



## REQUEST FOR PROPOSAL #02-23

### Finance, Payroll and HR Software Implementation

TASK	ESTIMATED DATES
RFP Release	Feb 1, 2023
Pre-Proposal Conference 10:00 AM PST <b>RSVP by 4:00 PM PST 2/8/23</b>	Feb 10, 2023
Questions Due by 4:00 PM PST	Feb 14, 2023
Answers Provided	Feb 17, 2023
<b>Proposals Due by 4:00 PM PST</b>	Mar 2, 2023
Firm Interviews &/or Demos (For firms not discovered Pre-RFP)	Mar 9, 2023 Mar 16, 2023
Firm &/or Demos Interviews (For top 5) if Necessary	Mar 16, 2023 - Mar 22, 2023
If necessary, move on to second highest rated firm	Mar 16, 2023 - Mar 22, 2023
Notice of Intent to Award	Mar 23, 2023
Island Transit Approval	April 6, 2023
Project Kick-off	April 7, 2023

An electronic copy of the complete RFP document and support reference documents can be obtained by contacting Island Transit.

Each proposal must be submitted in accordance with the requirements listed in the RFP package that is also on file at the Island Transit Administration Office, 19758 SR 20 Coupeville, WA 98239.

*Island Transit serves Whidbey and Camano Islands in Island County. The mission of Island Transit is to provide safe, accessible, convenient, and friendly public transportation services which enhance our Island quality of life.*

## **REQUEST FOR PROPOSAL (RFP) #02-23**

### **Finance, Payroll and HR Software Implementation**

#### **I. INTRODUCTION**

The Island County Public Transportation Benefit Area (PTBA) dba Island Transit is a municipal corporation of the state of Washington, and is the public transit agency providing fixed route, paratransit, and vanpool services on Camano and Whidbey islands, including connections to Skagit and Snohomish County. The agency has been a fare free system from its inception; sales tax, often volatile, is the primary source of the agency's funding. A Board of Directors govern Island Transit and is comprised of two Island County Commissioners, three appointed City and Town Council members and a labor representative. The agency has a staff of 118 employees including bus Operators and office staff, and an annual operating budget of \$20M.

Because our current system is inadequate to adapt to our expanding organization, and the manual processes are too time consuming, Island Transit is seeking to replace its current finance, accounting, time and attendance, and payroll software as well as adding HRIS software. The goal is to automate our manual processes.

Ideally one vendor could be chosen to provide this functionality, but Island Transit recognizes that software solutions from more than one vendor may be required. It is therefore open to granting awards to one or more firms as the evaluation may suggest. Vendors are invited to submit proposals that cover all or part of the functionality described in the functional requirements.

#### **II. PURPOSE**

Island Transit is seeking to replace its current finance, accounting, and payroll software as well as adding HRIS software. The goal is to automate our manual processes.

#### **III. SCOPE OF WORK**

Island Transit wants to select and implement new software that provides core accounting and finance functionality and a payroll and time card solution that is powerful enough to support the weekly time cards needed by salaried employees and the daily scheduling and time keeping requirements of the Operations department and the represented bus operators and dispatchers.

In addition, if the chosen vendors also offer the features outlined in the "other HRIS features" tab, they may be considered for a future implementation, but the initial implementation plan should not cover those functions unless it is integral to implementing the payroll solution.

However, vendors are invited to provide implementation plan and cost information for those features to assist Island Transit in future decision making.

While it would be preferred to have one software vendor provide both the finance, and payroll and time card solutions, Island Transit is entertaining the option of selecting two software systems and vendors if need be. The first priority is to implement the payroll solution.

The chosen vendors will be expected to perform the following and your implementation plans and cost estimates should reflect the following:

1. Meet with Island Transit and TokuSaku staff to discuss options for configuring their system in a manner that meets Island Transits business requirements to include the features and functionality listed in the functional requirements documents. (Note: TokuSaku has performed extensive current state process analysis and business requirements gathering and will serve as the initial subject matter expert for vendors whenever possible; although Island Transit will of course have many details TokuSaku will not be able to answer. Island Transit will need to sign off on configuration decisions.
2. Perform the actual configuration of the system.
3. Work with Island Transit technical team to ensure the system works properly.
4. Provide documentation regarding functional and technical configuration decisions.
5. Provide technical and user support as outlined in your proposal.
6. Migrate historic data as you outlined in your implementation plan.
7. Test the system to Island Transits satisfaction.
8. For the Finance Solution:
  - a. Training the finance team and/or the payroll team on how to use and administer the system.
9. For the Payroll Solution
  - a. Collaboratively design/configure the punch in/out interface on two or three workstations or kiosks near the dispatch windows or in the break room in two locations (Whidbey Island and Camano Island facilities.)
  - b. Training the payroll team on how to use and administer the system.
  - c. Train the Operations Supervisors, Operators, and Dispatchers on the proper use of the time card.

The following functions need not be included in your initial implementation:

- a. System supported time off requests.
- b. Any of the features included in the “Other HRIS” Features tab that are not also referenced in the Payroll requirements.

#### IV. PROPOSAL CONTENTS

To facilitate evaluation of the proposal, firms are **required** to adhere to the following format, i.e., **COMPANY OVERVIEW; PROJECT SPECIFIC WORK PLAN AND FEATURE OVERVIEW; COST PROPOSAL.**

##### A. COMPANY OVERVIEW

This summarizes your proposal and your firm's qualifications. You may use this section to articulate why your firm is pursuing this work and how it is uniquely qualified to perform it.

