

**Contract Number SBCTC 2015-2016-150**

**for a**

**Captioning Solution**

**between the**

**Washington State Board for Community  
& Technical Colleges**

**and**

**3Play Media, Inc.**

**Effective Date: October 7, 2016**

## Table of Contents

1.	Definition of Terms .....	1
----	---------------------------	---

### Contract Term .....

2.	Term .....	4
3.	Survivorship .....	4

### Pricing, Invoice And Payment .....

4.	Pricing .....	4
5.	Advance Payment Prohibited .....	5
6.	Taxes .....	5
7.	Invoice and Payment .....	5
8.	Overpayments to Vendor.....	6

### Vendor's Responsibilities .....

9.	Purchased Services and Statement of Work ( <i>required</i> ) .....	6
10.	Commencement of Work .....	7
11.	Ownership/Rights in Data .....	7
12.	Site Security .....	7
13.	Vendor Commitments, Warranties and Representations.....	7
14.	Minority and Women's Business Enterprise (MWBE) Participation .....	8
15.	Protection of Purchaser's Confidential Information.....	8

### Contract Administration .....

16.	Legal Notices.....	8
17.	Purchaser Business Manager.....	9
18.	Vendor Account Manager .....	9
19.	Section Headings, Incorporated Documents and Order of Precedence.....	10
20.	Entire Agreement.....	10
21.	Authority for Modifications and Amendments .....	11
22.	Independent Status of Vendor .....	11
23.	Governing Law.....	11
24.	Subcontractors .....	11
25.	Assignment .....	12
26.	Publicity.....	12
27.	Review of Vendor's Records.....	12
28.	Right of Inspection .....	13

### General Provisions .....

29.	Patent and Copyright Indemnification.....	13
30.	Save Harmless .....	14
31.	Insurance .....	14
32.	Industrial Insurance Coverage.....	15
33.	Licensing Standards .....	15
34.	Antitrust Violations .....	16

35.	Compliance with Civil Rights Laws .....	16
36.	Severability.....	16
37.	Waiver .....	16
38.	Treatment of Assets.....	16
39.	Vendor’s Proprietary Information .....	17

#### **Disputes and Remedies .....**

40.	Disputes .....	18
41.	Attorneys’ Fees and Costs .....	18
42.	Non-Exclusive Remedies .....	19
43.	Failure to Perform .....	19
44.	Limitation of Liability .....	19

#### **Contract Termination.....**

45.	Termination for Default.....	19
46.	Termination for Convenience.....	21
47.	Termination for Withdrawal of Authority .....	21
48.	Termination for Non-Allocation of Funds .....	21
49.	Termination for Conflict of Interest .....	21
50.	Termination Procedure .....	21
51.	Covenant Against Contingent Fees .....	22

#### **Contract Execution .....**

52.	Authority to Bind.....	23
53.	Counterparts .....	23

#### **Schedules .....**

<b>Schedule A:</b>	<b><i>Authorized Services and Price List</i></b> .....	<b>1</b>
<b>Exhibits A&amp;B:</b>	<b><i>RFP and Vendor’s Response</i></b> .....	<b>1</b>

**CONTRACT NUMBER SBCTC 2015-2016-150**

**for a  
Captioning Solution**

**PARTIES**

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Washington State Board for Community & Technical Colleges, an agency of Washington State government ("Purchaser" or "SBCTC") located at 1300 Quince Street SE, Olympia, WA 98501, and 3Play Media, Inc., a corporation licensed to conduct business in the state of Washington ("Vendor"), located at 34 Farnsworth Street, 4<sup>th</sup> Floor, Boston, MA 02210 for the purpose of providing a Captioning Solution.

**RECITALS**

The state of Washington, acting by and through SBCTC working in partnership with the state's institutions of public higher education as well as Seattle Pacific University, issued a Request for Proposals (RFP) dated February 9, 2016, (Exhibit A) for the purpose of purchasing a Captioning Solution.

Vendor submitted a timely Response to SBCTC's RFP (Exhibit B).

SBCTC evaluated all properly submitted Responses to the above-referenced RFP and has identified Vendor as the apparently successful Vendor.

SBCTC has determined that entering into a Contract with Vendor will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, Purchaser awards to Vendor this Purchased Services Contract, the terms and conditions of which shall govern Vendor's furnishing to Purchaser Captioning Services. This Contract is for the benefit of all Authorized Purchasers and is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

**"Authorized Purchasers"** shall mean all members of the Washington Institutions of Public Higher Education (WIPHE) and Seattle Pacific University.

