



**CONTRACT**

**No. K2401**

**SOLE SOURCE CONTRACT**

**FOR**

**CONSERVATION PRACTICE DATA SYSTEM SOFTWARE AND SERVICES**

By and Between

**STATE OF WASHINGTON  
CONSERVATION COMMISSION**

and

**ENKON INFORMATION SYSTEMS INC**

Dated July 1, 2023

**CONTRACT**

**No. K2401**

**SOLE SOURCE CONTRACT**

**CONSERVATION PRACTICES DATA SYSTEM SOFTWARE AND SERVICES**

This Contract ("Contract") is made and entered into by and between the State of Washington acting by and through the State Conservation Commission, a Washington State governmental agency ("SCC") and ENKON Information Systems Inc, a British Columbia Business Corporation ("Contractor") and is dated and effective as of July 1, 2023.

**RECITALS**

- A. Pursuant to Legislative direction codified in RCW 39.26, SCC is authorized to competitively solicit and award contracts for goods and/or services for use by SCC.
- B. SCC has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

**1. TERM.**

- 1.1. The term of this Contract is for a twelve (12) Month term commencing July 1, 2023, ending June 30, 2024.
- 1.2. DES FILING REQUIREMENT. The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

**2. SCC's SCOPE – INCLUDED GOODS AND/OR SERVICES AND PRICE.**

- 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to sell and provide only those goods and/or services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*.
  - (a) **Goods.** For purposes of this Contract, "Goods" means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased as defined in this Contract.
  - (b) **Services.** For purposes of this Contract, "Services" means all services of any nature ordered by SCC pursuant to this Contract.
  - (c) **Specifications.** Where applicable, specifications for Goods and/or Services as detailed in this Contract. Unless otherwise specified, all Goods and/or Services provided shall be new and unused of the latest model or design.

- 2.2. STATE'S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, SCC reserves the right to modify the goods and/or services included in this Contract; *Provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 2.3. PRICE CEILING. Although Contractor may offer lower prices to SCC, during the term of this Contract, Contractor guarantees to provide the Goods and/or Services at no greater than the prices set forth in *Exhibit B - Prices for Goods/Services*. Total contract amount is not to exceed \$100,000.

**3. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify SCC, in writing, of such breach.

- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- 3.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- 3.4. SUSPENSION & DEBARMENT. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are not have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.
- 3.5. WAGE VIOLATIONS. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 3.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.7. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or

affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.

- 3.8. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to State employees.
- 3.9. **WASHINGTON'S STATEWIDE PAYEE DESK.** Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 3.10. **ADVERTISING AND ENDORSEMENT.** Contractor understands and acknowledges that neither SCC nor the State of Washington are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to SCC or the State of Washington in any promotional material without the prior written consent of SCC.
- 3.11. **CONTINGENT FEES.** Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 3.12. **FINANCIALLY SOLVENT.** Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.
- 3.13. **OPERATIONAL CAPABILITY.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 3.14. **CONTRACT TRANSITION.** Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist SCC for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

#### **4. QUALITY; WARRANTY; REMEDIES.**

- 4.1. **SERVICES WARRANTY.** Contractor warrants that: (a) Services will be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed

in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”).

- 4.2. SERVICES REMEDY. If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at SCC’s election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to SCC or refund the amounts paid for the Services.
  - 4.3. IT WARRANTY. Contractor warrants, that all hardware, software, and firmware associated with Goods or Services (“IT Goods” and “IT Services”, respectively) will not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of SCC, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty will expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.
  - 4.4. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at SCC’s election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to SCC; or (c) refund the amounts paid for IT Services and IT Goods.
  - 4.5. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from SCC, or if an emergency exists rendering it impossible or impractical for SCC to have Contractor provide a remedy, SCC may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case Contractor shall reimburse SCC for its actual costs or, at SCC’s option, SCC will offset the costs incurred from amounts owing to Contractor.
  - 4.6. TECHNICAL SUPPORT. During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.
5. **SAFETY; SECURITY.** Contractor’s failure to comply with any of the requirements in this Section shall be cause for termination.
- 5.1. REGULATORY REQUIREMENTS/SAFETY. Goods and/or Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the Goods and/or Services.

- 5.2. MATERIAL SAFETY DATA SHEETS. As applicable, Contractor shall provide SCC with all appropriate Material Safety Data Sheets (“MSDS”) at the time of delivery of each shipment of Goods which requires such compliance and/or and for materials used by Contractor while performing Services and any updates of the same.
- 5.3. CLEAN-UP. If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, SCC will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.
- 5.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at SCC’s premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any SCC investigation of incidents.
- 5.5. ON SITE REQUIREMENTS. While on SCC’s premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with SCC’s physical, fire, access, safety, and other security requirements and not interfere with SCC’s operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access SCC’s premises will be adequately trained and at all times comply with SCC’s requirements.
- 5.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which will be made available to Contractor upon request.

## **6. DELIVERY & INSTALLATION.**

- 6.1. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods and/or Services are delivered or provided as required by this Contract, including the requirements set forth in *Exhibit A*, or as otherwise mutually agreed in writing between SCC and Contractor. The following apply to all deliveries:
  - (a) Contractor shall make all deliveries to the applicable delivery location specified herein. Such deliveries shall occur during SCC’s normal work hours and within the time period mutually agreed in writing between Contractor and SCC.
  - (b) Contractor shall ship all Goods and/or Services purchased pursuant to this Contract, freight charges prepaid by Contractor, FOB SCC’s specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Goods and/or Services ordered hereunder that occurs prior to delivery and installation, except loss or damage attributable solely to SCC’s fault or negligence.
  - (c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number set forth on the cover of this Contract.

- 6.2. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Contract are subject to SCC's reasonable inspection, testing, and approval at SCC's destination. SCC reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Contract. If there are any apparent defects in the Goods and/or Services at the time of delivery, SCC promptly will notify Contractor. At SCC's option, and without limiting any other rights, SCC may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at SCC's option, SCC's may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment.

## 7. PERFORMANCE OF SERVICES.

- 8.1 OWNERSHIP OF DELIVERABLES. Notwithstanding any provision to the contrary, including as specified in Exhibit A Section 3 Intellectual Property Rights, the parties understand and agree that SCC shall own all rights to any plans, reports, or other deliverables provided to SCC pursuant to this Contract. The copyright in all works of authorship created pursuant to this Contract shall be owned by the State of Washington. All such works or portions of works created by the Contractor are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. § 201. If, however, the State of Washington is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to State of Washington all right, title, and interest in: (a) the copyright to Contractor's work of authorship ("Work") and contribution to any such Work ("Contribution"); (b) any registrations and copyright applications, along with any renewals and extensions thereof, relating to the Contribution or the Work; (c) all works based upon, derived from, or incorporating the Contribution or the Work; (d) all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Work; (e) all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Contribution or the Work, and all rights corresponding to any of the foregoing, throughout the world. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Contractor has in the Contribution or the Work, the Contractor waives those rights as to State of Washington, its successors, licensees, and assigns.

- 8.2 CONTRACTOR KEY STAFF CHANGES. Except in the case of a leave of absence, sickness, death, termination of employment or unpaid or paid leave of absence, agreed upon Key Staff must not be changed during the term of this contract. Otherwise, any change in Key Staff must be agreed in writing between the parties. During the term of the Contract, SCC reserves the right to approve or disapprove of Contractor and Subcontractor Key Staff assigned to perform services as required by this contract, or to require the removal or reassignment of any Contractor or Subcontractor Key Staff found unacceptable by SCC, subject to SCC's compliance with applicable laws and regulations. Contractor must provide SCC with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed for any aspect of performance under this Contract prior to commencing any Services.

In the event that proposed Contractor resources are unavailable to deliver the work, Contractor must staff the project with resources with equal or greater skills and capabilities, subject to approval from SCC.

SCC must be notified of any change in Contractor Key Staff as soon as practicable but in no event less than five (5) working days after removal of such staff from their duties in support of this Contract. Contractor must provide resumes and describe the roles and responsibilities of any replacement staff to SCC as soon as practicable but in no event less than five (5) working days prior to the date that such staff begin work under this Contract. SCC reserves the right, in its sole judgement, to approve or reject such replacement staff. SCC's approval of such staff will not be unreasonably withheld.