1. **Transmittal Letter:** The Firm must submit **one** original Transmittal Letter of no more than **three** pages signed by an official authorized to solicit business and enter into contracts for the proposing Firm. The Transmittal Letter must contain the following information and statements:

- a. Years in Business
- b. Executive Team
- c. Organization Chart of Submitting Firm
- d. Authorized Official's Name, Title, and Contact Information
- e. Proposer's federal and state taxpayer identification numbers.
- f. "Proposal may be released as public information in accordance with requirements of the laws covering same." (Any proprietary information must be clearly marked).
- g. "Proposal and cost schedule shall be valid and binding for ninety (90) days following proposal due date and will become part of the contract that is negotiated with Island Transit."

2. **Experience and References:** Provide at least **five projects** either in progress or completed within the last three years. Please include contact information for clients who were involved in the implementation or who oversee the use of your systems. Projects that have been awarded but are not yet in service are not eligible experience. Island Transit reserves the right to visit and contact any or all the references listed. Vendors are encouraged to include one or more clients who are scheduled bus service agencies or government agencies with comparable budgets and staff sizes.

The contact names provided with the project descriptions will be considered references and may be contacted. The information provided must be up-to-date or the proposal may be considered nonresponsive.

3. **Product Overview:** Provide an overview of the product of no more than **50** pages including key features, unique selling proposition and key Firm differentiators.

#### 4. **Product Documentation:**

- a. Provide the system set-up manual as an attachment to the Proposal (this information is not included in the page count).
- b. Firms may be invited to provide a demonstration. The demonstration should cover these scenarios at the minimum:
  - i. Payroll Clerk reviewing and quality checking of time cards.
  - ii. Hourly union represented staff who need to punch in and out and code their hours being split against two pay/cost codes. (Ideally with the first pay/cost code set through the schedule.)
  - iii. Salary employee entering in hours worked with some time off codes.
  - iv. Requesting staff, approving manager, and Accounts Payable Clerk, who initiate, approve, and process (receive and pay) purchase orders.
  - v. Finance Manager preparing trial balances.
  - vi. Finance Manager creating a customized report.

#### **B. PROJECT SPECIFIC WORK PLAN AND FEATURE OVERVIEW**

Describe your overall approach to the scope of services listed in Section III - Scope of Work. Proposals should discuss specifics of how you propose to complete each task, including the timing to make sure that work will be relevant for the realities of the post-pandemic world. Specific deliverables will be determined during contract negotiation.

1. Completed **Appendix A - Functional and Non-Functional Requirements** (REQUIREMENTS) for the Finance, Payroll and HR Software Implementation RFP. Do not include any promotional material. If marked no, describe alternative.

Note: Vendors need not respond to all functional areas and each functional area will be scored separately.

There are three tabs for functional requirements (Finance, Time Cards, and Payroll, and Other HRIS Features). Vendors need only respond to whichever functional area their solution will address. Finance will be scored separately from Payroll/HR.

- a. **Mandatory Features:** Please note the features that are flagged as mandatory that constitute non-negotiable features of an acceptable solution.
- b. **Additional Desired Features:** The remaining items on each functional

requirements tab are desired features.

- c. **Feature Exception/Alternative Approach:** List features the systems are incapable of performing. For each feature that cannot be performed, describe how you would suggest Island Transit approach this need.
  - d. **Module Required:** If your solution is priced by module (straight, per user, per module, or transaction volume per module), your answers to Appendix A should clarify which module would be required to perform each functional requirement, and the terminology used for these modules should match the terminology used in the pricing/cost proposal.
  - e. **Additional Features:** List any additional features envisioned for Island Transit but not listed in the REQUIREMENTS.
2. There is also a Non-Functional Requirements tab described below that all vendors should respond to:
- a. Your application's technical requirements for cloud, on-premises, or hybrid solutions.
  - b. Customer service and technical support SLAs (including details of various tiers if offered).
  - c. Additional service offerings such as call center or help desk hours, dedicated engineer/analyst time, SPOC, or other offerings.
  - d. Enhanced training opportunities.

Note: The terminology used to describe any optional levels of support should correspond to similar terminology used in the pricing cost proposal.

3. **Implementation Plan:** Provide a solution for Finance, Payroll and HR Software Implementation.

Please note that implementing a payroll and scheduling solution described on the Payroll tab of the requirements document is the most urgent matter (for those firms offering that solution). Second most urgent would be the financial requirements solution, and then additional HR solutions.

**At a minimum, include:**

- a. Clarification of which functional areas you are proposing to implement. (Finance, time/attendance, and payroll, and other HRIS.)
- b. A brief overview of the implementation project.

- c. A project implementation schedule. (Provide a timeline for project completion.)
- d. The number and type of resources that your firm would deploy to this project. Note which roles if any would be dedicated exclusively to this project.
- e. Address the amount of historic and current data you propose to migrate to your system. Please be specific about the type of data. For instance, “one year of data” would be insufficiently vague, but “two years’ worth of annual ledger account transaction totals payee, description, amount, and account details for all journal entries this year-to- date” would be an example of a minimally specific answer for finance solutions. “Import all information necessary to run payroll plus detailed payroll cycle for all pay cycles year-to-date” is an example for time/attendance and payroll solutions. Additional details are welcome.
- f. List the Island Transit resources you would need including the subject matter expertise and the management and other roles that would be needed, and the average amount of time (weekly or monthly) they would need to be available to support the project.
- g. Your proposal for testing the new system.

Note: The implementation plan described here should be priced on the price/cost proposal clearly. If more extensive or less extensive implementation options are available, they should be clearly differentiated both in the description and the corresponding cost proposal.

- 4. **Training Plan:** state the firm’s approach to training Island Transit staff on proper usage of each system.

## C. COST PROPOSAL

### 1. Cost Proposal

Provide a completed pricing sheet that details the Finance, Payroll and HR Software Implementation software that includes all one time, subscription, annual maintenance, and any other cost for items referenced in this proposal or that you offer.

Software pricing should clarify pricing models such as price per module per user or per employee per month. Per user models should clarify whether you mean named users or concurrent users.

