



**STATEWIDE CONTRACT**

**No. 23023**

**ELECTRONIC HEALTH RECORDS SOLUTION**

*For Use by Eligible Purchasers*

By and Between

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

and

**FUSION CAPITAL MANAGEMENT LLC**

Dated March 15, 2024

**STATEWIDE CONTRACT**

**No. 23023**

**ELECTRONIC HEALTH RECORDS SOLUTION**

This Washington Statewide Contract (“Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and Fusion Capital Management LLC, dba Fusion Health, a New Jersey corporation (“Contractor”) and is dated and effective as of March 1, 2024.

**RECITALS**

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish enterprise procurement solutions, including statewide contracts, for goods and/or services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. Pursuant to its statutory authority, Enterprise Services is establishing a Contract for Electronic Health Records Solutions that is designed to enable eligible purchasers to procure specified electronic health records services from the awarded Contractor in a cost-effective, efficient manner using the terms and conditions of the Contract.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 23023 dated October 6, 2023.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.
- E. Enterprise Services has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.
- F. The purpose of this Contract is to enable eligible purchasers to purchase the Goods and/or Services as set forth herein.

**AGREEMENT**

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

- 1. TERM.** The term of this Contract is seventy two (72) months, commencing March 15, 2024 and ending March 14, 2030; Provided, however, that if Contractor is not in default and if, by September 1, 2029, in Enterprise Services’ reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Contract, by written amendment, for up to forty eight (48) additional months. Such extension amendment shall be on the same terms and conditions as set forth in this Contract. To earn the performance-based Contract term extension, Contractor must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR CONTRACT EXTENSION
Data Security Certifications and Notices:	Contractor timely provides to Enterprise Services annual security reports, attestations and Data Breach notifications (if applicable) as required by this Contract. <i>See Section 6.</i>
Services Availability Service Level Standard:	Meets levels set in Contractor’s SLA (see Section 8.7)
Technical Support Service Level Standard:	Meets levels set in Contractor’s SLA (see Section 8.7).
Insurance Endorsements:	Contractor timely provides to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Contract. <i>See Exhibit C – Insurance Requirements at § 4.</i>
Vendor Management Fee:	Contractor timely remits to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note: Contractor must pay the VMF within thirty (30) calendar days of invoice from Enterprise Services. If Contractor is delinquent in timely paying the VMF for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.</i>
Contract Sales Reports:	Contractor timely provides to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Contract quarterly sales reports. <i>Note: Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) calendar days of the quarter’s end. If Contractor is delinquent in providing the quarterly sales reports for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.</i>

**2. ELIGIBLE PURCHASERS.** This Contract may be utilized by any of the following types of entities (each an eligible “Purchaser”):

- 2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
- 2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following institutions of higher education in Washington:
  - State universities – i.e., University of Washington & Washington State University;
  - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University

- Evergreen State College;
  - Community colleges; and
  - Technical colleges.
- 2.3. CONTRACT USAGE AGREEMENT PARTIES. Any of the following types of entities that have executed a Contract Usage Agreement with Enterprise Services:
- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
  - Federal governmental agencies or entities;
  - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
  - Federally-recognized Indian Tribes located in the State of Washington.

### 3. SCOPE – INCLUDED GOODS AND/OR SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Contract, Contractor is authorized to sell and provide only those Goods and/or Services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*. Contractor shall not represent to any Purchaser under this Contract that Contractor has contractual authority to sell or provide any Goods and/or Services beyond those set forth in *Exhibit A – Included Goods/Services*.
- (a) Goods. For purposes of this Contract, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Contract and as identified in the Purchase Order.
  - (b) Services. For purposes of this Contract, “Services” means all services of any nature ordered by Purchaser pursuant to this Contract and as identified in the Purchase Order.
  - (c) Specifications. Where applicable, specifications for Goods and/or Services are detailed in this Contract and the Purchase Order. Unless otherwise specified in the Purchase Order, all Goods and/or Services provided shall be new and unused of the latest model or design.
- 3.2. STATE’S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Goods and/or Services included in this Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) calendar days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 3.3. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Contract, Contractor guarantees to provide the Goods and/or Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services*.
- 3.4. PRICE INCREASES. Contractor may increase any and all fees specified for Licensed Software, maintenance and support, or services, upon written notice to Purchaser, provided that such increases shall not occur during any initial term, shall occur no more frequently than once per contract year, and shall not exceed 5%
- 3.5. CONTRACT INFORMATION. Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Contract, including scope, pricing, and lowest responsive,

responsible bidder designation. In addition, Enterprise Services identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned Businesses, or that, pursuant to the Contract provide Goods/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