## **8. INVOICING & PAYMENT.**

9.1 CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to SCC's designated invoicing contact for Goods and/or Services delivered under this Contract. Invoices are due on the 20<sup>th</sup> day of the month, except the final invoice for June each contract period is due on July 10<sup>th</sup>. Such invoices shall itemize the following:

- a) Contract No. K2401;
- b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- c) Contractor's Federal Tax Identification Number;
- d) Date(s) of delivery;
- e) Description of Services and Deliverables provided;
- f) Net invoice Price for each Service or Deliverables;
- g) Applicable taxes;
- h) Total invoice amount;
- i) Receipts;
- j) Completed A19 and voucher support forms; and
- k) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. SCC shall have no obligation to pay Contractor for any services that do not comply with this Contract.

9.2 PAYMENT. Payment is the sole responsibility of, and will be made by, SCC. Payment is due within thirty (30) days of invoice. If SCC fails to make timely payment(s), Contractor may invoice SCC in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

9.3 OVERPAYMENTS. Contractor promptly shall refund to SCC the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that SCC shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by such credit memo), Contractor shall pay SCC interest at a rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.



- 9.4 **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Good and/or Services furnished by Contractor pursuant to this Contract.
- 9.5 **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.6 **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, SCC shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor’s invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to SCC, SCC has not provided Contractor with a valid exemption certificate from such federal excise taxes.

**9. CONTRACT MANAGEMENT.**

- 10.1 **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of contract administration for this Contract. SCC’s contract administrator shall provide contract administrative oversight. Contractor’s contract administrator shall be Contractor’s principal contact for invoice/billing activities under this Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

<p><b>SCC</b>          Attn: Nicole Boyes          WSCC          PO Box 47721          Olympia, WA 98504          Tel: (564) 669-3149          Email: <a href="mailto:nboyes@scs.wa.gov">nboyes@scs.wa.gov</a></p>	<p><b>Contractor</b>          Attn: _____          _____          _____          Tel: (____) _____          Email: _____</p>
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Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 10.2 **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform SCC of the same) who shall be responsible for addressing SCC’s issues pertaining to this Contract
- 10.3 **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent

to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**SCC**

Attn: Nicole Boyes

WSSC

PO Box 47721

Olympia, WA 98504

Tel: (564) 669-3149

Email: [nboyes@scs.wa.gov](mailto:nboyes@scs.wa.gov)

**Contractor**

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**10. RECORDS RETENTION & AUDITS.**

- 11.1 RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2 AUDIT. SCC reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor properly has invoiced SCC. Accordingly, Contractor shall permit SCC and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

**12. INSURANCE.**

- 12.1 REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C– Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods and/or Services and no additional payment shall be made to Contractor.
- 12.2 WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, SCC may terminate this Contract. This provision does

not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on SCC's behalf in the State of Washington, and only to the extent of claims against Contractor by SCC under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

### 13. CLAIMS.

- 13.1 ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. SCC has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any SCC's property resulting directly or indirectly from Contractor's acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.
- 13.2 THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold SCC and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', and subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract, ; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of SCC. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep SCC's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 13.3. INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold SCC and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods and/or Services provided, or the use of the Goods and/or Services under this Contract. If SCC's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for SCC the right to continue using the Goods and/or Services or, after consulting with SCC and obtaining SCC's consent, replace or modify the Goods and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

#### 14. DISPUTE RESOLUTION.

- 14.1. The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

#### 15. SUSPENSION; EXPIRATION; TERMINATION; REMEDIES.

- 15.1 TERMINATION. This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.
- 15.2 TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. SCC may suspend or terminate this Contract, at the sole discretion of SCC or, as applicable, if SCC reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects SCC's ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, SCC will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, SCC will have no obligation or liability to Contractor.
- 15.3 TERMINATION FOR PUBLIC CONVENIENCE. SCC, for public convenience, may terminate this Contract; *Provided*, however, that such termination for public convenience must, in SCC's judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve SCC from payment for Goods and/or Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, SCC shall not have any obligation or liability to Contractor.

- 15.4 EXPIRATION – SCC’S OBLIGATIONS. Upon expiration of this Contract, SCC shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.
- 15.5 EXPIRATION OR TERMINATION – CONTRACTOR’S OBLIGATIONS. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to SCC all keys, badges, and other materials supplied by SCC pursuant to this Contract.
- 15.6 DEFAULT. Any of the following events shall constitute cause for SCC to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
  - (b) Contractor breaches any representation or warranty provided herein; or
  - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 15.7 SUSPENSION & TERMINATION FOR DEFAULT. SCC may suspend Contractor’s operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to SCC’s reasonable satisfaction; *Provided*, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, SCC may terminate Contractor’s rights under this Contract. All of Contractor’s obligations to SCC survive termination of Contractor’s rights under this Contract, until such obligations have been fulfilled.
- 15.8 REMEDIES FOR DEFAULT.
- (a) SCC’s rights to suspend and terminate Contractor’s rights under this Contract are in addition to all other available remedies.
  - (b) In the event of termination for default, SCC may exercise any remedy provided by law including, without limitation, the right to procure replacement goods and/or services. In such event, Contractor shall be liable to SCC for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.
- 15.9. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) a party’s liability for all damages arising out of that party’s intentional acts or omissions; (b) the operation of any Goods and/or Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party’s obligations under this Contract, by delivery slips or other documentation is void.

- 15.10. SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to SCC all Goods and/or Services that are complete (or with approval from SCC, substantially complete) and SCC shall inspect, accept, and pay for the same in accordance with this Contract. Unless directed by SCC to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

**16. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.**

- 16.1. WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 16.2. CONTRACTOR OBLIGATION. Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to SCC that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.
- 16.3. SCC'S OBLIGATION. In the event that SCC receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive SCC, prior to disclosure, will do the following: SCC's Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, SCC will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where SCC determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, SCC will notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that SCC intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining SCC from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, SCC will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

**17. GENERAL PROVISIONS.**

- 17.1 TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.

- 17.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 17.3 ENTIRE AGREEMENT. This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4 AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5 AUTHORITY. Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.6 NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of SCC. Contractor shall not have authorization, express or implied, to bind SCC to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through SCC or the State of Washington and SCC and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 17.7 ASSIGNMENTS. Contractor may not assign its rights under this Contract without SCC's prior written consent and SCC may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to SCC within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.
- 17.8 BINDING EFFECT; SUCCESSORS & ASSIGNS. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.9 ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS AND/OR SERVICES. Contractor irrevocably assigns to SCC, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations

under this Contract, including, at SCC's option, the right to control any such litigation on such claim for relief or cause of action.

- 17.10 **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract. Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30) days, SCC shall have the right to terminate the Contract and/or purchase the goods and/or services set forth in this Contract; *Provided*, however, that in such event, Contractor shall not be liable to SCC for any price difference for such goods and/or services.
- 17.11 **FEDERAL FUNDS.** To the extent that SCC uses federal funds to purchase goods and/or services pursuant to this Contract, SCC shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.
- 17.12 **SEVERABILITY.** If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 17.13 **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 17.14 **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.15 **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington,



without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction..

- 17.16 JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 17.17 ATTORNEYS' FEES. In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each party agrees to bear its own attorneys' fees and costs.
- 17.18 FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 17.19 FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 17.20 EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 17.21 CAPTIONS & HEADINGS. The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 17.22 ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 17.23 COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

**EXECUTED** as of the date and year first above written.

**AGENCY**

**Insert Company name**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its:

Its:

**INCLUDED SERVICES  
PERFORMANCE REQUIREMENTS**

This Contract will govern the purchase of licenses to access and use the ENKON software identified as Conservation Practice Data System (CPDS) and the Services set out in Exhibit A. From time to time during the term of this Contract SCC may purchase additional software licenses and services, which additional licenses and services will be subject to the terms of this Contract. Enkon will maintain the CPDS system to be compliant with Washington State Office of the Chief Information Officer standards.

