

October 2, 2026

TO: PLAN HOLDERS LIST

SUBJECT: PROCUREMENT NO. 072026-1047
DATA CONSOLIDATION AND REPORTING SERVICES

ADDENDUM NUMBER 03

This addendum is issued to amend the following:

ATTACHMENT B-TERMS & CONDITIONS:

See attached.

ATTACHMENT E- DATA CONSOLIDATION AND REPORTING REQUIREMENTS:

Revised document uploaded to website.

ATTACHMENT B – UPDATED PORT ENTITIES TERMS & CONDITIONS

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. PORT ENTITIES UPDATE Subconsultant and Supplier Relations

- a. Subconsultants at all tiers shall be approved by the Port of Tacoma and the Northwest Seaport Alliance (collectively referred to as the **Port Entities**) prior to performing Services in support of this Agreement between Consultant and Port Entities.
- b. The award of a subcontract does not create a contract between the Port Entities' and the subconsultant. Subconsultants shall have no rights whatsoever against the Port Entities 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 terms of this 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 Entities 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 (**INS**). Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultants must comply with all Occupational Safety and Health Administration (**OSHA**), Washington Industrial Safety and Health Act (**WISHA**), Department of Labor (**DOL**), Environmental Protection Agency (**EPA**), and other applicable environmental standards as prescribed by law while on or occupying Port Entities'-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 ENTITIES UPDATE Port Entities' Data** means any data, records, or information provided by or pertaining to Port Entities', including but not limited to operational, financial, and personal data.
- b. **UPDATES APPROVED BY PORT ENTITIES WITH EDITS** The Port Entities are public entities and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Washington Secretary of State's Local Government Common Records Retention Schedule (**CORE**). Therefore, until the expiration of six (6) years after the term of this Agreement, Consultant agrees to maintain records of all activities performed for the Project, in providing the Services as created or maintained by Consultant. Upon the Port Entities' written notice and request, the Consultant shall provide a copy of such records requested to the Port Entities, at Consultant's sole cost and expense for any reproduction, retrieval, or delivery costs incurred by Consultant. At its sole cost and expense, Consultant may redact information that is protected from disclosure under applicable law, provided that Consultant shall produce the remainder of the records, including Port Entities Data and project-related documentation. For clarity, this obligation does not require Consultant to retain or deliver Consultant's proprietary system logs, platform analytics, or internal operational data that do not constitute Port Entities Data or public records as defined under applicable law. Records shall be delivered in a commercially standard electronic format reasonably acceptable to the Port Entities. Consultant shall preserve records beyond the six (6) year period in the event of pending or anticipated litigation, audit, investigation, claim, or dispute, or if otherwise required by law.
- c. **UPDATES APPROVED BY PORT ENTITIES WITH EDITS** The Port Entities' or its designated agent, and federal, state or other governmental auditing authorities, upon advanced written notice to Consultant, shall have the right to audit this Agreement and access to all records and documents related to the Services for a

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period of not less than six (6) years after completion of all projects or until resolution of any litigation, audit, investigation, claim, or dispute related to this Agreement whichever occurs last. Any examination and/or audit provided for under the Agreement shall to the extent possible be conducted during Consultant's normal business hours. The Port Entities may require access on shorter notice or outside normal business hours when necessary to comply with applicable law, respond to an emergency or security incident, investigate suspected fraud, preserve evidence, respond to a public-records request, or address regulatory or other governmental requirements. Consultant may withhold or redact information only to the extent disclosure is prohibited or exempt under applicable law, including legally privileged information or information subject to a legally applicable statutory exemption. Consultant shall not withhold records from the Port Entities solely because Consultant considers such records to be confidential, proprietary, trade secret, internal, or commercially sensitive. Audits shall be limited to no more than one (1) audit per calendar year, unless required by applicable law or regulatory authority.

6. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Custom Code and/or Custom Reports

Any custom code or custom report to be developed by the Consultant for the Port Entities will be mutually agreed to in a SOW or Project specifically for the Port Entities' Notwithstanding the foregoing, the Consultant shall retain all right, title, and interest in and to its pre-existing intellectual property, including without limitation its proprietary software platform, tools, libraries, frameworks, data models, and generic connectors (collectively, **Consultant Pre-Existing IP**). To the extent any Consultant Pre-Existing IP is embedded in, required by, or necessary to operate the delivered solution, the Consultant hereby grants Port Entities a non-exclusive, perpetual, royalty-free license to use such Consultant Pre-Existing IP solely in connection with the Port Entities' use of the delivery solution. For avoidance of doubt, Section 6 does not grant the Port Entities' ownership of, or any rights in, the Consultant's proprietary platform or any component thereof, except for the license expressly granted herein.