**"Business Days and Hours"** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**"Confidential Information"** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, information designated by a party as Confidential

Information, or information that by its nature is Confidential Information (including, but not limited to proprietary aspects of Vendor's service, business and marketing plans, proprietary technical information, confidential product designs, software, source code, algorithms, trade secrets). The terms of this Contract or any Statement of Work entered into pursuant to this Contract are not confidential.

**"Contract"** shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

**"Board"** shall mean the same as Purchaser.

**"Effective Date"** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**"Exhibit A"** shall mean the RFP.

**"Exhibit B"** shall mean Vendor's Response.

**"Price"** shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

**"Product(s)"** shall mean any Vendor-supplied equipment, Software, and documentation.

**"Proprietary Information"** shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**"Services"** shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract or a Statement of Work.

**"Purchaser"** shall mean the Washington State Board for Community & Technical Colleges, any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

**"Purchaser Business Manager"** shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor's Account Manager shall work with for the duration of this Contract and as further defined in the section titled **Purchaser Business Manager**.

**"Purchaser Contract Administrator"** shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

**"Purchaser Contracting Officer"** shall mean the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

**"RCW"** shall mean the Revised Code of Washington.

**"RFP"** shall mean the Request for Proposals used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**"Response"** shall mean Vendor's Response to Purchaser's RFP, Exhibit B hereto.

**“Schedule A: *Authorized Services and Price List*”** shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

**“Schedule B: *Statement of Work Template*”** shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

**“Schedule C: *MWBE Certification*”** shall mean the attached certificate(s) indicating Vendor’s and/or one or more of Vendor’s Subcontractor’s status as a minority or women’s business enterprise.

**“Software”** shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**“Specifications”** shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor’s Response, Exhibit B.

**“Statement of Work” or “SOW”** shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract. A template SOW is attached as Schedule B.

**“Subcontractor”** shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

**“Vendor”** shall mean 3Play Media, Inc., its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

**“Vendor Account Manager”** shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser Business Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

**“Vendor Contracting Officer”** shall mean the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

**“Vendor Personnel”** shall mean collectively and singularly, each employee, consultant, agent, representative, or other individual working for or on behalf of Vendor. For the avoidance of doubt, Purchaser acknowledges and agrees that Vendor may use remote labor (“Vendor Personnel”) to assist in performance of the Services. Vendor shall be responsible for the performance of its subcontractors and all Vendor Personnel and for ensuring that such subcontractors and Vendor Personnel comply with the terms of this Agreement.

**“Vendor Software”** shall mean any ideas, concepts, inventions or improvements, whether patentable or not, that reasonably relate to any Intellectual Property or Software created after the Effective Date that is not specifically part of the Services or Deliverables and has broad applicability to the products and services offered by the Vendor.

**“Work Product”** shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

## Contract Term

### 2. ~~Contract~~ Term

#### 2.1. Term of Contract

- a) This Contract’s initial term shall be Five (5) years, commencing upon the Effective Date.
- b) This Contract’s term may be extended by additional one (1) to three (3) year terms, provided that the extensions shall be at Purchaser’s option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

#### 2.2. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of the SOW shall not exceed the term of this Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

### 3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Vendor’s Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor’s Records; Patent and Copyright Indemnification; Vendor’s Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.

## Pricing, Invoice and Payment

### 4. Pricing

- 4.1. Vendor agrees to provide the Services at the Prices set forth in Schedule A (attached). No other Prices shall be charged by Vendor for implementation of Vendor’s Response.
- 4.2. Prices may not be increased during the initial term of the Contract.

- 4.3. If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.4. Vendor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to Purchaser for subsequent purchases.

## **5. Advance Payment Prohibited**

No advance payment shall be made for Services furnished by Vendor pursuant to this Contract.

## **6. Taxes**

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

## **7. Invoice and Payment**

- 7.1. Vendor will submit properly itemized invoices to each authorized purchaser for the services they purchase. For purchases made specifically by SBCTC, Vendor will submit invoices to SBCTC eLearning at the SBCTC address provided in this Contract. Invoices shall provide and itemize, as applicable:
  - a) Purchaser Contract number SC 2015-16-150;
  - b) Vendor name, address, phone number, and Federal Tax Identification Number;
  - c) Description of Services provided;
  - d) Date(s) that Services were provided;
  - e) Vendor's Price for Services;
  - f) Net invoice Price for each Service;
  - g) Applicable taxes;
  - h) Other applicable charges;
  - i) Total invoice Price; and
  - j) Payment terms including any available prompt payment discounts.



- 7.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.4. The Purchaser Contract number SC 2015-16-150 and SOW number [YY-YY] must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.5. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.6. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor's properly prepared invoice, whichever is later.