Included in this Exhibit A are the following schedule(s), which govern SCC's use and ENKON's delivery of the software and services. These schedules include reference to SCC as "Customer":

*Schedule A – Terms and Conditions (SaaS)*  
*Schedule B – Support and Service Levels (SaaS)*  
*Schedule D – Integral-LIS Licensed Components*

**1. LICENSE DETAILS**

- 1.1 Authorized Users.** SCC will be initially licensed for **three hundred (300)** Authorized Users. Additional Authorized Users may be added at any time, subject to the rates set out in Exhibit B Table 1.
- 1.2 Authorized Area.** SCC is authorized to use the ENKON software and services for projects located solely within the geographical limits of Washington State, US (the "**Authorized Area**").
- 1.3 Software Description and Subscription License Fees**
- 1.3.1 Software. Conservation Practice Data System.** During the Term, SCC may order additional software packages under this Contract through the issuance of a written Contract amendment.
- 1.3.2 Monthly Subscription and Annual Maintenance Fees.** The monthly subscription and annual maintenance fees for the Software are set out in Exhibit B Table 1.

**2. PROFESSIONAL SERVICES**

- 2.1 Professional Services** will be subject to the additional terms set out in *Contract* and any agreed statement of work.
- 2.2 Training and Support.** Training and support options offered by ENKON, and associated costs, are set out in Exhibit B Table 2. Costs do not include travel, accommodation and general

disbursements, all of which will be invoiced at cost, and which are in addition to professional fees. All travel expenses are limited to Washington State per diem rates and regulations issued by the State Office of Financial Management.

**2.3 Related Professional Services.** ENKON shall provide the Professional Services set out in Additional Professional Services, below. From time to time during the Term, and subject to the execution of an agreed Amendment with statement of work (SOW), SCC may request and ENKON shall provide certain additional Professional Services related to the licensed software. Unless otherwise agreed in the applicable SOW, Professional Services will be billed at ENKON’s then-standard time and materials rates, as specified in Exhibit B Table 3. If prices specified in Table 3 change, Enkon shall provide a revised Table 3 prior to invoicing for services.

**Additional Professional Services**

Professional Services	Description
Project Management and Design Services	ENKON will manage professional services undertaken for a project and provide design services for new features and functionality.
Data Migration	ENKON can assist in migrating data into the <i>Integral-LIS Web Application</i> . Quotes will be provided after a review of each of the available data sets.
Integration	ENKON can integrate the Integral-LIS with Customer systems.
Map Creation	ENKON has complete GIS Services that can assist the Customer in maintaining the mapping environment, including the creation of Map Services, editing services, etc. for the Integral-Spatial package.
Map Server Maintenance	ENKON can maintain the GeoServer on behalf of Customer if requested for the <i>Integral-Spatial</i> package.
Reports	ENKON can create custom reports that are provided by the Customer.
Customization	ENKON has created the <i>Integral-LIS Web Application</i> to allow easy customization and new business flows to be added into the application.

### 3 INTELLECTUAL PROPERTY RIGHTS

**3.1 Ownership of Deliverables.** Unless otherwise expressly agreed on a case-by-case basis in the relevant SOW, all Deliverables will be owned exclusively by ENKON. During the Term, ENKON grants to Customer a non-exclusive, worldwide, non-assignable, non-transferable (except as permitted under Section 16.4 of Schedule A), limited license to access and use the Deliverables solely for SCC's own internal business purposes in conjunction with the use of the Hosted Services or Licensed Software (as applicable). By executing the Contract, SCC hereby irrevocably assigns any and all rights and interests that SCC may have in and to all such Deliverables to ENKON, and waives (and shall ensure that its personnel waive) in favour of ENKON, and its successors and assigns, any of its moral rights therein. All rights in and to the Deliverables not expressly granted to SCC, and hereby expressly reserved by ENKON. For greater certainty, SCC retains all rights, including IP Rights, in and to all SCC Data.

**3.2 Residual Knowledge.** Notwithstanding any other provision of the Contract, ENKON shall have the unlimited and unrestricted right to use any knowhow, techniques, models, methods, materials and other intellectual property derived or created in the course of performing the Professional Services, in ENKON's business, including in the provision of the same or similar services for ENKON's other customers.

**PRICES  
FOR  
PERFORMANCE REQUIREMENTS**

The following pricing shall apply for work outlined in Exhibit A. The total price of the contract is not to exceed \$100,000 for the following services:

Annual Maintenance Fee	\$5,000.00
ArcGIS Server Maintenance	\$1,685.25
Annual Subscription	\$45,000.00
As-needed Services	\$48,314.75

As-needed services are to be billed at rates specified in Exhibit B Tables 2 and 3.

TABLE 1

	Description	Annual Subscription Fee (USD)	Annual Maintenance Fee (USD)
Core Components	<i>CPDS Web Service</i>	\$45,000	<b>\$5,000</b>
	Software ArcGIS Server Annual Maintenance		\$1,685.25
	<b>TOTAL</b>	\$45,000	\$6,685.25

TABLE 2

Item	Description	TOTAL (USD)
Webinars	Webinars (up to 20 attendees for a 1.5-2 hour session)	\$10,000 per Webinar package. The Webinar package includes 10 webinars.
Classroom Training Session (at Customer’s premises) (2 days for one trainer) – In North America	Training at Customer’s premises	\$7,500 per session plus travel and accommodation expenses
Administrative Training (up to five participants)	Administrator Training in ENKON’s office in Victoria, BC, Canada.	\$6,500 per session (2-day event)

TABLE 3

<b>Category</b>	<b>US Dollars</b>
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	Hourly Rate
Director	\$190
Senior Project Manager	\$175
Project Coordinator	\$150
Senior Programmer	\$175
Intermediate Programmer	\$155
Junior Programmer	\$135
Database Administrator	\$175
Senior IT Specialist	\$175
IT Specialist	\$150
Senior Trainer	\$145
Trainer	\$130
Senior GIS Analyst	\$160
GIS Analyst	\$135
Data Processing	\$135

#### INVOICING

Fees will be invoiced as follows, unless otherwise agreed in an applicable Amendment statement of work:

- **Monthly/Yearly License Fees:** Invoiced monthly in advance commencing on July 1<sup>st</sup>, 2023. Alternatively, license fees may be paid yearly in advance commencing on July 1<sup>st</sup>, 2023, at a discount of 1%.
- **Annual Maintenance Fees:** Payable annually in advance, commencing on July 1<sup>st</sup>, 2023.
- **Training Fees and Expenses:** Invoiced monthly in the month following completion of the training services.
- **Professional Services:** Invoiced monthly in arrears.

**INSURANCE REQUIREMENTS**

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
  - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
  - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
  - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. SCC reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized SCC (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to SCC, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to SCC that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to SCC an updated or renewed certificate of insurance, satisfactory to SCC, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be delivered to SCC by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as SCC may specify in writing:

US Mail: Contracts & Procurement – Contract Insurance Certificate  
**Contract No. K2401**  
Attn: Nicole Boyes  
WSCC  
PO Box 47721  
Olympia, WA 98504  
Tel: (564) 669-3149  
Email: [nboyes@scc.wa.gov](mailto:nboyes@scc.wa.gov)

*Note:* For Email notice, the Email Subject line must state:  
**Contract Insurance Certificate – Contract No. K2401**

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any SCC. All insurance or self-insurance of the State of Washington and/or SCC shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any SCC for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.



8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to SCC. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.
  
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

## Schedule A Terms and Conditions

(SaaS)

### 3. GOVERNING TERMS

These Terms and Conditions (“**General Terms**”) are attached as Schedule A to the Software and Services Agreement executed between ENKON Information Systems Inc. (“**ENKON**”) and the customer identified therein (“**Customer**”).

### 4. DEFINITIONS

**Definitions.** Capitalized terms used in these General Terms and not otherwise defined in the Agreement have the following meanings:

“**Authorized Area**” means the geographic area set out in the Agreement.

“**Authorized User**” means a Customer employee or individual contractor with a user account on the ENKON Integral-LIS Application Server who is authorized by Customer to access and use the Hosted Integral-LIS Application. The maximum number of Authorized Users is set out in the Agreement.

“**Confidential Information**” has the meaning ascribed to it in Section 11.1.

