



**PORT OF TACOMA**  
**REQUEST FOR PROPOSALS**  
**NO. 012026-1009**

**HR LEARNING MANAGEMENT SYSTEM**

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

<b>RFP INFORMATION</b>	
Contact:	Shawn Seaks, Procurement Analyst
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Phone:	(253) 592-6734
Submittal Date	<b>02/26/2026</b>
Questions Due Date	<b>03/12/2026</b>

**SUBMIT ALL QUESTIONS AND PROPOSALS VIA THE PROCUREMENT PORTAL.  
(LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT WEB PAGE)**

**Port of Tacoma**  
**Request for Proposals (RFP) 012026-1009**  
**HR Learning Management System**

**A. PURPOSE**

Vendors shall provide a detailed cost proposal that reflects standard market pricing for an organization of approximately 325 users. The proposal must include all costs associated with implementation, first-year subscription, and ongoing annual subscription fees beginning in Year 2, inclusive of licensing, support, and maintenance.

Cost proposals must provide sufficient detail for the Port to conduct a meaningful cost comparison across proposals.. All pricing submitted must reflect the vendor's standard rates for an organization of this size.

The successful respondent may be precluded from competing for, or participating in, subsequent contracts that are the direct result of or primarily generated by, the work performed under the contract resulting from this procurement.

Interlocal Cooperation Act-RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the Port, those agencies are eligible to purchase from Contracts established by the Port. Such agencies may ask Port Contractors to accept orders from the agency, citing the Port contract as the basis for the order. The Contractor may accept or decline such orders. If the Contractor accepts an order from another public agency using the Port contract as the basis, the Contractor agrees to sell additional items at the contract prices, terms, and conditions. The Port accepts no responsibility for the payment of the purchase price by other governmental agencies.

**B. BACKGROUND**

Created by Pierce County citizens in 1918, the Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos and heavy-lift cargo. To learn more about the Port, visit [www.portoftacoma.com](http://www.portoftacoma.com).

Formed in 2015, The Northwest Seaport Alliance is a marine cargo operating partnership of the ports of Tacoma and Seattle. The NWSA is the fourth-largest container gateway in North America. To learn more about the NWSA, visit [www.nwseaportalliance.com](http://www.nwseaportalliance.com).

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

language and describe why it is in the Port's best interests to adopt the alternative language.

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

Proposers submit proposals understanding all contract terms and conditions are mandatory. Response submittal is agreement to the Contract without exception. The Port reserves the right to negotiate changes to submitted proposals and to change the Port's otherwise mandatory Contract form during negotiations. If the Proposer is awarded a contract and refuses to sign the attached Contract form, the Port may reject the Proposer from this and future solicitations for the same work. Under no circumstances shall Proposer submit its own boilerplate of terms and conditions.

### **C. SCOPE OF SERVICES**

The Port of Tacoma intends to select a Learning Management System (LMS) as well as implementation services and ongoing support for the selected LMS. The LMS will support the Port's training, compliance, and workforce development needs across the organization.

The proposed solution will support both the Port of Tacoma and NWSA for approximately 300 staff.

Scope of Services are expected to include:

- **Select LMS with content catalog:**
  - The Port has included an Excel-based requirements matrix as an attachment.
- **Implementation and support services:**
  - Implementation planning, system configuration, integration support, testing, training, go-live assistance, and post-implementation support.
  - The Port anticipates a phased approach to the work, with activities and deliverables defined within a single Task Order.

The selected consultant will work closely with the Port's Project Manager and stakeholders to ensure the LMS is implemented effectively and supported following deployment.