## **8. Overpayments to Vendor**

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

## **Vendor's Responsibilities**

### **9. Purchased Services and Statement of Work *(required)***

- 9.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW established between Purchaser and Vendor. Specific Authorized Purchasers (4 year public institutions and Seattle Pacific University) may enter into separate participating agreements based upon this Contract; those agreements may contain their own SOWs. *[A template for an SOW is attached as Schedule B.]*
- 9.2. The SOW shall at a minimum: *[add any other items applicable to the SOW]*
  - a) Reference this Contract number SC 2015-16-150;
  - b) Define project or task objectives;
  - c) Describe the scope of Services or work to be performed;
  - d) Identify deliverables;
  - e) Specify a timeline and period of performance;
  - f) Specify compensation and payment, e.g., the hourly rate and total Vendor hours to be provided or the fixed price for a deliverable, (whichever is applicable), total cost of the project, and reimburseable Vendor expenses;
  - g) Describe Vendor's roles and responsibilities and identify specific Vendor staff;
  - h) Describe Purchaser's roles and responsibilities;

i) Provide signature block for both parties.

9.3. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

## **10. Commencement of Work**

No work shall be performed by Vendor until this Contract is executed by Vendor and Purchaser and is received by Vendor.

## **11. Ownership/Rights in Data**

11.1. Vendor affirmatively disclaims any ownership rights in Content Created by Purchaser or Purchaser institutions through the use of Vendor Service.

11.2. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor. This Section does not in any way restrict Purchaser's right to purchase or use a competing product at any time. Purchaser always has the right to use its experience with any product as a part of planning, use or implementation of any other service or product.

## **12. Site Security**

While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

## **13. Vendor Commitments, Warranties and Representations**

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser, .

#### **14. Minority and Women's Business Enterprise (MWBE) Participation**

Removed.

#### **15. Protection of Purchaser's Confidential Information**

- 15.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which are as strict as the terms of this Contract. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 15.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 15.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Purchaser and affiliated institutions will collaborate with Vendor to identify the Confidential Information subject to record keeping and Review of Vendor's Records. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.
- 15.4. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 15.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

### **Contract Administration**

#### **16. Legal Notices**

- 16.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized

courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

**To Vendor at:**

3Play Media, Inc.

**Attn:** Josh Miller  
34 Farnsworth Street  
4th Floor  
Boston, MA 02210  
Phone: (617) 764-5189 x102  
Fax:  
E-mail: [josh@3playmedia.com](mailto:josh@3playmedia.com)

**To Purchaser at:**

State of Washington  
State Board for Community & Technical  
Colleges  
**Attn:** Abraham L. Rocha  
1300 Quince St. SE  
PO Box 42495  
Olympia, WA 98504-2495  
Phone: (509) 842-4341  
Fax:  
E-mail: [arocha@sbctc.edu](mailto:arocha@sbctc.edu)

- 16.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 16.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**17. Purchaser Business Manager**

Purchaser shall appoint the Director of eLearning who will be the Purchaser Business Manager for this Contract and will provide oversight of the activities conducted hereunder. Purchaser Business Manager will be the principal contact for Vendor concerning business activities under this Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser Business Manager assigned to this Contract.

**18. Vendor Account Manager**

Vendor shall appoint an Account Manager for Purchaser's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for Purchaser concerning Vendor's performance under this Contract. Vendor shall notify Purchaser Contract Administrator and Purchaser Business Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. Vendor may bring in additional representatives to assist from time to time as needed. The Vendor Account Manager information is:

Vendor Account Manager: Josh Miller  
Address: 34 Farnsworth St, 4<sup>th</sup> Floor, Boston, MA 02210

Phone: 617-764-5189 x102

Fax:

E-mail:

josh@3playmedia.com

## 19. Section Headings, Incorporated Documents and Order of Precedence

- 19.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 19.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
  - a) Schedules A, and B *[if applicable]; [include other Schedules, if appropriate]*
  - b) SBCTC RFP dated February 9, 2016;
  - c) Vendor's Response to SBCTC RFP dated February 9, 2016;
  - d) Any SOW entered into pursuant to this Contract;
  - e) The terms and conditions contained on Purchaser's purchase documents, if used; and
  - f) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.
- 19.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
  - a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract;
  - c) Schedule A; *[include other Schedules, if appropriate]*
  - d) SBCTC RFP dated February 9, 2016;
  - e) Any SOW entered into pursuant to this Contract;
  - f) Vendor's Response to SBCTC RFP dated February 9, 2016;
  - g) The terms and conditions contained on Purchaser's order documents, if used; and
  - h) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

## 20. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

**21. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Vendor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of Purchaser.