“**Content**” includes text, messages, files, photos, video, sounds, musical works, works of authorship, links, emails, postings, code, data, images, graphics, video, chat, designs, polygons, files, works of authorship or other materials.

“**Customer Data**” means any information (including Personal Information), data, communications or Content uploaded, generated, stored or transmitted by Customer and/or Authorized Users as part of, or in conjunction with the use of the Hosted Integral-LIS Application, but excludes any uniform resource locators or domain names that are used by Customer in connection with the Hosted Integral-LIS Application or the ENKON Integral-LIS Application Server.

“**Customer Technology**” means any information, materials and technology owned or controlled by Customer, the use of which is required by ENKON in connection with the performance of the Services.

“**Deliverables**” means any customized software functionality, data integration, or other customized materials to be delivered by ENKON to Customer pursuant to an SOW or otherwise in connection with the Services.

“**Documentation**” means the documentation provided by ENKON to Customer under the Agreement in connection with the Services.

“**ENKON Integral-LIS Application Server**” means the online environment hosted and maintained by ENKON, or on ENKON’s behalf by a third party service provider, for the purpose of hosting the Hosted Integral-LIS Application for access over the Internet.

“**ENKON Trademarks**” means the registered and unregistered trademarks, trade names, logos or service marks of ENKON as used by ENKON in connection with the Hosted Integral-LIS Application and Services from time to time.

“**Hosted Integral-LIS Application**” means each ENKON-hosted software-as-a-service offering set out in the Agreement, and includes any updates made available by ENKON to Customer from time to time.

“**Initial Term**” means the initial contract period for the provision of the Hosted Integral-LIS Application as set out in the Agreement.

“**IP Rights**” means any right that is granted or recognized under any Canadian, United States, European or foreign legislation regarding patents, copyrights, neighbouring rights, moral rights, trademarks (including trade names and service marks), trade secrets, industrial designs, design rights, mask work, integrated circuit topography, privacy and publicity rights and any other statutory provision or common or civil law principle regarding intellectual and industrial property, whether registered or unregistered, and including rights in any application for any of the foregoing.

“**Personal Information**” means information about an identifiable individual.

“**Professional Services**” means professional services related to the Hosted Integral-LIS Application that ENKON may provide to Customer, which may include installation, implementation, technical support, training, consulting, data processing or migration, third party integrations, software development, and customization. Professional Services, if any, will be provided by ENKON pursuant to the Agreement or an SOW, and will be subject to the additional terms governing Professional Services set out in Schedule C (*Professional Services*) to the Agreement.

“**Service Levels**” means the service levels described in Schedule B (*Support and Service Level Agreement*).

“**Services**” means any of the Hosted Integral-LIS Application, Professional Services and/or Support Services provided by ENKON under the Agreement.

“**SOW**” means a written statement of work for the performance of Professional Services by ENKON entered into between Customer and ENKON pursuant to the Agreement, and includes any addenda and supplements thereto.

“**Support Services**” means the technical support services to be provided by ENKON to Customer in respect of the Hosted Integral-LIS Application, as described in Schedule B (*Support and Service Level Agreement*) to the Agreement.

“**Supported Browsers**” means Microsoft Internet Explorer and Chrome.

“**System**” means the proprietary and third-party information technology systems used by ENKON to provide the Hosted Integral-LIS Application.

### 5. HOSTED APPLICATION

**5.2 Use of the Hosted Integral-LIS Application.** Customer’s access to and use of the Hosted Integral-LIS Application is on a subscription basis during the Term. Subject to the terms and conditions of the Agreement, including without limitation the restrictions in Section 3.2, ENKON grants to Customer a non-exclusive, non-assignable, non-transferable (except as permitted by Section 15.4) and limited license to access and use the Hosted Integral-LIS Application in the Authorized Area solely for Customer’s own internal business purposes, and to grant each Authorized User the limited right to use the Hosted Integral-LIS Application and the ENKON Integral-

LIS Application Server solely as necessary for the exercise by Customer of its rights hereunder. The Hosted Integral-LIS Application may not be used outside of the Authorized Area.

**5.3 Restrictions on Use.** Customer shall not, and shall not permit an Authorized User or any other person to, directly or indirectly do any of the following: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying algorithms of the Hosted Integral-LIS Application (or any part thereof) and/or the System; (b) modify, translate, or create derivative works based on any portion of the Hosted Integral-LIS Application, Documentation or any Deliverables (other than such Deliverables that are owned by Customer as expressly agreed to in the relevant SOW); (c) rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit any Deliverables (other than Deliverables that are owned by Customer as expressly agreed in the relevant SOW), any portion of the Hosted Integral-LIS Application and/or the System or make any portion of the Hosted Integral-LIS Application available to any person other than Authorized Users; (d) use any part of the Hosted Integral-LIS Application for timesharing or service bureau purposes, or otherwise make the Hosted Integral-LIS Application available for use by or for the benefit of third parties, including Customer affiliates; (e) publish or disclose to any person evaluations of the Services; (f) tamper with the security of any portion of the Hosted Integral-LIS Application and/or the System; (g) knowingly access data on or available through the Hosted Integral-LIS Application and/or the System not intended for Customer or Authorized Users; (h) attempt to probe, scan or test the vulnerability of any portion of the System or to breach the security or authentication measures without ENKON's prior written consent; (i) use the Hosted Integral-LIS Application to violate any applicable local, provincial, state, federal or foreign law, rule or regulation; or (j) create, solicit, transmit, upload or publish any comment, request, suggestion, proposal, image, data file or other communication through the Hosted Integral-LIS Application which does or may: (i) violate the rights of others, including any privacy or IP Rights; (ii) contain or embody any computer virus, harmful component or corrupted data; (iii) adversely affect the performance or availability of any of the Hosted Integral-LIS Application or the System; or (iv) be used to impersonate any person, including ENKON personnel.

**5.4 Authorized Users and Accounts.**

**3.1.1** Customer's access to and use of the Hosted Integral-LIS Application is restricted to the specified number of Authorized Users set forth in the Agreement. Customer may add Authorized Users at any time, in accordance with the fee structure set out in the Agreement. Each Authorized User will be entitled to access the ENKON Integral-LIS Application Server by means of a user account ("**Account**") using a unique username and password.

**3.1.2** Customer must purchase at least one administrator Account for accessing the Hosted Integral-LIS Application. Through the administrator Account, Customer will be able to establish additional Accounts for Authorized Users. Customer is responsible for authorizing and controlling access to the Hosted Integral-LIS Application by Authorized Users. Customer agrees to notify ENKON immediately upon becoming aware of any breach of security or unauthorized use of any Accounts (including the administrator Account).

**3.1.3** User Accounts may only be assigned to and used by one named individual at a time and may not be shared with any other individual; provided that user Accounts may be reassigned by Customer to a new individual replacing one who no longer requires ongoing use of the Account. An Account may not be used concurrently by more than one Authorized User. Customer is responsible to ENKON for all use of the User Accounts and the Hosted Integral-LIS Application by its Authorized Users.

**5.5 Additional Customer Responsibilities.** Customer is solely responsible for obtaining and maintaining all equipment,

computers, networks, systems and communications required to access the Hosted Integral-LIS Application, and for all expenses related thereto. Customer is responsible for complying with, and causing Authorized Users to comply, with the terms of the Agreement governing use of the Hosted Integral-LIS Application. Customer will notify ENKON immediately of any actual or suspected unauthorized use of Hosted Integral-LIS Application or any Accounts or other breach of security in relation to the Hosted Integral-LIS Application, Customer Data or the System of which Customer becomes aware.

**6. CUSTOMER DATA**

**6.2 Monitoring.** ENKON has no obligation to monitor or pre-screen any Customer Data. Customer shall be solely responsible at all times for monitoring Customer Data and for ensuring that all Customer Data complies with the Agreement. Customer is solely responsible for the accuracy, quality, integrity and legality of Customer Data and the means by which Customer acquires Customer Data.

**6.3 Rights to Customer Data.** As between ENKON and Customer, Customer retains all rights, including IP Rights, in and to all Customer Data. Customer hereby grants to ENKON a limited license to access and use Customer Data solely as necessary for the purpose of providing the Hosted Integral-LIS Application and other Services to Customer, which includes making Customer Data available to Authorized Users. All rights in Customer Data held by Customer and not granted to ENKON are reserved to Customer. Customer represents and warrants that Customer is the owner or authorized licensee of all rights in and to all Customer Data, or otherwise has the rights to grant the license set forth in this Section 4.2. The foregoing representation and warranty shall survive the expiration or termination of the Agreement.