If different types of user licenses are part of the module, please provide

sufficient information about the name of each license type and what can be performed under each. (Presumably initiating or approving a PO does not count or require the same license as the AP clerk or the finance manager.)

Proposals should clarify customer service tiers and explain differentiated SLAs, modes of service information including both user customer service and technical support that correspond to any tiers or offerings described in the non-technical requirements section.

#### SECTION IV - PROCUREMENT SCHEDULE

The procurement schedule for this project is below:

TASK	ESTIMATED DATES
RFP Release	Feb 1, 2023
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#### SECTION V – INSTRUCTIONS TO PROPOSERS

##### A. Submittal

Bidders must submit one (1) PDF copy to Procurement Specialist, Jake Murray at [murray@islandtransit.org](mailto:murray@islandtransit.org). Proposals should be titled: “[Name of Firm] Finance, Payroll and HR Software Implementation - Technical Proposal.” “Firm Name” must be the name of the prime Firm.

Bidders must also submit a cost proposal. The pricing sheet must be in a separate file titled: “[Name of Firm] Finance, Payroll and HR Software Implementation - Pricing sheet.” “Firm Name” must be the name of the prime Firm.

The Cost Proposal file will not be opened until each submitted Technical Proposal has been carefully reviewed and evaluated, and the highest-ranking firm has been selected. The Cost Proposal will form the basis of contract negotiations.

Technical and Cost Proposal submissions will be accepted until **4:00 p.m. March 2, 2023**

The timeliness of proposal submission is the sole responsibility of the Firm.

The **Technical Proposal should not exceed fifty (50) double-sided pages**. The page limitation **does not** apply to **Section IV (A) Company Overview** of the Proposal

Any proposal **not** received by the specified date and time will be automatically rejected and will not receive further consideration by the Island Transit. The Island Transit reserves the right to reject all proposals, disqualify nonconforming or incomplete proposals at its sole discretion, waive deviations from the RFP, and determine whether firms are qualified. A proposal may be deemed incomplete unless all required documents, **including all appendices**, are submitted.

All proposals submitted to Island Transit in response to this RFP shall become the property of the Island Transit and will not be returned and such proposals are subject to the Washington Public Records Act.

Proposals shall be valid for a minimum of 90 days following submission.

#### **B. Proposal Conference Regarding the RFP**

A non-mandatory, virtual pre-proposal conference will be held on **February 10, 2023**. It is highly recommended that interested Firms attend this meeting. Please RSVP no later than **February 8, 2023, at 4:00 p.m. PST** to Jake Murray at [murray@islandtransit.org](mailto:murray@islandtransit.org) to confirm your attendance.

One round of questions is anticipated for this RFP. Questions regarding any part of the RFP may be submitted in writing **via email** to Jake Murray at [murray@islandtransit.org](mailto:murray@islandtransit.org). All email correspondence shall use the title *Island Transit Finance, Payroll and HR Software Implementation #02-23* in the subject line. All written requests for RFP clarifications must be received by **4:00 p.m. PST February 14, 2023**

No contact with Island Transit staff, TokuSaku Consultants, or evaluation committee members is permitted. Only information received through the official question and answer process may be relied upon by the Proposer.

## SECTION VI – EVALUATION PROCEDURES

### A. REVIEW COMMITTEE & SELECTION COMMITTEE

1. The evaluation process is not designed to simply award the contract to the lowest cost proposer. Rather, it is intended to help Island Transit select the proposer with the best combination of attributes, including price, based on the evaluation factors that provides the best value to Island Transit.
2. Agency staff will review all timely submittals to determine if they are responsive in comparison to the stated requirements and will establish a list of firms to be further considered. A review panel of three or more persons may include non-agency employees who offer subject matter expertise.
3. The panel will review the proposals to determine if they address the following:
  - Meet enough of the functional requirements.
  - Adequately address the non-functional requirements.
4. Island Transit reserves the right to request additional information that, in Island Transit's opinion, is necessary to ensure that the Proposer's competence, qualified employees, business organization and financial resources are adequate for the performance of the services under this RFP.
5. Finalists may be invited to make an oral presentation and/or extended software demonstration to the Evaluation Committee.
6. The Evaluation Committee shall use the additional information gathered in oral interviews and software demonstrations to update their score and attempt to negotiate a mutually satisfactory agreement with the highest-ranking Firm in the payroll and time and attendance category and in the finance category.
7. The Evaluation Committee shall review the Price Proposal of the highest ranked proposer and determine if the highest ranked proposer provides the best value to Island Transit. In determining best value, consideration should be given to other Price Proposals received and the budget cost estimate for the project. Best value is the best combination of price and technical performance, not necessarily the lowest price or the highest technical rating, but the best combination of price and technical performance. If an agreement cannot be reached with the highest-ranking

Firm or if it is determined not to be the best value for Island Transit, Island Transit will attempt to negotiate an agreement with the second highest-ranking Firm, and so forth.

8. Approval of the Proposer recommended by Island Transit staff will be submitted by the Executive Director to the Island Transit Board with a recommendation for award of the contract.

