responsible for all reasonable actions of its subcontractors in the performance of this Agreement.

8. **LICENSEE OBLIGATIONS.**

8.1 **Cooperation.** Licensee will cooperate with ConverterTechnology, will provide ConverterTechnology such assistance as ConverterTechnology may reasonably request, and will fulfill its responsibilities as set forth in this Agreement and/or SOW, except as prevented by acts or occurrences beyond Licensee's control. If ConverterTechnology personnel are required to be present on a Licensee site, Licensee will provide adequate workspace and may provide reasonable worksite safety and security rules to which such personnel are to conform. Licensee shall be responsible for obtaining and paying for any releases, rights, licenses, clearances or permissions necessary to use any third party materials which are the responsibility of Licensee to provide in connection with any Professional Services performed by ConverterTechnology under any SOW.

8.2 **Licensee Contact.** Licensee will appoint a Licensee contact to ConverterTechnology. This contact, or a designated alternate, must be available on site or by phone at all times that Professional Services are being provided.

8.3 **Accurate Data.** Licensee will provide ConverterTechnology accurate and complete information necessary for the implementation of the Professional Services. Licensee agrees to pay ConverterTechnology's rates as defined in the SOW for any remedial work resulting from inaccurate and/or incomplete information provided by Licensee.

8.4 **Acknowledgment.** Licensee acknowledges and agrees that if any phase of ConverterTechnology's scheduled Professional Services as set forth in the SOW is delayed by any act or omission of Licensee, including but not limited to Licensee's failure to fulfill its obligations listed in this Section 8 or make payments as set forth in Section 3, the scheduled completion of the Professional Services or individual phases of the Professional Services as set forth in the SOW may be delayed. Licensee agrees to pay ConverterTechnology compensation for the extended work at ConverterTechnology's then standard rates for the required personnel. Licensee will not be responsible for any extension period that is caused by circumstances within ConverterTechnology's reasonable control.

Appendix 4

Software Licensing Programs

OfficeConverter 2007 Enterprise Edition Licensing

1.1 **OfficeConverter 2007 Software License.** Upon payment of the Software license, services and support fees listed in this Appendix 4 ConverterTechnology shall provide a perpetual license for the Licensed Software based on the number of Microsoft Office Licenses specified in this Appendix 4.

1.2 **Upgrades.** So long as Licensee is enrolled in and fully-paid up under ConverterTechnology's Maintenance Program, during the Maintenance Program, ConverterTechnology shall provide Licensee with all Upgrades to the Licensed Software and Documentation. Licensee can download Upgrades via the customer login area on the ConverterTechnology website, www.ConverterTechnology.com. From time-to-time, ConverterTechnology may also elect to license to Licensee the right to use pre-release software, such as the "OMPM XML Filtering Tool". Such license grant shall be subject to the terms and conditions of the Agreement including without limitation Section 2.4 of the Agreement.

1.3 **Services.** Converter Technology's Professional Services (as purchased and requested)

- Project Management
- Project Planning
- Training
- Setup structure of tools (OC, ReportIT)
- Execution of tool
- Analyzing Scanning output
- Analyzing Discovery output
- Analyze ReportIT output
- Determining in-scope/out of scope files
- Determining OC options
- Applying lessons learned from past engagements
- Providing "best practice" recommendations as it related to our tools

Program License and Services Fees

Licensee has been approved for 10,000 seat user pricing from November 1, 2008 through April 30, 2009. During this time, Licensee can purchase the number of users as needed for each business unit. On or before April 30, 2008, the pricing level will be renegotiated as determined to be necessary.

All pricing is in US Dollars and is listed per seat unless stated otherwise.

- The Enterprise license is determined on the number of MS Office licenses installed (or components of) in the target user group (i.e. organization, division, department) and is not limited by site.
- Software Maintenance is defined as providing commercially reasonable efforts to address any non-conformant product issues and upgrades to the Licensed Software
- Product Support is provided for 60-days from Purchase; Support via telephone is Available during the Daily Coverage Period for Contracted, Trained Personnel after proper support request submission via the website.