- 4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time any order is placed pursuant to this Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
  - 4.2. **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
  - 4.3. **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
  - 4.4. **SUSPENSION & DEBARMENT.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
  - 4.5. **WAGE VIOLATIONS.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
  - 4.6. **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 4.7. **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 4.8. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or purchase order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) have been indicted for or otherwise criminally or civilly charged by a government entity (federal, state, local, or tribal) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state, local, or tribal) terminated for cause or default.
- 4.9. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Enterprise Services and Purchasers' employees.
- 4.10. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of Contractor's information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.11. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 4.12. CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that Contractor shall use commercially reasonable efforts both to promote and market the use of this Contract with eligible Purchasers and to ensure that those entities that utilize this Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's Goods and/or Services or suggesting that such Goods and/or Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.13. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 4.14. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.
- 4.15. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 4.16. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Contract or a similar contract, is transitioned to another contractor (e.g., Contract expiration or

termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (including the Purchasers hereunder) for a period of sixty (60) calendar days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and such Purchasers; *Provided*, however, that, if costs are incurred, Contractor shall be compensated for such costs consistent with the terms and conditions pertaining to this Contract for the sixty (60) day period immediately before such transition.

- 4.17. ACCESSIBILITY. Contractor represents and warrants it shall exercise commercially reasonable efforts to comply with the Office of Chief Information Officer (OCIO) Standard 188.10 – Minimum Accessibility Standard located at <https://ocio.wa.gov/policy/minimum-accessibility-standard>. Contractor shall regularly review its systems and at the commencement of this Contract, and annually thereafter, certify to Enterprise Services that Contractor’s Services meet OCIO Standard 188.10.

## 5. QUALITY; WARRANTY; REMEDIES.

- 5.1. GOODS WARRANTY. Contractor warrants that, for a period of twelve (12) months from the date when the Goods are put into use, or eighteen (18) months after delivery of the Goods, whichever is later (“Goods Warranty Period”), the Goods: (a) are free from defects in design, material, and workmanship; (b) are fit and safe for the intended purposes and appropriate for the specified application(s) (if any); (c) are consistent with recognized industry quality standards; (d) comply with the requirements, specifications, drawings, standards, and descriptions included in this Contract; and (e) are produced and delivered in full compliance with applicable law (“Goods Warranty”). Contractor further warrants that it has good and marketable title to the Goods and shall keep Purchaser’s property free of liens. If Purchaser receives notice of a lien caused by Contractor, Purchaser may withhold any payment otherwise due Contractor until Contractor submits proof, in a form satisfactory to Purchaser, that all lienable claims have been fully paid or waived.
- 5.2. GOODS REMEDY. If Goods do not comply with the Goods Warranty or any defects develop during the Goods Warranty Period under normal use, at Purchaser’s election, Contractor promptly shall remedy the defect by removing, repairing, correcting, or replacing, and/or reinstalling any defective Goods. Contractor’s Goods Warranty support shall include, at Contractor’s sole expense, all technical support, parts, materials and equipment, and labor, including freight and “in/out” costs required to address the defect.
- 5.3. SERVICES WARRANTY. Contractor warrants that: (a) Services will be performed in a timely, efficient, and professional manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”).
- 5.4. SERVICES REMEDY. If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at Purchaser’s election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to Purchaser.
- 5.5. IT WARRANTY. Contractor warrants, that all hardware, software, and firmware associated with Goods or Services (“IT Goods” and “IT Services”, respectively) will not: (a) contain any viruses,

malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of Purchaser, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty will expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.