## B. EVALUATION CRITERIA & SCORING

CRITERIA	DETAIL	SCORING
<b>Finance/Accounting</b>		
Technology Functionality / Approach	Functionality of Firm's solution in relation to key features identified in <b>Appendix A – Functional Requirements re: Finance</b>	60 points
Qualifications / Experience	Proposer's experience deploying solutions for similar types of needs	15 points
Training / Deployment / Support	Proposer's training plan, deployment plan, and support plan	25 points
<b>Total</b>		<b>100</b>
<b>Payroll/Timesheets/Scheduling And Other HRIS</b>		
Technology Functionality / Approach – Payroll/Time/Scheduling	Functionality of Firm's solution in relation to key features identified in <b>Appendix A – Functional Requirements re: Payroll/Time/Scheduling</b>	40 Points
Technology Functionality / Approach – Other HRIS	Functionality of Firm's solution in relation to key features identified in <b>Appendix A – Functional Requirements re: Other HRIS</b>	20 Points
Qualifications / Experience	Proposer's experience deploying solutions for similar types of needs	15 points
Training / Deployment / Support	Proposer's training plan, deployment plan, and support plan	25 points
<b>Total</b>		<b>100</b>

## **SECTION VII - CONTRACT AWARD AND EXECUTION**

Island Transit reserves the right to make an award without further discussion of the proposal submitted. Island Transit reserves the right to award all categories to a single firm or award specific categories to specific firms. Thus, each firm will be evaluated by category for category. Firms are highly encouraged to focus on their specific strengths to maximize the chance of an award. The proposal should be initially submitted on the most favorable terms the proposers can offer. It is understood that the proposal will become a part of the official file on this matter without obligation to Island Transit.

### **NOTICE OF INTENT TO AWARD**

Once the Evaluation Committee has successfully negotiated an agreement with the Firm, Island Transit staff will send the recommended Firm three original copies of the Software as a Service Agreement attached. Upon receiving these documents, the recommended Firm shall sign all three copies of the Software as a Service Agreement and return them to Island Transit within five business days.

### **FINAL DETERMINATION**

The Evaluation Committee will forward its recommendation for the contract award along with the three signed copies of the Agreement to the Island Transit's Executive Director. After review and consideration of this recommendation, Island Transit's Executive Director has the discretion to 1) award the contract, or 2) reject all proposals. Once the Executive Director has decided to award the contract, Island Transit's Board of Directors will give final approval.

The general conditions and specifications of the RFP and as proposed by Island Transit and the successful proposer's response, as amended by agreements between Island Transit and the proposer, will become part of the contract documents. Additionally, Island Transit will verify proposer representations that appear in the proposal. Failure of the proposer's products to meet the mandatory specifications may result in elimination of the proposer from competition or in contract cancellation or termination.

The proposer selected as the apparently successful proposer will be expected to enter into an agreement with Island Transit. A Proposed Software as a Service Agreement is provided with this RFP as **Appendix C**.

### **EXCEPTIONS TO SOFTWARE AS A SERVICE AGREEMENT AND TERMS AND CONDITIONS**

The Firm must state in writing any exceptions it has to provisions of the Software as a Service Agreement Appendix E) and Terms and Conditions, attached in Attachment C. If such

exceptions exist, the Firm must state which section they object to and provide alternative language to address any exceptions, which will be taken under consideration by Island Transit.

If the selected proposer fails to sign the contract within five (5) business days of delivery of the final contract, Island Transit may elect to cancel the award and award the contract to the next-highest-ranked proposer.

### **UNSUCCESSFUL PROPOSERS/SELECTION DISPUTES**

After the Evaluation Committee finalizes its recommendation, the unsuccessful firms will be notified of Island Transit's intent to recommend the Island Transit Executive Director award the contract to the recommended firm.

Unsuccessful firms will be debriefed upon their written request. Debrief requests must be submitted to Island Transit staff within five (5) business days after Island Transit's Executive Director's award of contract.

### **APPEALS**

Proposers who wish to appeal a disqualification of proposal or the award of contract may submit the appeal in writing to the Procurement Specialist within ten (10) working days of the issue date on the Notice of Award or disqualification. Appeals should be sent to the following address:

Island Transit  
ATTN: Procurement Specialist  
19758 SR 20,  
Coupeville, WA 98239

The appeal must describe the specific citation of law, rule, regulation, or common business practice upon which the protest is based. Neither the judgment used in the scoring by individual evaluators nor disagreement with the procurement process shall constitute grounds for appeal. Island Transit will not consider any protest based on items that could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent Island Transit from executing a contract with any other proposer.

### **RFP AMENDMENTS**

Island Transit reserves the right to change the schedule or issue amendments to the RFP at any time. Island Transit also reserves the right to cancel or reissue the RFP.

### **PROPOSER'S COST TO DEVELOP PROPOSAL**

Costs for developing proposals in response to the RFP are entirely the obligation of the proposer and shall not be chargeable in any manner to Island Transit.

### **WITHDRAWAL OF PROPOSALS**

Proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing. Proposals cannot be changed or withdrawn after the time designated for receipt.

### **REJECTION OF PROPOSALS – WAIVER OF INFORMALITIES OR IRREGULARITIES**

Island Transit reserves the right to reject any or all proposals, to waive any minor informalities or irregularities contained in any proposal, and to accept any proposal deemed to be in the best interest of Island Transit.

### **PROPOSAL VALIDITY PERIOD**

Submission of the proposal will signify the proposer's agreement that its proposal and the content thereof are valid for ninety (90) days following the submission deadline and will become part of the contract that is negotiated between Island Transit and the successful proposer.

### **PUBLIC RECORDS**

RCW 42.56.070(1) requires Island Transit to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by Island Transit regardless of physical form or characteristics. A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.56.010 (3). "Writing" is defined very broadly as: "... handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.56.010(4). An email, text, social media post and database are therefore also "writings."

Under Washington state law, the documents submitted in response to this Request for Proposals (the “documents”) become a public record upon submission to Island Transit, subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law. If Island Transit receives a request for inspection or copying of any such documents provided by a proposer in response to this RFP, it will promptly notify the proposer at the address given in response to this RFP that it has received such a request. Such notice will inform the proposer of the date Island Transit intends to disclose the documents requested and affording the proposer a reasonable opportunity to obtain a court order prohibiting or conditioning the release of the documents. Island Transit assumes no contractual obligation to enforce any exemption.