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 Entities, shall not be disclosed by the Consultant without the prior written consent of the Port Entities'

8. Compensation

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port Entities shall pay the Consultant as specified in the Agreement.
- b. The Consultant is responsible for working within the Contract Sum. Should the consultant incur costs beyond the Contract Sum without an executed amendment to this Agreement, the Consultant shall be solely responsible for any additional amounts above the contract value.

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 Entities' "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 seventh (7th) day of the following month. If the Consultant is unable to provide an invoice, the Consultant shall advise the Port Entities 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. UPDATES APPROVED BY PORT ENTITIES WITH EDITS 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 material errors or omissions in such Services of which Consultant is notified in writing within a commercially reasonable time after delivery; provided that the Port Entities notify the Consultant in writing of any such errors or omissions within ninety (90) days of

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discovery, and the Consultant shall have a reasonable cure period of not less than sixty (60) days to correct such errors or omissions.

- b. The Port Entities' 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 Entities' 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 Entities' 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. UPDATES APPROVED BY PORT ENTITIES WITH EDITS 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 Entities' prior written consent; **provided, however**, that with respect to an assignment to an affiliate or subsidiary of the Consultant, such consent shall not be unreasonably withheld, so long as the assignee expressly assumes all of the Consultant's obligations under this Agreement in writing. If the Consultant attempts to make any other assignment, transfer, or novation without the Port Entities' 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 Entities' arising under the Agreement or otherwise related to the Project.

14. Termination of Agreement

a. CHANGES NOT ACCEPTED BY PORT ENTITIES' Termination for Default:

- i. The Port Entities' 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 Entities provided that the Consultant has been given an opportunity to cure.
 - 1. Cure Notice: If the Port Entities determines that a breach of this Agreement has occurred and if the Port Entities deems said breach to warrant corrective action, the following sequential procedure shall apply:
 - a. The Port Entities shall provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
 - b. 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 Entities'

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 Entities shall provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port Entities in writing within seven (7) calendar days of any reason the Port Entities should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port Entities' may commence termination of this Agreement in whole or in part.
- ii. The Port Entities' may withhold payment due to Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port Entities are 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 Entities'

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c. Notice of Termination:

- i. If the Port Entities' terminate this Agreement for default, the Port Entities' 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 Entities' incurs because of the Consultant's default. In such event, the Port Entities' 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 Entities' at the date of termination, the cost to the Port Entities' of completing the Services itself or of engaging another firm to complete it and the inconvenience and costs which may be required to do so, and other factors which affect the value to the Port Entities' of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price or Contract Sum set forth in this Agreement. This provision shall not preclude the Port Entities from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- ii. Upon receiving a termination notice, the Consultant shall at no additional cost to the Port Entities':
 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 Entities' 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 Entities' have paid the Consultant for such items.
 3. Upon termination, the Port Entities' may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

d. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Termination for Convenience:

- i. The Port Entities' may terminate this Agreement for the convenience, upon not less than thirty (30) days' prior written notice to the Consultant upon sixty (60) days' prior written notice to the Consultant.
- ii. If the Port Entities terminate this Agreement for convenience, the Port Entities shall pay the Consultant for the following items:
 - a) The 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 Entities determine 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 Entities':
 - a) Promptly discontinue all Services (unless the notice directs otherwise);
 - b) **UPDATES APPROVED BY PORT ENTITIES WITH EDITS** No later than fourteen (14) calendar days after receipt of termination, deliver or otherwise make available to the Port Entities', all Port Entities information including but not limited to work product, deliverables, specifications, calculations, reports, estimates, summaries, and Project documentation prepared for the Port Entities in connection with this Agreement, whether completed or in progress, that are in the Consultant's possession or control; provided, however, the Consultant shall have no obligation to deliver or make available its internal work papers, proprietary tools, pre-existing materials, or materials the Consultant is not legally permitted to disclose, Port Entities' information and all equipment/materials purchased specifically for this Agreement where the Port Entities' have reimbursed the Consultant for such costs;

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- c) Take commercially reasonable actions, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port Entities' have 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 Entities 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 information, and the amount requested accurately reflects the amount for which the Consultant believes the Port Entities' are responsible.
- v. Termination settlement costs and proposals are subject to audit verification by the Port Entities'
- vi. Upon termination, the Port Entities may take over the work and prosecute the same to completion by agreement with another party or otherwise.

15. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions within thirty (30) days, 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 (50/50) between the Consultant and Port Entities'. If mediation is unsuccessful within thirty (30) days after commencement, either party may pursue other remedies available at law or in equity.

16. Venue & Governing Law

Venue for any dispute resolution shall be in Pierce County, Washington. Exclusive 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 Entities' and Consultant, supersedes any previous written or oral representations, and may be amended only by written instrument signed by both the Port Entities' and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port Entities' 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. All signers of this Agreement warrant 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 shall comply with all applicable federal, state, and local laws prohibiting discrimination in employment and the provision of services. The Consultant shall not discriminate against any employee, applicant for employment, or person receiving services on the basis of any characteristic protected by applicable law, including, as applicable, race, color, religion, sex, national origin, age, disability, veteran or military status, sexual orientation, or any other legally protected status.
- b. Equal Employment Opportunity. The Consultant and all parties subcontracting under the authority of this Agreement shall provide equal employment opportunity and shall make employment decisions, including recruitment, hiring, promotion, compensation, training, discipline, and termination, based on lawful, job-related, and merit-based criteria and without unlawful discrimination. Nothing in this Agreement shall be construed to require or authorize quotas, preferences, set-asides, workforce balancing, or other preferential

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treatment based on race, color, sex, national origin, or any other protected characteristic, except to the extent expressly required or permitted by applicable law.

- c. Federal Contracting Requirements. To the extent this Agreement is subject to federal contracting requirements, the Consultant and applicable subcontractors shall comply with all nondiscrimination, equal employment opportunity, and other applicable requirements incorporated into this Agreement by federal statute, regulation, executive order, federal award terms, or applicable federal contract clause.
- d. 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. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Indemnity / Hold Harmless Clause

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its commissioners, officers, managing members, and employees from and against any and all claims due to Consultant's acts and/or omissions including but not limited to third-party claims for personal injury, property damage, cyber security claims or intellectual property infringement by Consultant's pre-existing materials incorporated into the deliverables, and related damages, losses, expenses or actions, including reasonable attorney's fees and costs. Consultant may control the defense and settlement of any claim, provided that Consultant shall not settle any such claim in a manner that admits fault of, or imposes any non-monetary obligation on, the Port Entities without the Port Entities' prior written consent, not to be unreasonably withheld. The Port Entities shall provide prompt written notice of any claim, cooperate in the defense, and not settle or compromise any claim without Consultant's prior written consent. , to the extent, negligent, errors, Except for this Section 19 and any liability arising from the Consultant's willful misconduct or fraud, the Consultant's total aggregate liability under this Agreement shall not exceed the Commercial General Liability insurance limits required under Section 23.b. required under this Agreement.
- b. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port of Tacoma 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 and agrees that this waiver was the subject of mutual negotiation.
- c. **UPDATES APPROVED BY PORT ENTITIES** Consultant shall indemnify, defend and hold the Port Entities' harmless the Port Entities from liability, expense, fines, penalties, cost, demand, or other obligation resulting from any cyber-related risk to the extent caused by the negligent acts, errors, or omissions of the Consultant, its subconsultants, or agents. Consultant are sub-consultants, or agents. Consultants' total liability under this Section 19.c shall not exceed the greater of the Cybersecurity Liability Insurance limits required under Section 23.b.vi required under this Agreement.
- d. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

20. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Limitation of Liability

The liability of Consultant on any single claim of any kind arising from or related to the formation, performance or breach of this Agreement or any Services, shall not exceed the greater of (a) the amount of fees for the Services actually paid to Consultant under the applicable Task Order or Statement of Work, or (b) the amount of insurance required under this Agreement. The total liability of Supplier for all claims of any kind in connection with, arising from or related to the formation, performance or breach of the Agreement, or any Services shall not exceed in the aggregate the greater of (c) the total amount of the fees for the Services actually paid to Consultant under the Agreement or (d) the amount of insurance required under this Agreement or (b) the amount of insurance required under this Agreement.