- 5.6. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at Purchaser’s election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to Purchaser.
- 5.7. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within twenty (20) calendar days after receipt of written notice from Purchaser, or if an emergency exists such that there is an immediate patient safety concern and Contractor is not able to provide a remedy, Purchaser may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case Contractor shall reimburse Purchaser for its actual costs or Purchaser will offset the costs incurred from amounts owing to Contractor.

**6. SAFETY; SECURITY.** Contractor’s failure to comply with any of the requirements in this Section shall be cause for termination.

- 6.1. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at Purchaser’s premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any Purchaser investigation of incidents.
- 6.2. ON SITE REQUIREMENTS. While on Purchaser’s premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser’s physical, fire, access, safety, and other security requirements and not interfere with Purchaser’s operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser’s premises will be adequately trained and at all times comply with Purchaser’s requirements.
- 6.3. DATA SECURITY.
  - (a) SECURITY COMPLIANCE. Contractor is responsible for establishing an information security program and maintaining physical, technical, administrative, and organizational safeguards, that comply with: (a) applicable industry standards and guidelines; (b) requirements set forth in *Exhibit A – Included Goods/Services*; (c) applicable Washington State IT policies and standards located at <https://ocio.wa.gov/policies>.



- (b) ANNUAL SECURITY CERTIFICATIONS. Contractor will, at the commencement of this Contract and annually thereafter provide Enterprise Services with the Contractor’s hosting specific certifications, including a FedRAM compliance report. Enterprise Services may accept, at its sole discretion, alternative reports, audits or reporting formats which Enterprise services determines to be equivalent or better to the reports and certifications described herein.
- (c) DATA BREACH. Contractor must have an incident response process that follows National Institute of Standards and Technology (NIST) standards and includes breach detection, breach notification and breach response. Upon discovery or reasonable belief of any access, destruction, loss, theft, use or disclosure of Purchaser’s Data by an unauthorized party (“Data Breach”), Contractor shall notify the Purchaser and Enterprise Services by the fastest means available and also in writing. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor’s notification shall identify:
  - i. The nature of the Data Breach;
  - ii. The Data accessed, used or disclosed;
  - iii. The person(s) who accessed, used, disclosed and/or received Data (if known);
  - iv. What Contractor has done or will do to quarantine and mitigate the Data Breach; and
  - v. What corrective action Contractor has taken or will take to prevent future Data Breaches.

Contractor shall quarantine the Data Breach, ensure secure access to Data, and restore Services as needed to comply with terms and conditions of this Contract. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with Enterprise Services.

In the event of the Data Breach, Contractor agrees to comply with all applicable state and federal statutory provisions, including but not limited to Revised Code of Washington (RCW) 19.255.010 and RCW 42.56.590. Where notifications are required to the public or regulators, Contractor shall coordinate and cooperate with the Purchaser and Enterprise Services in the development of a communication plan, and promptly and at no cost, provide advance copies of any notifications for Purchaser’s and Enterprise Services review before disseminating. If a Data Breach occurs and is found to be the result of Contractor’s acts, omissions or negligence, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by the Purchaser and Enterprise Services in responding to or recovering from the Data Breach.

- (d) TECHNICAL EXAMINATION AND AUDIT. Upon advance written request, Contractor agrees that Enterprise Services or its designated representative shall have reasonable access to Services purchased under this contract, its operational documentation, records and databases. The online inspection shall allow Enterprise Services, its authorized agents, or a mutually acceptable third party hired by Enterprise Services, to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
  - i. Operating system/network vulnerability scans;
  - ii. Web application vulnerability scans;

- iii. Database application vulnerability scans; and
- iv. Any other scans related to security requirements to be performed by Enterprise Services or representatives on behalf of Enterprise Services.

Except for in response to a data breach, Enterprise Services and its authorized agents shall not conduct online tests above so long as Contractor annually and voluntarily submits the results of its annual Operating System/network and web application vulnerability scans.