**6.4 Personal Information.** If Customer discloses Personal Information to ENKON or transfers Personal Information to ENKON for processing, Customer is deemed to represent, warrant and covenant to ENKON that: (a) Customer is solely and exclusively responsible for the collection, accuracy or completeness of Personal Information provided to ENKON; and (b) all such Personal Information provided to ENKON has been or will be collected and disclosed in accordance with all applicable laws. Customer hereby grants to ENKON the limited right to collect, store, access and use the Personal Information solely for purposes of providing the Services to Customer. Customer represents and warrants that it has obtained and will continue to obtain all necessary consents from all individuals whose Personal Information is disclosed or transferred to ENKON pursuant to this Section 4.3.

**6.5 Data Security.** ENKON shall, in providing the Services, maintain appropriate safety and security procedures that meet or exceed prevailing industry standards. ENKON shall endeavour to promptly notify Customer of any material failure of any safety and security procedures or any security breach related to the System or ENKON's network.

**7. PROFESSIONAL SERVICES**

ENKON will provide the Professional Services set out in the Agreement, or as agreed with the Customer in an SOW executed pursuant to the Agreement. Professional Services, if any, shall be subject to the terms and conditions of the Agreement, including Schedule C (*Professional Services*) and any applicable SOW entered into by the parties.

**8. SERVICE LEVELS AND SUPPORT**

**8.2 SLA.** During the Term, ENKON agrees to provide the Hosted Integral-LIS Application to the Service Levels are set out in Schedule B (*Support and Service Level Agreement*).

**8.3 Support.** Subject to the payment by Customer of applicable support and maintenance fees, ENKON shall provide Support Services in accordance with the terms of the Agreement, including Schedule B (*Support and Service Level Agreement*).

## 9. INTELLECTUAL PROPERTY RIGHTS

**9.2 Ownership.** The Hosted Integral-LIS Application and Documentation (including any Content therein that is not Customer Data), all copies and portions thereof, ENKON Trademarks and all improvements, enhancements, modifications and derivative works thereof (excluding all Customer Data and Customer Technology), and all IP Rights therein (collectively, “**ENKON Property**”), are and shall remain the sole and exclusive property of ENKON and its licensors and are protected by domestic and international laws and treaties. Customer agrees not to, and not to cause or permit others to: (a) remove any proprietary notices, markings and legends appearing on or contained in or on any ENKON Property, the Hosted Integral-LIS Application and/or any Deliverables; or (b) change any security or rights management technology used in connection with any ENKON Property.

**9.3 Rights Reserved By ENKON.** Customer’s rights to use the Hosted Integral-LIS Application and other ENKON Property shall be limited to those expressly granted in the Agreement, including any agreed SOW. No other rights with respect to the Hosted Integral-LIS Application or any other ENKON Property (including all related IP Rights) are implied. Customer agrees that Customer will use all commercially reasonable measures to protect ENKON’s proprietary interests and IP Rights in ENKON Property, and will comply with the terms of the Agreement to protect ENKON’s proprietary and IP Rights in ENKON Property. Except as ENKON may otherwise expressly agree in writing, any discoveries, enhancements, improvements, customizations, translations or other modifications made to, or derived from, ENKON Property, and all related IP Rights therein, shall be owned exclusively by ENKON.

**9.4 Trademarks.** Customer recognizes and acknowledges the great value of the goodwill associated with ENKON’s name and trademarks, and the identification of ENKON’s goods or services therewith. Customer agrees that it obtains no rights, title or interest of any kind in or to any trademarks, tradenames, logos, service marks or other markings belonging to ENKON.

**9.5 Feedback.** Any suggestions, enhancement requests, recommendations or other feedback provided by Customer to ENKON relating to the Services (collectively “**Feedback**”) shall become ENKON’s sole property. ENKON shall exclusively own all rights, including all IP Rights, in and to all Feedback. ENKON shall be entitled to the unrestricted use and dissemination of any Feedback for any purpose, commercial or otherwise, without acknowledgement, attribution or compensation to Customer.

## 10. FEES AND PAYMENT

**10.2 Fees.** Customer shall pay to ENKON the fees specified in, and in accordance with the terms set out in the Agreement and any SOWs. Except as otherwise specified in the Agreement, payment obligations are non-cancellable and all fees are non-refundable.

**10.3 Taxes.** All fees are net of any sales, use, value added and similar taxes, as well as any duties and levies, imposed by any governmental authority (“**Taxes**”), all of which shall be the responsibility of Customer, but excluding taxes on ENKON’s income. Customer shall pay all such Taxes or provide ENKON with a tax or levy exemption certificate acceptable to the taxing authority. In the event that ENKON is required to pay any Taxes or other charges for which Customer is responsible, Customer shall promptly reimburse ENKON upon receipt of ENKON’s invoice therefor. If, pursuant to local law, Customer is required to withhold any taxes, duties or other amounts from amounts payable to ENKON, then: (a) Customer will promptly notify ENKON; and (b) the amount payable to ENKON will be automatically increased to the full extent required to offset such tax, duty or other amount so that the amount remitted to ENKON, net of all taxes, duties and other like amounts, equals the amount payable to ENKON pursuant to the Agreement or pursuant to an invoice from ENKON, as applicable.

**10.4 Payment Terms.** Amounts owed by Customer hereunder, which are not disputed by Customer, that are not paid within forty-five (45) days of the invoice due date shall accrue

interest at the lesser of two percent (2%) per month (twenty-four percent (24%) per annum) and the maximum rate permitted by law, calculated from the date of the invoice. If any undisputed amount owing by Customer under the Agreement (including any SOW) is forty-five (45) or more days overdue ENKON may, upon notice to Customer and without limiting ENKON’s other rights and remedies, suspend Customer’s (including Authorized Users’) access to the Hosted Integral-LIS Application. Customer will continue to be charged and remain liable for the applicable fees and other charges for all Services during any suspension period. If any undisputed amount is more than ninety (90) days overdue, ENKON will, in addition to its other rights and remedies be entitled to terminate the Agreement.

## 11. LIMITED WARRANTY

**11.2 Warranty.** ENKON represents and warrants to Customer that, during the Term, the Hosted Integral-LIS Application will function substantially in accordance with the Documentation, the Service Levels and any agreed Specifications therefor.

**11.3** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE HOSTED INTEGRAL-LIS APPLICATION AND ALL OTHER SERVICES (INCLUDING THE USE THEREOF) ARE PROVIDED “AS IS” WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. ENKON DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING BY LAW, STATUTE, USAGE OR TRADE, OR COURSE OF DEALING REGARDING OR RELATED TO THE AGREEMENT, THE HOSTED INTEGRAL-LIS APPLICATION, THE DOCUMENTATION, THE SERVICES, DELIVERABLES OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. ENKON DOES NOT WARRANT THAT THE HOSTED INTEGRAL-LIS APPLICATION WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL SATISFY CUSTOMER’S REQUIREMENTS OR PRODUCE ANY SPECIFIC RESULTS. EXCEPT FOR ENKON’S OBLIGATIONS THAT ARE EXPRESSLY SET FORTH IN THE AGREEMENT, THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE HOSTED INTEGRAL-LIS APPLICATION REMAINS WITH CUSTOMER. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, ENKON DOES NOT WARRANT THE ACCURACY OR SECURITY OF ANY CUSTOMER DATA, INCLUDING ANY DATA GENERATED THROUGH THE USE OF THE HOSTED INTEGRAL-LIS APPLICATION.