## APPENDIX A

Functional and Non-Functional Requirements

Functional Requirements

Technical Requirements

Training

User Customer Service and Technical Support

**(See Excel Spreadsheet)**

## Appendix B

### ACCEPTANCE OF TERMS AND CONDITIONS

Indicate exceptions that your firm takes to any terms and conditions listed in this RFP, including the Attachments and proposed Agreement. Proposals which take exception to the specifications, terms or conditions of this RFP or the Proposed Agreement or offer substitutions shall explicitly state the exceptions(s), reason(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms and specifications of the RFP and the Proposed Agreement.

If your firm takes no exception to the specifications, terms and conditions of this RFP and the Proposed Agreement, please indicate so.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: \_\_\_\_\_

## APPENDIX C

### Software Considerations

1. **DEFINITIONS.** In this Agreement, the following terms have the following meanings, and all other capitalized terms have the meaning given to them elsewhere in this Agreement:
  - a. **“Authorized Persons”** as used in this document means the Service Provider’s employees, contractors, subcontractors, or other agents who need to access the Island Transit’s personal data to enable the Service Provider to perform the services required.
  - b. **“Data Breach”** as used in this document means the unauthorized access by non-authorized person/s that result in the use, disclosure or theft of an Island Transit’s unencrypted personal data.
  - c. **“Follow-the-sun”** is a workflow model in which work is passed on to the offices located in different time zones. In this way work is done round-the-clock thereby reducing the support duration and increasing the responsiveness.
  - d. **“Individually Identifiable Health Information”** as used in this document means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a healthcare provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
  - e. **“Non-Public Data”** means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the Island Transit because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
  - f. **“Personal Data”** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit, or debit card numbers; or protected health information (PHI) relating to a person.

- g. **“Protected Health Information” (PHI)** as used in this document is individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- h. **“Personally Identifiable Information” (PII)** PII refers to a combination of data elements (e.g. Social Security number, driver’s license or other government-issued identification number, passport number, financial account number, or credit or debit card number in combination with security codes) that, when linked to the individual’s first name or first initial and their last name, and not encrypted or otherwise could lead to the loss, theft or unauthorized use of the individual’s personal information.
- i. **“Island Transit”** means the Island Transit of Coupeville, Washington.
- j. **Island Transit Data** as used in this document means all data created or in any way originating with Island Transit, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the Island Transit, whether such data or output is stored on the Island Transit’s hardware; the Service Provider’s hardware or exists in any system owned, maintained or otherwise controlled by the Island Transit or by the Service Provider.
- k. **“Island Transit Identified Contact”** means the person or persons designated in writing by Island Transit to receive security incident or breach notification.
- l. **“Security Incident”** means the potentially unauthorized access by non-authorized persons to personal data or non-public data that could reasonably result in the use, disclosure or theft of Island Transit’s unencrypted personal data or non-public data within the possession or control of a Service Provider. A security incident may or may not turn into a data breach.
- m. **“Service Level Agreement” (SLA)** means a written agreement between both Island Transit and the Service Provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises (i.e., metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered

and addressed and (6) any remedies for performance failures.

- n. **“Service Provider”** means the contractor and its employees, subcontractors, agents, and affiliates who are providing the services agreed to under the contract.
- o. **“Software-as-a-Service” (SaaS)** means the capability provided to the consumer to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- p. **“Statement of Work”** is a written statement in a solicitation document or contract that describes the Island Transit’s service needs and expectations.

## 2. Description of Services

- a. **Scope of Services.** The scope of services to be performed by Service Provider under this Agreement is as described in this Statement of Work in Exhibit A of this Agreement.
- b. **Data Ownership.** Island Transit will own all right, title and interest in its data that is related to the services provided by this contract. SERVICE PROVIDER shall not access Island Transit user accounts or Island Transit data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at Island Transit’s written request.
- c. **Data Protection.** Protection of personal privacy and data shall be an integral part of the business activities of the Service Provider to ensure there is no inappropriate or unauthorized use of Island Transit information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity and availability of Island Transit information and comply with the following conditions:
  - i. The Service Provider shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Service Provider applies to its own personal data and non- public data of similar kind.

- ii. All data obtained by the Service Provider in the performance of this contract shall become and remain the property of the Island Transit.
  - iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Service Provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
  - iv. Unless otherwise stipulated, the Service Provider shall encrypt all non-public data at rest and in transit. The Island Transit shall identify data it deems as non-public data to the Service Provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
  - v. At no time shall any data or processes – that either belong to or are intended for the use of Island Transit or its officers, agents, or employees – be copied, disclosed or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include Island Transit.
  - vi. The Service Provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- d. Data Location.** The Service Provider shall provide its services to Island Transit and its end users solely from data centers in the U.S. Storage of Island Transit data at rest shall be located solely in data centers in the U.S. The Service Provider shall not allow its personnel or contractors to store Island Transit data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Service Provider shall permit its personnel and contractors to access Island Transit data remotely only as required to provide technical support. The Service Provider may provide technical user support on a 24/7 basis using a “Follow the Sun” model, unless otherwise prohibited in this contract.
- e. Security Incident.** Service Provider shall inform the Island Transit of any security incident or data breach.
- i. Incident Response: The Service Provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, or contained in the contract. Discussing security incidents with the Island Transit should be handled on an urgent as-needed basis, as part of Service Provider communication and mitigation processes as mutually agreed upon,

defined by law, or contained in the contract.

- ii. Security Incident Reporting Requirements: The Service Provider shall report a security incident to the appropriate Island Transit identified contact immediately as defined in the SLA.
- iii. Breach Reporting Requirements: If the Service Provider has actual knowledge of a confirmed data breach that affects the security of any Island Transit content that is subject to applicable data breach notification law, the Service Provider shall (1) promptly notify the appropriate Island Transit identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**f. Breach Responsibilities.** This section only applies when a data breach occurs with respect to personal data within the possession or control of the Service Provider.