- ReportIT Desktop Edition (Product Code: RITD) is included with any OfficeConverter License purchase

OfficeConverter 2007 Enterprise Edition Licensing – Table

Customer:	City of Seattle	
Division:	Department of Information Technology	
Prepared For:	Stan Wu	
Title:	Director of Major Projects	
Estimated Project Duration:	11/1/08 - 4/30/09	
Quote Valid Through:	11/1/08 - 4/30/09	
Assumptions		
# Seats	10,000	
Line Item - Price to Customer		
	Pricing Factor	
Software Related Fees Per Seat		
OfficeConverter 2007 Enterprise Edition License	\$ 10.17	
Software Maintenance Fee - 1 Year	\$ 1.83	
Product Support (60 days Included)		
Product Support - Additional months for full year of coverage	\$ 0.85	
ReportIT (Included with OfficeConverter 2007)	\$ -	
Total OfficeConverter Price Per Seat to Customer	\$ 12.85	
Professional Services		
Standard Rate	220.00 / Hr	
Pre-Buy (40 Hours +) Discounted Rate*	180.00 / Hr	
DiscoverIT Line Item - Price to Customer		
	Pricing Factor	
DiscoverIT License	\$ 17,000.00	
Software Maintenance Fee - 1 Year	\$ 3,060.00	
Total DiscoverIT Price - Per Customer (1 Time Purchase)	\$ 20,060.00	
Other Services		
Training - OC Advanced	900.00 / Person	
* Any pre-buy hours will expire 6 months from date of purchase		
Travel & Expenses are not included and will be billed as incurred if on-site services are required		

Handwritten signature

Appendix 5
Additional Terms and Conditions for the City of Seattle

1. Expansion Clause

This contract may be expanded as mutually agreed, if such expansion is approved in writing by the Buyer from the City Purchasing Office of the Department of Executive Administration, City of Seattle. No other City employee is authorized to make such written notices. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition, and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Certain Work Orders or changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, change in design and specifications that does not expand the work beyond the limits provided for above, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

2 Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non-Discrimination

- a. During the performance of this contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 1201 et seq; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination.
- b. Fair Contracting Practices Ordinance: Vendor shall comply with the Fair Contracting Practices Ordinance of The City 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.
- c. In accordance with Seattle Municipal Code Chapter 20.42, Vendor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the Statement of Work required for this Contract. Vendors shall actively solicit subcontracting bids from sub as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Vendors 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 The City, Vendor shall promptly furnish evidence of the Vendor's compliance with these requirements.
- d. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Vendor has failed to comply with the requirements of this Section, the Vendor shall notified in writing. The Director of Executive Administration shall give Vendor an opportunity to be heard, after ten calendar days' notice. If, after the Vendor'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 Vendor, pending compliance by the Vendor with the requirements of this Section.
- e. 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 Vendor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Vendor 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).

3 Equal Benefits

- a. Compliance with SMC Ch. 20.45: The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Vendor provides to its employees with spouses. At The City's request, the Vendor shall provide complete information and verification of the Vendor'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:
 - o Require the Vendor to pay actual damages for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - o Terminate the Contract; or
 - o Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or

- o Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

4. Insurance

Except as specified otherwise, Vendor shall obtain at time of award and maintain in force, minimum coverages and limits of liability of insurance specified below. If the Vendor fails to obtain or maintain these coverages, the City may withdraw its intent to award. All costs are borne by the Vendor.

1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:
 - A. Commercial General Liability (CGL) insurance, including:
 - Premises/Operations
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual
 - Independent Contractors
 - Stop Gap/Employers Liabilitywith minimum limits of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:

\$1,000,000	Personal/Advertising Injury
\$1,000,000	each accident/disease/employee Stop Gap/Employer's Liability
\$1,000,000	Errors & Omissions
 - B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.
 - C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.
3. NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.
4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.
5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.
6. EVIDENCE OF COVERAGE. Prior to performance of any scope of work under paragraph 5., Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.