Contractor shall allow Enterprise Services reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Contract and Enterprise Services' Data, at no cost to Enterprise Services. After any significant Data loss, specific to data stored within the Services platform, or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized third party perform an information security audit. This does not apply to data loss resulting from interruptions in the Services stemming from Enterprise Services' computers, network hardware, internet connectivity, or other elements owned or controlled by Enterprise Services that are reasonably required to use Services. The audit results shall be shared with Enterprise Services within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide Enterprise Services with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract. With the exception of responding to a data breach, references to reasonable access shall not include direct access to any operating system, network, or database (SQL); Contractor agrees to provide database reporting through SSRS.

## **7. SUBCONTRACTORS.**

- 7.1. **CONTRACTOR RESPONSIBILITY.** Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall: (a) incorporate Contractor's responsibilities under this Contract into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract; (c) be the sole point of contact for Enterprise Services and any Purchasers regarding all contractual matters; (d) ensure that such subcontractors are registered in WEBS; and (e) defend, indemnify, and hold Enterprise Services and Purchasers harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). Prior to utilizing any subcontractor to perform this Contract, Contractor shall provide written notice to Enterprise Services' contract administrator. Such notice shall confirm that the subcontractor is registered in WEBS and provide the necessary information for Enterprise Services' contract administrator to include such subcontractor(s) in Washington's Purchasing Contract Management System (PCMS).
- 7.2. **REPORTING.** If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) will include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated 'rollup' report combining Contractor and subcontractor data.

- 7.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington’s Statewide Payee Desk, unless Purchaser will pay such subcontractor directly.

**8. USING THE CONTRACT – PURCHASES.**

- 8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Goods and/or Services from this Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively “Purchaser Order”). All Purchase Orders must reference the Contract number. The terms of this Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any ‘click-agreement,’ software or web-based application terms and conditions, or any other agreement modify the terms and conditions of this Contract.
- 8.2. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods and/or Services are delivered or provided as required by this Contract, the Purchase Order used by Purchaser, and as otherwise mutually agreed in writing between Purchaser and Contractor. The following apply to all deliveries:
- (a) LOCATION OF SERVICES. The Services shall be provided solely from within the continental United States and on computing and data storage devices residing therein.
- 8.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Contract are subject to Purchaser’s reasonable inspection, testing, and approval at Purchaser’s destination. Purchaser reserves the right to reject and refuse acceptance of Goods and/or Services that are not in accordance with this Contract and Purchaser’s Purchase Order. If there are any apparent defects in the Goods and/or Services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser’s option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor’s expense, any or all of the damaged Goods and/or Services or, at Purchaser’s option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Goods and/or Services from final payment. Payment for any Goods and/or Services under such Purchase Order shall not be deemed acceptance.
- 8.4. LICENSE FOR SERVICES.
- (a) AUTHORIZED USERS. Subject to the terms of this Contract and the Purchase Order, Contractor grants Purchaser a renewable, revocable, nonexclusive, royalty-free, limited worldwide right for Purchaser and its employees, contractors, agents, or any other individuals or entities authorized by Contractor (each an “Authorized User”) solely to access and use the Services for the term identified in subsequent Purchase Orders. For the purposes of 11 U.S.C. § 365(n), the Contractor and Purchaser agree that this Contract and the Purchase Order constitutes a license grant of intellectual property in software form to Purchaser from Contractor (such software being referred to as “Licensed Software”). Any recommendations, ideas, contributions, corrections, enhancements, or information provided to Contractor by Purchaser

concerning the goods or services identified in a Purchase Order, may be incorporated into the License and shall be the sole and exclusive property of Contractor.

- (b) PRE-EXISTING MATERIALS. Enterprise Services acknowledges that, in the course of performing the Services, Contractor may use software and related processes, instructions, methods, and techniques that have been previously developed by Contractor (collectively, the “Pre-existing Materials”) and that the same shall remain the sole and exclusive property of Contractor.
- (c) CHANGES IN FUNCTIONALITY. If improved features or versions (e.g., patches, bug fixes, updates or releases) are made available to other Services’ users at no additional cost, Contractor also shall make such improved features or versions available to Purchasers at no additional cost and with the same rights, obligations and limitations as for the Services.
- (d) DOCUMENTATION. Contractor shall provide the documentation for the Services (“Documentation”) that accurately and completely describes the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instructions such that an Authorized User can become self-reliant with respect to access and use of the Services.