**22. Independent Status of Vendor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

**23. Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

**24. Subcontractors**

Vendor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

## **25. Assignment**

- 25.1. With the prior written consent of Purchaser Contracting Officer, which consent shall “not be unreasonably withheld”, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 25.2. Purchaser may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

## **26. Publicity**

- 26.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor’s Services by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.
- 26.2. Vendor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Vendor wherein Purchaser’s name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser’s name therewith may, in Purchaser’s judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.
- 26.3. Either Party may use the other Party’s name and logo (except for the State seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

## **27. Review of Vendor’s Records**

- 27.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women’s Business Enterprise participation, protection and use of Purchaser’s Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 27.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser’s Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to

the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

- 27.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 27.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

## **28. Right of Inspection**

Vendor shall provide right of access to its facilities to Purchaser, or any of Purchaser's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

## **General Provisions**

### **29. Patent and Copyright Indemnification**

- 29.1. Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product or Work Product supplied hereunder, or Purchaser's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
  - a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
  - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 29.2. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide Purchaser a refund. In the case of Work Product, Vendor shall refund to Purchaser the entire amount Purchaser paid to Vendor for Vendor's provision of the Work Product. In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4)



years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

29.3. Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Product or Work Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
- c) Use of the Product or Work Product in a way not specified by Vendor;

unless the claim arose against Vendor's Product or Work Product independently of any of these specified actions.

### **30. Save Harmless**

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

### **31. Insurance**

31.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.

31.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$500 thousand per accident for bodily injury by accident and \$500 thousand per employee for bodily injury by disease;

- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
  - e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 31.3 below, and coverage of not less than \$1 million per occurrence/\$1 million general aggregate; and
- 31.3. For Professional Liability Errors and Omissions coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis.
- 31.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number SC 2015-16-150 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.
- 31.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 31.6. Vendor shall include any Subcontractors not included in Vendor Personnel as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 31.7. Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.
- 31.8. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

## **32. Industrial Insurance Coverage**

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

## **33. Licensing Standards**

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

### 34. Antitrust Violations

Vendor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

### 35. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

### 36. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

### 37. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

### 38. Treatment of Assets

- 38.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 38.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 38.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 38.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

- 38.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 38.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

**39. Vendor's Proprietary Information**

Vendor acknowledges that Purchaser is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

## **Disputes and Remedies**

### **40. Disputes**

- 40.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 40.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 40.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 40.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 40.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 40.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

### **41. Attorneys' Fees and Costs**

- 41.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 41.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator

or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

#### **42. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

#### **43. Failure to Perform**

If Vendor fails to perform any substantial obligation under this Contract, Purchaser shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then Purchaser may withhold all monies due and payable to Vendor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

#### **44. Limitation of Liability**

- 44.1. The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 44.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.
- 44.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 44.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

### **Contract Termination**

#### **45. Termination for Default**

- 45.1. If either Purchaser or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the

aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or other appropriate time period or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.

- 45.2. In the event of termination of this Contract by Purchaser due to Vendor default, Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Vendor's breach. Purchaser shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser for Vendor's default.
- 45.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 45.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

**46. Termination for Convenience**

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by thirty (30) calendar days or other appropriate time period written notice to Vendor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by Purchaser prior to the effective date of termination.

**47. Termination for Withdrawal of Authority**

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party. If this Contract is so terminated, Purchaser is liable for services delivered as of the effective date of termination.

**48. Termination for Non-Allocation of Funds**

If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period other than for services delivered as of the effective date of termination. Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

**49. Termination for Conflict of Interest**

Purchaser may terminate this Contract by written notice to Vendor if Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, Purchaser shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

**50. Termination Procedure**

- 50.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Vendor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 50.2. Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Vendor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this



Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

- 50.3. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 50.4. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

## **51. Covenant Against Contingent Fees**

- 51.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 51.2. In the event Vendor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser or, in Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

## Contract Execution

### 52. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

### 53. Counterparts

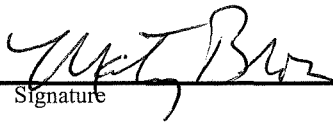
This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 2<sup>nd</sup> day of November, 2016.

#### Approved

Washington State Board for Community &  
Technical Colleges



Signature

Marty Brown 10-25-16

Print or Type Name

Date

Executive Director

Title

#### Approved

3Play Media, Inc.



Signature

Josh Miller 10/12/2016

Print or Type Name

Date

Chief Revenue Officer

Title

#### Vendor Information

Vendor's UBI Number:

Minority or Woman Owned Business Enterprise

Yes \_\_\_\_\_ No ☐  
(Certification Number)

**Schedule A**  
***Authorized Services and Price List***

for  
**Contract Number SBCTC 2015-2016-150**  
with  
**Vendor.**

Vendor is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

**Exhibits A RFP  
&  
Exhibit B Vendor's Response**

Exhibits A and B are not attached, but are available through the SBCTC Contracts & Procurement Officer.