- i. The Service Provider, unless stipulated otherwise, shall immediately notify the appropriate Island Transit identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- ii. The Service Provider, unless stipulated otherwise, shall promptly notify the appropriate Island Transit identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The Service Provider shall (1) cooperate with the Island Transit as reasonably requested by the Island Transit to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- iii. Unless otherwise stipulated, if a data breach is a direct result of the Service Provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Service Provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonable determined by Service Provider based on root cause; all [(1) through (5)] subject to this

contract's limitation of liability.

**g. Notification of Legal Requests.** The Service Provider shall contact Island Transit upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Island Transit's data under this contract, or which in any way might reasonably require access to the data of the Island Transit. The Service Provider shall not respond to subpoenas, service of process and other legal requests related to the Island Transit without first notifying the Island Transit, unless prohibited by law from providing such notice.

**h. Termination and Suspension of Service.**

- i. In the event of a termination of the contract, the Service Provider shall implement an orderly return of Island Transit data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Island Transit data.
- ii. During any period of service suspension, the Service Provider shall not take any action to intentionally erase any Island Transit data.
- iii. In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any Island Transit data for a period of:
  - 1. 10 days after the effective date of termination, if the termination is in accordance with the contract period.
  - 2. 30 days after the effective date of termination, if the termination is for convenience.
  - 3. 60 days after the effective date of termination if the termination is for cause.

After such period, the Service Provider shall have no obligation to maintain or provide any Island Transit data and shall thereafter, unless legally prohibited, delete all Island Transit data in its systems or otherwise in its possession or under its control.

- iv. The Island Transit shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the SLA.
- v. The Service Provider shall securely dispose of all requested data in all its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the Island Transit. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Island Transit.

**i. Background Checks:** The Service Provider shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not

limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the Island Transit's information among the Service Provider's employees and agents.

- j. **Access to Security Logs and Reports.** The Service Provider shall provide reports to the Island Transit in a format as specified in the SLA agreed to by both the Service Provider and the Island Transit. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all Island Transit files related to this contract.
- k. **Data Center Audit.** The Service Provider shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. The Service Provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- l. **Change Control and Advance Notice.** The Service Provider shall give advance notice (to be determined at the contract time and included in the SLA) to the Island Transit of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software, or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.
- m. **Security.** The Service Provider shall disclose its non-proprietary security processes and technical limitations to the Island Transit such that adequate protection and flexibility can be attained between the Island Transit and the Service Provider. For example: virus checking and port sniffing — Island Transit and the Service Provider shall understand each other's roles and responsibilities.
- n. **Non-disclosure and Separation of Duties.** The Service Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Island Transit data to that which is absolutely necessary to perform job duties.
- o. **Import and Export of Data.** Island Transit shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Service Provider. This includes the ability for the Island Transit to import or export data to/from other Service Providers.
- p. **Responsibilities and Uptime Guarantee.** The Service Provider shall be responsible

for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the Service Provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime) and provide service to customers as defined in the SLA.

- q. Subcontractor Disclosure.** The Service Provider shall identify all its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, and who shall be involved in any application development and/or operations.
- r. Right to Remove Individuals.** Island Transit shall have the right at any time to require that the Service Provider remove from interaction with Island Transit any Service Provider representative who Island Transit believes is detrimental to its working relationship with the Service Provider. Island Transit shall provide the Service Provider with notice of its determination, and the reasons it requests the removal. If Island Transit signifies that a potential security violation exists with respect to the request, the Service Provider shall immediately remove such individual. The Service Provider shall not assign the person to any aspect of the contract or future work orders without Island Transit's consent.
- s. Compliance with Accessibility Standards.** The Service Provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

### 3. General Terms and Conditions

- a. REIMBURSEMENT AND PAYMENT.** Payment will be made by ISLAND TRANSIT on a reimbursable basis for actual costs and expenditures incurred, while performing eligible direct and related indirect Project work during the life of the Project. Payment is subject to the submission to and approval by ISLAND TRANSIT of properly prepared invoices that substantiate the costs and expenses submitted by CONTRACTOR for reimbursement. Failure to send in progress reports and financial information as required in, SECTION 3(g) – ACCOUNTING RECORDS may delay payment. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once per month and no less than once per year, during the course of this AGREEMENT. If approved by ISLAND TRANSIT, properly prepared invoices shall be paid by ISLAND TRANSIT within thirty (30) days of receipt of the invoice. Total payments under this AGREEMENT shall not exceed \$\_\_\_\_\_ without written authorization or amendment to this AGREEMENT by ISLAND TRANSIT.
- b. ASSIGNMENTS AND SUBCONTRACTS.**
- i. Unless otherwise authorized in advance and in writing by ISLAND TRANSIT, the CONTRACTOR shall not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT.
  - ii. The CONTRACTOR agrees to include certain language, attached as ATTACHMENT 1 and by this reference is incorporated here, of this AGREEMENT in each subcontract and in all contracts, it enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished under this AGREEMENT. It is further agreed that those clauses shall not be modified in any such subcontract, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT.
- c. NO OBLIGATION BY THE STATE OR FEDERAL GOVERNMENT.** No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability for ISLAND TRANSIT, WSDOT, OR FTA with regard to this AGREEMENT without specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof.

**d. PERSONAL LIABILITY OF PUBLIC OFFICERS.** No officer or employee of ISLAND TRANSIT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of ISLAND TRANSIT.