8.5. USE RESTRICTIONS. Purchaser shall not, and shall not knowingly permit any Authorized User or any person to:

- (a) Copy the License Software, in whole or in part,
- (b) Modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Licensed Software.
- (c) Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service.
- (d) Reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part.
- (e) Bypass or breach any security device or protection used for or contained in the Licensed Software or documentation.
- (f) Remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Licensed Software or documentation.
- (g) Use the Licensed Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- (h) Use the Licensed Software for purposes of: (i) benchmarking or competitive analysis of the Licensed Software; (ii) development, using or providing a competing software product or service; or (iii) any other purpose that is to Contractor’s detriment or commercial disadvantage.

- (i) Use the Licensed Software in or in connection with the design, construction, maintenance, operation or use of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Licensed Software could lead to personal injury or severe physical or property damage; or
- (j) Use the Licensed Software or documentation other than for permitted uses or in any manner or for any purpose or application not expressly permitted by this Agreement.

8.6. DATA OWNERSHIP, USE, RECOVERY.

- (a) DATA OWNERSHIP AND USE. Purchaser's data ("Data") shall include data collected, used, processed, stored, or generate as the result of the use of the Services. Data is and shall remain the sole and exclusive property of the Purchaser. Contractor is provided a limited, non-exclusive license to access and use Data solely for performing its obligations under the Contract. Contractor shall: (a) keep and maintain Data in strict confidence and as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; and, (b) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data for Contractor's own purposes or for the benefit of anyone other than Purchaser without Purchaser's prior written consent.
- (b) DATA BACKUP. As part of the Services, Contractor is responsible for maintaining a backup of Data and for an orderly and timely recovery of such Data in the event that the Services may be interrupted. Contractor shall maintain a contemporaneous backup of Data that can be recovered within four (4) hours at any point in time.
- (c) EXTRACTION OF DATA. Contractor shall, within one (1) business day of Purchaser's request, provide Purchaser, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the Data in the format specified by Purchaser.
- (d) RETURN OF DATA. Sixty (60) days prior to the expiration date of the Purchase Order, or upon notice of termination of the Purchase Order, Contractor, without charges and without any conditions or contingencies, shall assist Purchaser in extracting and/or transitioning all Data in the format specified by Purchaser. After all Data is returned to Purchaser, Contractor shall within sixty (60) days delete all Data from all Contractor's systems in compliance with procedures established by the National Institute of Standards and Technology (NIST). Within the same time period, Contractor shall certify to Purchaser that Contractor has destroyed all Purchaser's Data disclosed to it under this Contract.
- (e) DISASTER RECOVERY. In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify Purchasers and Enterprise Services by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform Purchasers and Enterprise Services of:
  - i. The scale and quantity of the Data loss;
  - ii. What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and

- iii. What corrective action Contractor has taken or will take to prevent future Data loss.

Contractor shall restore continuity of Services to meet the 24 hours Recovery Point Objective (RPO) and 72 hours Recovery Time Objective (RTO). At the commencement of the Contract, Contractor shall provide a copy of its disaster recovery plan and obtain Enterprise Services' written approval of the disaster recovery plan. Contractor shall annually demonstrate the completion of disaster recovery testing and present a summary of test findings and any resulting remedial actions.

- 8.7. SERVICE LEVEL AGREEMENT. See Exhibit D – Service Level Agreement.