#### **Phased Scope of Services (Single Task Order)**

##### **Phase 1: Discovery & Planning**

- Conduct stakeholder coordination and discovery activities
- Validate requirements and assumptions
- Develop implementation approach and sequencing

##### **Phase 2: System Configuration & Setup**

- Configure LMS environment
- Configure user roles, permissions, and training structures

### **Phase 3: Integration & Data Migration (as applicable)**

- Support system integrations
- Support data migration activities

### **Phase 4: Testing, Training & Go-Live**

- Support testing and issue resolution
- Provide administrator and/or end-user training
- Support go-live activities

### **Phase 5: Ongoing Support**

- Provide post-implementation and on-call support services as requested

## **D. DELIVERABLES:**

- Implementation plan
- Requirements validation summary
  
- Configured LMS environment
- User roles and permissions configuration
- Training catalogs and learning paths
  
- Integration documentation (if applicable)
- Data migration validation summary (if applicable)
  
- Training materials and job aids
- Go-live readiness confirmation
  
- Ongoing support documentation or summaries, as applicable

Completion and acceptance of deliverables will be confirmed by the Port's Project Manager prior to payment.

## **E. PROPOSAL ELEMENTS & EVALUATION CRITERIA:**

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing Vendor (to include the prime, key team members and major sub-consultants) and the team's ability to meet the requirements and provide the requested services of this RFP. Emphasis will be on completeness of content. The written proposals should be prepared in the same sequential order of proposal criteria as outlined below.

Proposals are limited to 10 numbered pages (8 ½ by 11 inch) **excluding** the cover letter, compensation information and all appendices. All pages shall be in portrait orientation

with 1-inch (1”) margins. Font size shall be 10 point or larger. Proposals that do not follow this format may be rejected. Submittals need to be limited to **9 MB** in total size.

The cover letter shall include the RFP Number & Title in the subject line, the Name, Title, Email Address, Phone Number and current Address of the submitting team’s main contact and include the following information (even if the answer is none):

- Describe any **claim** submitted by any client against the prime firm within the past two (2) years related to the professional services provided by the firm or its key personnel. For purposes of this request, claim means a sum of money in dispute in excess of 10% of the firm’s fee for the services provided.
- Any real or perceived **conflicts** of interest for team members, inclusive of the prime, sub-consultants and key team members.

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

**INITIAL EVALUATION PHASE**

**1. Capabilities of the Proposed Solution ..... 25 PTS**

- a) Complete the “Vendor” columns (F, G, H) in Attachment E (Port LMS Requirements) to indicate how your proposed solution meets the Port’s LMS requirements. Use the Notes column (I) to explain how the solution will meet each requirement if needed.
- b) Share information on how long your proposed solution has been available, the number of customers using the solution, and what differentiates your proposed solution from other LMS solutions.
- c) Include a list of three (3) recent customers that have implemented the proposed solution in the last five (5) years.

**2. Content Catalog/ Library ..... 35 PTS**

Present detailed information on the firm’s available training content catalog and any integrations with 3<sup>rd</sup>-party content providers. To include the ability to curate custom in-house training.

Provide a link to sample training from your catalog in the following categories below (a-f).

Training Catalog/ Library with or without 3<sup>rd</sup>-party integrations should be able to address training across the following focus areas:

- a) Technical knowledge and ability with a focus on Microsoft offerings such as SharePoint, Teams, Dynamics 365, Power Platform, Copilot, and Azure.
- b) Performance Management
- c) Leadership Development
- d) Workplace Conduct and Compliance
- e) Leave, Accommodation & Employee Rights
- f) Safety

**3. Project Approach Narrative ..... 20 PTS**

Proposals should clearly outline the team's recommended approach and methodology for:

- a) Accomplishing the Scope of Services: Clearly describe the approaches and methods that will be used to accomplish the tasks required in the Scope of Services. Include a summary of innovative ideas and suggestions for enhancing the scope of services.
  - Project Management: Describe how the team will manage and coordinate the necessary disciplines required to accomplish the services requested.
  - Describe the team's experience responding to and overall management of on-call/ task order services and describe the firm's approach for responding to the Port's request(s) for services.
- b) Provide approach for scheduling and sequencing of work and for providing simultaneous services on multiple areas of the task and facilitating efficient and consistent progress on each area of the task order.
  - General information for supporting the Port with an overall approach to LMS services at the Port.
  - Coordination & Communication. Provide a plan for communications and coordination between the Project Team, the Port's Project Manager, and the various Stakeholders.
  - Quality Control (QC) and Quality Assurance (QA) program for the requested services.
  - What risks beyond your control do you see in providing this service, and how would you mitigate them?