**e. ETHICS.**

i. **Relationships with Employees and Officers of ISLAND TRANSIT.** The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of ISLAND TRANSIT, nor shall CONTRACTOR rent or purchase any equipment and materials from any employee or officer of ISLAND TRANSIT.

ii. **Employment of Former ISLAND TRANSIT Employees.** The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of ISLAND TRANSIT without written consent of ISLAND TRANSIT.

iii. **Prohibited Interest.** No employee of Island Transit shall have any financial interest in this agreement. This agreement shall be terminated if this provision is violated.

**f. COMPLIANCE WITH LAWS AND REGULATIONS.** The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in chapter 49.60 RCW. Except when a federal statute or regulation preempts state or local law, no provision of the AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. If any provision or compliance with any provision of this AGREEMENT violate state or local law or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify ISLAND TRANSIT immediately in writing. Should this occur, ISLAND TRANSIT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

**g. ACCOUNTING RECORDS.**

i. **Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project(s) either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified

with the Project(s). The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project(s) shall be clearly identified, readily accessible and available to ISLAND TRANSIT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project(s).

- ii. **Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project(s), including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project(s).

#### **h. AUDITS, INSPECTION, AND RETENTION OF RECORDS.**

- i. **Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the performance period of the Project(s) and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project(s) as ISLAND TRANSIT, FTA and WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.
- ii. **General Audit Requirements.** The CONTRACTOR agrees to obtain any other audits required by ISLAND TRANSIT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.
- iii. **Inspection.** The CONTRACTOR agrees to permit ISLAND TRANSIT, WSDOT and/or the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its subcontractors pertaining to the Project. The CONTRACTOR agrees to require each third party to permit WSDOT, and the State Auditor or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project(s).

#### **i. LABOR PROVISIONS AND OVERTIME REQUIREMENTS.** No CONTRACTOR or

subcontractor contracting for any part of the Project(s) work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.

- j. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** The CONTRACTOR hereby agrees to immediately notify ISLAND TRANSIT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project(s) in accordance with the provisions of this AGREEMENT.

k. **DISPUTES.**

- i. **Disputes.** Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the Executive Director of ISLAND TRANSIT. This decision shall be final and conclusive unless within ten (10) days from the date of CONTRACTOR's receipt of ISLAND TRANSIT's written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Executive Director of ISLAND TRANSIT. The CONTRACTOR's appeal shall be decided in writing by the Executive Director of ISLAND TRANSIT within thirty (30) days of receipt of the appeal by the Executive Director of ISLAND TRANSIT or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.
- ii. **Performance during Dispute.** Unless otherwise directed by ISLAND TRANSIT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.
- iii. **Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.
- iv. **Rights and Remedies.** All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by the ISLAND TRANSIT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this

AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **I. TERMINATION.**

- i. **Termination for Convenience.** ISLAND TRANSIT may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to CONTRACTOR. ISLAND TRANSIT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However, if, in the case of partial termination, ISLAND TRANSIT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, ISLAND TRANSIT may terminate the award in its entirety. ISLAND TRANSIT may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:
  1. The requisite funding becomes unavailable through failure of appropriation or otherwise.
  2. ISLAND TRANSIT determines, in its sole discretion, that the continuation of the Project(s) would not produce beneficial results commensurate with the further expenditure of funds.
  3. The CONTRACTOR is prevented from proceeding with the Project(s) as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
  4. The CONTRACTOR is prevented from proceeding with the Project(s) by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
  5. The State Government determines that the purposes of the statute authorizing the Project(s) would not be adequately served by the continuation of financial assistance for the Project(s).

6. In the case of termination for convenience under subsections i(1)-(5) above, ISLAND TRANSIT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to ISLAND TRANSIT. If the CONTRACTOR has any property in its possession belonging to ISLAND TRANSIT, the CONTRACTOR will account for the same, and dispose of it in the manner ISLAND TRANSIT directs.
- ii. **Termination for Default.** ISLAND TRANSIT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:
    1. Takes any action pertaining to this AGREEMENT without the approval of ISLAND TRANSIT, which under the procedures of this AGREEMENT would have required the approval of ISLAND TRANSIT.
    2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates; or
    3. Fails to make reasonable progress on the Project(s) or other violation of this AGREEMENT that endangers substantial performance of the Project(s); or
    4. Fails to perform in the manner called for in this AGREEMENT or fails, to comply with, or is in violation of, any provision of this AGREEMENT. Island Transit shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by ISLAND TRANSIT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, ISLAND TRANSIT may: (a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or (b) treat the termination as a termination for convenience.
  - iii. ISLAND TRANSIT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by ISLAND TRANSIT, in which to cure the defect. In such case, the notice of termination will state the time period in

which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to ISLAND TRANSIT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, ISLAND TRANSIT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude ISLAND TRANSIT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- iv. In the event that ISLAND TRANSIT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by ISLAND TRANSIT shall not limit ISLAND TRANSIT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.
- v. If this AGREEMENT is terminated, whether for convenience or for default, before the specified end date set forth in the caption header, "Term of Agreement", ISLAND TRANSIT and the CONTRACTOR shall execute an amendment to this AGREEMENT identifying the termination date and the reason for termination.

**m. FORBEARANCE BY ISLAND TRANSIT NOT A WAIVER.** Any forbearance by ISLAND TRANSIT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**n. LACK OF WAIVER.** In no event shall any ISLAND TRANSIT payment of funds to the CONTRACTOR constitute or be construed as a waiver by ISLAND TRANSIT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to ISLAND TRANSIT with respect to any breach or default.

**o. LIMITATION OF LIABILITY.**

- i. The CONTRACTOR shall indemnify and hold harmless ISLAND TRANSIT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against ISLAND TRANSIT arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against ISLAND TRANSIT, its agents, employees, and officers arising out of, in connection with or incident to the negligent acts or omissions of the

CONTRACTOR, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify and hold harmless or defend ISLAND TRANSIT, its agents, employees or officers to the extent that claims are caused by the sole negligent acts or omissions of ISLAND TRANSIT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) ISLAND TRANSIT, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.