## 9. INVOICING & PAYMENT.

- 9.1. CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Goods and/or Services delivered under this Contract. Such invoices shall itemize the following:

- (a) Contract No. 23023;
- (b) Purchaser's Purchase Order Number;
- (c) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- (d) Contractor's Federal Tax Identification Number;
- (e) Date(s) of delivery;
- (f) Applicable Goods and/or Services;
- (g) Invoice amount; and
- (h) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 9.2. PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices for Goods/Services*, Purchaser's payment is due within thirty (30) calendar days of invoice. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

- 9.3. PROJECT IMPLEMENTATION FEES. Purchasers shall pay to Contractor the project implementation fees based on the rates set forth in *Exhibit B - Prices for Goods/Services* and as mutually agreed between the Purchaser and Contractor. Notwithstanding any provision to the contrary, Contractor's compensation to implement the Services is contingent upon Purchaser's approval of Contractor's satisfactory completion of the deliverables and milestones set forth in the Purchaser Order. The parties understand and agree that this is a performance-based contract. Accordingly, in regard to implementation of the Services, Contractor shall be paid pursuant to the milestone schedule as mutually agreed between the Purchaser and Contractor and set forth in the Purchase Order. Purchasers may elect to retain up to ten

percent (10%) of the total project implementation fees until sixty (60) days after the final written acceptance by the Purchaser of the successful launch of the Services to ensure the Services are performing as intended.

- 9.4. **OVERPAYMENTS.** Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by credit memo), Contractor shall pay Purchaser interest at the rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.
- 9.5. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Contract.
- 9.6. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.7. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchaser, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

**10. CONTRACT MANAGEMENT.**

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

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

**Enterprise Services**

Attn: DES Contracts Team Cypress  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-2218  
Email:  
DESContractsTeamCypress@des.wa.gov

**Contractor**

Attn: Michael W. Jakovcic  
Fusion Capital Management LLC  
10 Woodbridge Center Dr., Suite 200  
Woodbridge, NJ 07095  
Tel: (732) 218-5705  
Email:  
michael.jakovcic@fusionmgt.com

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

- 10.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Contract.
- 10.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

<p><b>Enterprise Services</b>                  Attn: Legal Services Manager                  Washington Dept. of Enterprise Services                  PO Box 41411                  Olympia, WA 98504-1411                  Email: greg.tolbert@des.wa.gov</p>	<p><b>Contractor</b>                  Attn: Legal Department                  Fusion Capital Management LLC                  10 Woodbridge Center Dr., Suite 200                  Woodbridge, NJ 07095                  Email: legal.dept@fusionmgt.com</p>
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Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**11. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.**

- 11.1. **CONTRACT SALES REPORTING.** Contractor shall report total Contract sales quarterly to Enterprise Services, as set forth below.
  - (a) **Contract Sales Reporting System.** Contractor shall report quarterly Contract sales in Enterprise Services’ Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor’s Bidder Profile.
  - (b) **Data.** Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the Contract. If there are no Contract sales during the reporting period, Contractor must report zero sales.
  - (c) **Due dates for Contract Sales Reporting.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all Contract sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1



QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

11.2. **VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 0.25 percent on the purchase price for all Contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total Contract sales  
invoiced (not including sales tax) x .0025.

(b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

(c) Enterprise Services will invoice Contractor quarterly based on Contract sales reported by Contractor. Contractor is not to remit payment until Contractor receives an invoice from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference this Contract number, the year and quarter for which the VMF is being remitted, and Contractor’s name as set forth in this Contract, if not already included on the face of the check.

(d) Contractor’s failure to report accurate total net Contract sales, to submit a timely Contract sales report, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend Contractor or terminate this Contract or exercise remedies provided by law. Without limiting any other available remedies, the parties agree that Contractor’s failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.

(e) Enterprise Services reserves the right, upon thirty (30) calendar days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

11.3. **ANNUAL CONTRACT SALES REPORT.** Contractor shall provide to Enterprise Services a detailed annual Contract sales report. Such report shall include, at a minimum: the Goods and/or Services sold (including, as applicable, item number or other identifier), per unit quantities sold, items and volumes purchased by Purchaser, shipment/delivery locations by Purchaser, and Contract price. This report must be provided in an electronic format that can be read by

Microsoft (MS) Excel. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Contract.