**4. Compensation ..... 20 PTS**

Present detailed information on the firm's proposed LMS solution, including one time and recurring service and support costs

Implementation services by milestone for the phases described in **section C** above.

**Compensation information MUST be provided separately from the proposal, in an individual PDF document.**

All rates quoted shall be:

- a) Fixed, fully burdened, including, but not limited to, per diem, administrative overhead, travel, lodging, and transportation (all direct/indirect expenses included);
- b) Quoted in US Dollars;
- c) Full cost inclusive of sales tax and other government fees, taxes and charges; and
- d) Valid throughout the contract period unless otherwise amended and agreed to by both parties in writing.

- 5. Vendor Cybersecurity Self-Evaluation (if requested) .....Pass/Fail**  
VENDOR CYBERSECURITY SELF-ASSESSMENT (Attachment E) information **MUST** be provided in an individual PDF document as a separately labeled attachment.

**FINAL EVALUATION PHASE (if applicable)**

- 1. Oral Presentations (if requested) ..... 100 PTS**

Oral Presentations may be conducted with the top-ranked Vendors. Failure to participate in the process will result in the Vendor's disqualification from further consideration. Oral Presentations will be conducted by online video meeting.

- 2. Best and Final Proposal (if requested) ..... 40 PTS**

After Oral Presentation discussions are conducted in #1 above, proposers may be asked to submit a best-and-final proposal.

- 3. References (if requested).....Pass/Fail**

Reference checks may be performed on the selected firm, if based directly on the proposals received, or on shortlisted firms if Oral Presentations are being requested. The Port may evaluate the reference checks to assess the proposed Vendor's overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the proposal.

**LIST OF ATTACHMENTS:**

**ATTACHMENT A – INSTRUCTIONS FOR PROPOSING (ATTACHED TO RFP)**

**ATTACHMENT B – PERSONAL SERVICES CONTRACT TEMPLATE & TERMS AND CONDITIONS (ATTACHED TO RFP)**

**ATTACHMENT C – COST BREAKDOWN-OFFER TEMPLATE (SEPARATE ATTACHMENT)**

**ATTACHMENT D – VENDOR CYBERSECURITY SELF-ASSESSMENT (SEPARATE ATTACHMENT)**

**ATTACHMENT E – PORT LMS REQUIREMENTS (SEPARATE ATTACHMENT)**

# **PROCUREMENT PROCESS**

## **SOLICITATION TIMELINE:**

This is the procurement schedule for this RFP. The dates shown below are estimated, are provided for information only, and are subject to change at the sole discretion of the [POT/NWSA].

Issuance of RFP	[February 26 , 2026]
<b>*Last Day To Submit Questions</b>	<b>[March 12, 2026]</b>
<b>*Proposal packets due</b>	<b>[March 26, 2026]</b>
*Review/Shortlist*	[March 30 – April 3 2026]
*Oral Presentations (if required)*	[April 13 – April 24 2026]
*Best and Final (if required)	TBD
*Final Selection	April 29, 2026
*Execute Contract	[May 13, 2026]

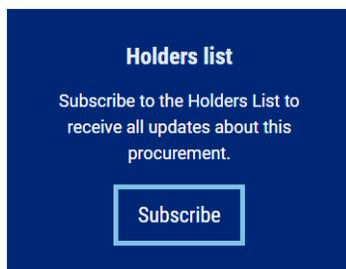
\*Dates are tentative and may be subject to change.