## 12. LIMITATION OF LIABILITY

**12.2** OTHER THAN IN RESPECT OF: (A) A BREACH BY ONE PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THE AGREEMENT; (B) THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY; OR (C) CUSTOMER’S MISUSE OR INFRINGEMENT OF ANY ENKON INTELLECTUAL PROPERTY RIGHTS, INCLUDING A BREACH OF ITS LIMITED RIGHTS TO USE THE HOSTED INTEGRAL-LIS APPLICATION SET FORTH IN SECTION 3, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR RELATED TO THE SERVICES OR THE AGREEMENT, HOWEVER CAUSED, INCLUDING UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENKON’S, ITS DIRECTORS’, OFFICERS’ AND EMPLOYEES’ TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THE AGREEMENT SHALL NOT EXCEED THE LESSER

OF: (A) THE AMOUNT ACTUALLY PAID TO ENKON BY CUSTOMER UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE INITIATION OF A CLAIM BY CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT; OR (B) ONE HUNDRED THOUSAND (\$100,000) CANADIAN DOLLARS.

### 13. CONFIDENTIALITY

**13.2 Definition.** "Confidential Information" includes any information, technology, document, material, idea or data that is disclosed by one party to the other, whether orally, electronically or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information, technology, document, material, idea or data and the circumstances of the disclosure, including information regarding a party's products and services, business information, customer lists, prices, financial information, intellectual property and other trade secrets or confidential information, and anything tangible from which such information may be obtained. Confidential Information includes the terms and conditions of the Agreement and any Personal Information disclosed or made available by one party to another. ENKON's Confidential Information is expressly understood to include the Hosted Integral-LIS Application, related software code and other intellectual property. Confidential Information, however, shall not include any document, material, idea, data or other information which: (a) is known to the receiving party under no obligation of confidence, at the time of disclosure by the other party; (b) is lawfully obtained by the receiving party from a third party who, in making such disclosure, breaches no obligation of confidence to the other party; (c) is or becomes publicly known through no wrongful act of the receiving party; or (d) is independently developed by the receiving party without the use of the disclosing party's Confidential Information. The onus of proving that any of the above-mentioned exceptions applies is on the receiving party.

**13.3 Protection.** Each party agrees to take all necessary precautions to maintain the confidentiality of the other party's Confidential Information disclosed in connection with the Agreement by using at least the same degree of care as that party uses with respect to its own Confidential Information of a like kind or nature, but no less than a reasonable degree of care. Each party agrees not to use the other party's Confidential Information for any purpose not expressly permitted by the Agreement and shall limit the disclosure of the other party's Confidential Information to the receiving party's employees and contractors having a need to know in connection with the provision by ENKON of the Services or Customer's use of the Services and any resulting Deliverables.

**13.4 Compelled Disclosure.** The receiving party may disclose Confidential Information of the disclosing party if it is compelled by law to do so, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to object to the disclosure. If the receiving party is compelled by law to disclose the disclosing party's Confidential Information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not objecting to the disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of compiling and providing secure access to the Confidential Information.

### 14. INFRINGEMENT

**14.2 Infringement Indemnity.** Subject to Section 12.2, ENKON will defend, indemnify and hold harmless Customer from and against any claims, liability, and related costs, damages and other losses, resulting from a claim that Customer's use of the Hosted Integral-LIS Application or a Deliverable in accordance with the Agreement infringes the Canadian IP Rights of any third party (an "Infringement Claim"); provided that: (a) Customer promptly notifies ENKON in writing within a reasonable period of time after learning of the Infringement Claim; (b) Customer agrees to allow ENKON to control any litigation and settlement related to

the Infringement Claim; and (c) Customer provides such reasonable assistance and cooperation as ENKON may require in connection with the defense or settlement of the Infringement Claim. ENKON may not settle or compromise any Infringement Claim without the prior written consent of Customer, if and to the extent such settlement or compromise would result in any admission of liability or payment by Customer for which Customer will not be indemnified by ENKON pursuant to this Section 12.1.

**14.3 Exclusions.** ENKON shall have no liability with respect to any Infringement Claim to the extent that such Infringement Claim: (a) would have been avoided but for the combination, operation or use of the Hosted Integral-LIS Application or Deliverable with any product, service, equipment or software not provided or approved by ENKON, and which is not required for the normal use of the Hosted Integral-LIS Application or Deliverable; (b) is based on the operation or use of the Hosted Integral-LIS Application or Deliverable in a manner not consistent with the Documentation or in violation of the Agreement; (c) would have been avoided but for the combination or incorporation of any Customer Data together with the Hosted Integral-LIS Application; (d) is based on, or would have been avoided but for, any modifications to the Hosted Integral-LIS Application or Deliverable made without ENKON's express prior written approval; or (e) is based on, or would have been avoided but for ENKON's adherence to, Customer requirements or instructions.

**14.4 Remedy.** Should the Hosted Integral-LIS Application or a Deliverable become, or if ENKON reasonably believes that the Hosted Integral-LIS Application or Deliverable may likely become, subject to an Infringement Claim, then ENKON may, at its sole option and expense: (a) procure the right for Customer to continue using the affected portion of the Hosted Integral-LIS Application or Deliverable; (b) replace the same with other software, services or other material having equivalent functionality that is not subject to an Infringement Claim; (c) modify the affected Hosted Integral-LIS Application or Deliverable so that the same is no longer infringing; or (d) if ENKON determines that option (a), (b) or (c) cannot be achieved on a commercially reasonable basis, terminate the Agreement and refund to Customer the unused portion of any fees paid in advance by Customer for the Deliverable or use of the affected Services, based on the number of full months, if any, remaining in the Term.

### 15. CUSTOMER INDEMNITY

Customer shall indemnify, defend (at ENKON's election) and hold ENKON harmless from and against any third party claims, losses, damages and expenses, including reasonable legal fees, arising from or relating to: (a) Customer Data (other than ENKON's or its personnel's unauthorized use or disclosure thereof); (b) any infringement, misappropriation or violation of any IP Rights or privacy rights by Customer or any Authorized User; (c) any violation of applicable law by Customer or an Authorized User; or (d) Customer's or an Authorized User's use of the Services in violation of the Agreement; provided that ENKON: (i) provides Customer with written notice of such claim within a reasonable period of time after learning of the claim; and (ii) provides reasonable cooperation in response to Customer's request for assistance. Customer may not settle or compromise any indemnified claim without the prior written consent of ENKON, if and to the extent such settlement or compromise would result in any admission of liability, obligation or payment by ENKON of any amounts for which it will not be indemnified by Customer pursuant to this Section 13.

### 16. TERMINATION

**16.2 Termination for Breach.** In the event that either party believes that the other has materially breached any obligations under the Agreement, such party shall notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that the breach has been cured. Except as provided in Section 8.3, if the breach is not cured by the breaching party or the notice of breach is not withdrawn by the non-breaching party within thirty (30) days, the non-breaching

party shall have the right to terminate the Agreement without further notice and without the refund of any fees paid to ENKON; provided, however, that if ENKON is the breaching party, ENKON will refund any unrealized amounts prepaid for the Hosted Integral-LIS Application on a prorated basis up to a maximum of six (6) months' worth of subscription fees.

**16.3 Immediate Termination.** Either party ("Terminating Party") may terminate the Agreement effective immediately (without providing a right to cure or refund of any portion of fees) if the other party institutes a proceeding, a proceeding is commenced against or affecting the other party, or the Terminating Party reasonably believes that a proceeding will be instituted: (a) seeking to adjudicate it as bankrupt or insolvent; (b) seeking liquidation, dissolution, winding up, arrangement, protection, relief or composition of it or any of its property, assets or debt; (c) making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (d) seeking to appoint a receiver, trustee, agent, custodian or other similar official for it or for all or part of its assets or property.

**16.4 Suspension or Termination of Accounts.** Customer acknowledges and agrees that ENKON reserves the right to suspend or terminate, upon not less than ten days' prior notice to Customer, the Account of any Authorized User that is, or ENKON reasonably believes is, in material violation of any terms of the Agreement applicable to Authorized User, if the violation is not rectified during the ten day notice period. Notwithstanding the foregoing, Customer agrees that ENKON shall not be required to provide prior notice of any suspension in cases where ENKON reasonably believes that such suspension is required to prevent, or to prevent the continuation of, imminent harm to the Hosted Integral-LIS Application, the System, ENKON software or any party's use of any of the foregoing.