- ii. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of ISLAND TRANSIT.
- iii. The CONTRACTOR specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.
- iv. In the event either the CONTRACTOR or ISLAND TRANSIT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

**p. AGREEMENT MODIFICATIONS.** Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by the persons authorized to bind from each of the PARTIES.

**q. ISLAND TRANSIT ADVICE** The CONTRACTOR bears complete responsibility for the administration and success of the Project(s) as defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from ISLAND TRANSIT on problems that may arise, the offering of ISLAND TRANSIT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project(s), and ISLAND TRANSIT shall not be held liable for offering advice to the CONTRACTOR.

- r. **VENUE AND PROCESS** In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Island County. The PARTIES agree that the laws of the State of Washington shall apply.
- s. **SUBROGATION**
  - i. **Prior to Subrogation.** ISLAND TRANSIT may require the CONTRACTOR to take such action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to any equipment, property, or transportation program in which ISLAND TRANSIT has a financial interest.
  - ii. **Subrogation.** ISLAND TRANSIT may require the CONTRACTOR to assign to ISLAND TRANSIT all right of recovery against any person or organization for loss, to the extent of ISLAND TRANSIT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else necessary to secure ISLAND TRANSIT's rights. The CONTRACTOR shall do nothing after any loss to prejudice the rights of ISLAND TRANSIT. If ISLAND TRANSIT has exercised its right of subrogation, the CONTRACTOR shall cooperate with ISLAND TRANSIT and, upon ISLAND TRANSIT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to ISLAND TRANSIT. The CONTRACTOR shall attend hearings and trials as requested by ISLAND TRANSIT, assist in securing and giving evidence as requested by ISLAND TRANSIT, and obtain the attendance of witnesses as requested by ISLAND TRANSIT.
- t. **COMPLETE AGREEMENT.** This document contains all covenants, stipulations, and provisions agreed upon by ISLAND TRANSIT. No agent or representative of ISLAND TRANSIT has authority to make, and ISLAND TRANSIT shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.
- u. **SEVERABILITY.** If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.
- v. **ORDER OF PRECEDENCE** Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

- i. Federal law
- ii. The SaaS Agreement
- iii. State law
- iv. Terms and conditions set forth in the Request for Proposals (RFP)
- v. CONTRACTOR'S proposal

**w. EXECUTION.** This AGREEMENT is executed by the Executive Director of ISLAND TRANSIT or their designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of ISLAND TRANSIT, in the capacity as ISLAND TRANSIT'S Executive Director, or designee.

**x. INSURANCE.** The CONTRACTOR shall procure and maintain for the duration of the AGREEMENT, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, their agents, representative, employees or subcontractors. CONTRACTOR'S maintenance of insurance as required by the AGREEMENT shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit ISLAND TRANSIT'S recourse to any remedy available at law or in equity. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. The CONTRACTOR shall provide a Certificate of Insurance and additional insured endorsement page(s) evidencing:

- i. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage on all owned, non- owned, hired, and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance written on an ISO occurrence basis form CG 00 01 and shall cover liability arising from premises, operations, property damage, independent contractors and personal injury and advertising injury, with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate.
- iii. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance, including "errors and omissions" with limits no less than \$1,000,000 on a claims-made annual aggregate basis (if applicable to project – required for engineering, architects and some professional consultants – otherwise this coverage stipulation does not apply). Any payment of deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR. ISLAND TRANSIT, its officers, volunteers, and agents shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the CONTRACTOR and a copy of the endorsement naming ISLAND TRANSIT as additional insured shall be attached to the Certificate of Insurance and provided to ISLAND TRANSIT before the contract is finalized. A copy of the

certificate and endorsement shall be provided to ISLAND TRANSIT prior to commencement of the work. ISLAND TRANSIT reserves the right to request certified copies of any required insurance policies. The CONTRACTOR'S insurance shall contain a clause stating that coverage shall separately apply to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The CONTRACTOR'S insurance shall be primary insurance with respect to ISLAND TRANSIT and ISLAND TRANSIT shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

- y. **OWNERSHIP OF DOCUMENTS.** Any reports, studies, conclusions and summaries prepared by the Proposer shall become the property of ISLAND TRANSIT.
- z. **CONFIDENTIALITY OF INFORMATION.** All information and data furnished to the Proposer by ISLAND TRANSIT, and all other documents to which the Proposer's employees have access during the term of the contract, shall be treated as confidential to ISLAND TRANSIT. Any oral or written disclosure to unauthorized individuals is prohibited.
- aa. **BINDING AGREEMENT.** This AGREEMENT, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this AGREEMENT supersedes any prior agreements, promises, conditions, or understandings between ISLAND TRANSIT and CONTRACTOR. This AGREEMENT may be modified or amended if the amendment is made in writing and is signed by both parties. The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(s) and or entity(s) to the obligations set forth herein. IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year signed last below.

## Appendix D

### NON-COLLUSION CERTIFICATION

The undersigned, being duly sworn, deposes and says that the person, firm, association, co-partnership, or corporation herein named, has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to Island Transit for consideration in the award of a contract on the improvement described as follows:

#### **RFP #02-23 Finance, Payroll and HR Software Implementation – Technical Proposal**

By:

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(Please print)

---

(Authorized Signature)

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Title

---

Firm

---

Date

## Appendix E

### **Certificate Regarding Debarment and Suspension**

The Proposer, \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, State or local) transaction or contract under a public transaction; 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;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this proposal had one or more public transactions (federal, State or local) terminated for cause or default.

[If the Proposer is unable to certify to any of the statements in this certification, the Proposer shall attach an explanation to this certification.]

THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801, ET SEQ. ARE APPLICABLE THERETO.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.