All status updates on the above solicitation timeline will be announced on the Port's website for this solicitation.

## **VENDOR OBLIGATION**

The Northwest Seaport Alliance (**NWSA**) and Port of Tacoma's (**PORT**) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the following websites, [www.portoftacoma.com](http://www.portoftacoma.com) (**PORT**) under 'Business -> Contracting -> Procurement' or <https://www.nwseaportalliance.com/> (**NWSA**) under 'Resources -> Procurement.'

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



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

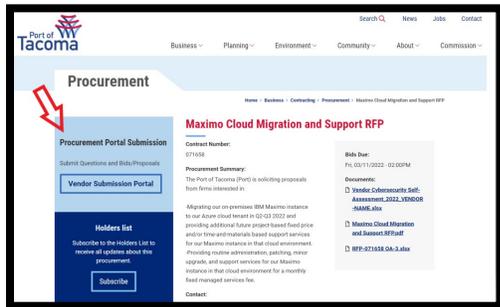
**\*Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

## **COMMUNICATION / INQUIRES**

**All communications is to be sent through Axa Turney, the Sr. Contract Administrator.**

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

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (Portal link is accessible via this specific procurements website. See left side of page.).



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed on the solicitation. The Port will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

## **ADDENDA**

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

## **SUBMITTAL PROCESS**

### **Electronic Submittal:**

PROPOSALS must be received via the procurement portal on or before the date and time outlined on the front page of this RFQ.

### **Procurement Submission Portal Instructions:**

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#) or [Procurement | Northwest Seaport Alliance](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).

Full instructions on how to utilize the submission portal can be found on the Port's Procurement website.

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

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

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

### **EVALUATION AND AWARD PROCESS**

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

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

The Port intends to select the Proposer who represents the best value to the Port.

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

### **PROCEDURE WHEN ONLY ONE PROPOSAL IS RECEIVED**

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

### **GENERAL INFORMATION**

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

### **COSTS BORNE BY PROPOSERS**

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

### **PROTEST PROCESS**

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the Port's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.)

The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com).

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

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

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

The Port of Tacoma encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (**OMWBE**). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

### **PUBLIC DISCLOSURE**

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

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as **CONFIDENTIAL**, **PROPRIETARY** or **TRADE SECRET** on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such

protective order is obtained and provided to the Port by the stated deadline, the Port will release the requested portions of the PROPOSAL. By submitting a response, the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.

**PERSONAL SERVICES AGREEMENT NO. 012026-1009**

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**TITLE:** Learning Management Software

**Consultant:** [VENDOR], [VENDORADD]

**CONTRACT OWNER:** [PM] **PROJECT NO./G/L NO.:** [PROJECTNO]/[G/L]

THIS AGREEMENT is made and entered into by and between the Port of Tacoma (hereinafter referred to as the **Port** and [VENDOR] (hereinafter referred to as the **Consultant**) for the furnishing of [DESCRIPTION] (hereinafter referred to as the **Project**).

The Port and Consultant mutually agree as follows:

**SCOPE OF WORK**

[SOW]

**DELIVERABLES**

[DELIVERABLES]

**COMPENSATION**

[\$[AMOUNT]]...

**TERM**

The term of the Agreement shall be from the date of execution through...

**AGREED**

This agreement is expressly conditioned upon the Terms and Conditions attached ...

**Port of Tacoma**

**[CONSULTANT]**

By

By

---

Axa Turney

Date

Sr. Contract Administrator

---

[VENDORSIGN]

Date

[VENDORTITLE]

**1. Relationship of the Parties**

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

**2. Subconsultant and Supplier Relations**

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

**3. Conflicts of Interest**

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

**4. Compliance with Laws**

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (**OSHA**), Washington Industrial Safety and Health Act (**WISHA**), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.