**16.5 Changes or Discontinuance of a Service.** ENKON may change or terminate features or functionality of a Service in its sole discretion at any time. In the event of any material change to or termination of a Service, ENKON will: (a) use reasonable efforts to notify Customer of such change or termination and, (b) at ENKON's option, either (i) make the Hosted Integral-LIS Application available to Customer in the form available prior to such change for the remainder of the then current term, being the Initial Term or a Renewal Term (as the case may be); (ii) permit the Customer to terminate the Agreement without cause, provided that Customer provides ENKON with at least thirty (30) days' prior written notice of such termination and such notice is provided within 90 days of the effective date of such change to or termination of a Service; or (iii) adjust pricing, including the refund or credit of any prepaid amounts, to reflect the corresponding reduction in features or functionality. Termination of a particular Service by ENKON shall not automatically terminate the Agreement, and the terms and conditions of the Agreement and any other agreements between the parties shall remain in full force and effect, unaffected hereby.

**16.6 Effect of Termination.** Upon the termination, expiration or non-renewal of the Agreement: (a) Customer shall pay all undisputed fees and other amounts owing to ENKON for the Services up to and including the effective date of termination or expiry; (b) Customer's rights to use the Services, including its right to use the Hosted Integral-LIS Application, shall terminate and Customer (including all Authorized Users) shall immediately cease use of the Hosted Integral-LIS Application; (c) each of the parties shall deliver or destroy all Confidential Information of the other party which is in its possession or under its care or control; (d) if requested by Customer, ENKON shall provide, at Customer's expense, a machine-readable copy of any Customer Data, and shall thereafter promptly irretrievably delete all Customer Data from the Hosted Integral-LIS Application and the System; and (e) any terms and conditions of the Agreement, which by their nature extend beyond the termination or expiry of the Agreement, shall survive the termination or expiry of the Agreement, including Sections 3.2, 7, 8, 9, 10, 11, 12, 13, 14.5, 15.1, 15.7, 15.8, 15.10 and 15.11 of this Schedule A (*Terms and Conditions*).

## 17. MISCELLANEOUS

**17.2 Governing Law.** The Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be exclusively governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable in that province, as if it had been wholly performed within British Columbia, but excluding conflicts of laws provisions. The parties expressly exclude the application of the Convention of The Hague regarding the Unification of Law Governing the International Sale of Goods (1964), and the United Nations Convention on Contracts for the International Sale of Goods (also referred to as the "Vienna Convention").

**17.3 Severability.** In the event that any provision of the Agreement is determined to be unenforceable or invalid under any applicable law or by applicable court decision, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

**17.4 Waiver.** The waiver by either party of a breach of any provisions of the Agreement shall be in writing and shall in no way be construed as a waiver of any other breach or of any succeeding breach of the provision or the waiver of the provision itself.

**17.5 Assignment.** The Agreement, or any part thereof, may not be assigned by Customer without the prior written approval of ENKON, which will not be unreasonably withheld or delayed. The Agreement will be binding on and enure to the benefit of the parties and their respective successors and permitted assigns.

**17.6 Independent Contractors.** ENKON and Customer are independent contractors and neither the Agreement, nor any party thereof, will be deemed to establish any partnership, joint venture, employment, franchise or agency between them. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**17.7 Force Majeure.** Except with respect to payment obligations, the time for performance of a party's obligations shall automatically be extended by the period during which one party is prevented from performing its obligations due to any cause beyond its reasonable control (a "Force Majeure Event"). Each party will use commercially reasonable efforts to prevent or avoid any event, condition or circumstance that would result in such Force Majeure Event. Failing prevention of the occurrence of such Force Majeure Event, the party that is unable to perform as a result of the Force Majeure Event will: (a) notify the other party immediately; (b) use commercially reasonable efforts to mitigate the effects of the Force Majeure Event, and (c) effect performance of its affected obligations under the Agreement as soon as reasonably possible, including through the use of alternate resources or workarounds.

**17.8 Disputes.** In the event of any dispute arising out of the Agreement, the parties shall use reasonable good faith efforts to negotiate a mutually satisfactory resolution. If they are unable to do so within a period of sixty (60) days (or such other longer period as the parties may agree), then either party may, on written notice to the other party, refer the dispute for final resolution by arbitration before a single arbitrator administered by the Vancouver International Arbitration Centre pursuant to its applicable Rules. The parties shall select the arbitrator promptly and use commercially reasonable efforts to conduct the arbitration hearing no later than three (3) months after the arbitrator is selected. The arbitrator may not award punitive or exemplary damages against either party or any other relief in excess of the limitations set forth in the Agreement. The judgment and award of the arbitrator will be final and binding on each party. Judgment upon the award may be entered in any court having jurisdiction, or application may be made to such court for judicial acceptance of the award and/or an order of enforcement as the case may be. No action, regardless of form, arising out of or in connection with the Agreement may be brought by Customer more than twelve (12) months after the occurrence of the event giving rise to the cause of action, regardless of whether the Customer was aware or ought reasonably to have been aware of the event.

**17.9 Injunctive Relief.** Notwithstanding Section 15.7, nothing in the Agreement shall prevent either party from applying to a court of competent jurisdiction for injunctive or other equitable relief in the case of an infringement of IP Rights (including any breach of use or license rights), data breach, breach of obligations with respect to Personal Information, or the breach of an obligation of confidentiality, to preserve or protect real or tangible property from continuing damage or risk of same or to preserve a legal right for which the applicable limitation period is about to expire.

**17.10 Authority.** Each party represents and warrants that: (a) it is a corporation validly subsisting under the laws of the jurisdiction in which it is incorporated; (b) it possesses full power and authority to enter into the Agreement and to perform its obligations hereunder; (c) its performance of the terms of the Agreement will not breach any separate agreement by which such party is bound; and (d) it shall at all times comply with applicable laws.

**17.11 Legal Compliance.** The Hosted Integral-LIS Application, Deliverables, Documentation and other ENKON property and materials are subject to the export control laws of various countries, including Canada. Customer agrees that it will not submit the Hosted Integral-LIS Application, any Deliverables, Documentation or other ENKON Property to any government agency for licensing consideration or other regulatory approval without the prior written consent of an authorized representative of ENKON, and that it will not export or use the Hosted Integral-LIS Application, any Deliverable, Documentation and ENKON

property in or to countries or to persons prohibited by such laws. Customer shall also be responsible for complying with all applicable laws of any country where Customer carries on business, with respect to the use of the Hosted Integral-LIS Application, Documentation, any Deliverable or other ENKON property and materials.

**17.12 United States Government End Use.** ENKON provides the Hosted Integral-LIS Application, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Hosted Integral-LIS Application include only those rights customarily provided to the public as defined in the Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with ENKON to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**17.13 Notices.** Any notice or other significant communication given to either party pursuant to the Agreement shall be in writing sent by email to the parties at the addresses set out in the main body of the Agreement, or in an applicable SOW.

**Schedule B**  
**Support and Service Levels**  
**(SaaS)**

**1. ADDITIONAL TERMS**

This Schedule B sets out the additional terms and conditions that apply to the provision of Support Services by ENKON to Customer, and applicable Service Levels. In case of any inconsistency between the terms of this Schedule B and terms contained elsewhere in the Agreement, the terms of this Schedule B shall prevail with respect to the provision of Support Services only.

**2. DEFINITIONS**

In this Schedule B, the following terms shall have the meanings ascribed to them. Any capitalized terms not defined in this Schedule B shall have the meaning ascribed to such term elsewhere in the Agreement.

“**Business Day**” means a calendar day other than a Saturday, Sunday or public holiday in the Province of British Columbia, Canada.

“**Deficiency**” means a failure by the Hosted Integral-LIS Application to function in accordance with the applicable Documentation and Service Levels.

“**Maintenance Fee**” means the annual fee for Maintenance set out in the Agreement.

“**Severity Level**” means a Deficiency severity level as described in Table 1, below.

“**Service Level**” means the services levels described in Section 4.

“**Service Level Credit**” means financial credits applied against subscription fees.

“**Support Hours**” means 24 hours per day, 365/6 days per year by answering service and 9:00 am to 5:00 pm Pacific Time during Business Days for ENKON’s office.

“**Support Request**” has the meaning ascribed to it in Subsection 3.1.1.