21. 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 Entities'. The Consultant hereby waives any and all rights of recovery, claim, action or cause of action against the Port Entities,' their commissioners, employees, agents, invitees and representatives for any loss or

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damage or any bodily injury, death or property damage to third parties that may arise from or related to this Agreement. This waiver applies to any claims or damages that are, or should have been, insured against under any insurance policies maintained or required to be maintained by the Consultant under this Agreement, regardless of cause. The Consultant agrees to procure an endorsement from its insurance carrier(s) waiving the insurer's rights of subrogation against the Port Entities' This waiver shall apply to all property damage, bodily injury and liability coverage required under this Agreement.

22. Miscellaneous Provisions

- a. **CHANGES NOT ACCEPTED BY PORT ENTITIES 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. **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.
- e. **No Personal Liability:** No officer, agent, or authorized employee of either the Port Entities' 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.

23. CHANGES ACCEPTED BY PORT ENTITIES Key Personnel

The Consultant's key personnel, as described in the Consultant's response to the RFP, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the Port Entities. In the event that any key personnel become unavailable due to resignation, termination, illness, or other circumstances beyond the Consultant's reasonable control, the Consultant shall promptly notify the Port Entities and propose a replacement of equal or greater qualifications. The Port Entities' approval of any replacement shall not be unreasonably withheld, conditioned, or delayed

24. CHANGES NOT ACCEPTED BY PORT ENTITIES 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 Entities shall 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 requirements.
- b. Consultant shall submit to the Port Entities, prior to the commencement of services, certificates of insurance evidencing:
 - i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$2,000,000 per occurrence and \$3,000,000 aggregate. Coverage shall 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 \$4,000,000 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 Entities on an annual basis for each of the three (3) 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.

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- vi. Cybersecurity Liability Insurance of not less than \$5,000,000 per claim and in the aggregate. Coverage shall include cyber-related risks, including theft, loss or misuse of data, release of private information as a result of a network breach, penetration, compromise, or loss of IT systems control, and shall include costs associated with incident response, forensic investigation, breach notification, and recovery, where applicable. Coverage shall remain in effect for the term of this Agreement plus three years.
- 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 Entities 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 Entities 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. Consultants may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.

25. Payment Schedule

- a. Consultant shall submit detailed numbered invoices in accordance with this Agreement. After a complete and correct invoice has been received by the Port Entities' payment shall 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.

26. Compensation

- a. Consultant expenses shall be reimbursed at cost with the exception of:
 - i. Subconsultant services shall be reimbursed at cost plus fifteen percent (15%).
 - ii. Services provided by a third party shall be reimbursed at cost plus fifteen percent. (15%).
- 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 fifteen percent (15%) in total.
- 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 shall 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 shall be tied to the CPI for the Tacoma area.
- e. Rates and Markup are defined in the attached Rate Sheet and made a part of this Agreement.

27. Deliverables

All deliverables fully defined in this Agreement.

28. 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 U.S. Department of Homeland Security (**DHS**), through the U.S. Coast Guard and the U.S. Transportation Security Administration. All credentialed merchant mariners and individuals who shall 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. **UPDATES ACCEPTED BY PORT ENTITIES** Each Consultant shall have a Port Entities escort if Consultant does not have a TWIC.

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29. Extent of Agreement

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, Total Price, cost of performing the Services, the Consultant shall inform the Project Manager in writing at least one (1) month prior to exceeding the task budget(s) and state the possible impacts to scope, schedule and cost.
- 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 or Services.

c. 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 Entities' 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 Entities acknowledge and agree 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 Entities' any limited warranty they do provide;
- ii. Consultant does not and shall 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 Entities 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, licensor or third-party provider of such hardware, equipment, software, or services, and not to Consultant.

30. UPDATES APPROVED BY PORT ENTITIES WITH EDITS Order of Precedence

For the avoidance of doubt, in the event there are Statements of Work, Task Orders, Purchase Orders and/or Exhibits and Attachments to this Agreement, the order of precedence in event of conflict shall be:

- (1) Terms & Conditions of this Agreement;
- (2) Statement of Work;
- (3) Task Order;
- (4) Exhibits.