- c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

**5. Records and other Tangibles**

- a. **Port Data** means any data, records, or information provided by or pertaining to Port of Tacoma and Northwest Seaport Alliance, collectively referred to as the Port Entities, including but not limited to operational, financial, and personal data.
- b. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (**CORE**) (Current Version at time of execution). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- c. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

**6. Custom Code and/or Custom Reports**

Any custom code or custom reports requested by The Port and written or otherwise created by Consultant shall be owned by The Port, but Consultant shall retain the right to use and sell the custom code or custom reports in whole or in part. The source code used by Consultant to create or write custom code or custom reports will only be provided to The Port once payment for all outstanding invoices has been received in full and/or both parties are satisfied that all obligations under this Agreement have been met.

**7. Disclosure**

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

**8. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.
- b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the

agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

**9. Invoices**

- a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, title of the Project, total authorized, total current invoice, hours, hourly rate, and all authorized expenses, if allowed, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", within thirty (30) days.
- b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Consultant is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

**10. Costs and Disbursements**

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

**11. Standard of Care**

- a. Consultant shall perform the Services to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such Services.
- b. The Port's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the Port arising from the Consultant's errors, omissions, or negligent performance of the Services.

**12. Time**

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule, including any established milestones and task completion dates, and the overall period of performance. The completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable

to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the Port which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

**13. Assignability**

The Consultant may not assign, transfer, or novate all or any portion of the Agreement to a non-related entity, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

**14. Termination of Agreement**

a. Termination for Default:

- i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the Port; provided that the Consultant has been given an opportunity to cure.
  1. Cure Notice: If the Port determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:
- ii. The Port will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
- iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this

Agreement into compliance within the number of calendar days specified by the Port;

b. Show Cause Notice:

- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part.
- ii. The Port may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port is satisfied that the breach has been corrected.
- iii. No increase in total price or period of performance shall result from breach of this Agreement; and
- iv. Nothing herein shall be deemed to affect or waive any other rights of the Port.

c. Notice of Termination:

- i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision

shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
  1. Promptly discontinue all Services (unless the notice directs otherwise);
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.
  3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

d. Termination for Convenience:

- i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.
- ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:
  - a) An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
  - b) Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
  - c) Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable

- accounting and clerical costs actually incurred by the Consultant.
- iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
    - a) Promptly discontinue all Services (unless the notice directs otherwise);
    - b) No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Port Data including specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;
    - c) Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.
  - iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
    - a) Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
    - b) As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
    - c) Documentation supporting all costs identified in the Termination Settlement Proposal; and
    - d) A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for

which the Consultant believes the Port is responsible.

- v. Termination settlement costs and proposals are subject to audit verification by the Port.
- vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

#### **15. Disputes**

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

#### **16. Venue & Governing Law**

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

#### **17. Integration and Merger/ Extent of Agreement**

- a. This Agreement represents the entire and integrated understanding between the Port and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

#### **18. Non-Discrimination**

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or

the use of a trained dog guide or service animal by a person with a disability.

- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

#### **19. Indemnity / Hold Harmless Clause**

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, and employees from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, but only to the extent of the negligence, gross negligence, willful misconduct, of Consultant or its officers, employees, or subcontractors; or to the extent arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, or subcontractors provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.
- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise out of negligence, gross negligence or willful misconduct on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.
- c. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultants' indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits

payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.

- d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.
- e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

#### **20. General Insurance Requirements**

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, or by anyone directly or indirectly employed by either of them, and shall comply with any such insurance requirements as determined by the Port.

#### **21. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, 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 the acceptance by Port of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to

insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- e. **Negotiated Agreement:** The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. **No Personal Liability:** No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

## **22. Key Personnel**

The Consultant's key personnel, as described in the Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the Port.

## **23. Insurance - Assumption of Risk**

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and other insurance as required by contract for this project that shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.
- b. Consultant shall submit to the Port, prior to the commencement of services, certificates of insurance evidencing:

- i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$3,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
  - ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
  - iii. Professional Liability of not less than \$2,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port on an annual basis for each of the three years.
  - iv. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
  - v. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
- c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port of Tacoma and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.
  - d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance

requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.