**3. SUPPORT PORTAL AND HELP DESK**

**3.1 Support.** Subject to the payment by Customer of the Maintenance Fee, ENKON will, during the Term:

- (a) maintain, and provide Customer with access to, an email address (support@enkon.com) through which Authorized Users may report issues or request assistance or advice (each, a “**Support Request**”) in relation to the Hosted Integral-LIS Application;
- (b) assign all Support Requests a unique identifier and log each Support Request in a database, together with a description of the issue and such other details as may assist in the resolution; and
- (c) respond to Support Requests using the portal or email address described in Subsection 3.1.2 by:
  - (i) providing any advice or assistance requested by Authorized Users in relation to the features and functionality of the Hosted Integral-LIS Application;
  - (ii) analysing and diagnosing any reported Deficiencies, online or by means of remote access (as applicable); or
  - (iii) rectifying any Deficiencies discovered through the analysis and diagnosis described in Subsection 3.1.3.2 above or otherwise coming to ENKON’s attention from time to time.

**3.2 Support Hours.** Support Services will be provided via email or the support portal during Support Hours.

**3.3 Exclusions.** ENKON’s support obligations do not include consultancy, training, back-up processing, use of trial accounts, creation of customized software, corrections or updates to Customer Data, or any services necessitated by Customer’s inability to use the Hosted Integral-

LIS Application resulting from causes beyond the reasonable control of ENKON, including those described in Section 6, below.

**4. SERVICE LEVELS**

**4.1 Response and Resolution Times.** Customer should report all Deficiencies to ENKON by way of a Support Request issued using the support portal or email address set out in Section 3.1.1. Customer must complete all required fields, and any supplementary fields to the extent possible. Customer should also indicate an initial Severity Level for the Deficiency referencing Table 1, below, and make all reasonable efforts to provide ENKON with sufficient information to enable ENKON to reproduce the Deficiency. Customers issuing Support Requests via email will receive a link to their support tickets. ENKON will acknowledge receipt of Support Requests by issuing a unique ticket tracking number, and will endeavor to provide resolutions within the time periods set out in Table 1, below. ENKON will ultimately determine the severity level of the Deficiency.

**4.2 Service Availability.** The Hosted Integral-LIS Application will be operational and available to Customer during the Customer’s normal business working hours 99.5% of the time calculated on a monthly basis. Service will be considered “unavailable” if three consecutive attempts to access the Hosted Integral-LIS Application fail due to ENKON’s Integral-LIS Application Server not responding or if ENKON’s connection to the Internet fails.

**5. SERVICE LEVEL CREDITS**

**5.1** Subject to Section 6, should ENKON fail to achieve the **Service Level for Service availability described in Section 4.2**, Customer will receive Service Level Credits as set out in Table 2, below. Service Level Credits will be calculated based upon the difference between the actual Service Level achieved and the Service Level target. The actual Service Level is measured over a calendar month; targets are calculated on a 30-day period. The maximum Service Level Credit will be equal to 80% of the **[monthly subscription fee]**.

**6. EXCLUSIONS**

**6.1 Exclusions.** ENKON will not be liable, and no Service Level Credit will apply, in respect of any Deficiencies or failures to meet the Service Levels set out in Section 4 which results from any of the following:

- (a) Scheduled maintenance, which means non-emergency maintenance that is required to improve Service quality, including the installation of updates and upgrades. ENKON will provide Subscriber with at least 72 hours advance written notice, via email, of any schedule maintenance. Scheduled maintenance will normally occur once per month, between the hours of 10 PM to midnight, Pacific Time, on a Friday, Saturday or Sunday.
- (b) Emergency maintenance, which means support that was not planned, but which is required on an urgent basis to prevent issues with the Services and/or to restore network performance.
- (c) Access issues outside of ENKON’s direct control, including connectivity issues, and issues originating with Customer, utilities or third party hosting service providers.
- (d) Misuse or unauthorized use of the Hosted Integral-LIS Application, including use for purposes for which it was not designed;
- (e) Failure of Customer to implement recommendations, fixes or workarounds that have been previously supplied by ENKON to Customer



- (f) Failure of any Customer or third party hardware or software required to access or use the Hosted Integral-LIS Application;
- (g) Failure of Customer or ENKON Internet or other communications connections.
- (h) Malicious attacks on Customer's or ENKON's systems, or on third party systems required to access or use the Hosted Integral-LIS Application;
- (i) "No trouble found" tickets;
- (j) Compliance with the requirements of any governmental authority, or service, communication or utility provider; or
- (k) Other circumstances beyond ENKON's reasonable control including, but not limited to, *force majeure* events.

**6.2 Professional Services.** ENKON may agree, at its sole discretion, to provide support for Deficiencies arising as a result of the causes referenced in Section 6.1, at its then-standard consulting rates and in accordance with the provisions of Schedule C (*Professional Services*).

**7. SCHEDULED MAINTENANCE**

From time to time, ENKON will perform scheduled maintenance, including the implementation of updates and new releases, so as to ensure that the Hosted Integral-LIS Application continues to comply with the applicable Documentation. Whenever practical, ENKON will endeavour to perform scheduled maintenance such that the overall availability of the Hosted Integral-LIS Application is not affected or only minimally affected, and with minimum disruption to Customer. In rare cases, scheduled maintenance may necessitate a complete system outage or inability to access the Hosted Integral-LIS Application.

ENKON will endeavour to notify Customer through the support portal at least seven days prior to any scheduled outage or prolonged downtime.

**8. UNSCHEDULED/EMERGENCY MAINTENANCE**

In the unlikely event of an unscheduled maintenance event that materially affects Customer's ability to access or use the Hosted Integral-LIS Application, ENKON will endeavour to notify Customer within thirty minutes, and to provide an estimate of when normal service will resume.

**9. UPDATES AND UPGRADES**

During the Term, ENKON will provide to Customer all generally available updates and upgrades to the Hosted Integral-LIS Application, no later than when ENKON first makes such updates and upgrades generally available to its other customers.

**10. LIMITATION OF LIABILITY**

In no event will ENKON's, its director's, officers' and employees' total collective liability arising under or in connection with the provision of Support and Maintenance Services, exceed the total amount actually paid by Customer to ENKON for Support and Maintenance Services in the twelve (12) months immediately preceding the most recent claim.

**Table 1 – Severity Levels / Response and Resolution Times**

Severity Level	Description	Initial Response (Out of Business Hours)	Initial Response (During Business Hours)	Resolution
1. System Down	Application is not available	Within 4 hours	Within 1 hr	As soon as possible
2. Critical	Business outage or significant customer impact that threatens future productivity	Within first 2 hours of next business day	Within 2 hours	Within 8 hours next Business Day
3. Urgent	High-impact problem where production is proceeding, but in a significantly impaired fashion; there is a time-sensitive issue important to long term productivity that is not causing an immediate work stoppage; or there is significant customer concern	Within first 6 hours of next business day	Within 6 hours	Within 2 Business Days
4. Important	Important issue that does not have significant current productivity impact	Next Business Day	Within 8 hours	Within 10 Business Days
5. Monitor	Issue requiring no further action beyond monitoring for follow-up, if needed	Within 2 Business Day	Within 2 Business Day	Within 10 Business Days
6. Informational	Request for information only	Within 2 Business Days	Within 2 Business Days	Within 10 Business Days

**Table 2: Calculation of Service Level Credits**

If difference between actual availability and availability target is:	Total Monthly Credit (% of hosting fee as defined in Schedule 2)
< or = 2%	10%
>2% and < or = 4%	20%
>4% and < or = 6%	40%
>6% and < or=10%	60%
>10%	80%

**Schedule D**  
**Integral-LIS Licensed Components**

- *Integral Web Components*
  - My WDPP
    - Change Password
    - Map Favorites
    - Sign In
  - Habitat Projects
    - Navigation
      - Site Map
      - Navigation Map
      - Navigation Search
      - Navigation Tree
    - Map Themes
      - Basic Navigation
      - Fish Distribution
      - Political-Geographic
      - 303d Water Quality
    - Project Form
    - Practice Form
  - Utilities
    - Report Writer
    - Document Manager
    - Photo Manager
    - Notes
  - Admin
    - Manage Users
    - Manage Groups
    - Security Access
    - User Logs
    - Lookup Table Editor
    - User Re-Assign