#### **24. Payment Schedule**

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.
- b. Consultant shall submit detailed invoices showing the following:
  - i. Invoice Number, Contract number, Title, Invoice Period.
  - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and

#### **25. Compensation**

- a. Consultant expenses will be reimbursed at cost with the exception of:
  - i. Subconsultant services will be reimbursed at cost plus negotiated markup.
  - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.
  - i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup are defined in the attached Rate Sheet and made a part of this contract.

#### **26. Deliverables**

All deliverables fully defined in this Agreement.

#### **27. Security – Transportation Worker Identification Credential (TWIC)**

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.

- c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

#### **28. Extent of Agreement**

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.

#### **29. Warranties**

- a. No Warranties regarding data restoration: Consultant will use its Best Efforts to deploy the Services and make effective recommendations regarding data protection technologies but cannot affect the manufacturer's product from a warranty perspective, nor guarantee that such third-party products or technologies will be effective, free of bugs or other defects. The recoverability of data in the event of network or system failure is subject to the integrity of the media, success of backup procedures, and other factors that may be outside the control of Consultant. Therefore, CONSULTANT CANNOT AND DOES NOT MAKE ANY REPRESENTATIONS, PROMISES, OR WARRANTIES THAT THE PORT WILL BE ABLE TO RESTORE DATA AS A RESULT OF FOLLOWING ANY SUCH CONSULTANT RECOMMENDATIONS. NO WARRANTIES REGARDING SECURITY OF THE PORT CONFIDENTIAL INFORMATION FROM ELECTRONIC THREATS & HACKING. In providing the Services, Consultant shall use Best Efforts to see that the Port's Confidential Information is kept secure; however, the Port understands, acknowledges, and agrees as follows:
  - i. The nature of the Internet, e-mail, and other forms of electronically storing and communicating information are subject to ever-changing and evolving vulnerabilities, some, or all of which cannot be reasonably anticipated or protected against even with the use of reasonable care, including, without limitation, Electronic Threats & Hacking.

ii. ANYTHING IN THIS AGREEMENT OR THE DESCRIPTION OF SERVICES TO THE CONTRARY NOTWITHSTANDING, CONSULTANT MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE Port's CONFIDENTIAL INFORMATION OR IT SYSTEMS WILL BE PROTECTED FROM BREACH OR EXPOSURE BY ELECTRONIC THREATS & HACKING.

b. Limited Warranty From Third Party Providers:

To the extent authorized under applicable third-party manufacturer or third-party provider agreements, Consultant shall provide or assign to the Port all third party product or service warranties associated with the hardware, equipment, software, or other services the third party provided in connection with the Services under this Agreement. the Port acknowledges and agrees that:

- i. Third-party Provider agreements for hardware, equipment, software, or services provided in connection with the Services, vary in the terms, conditions, and limited warranties they respectively provide; and some third-party Provider agreements either may not provide any warranties, or may prohibit Consultant from transferring to the Port any limited warranty they do provide;
- ii. Consultant does not and will not provide any separate, independent, or concurrent warranty of any kind or nature for third party hardware, equipment, software, or services provided in connection with the Services; and
- iii. The Port shall make any warranty claims with respect to hardware, equipment, software, or services supplied by third parties in connection with the Services, directly to the manufacturer, vendor, licensor or third-party provider of such hardware, equipment, software, or services, and not to Consultant.

c. Disclaimer of Warranties:

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS-IS," "WHERE-IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO THE SERVICES. CONSULTANT EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY

AND FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING, OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. USE OF THE SERVICES IS ENTIRELY AT THE Port's OWN RISK AND, EXCEPT AS SET FORTH IN THIS SECTION, CONSULTANT SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR SUCH USE.