## **12. RECORDS RETENTION & AUDITS.**

- 12.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes, and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment for any order placed by a Purchaser against this Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 12.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor properly has invoiced Purchasers and that Contractor has paid all applicable vendor management fees to Enterprise Services. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Contract or Purchase Orders placed by a Purchaser under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment for any order placed by a Purchaser against this Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 12.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Contract or Purchase Orders placed thereunder, at a rate of 125% of any such overpayments, found as a result of the examination of Contractor's records; and (b) reimburse Enterprise Services for any underpayment of vendor management fees, at a rate of 125% of such fees found as a result of the examination of Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services  $\$500 \times 1.25 = \$625$ ); *Provided*, however, that, in the event Contractor discovers and corrects any Purchaser overpayment or Contractor underpayment of vendor management fees and does so, within 60 days of the over/under payment or prior to the initiation of any audit, Contractor shall be entitled to reimburse Purchaser or pay to Enterprise Services the actual amount of such Purchaser overpayment or such underpayment of vendor management fees.

## **13. INSURANCE.**

- 13.1. REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods and/or Services and no additional payment shall be made to Contractor.
- 13.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to

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

#### **14. CLAIMS.**

- 14.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from Contractor's acts or omissions under this Contract.
- 14.2. THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from and against all third-party claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', or subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the negligence, tortious fault, or intentional misconduct of Enterprise Services or Purchaser, nor to any claim of injuries to persons arising out of or related to the use of the Licensed Software (the Parties agree that the Licensed Software does not make clinical or other decisions and is not a substitute for the decision making of professional healthcare providers). The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons (including death), damages to property, data breach, and/or intellectual property infringement. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 14.3. INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from against any and all third-party claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods and/or Services provided, or the use of the Goods and/or Services under this Contract. If Purchaser's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods and/or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods

and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

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

**16. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.**

16.1. **TERMINATION.** This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

16.2. **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** Enterprise Services may suspend or terminate this Contract and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser will have no obligation or liability to Contractor.

16.3. **TERMINATION FOR PUBLIC CONVENIENCE.** Enterprise Services, for public convenience, may terminate this Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) calendar days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for Goods/Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

- 16.4. PURCHASER OBLIGATIONS – EXPIRATION. Upon expiration of this Contract, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled Purchase Orders and pay Contractor the price as set out in the Contract. Notwithstanding any provision to the contrary, in no event shall a Purchaser’s Purchase Order pursuant to this Contract that is executed prior to expiration of this Contract allow for Contractor to provide Goods and/or Services more than twelve (12) months beyond the expiration date of the Contract.
- 16.5. CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to Purchaser all keys, badges, and other materials supplied by Purchaser for the performance of any Purchase Order entered into pursuant to this Contract.
- 16.6. DEFAULT. Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
  - (b) Contractor fails to timely report contract sales;
  - (c) Contractor fails to timely pay the vendor management fees when due; or
  - (d) Contractor breaches any representation or warranty provided herein.
- 16.7. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor’s operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services’ reasonable satisfaction; *Provided*, however, that, if after thirty (30) calendar days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor’s rights under this Contract. All of Contractor’s obligations to Enterprise Services and Purchasers survive termination of Contractor’s rights under this Contract, until such obligations have been fulfilled.
- 16.8. REMEDIES FOR DEFAULT. Enterprise Services’ rights to suspend and terminate Contractor’s rights under this Contract are in addition to all other available remedies.
- 16.9. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) a party’s liability for all damages arising out of that party’s intentional acts or omissions; (b) the operation of any Goods or Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party’s obligations under this Contract, by delivery slips or other documentation is void.
- 16.10. SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all Goods and/or Services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the

contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

- 16.11. PURCHASER PURCHASE ORDERS. Purchaser Orders may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the applicable Purchase Order; and (c) as otherwise expressly provided for in the applicable Purchase Order. Purchase Orders shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the Purchase Order as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

## **17. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.**

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

disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

## **18. GENERAL PROVISIONS.**

- 18.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- 18.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 18.3. ENTIRE AGREEMENT. This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 18.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 18.5. AUTHORITY. Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 18.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 18.7. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of Enterprise Services. Contractor shall not have authorization, express or implied, to bind Enterprise Services to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through Enterprise Services or the State of Washington and Enterprise Services and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 18.8. ASSIGNMENT. Contractor may not assign its rights under this Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor (a) provides written notice to Enterprise Services within thirty (30) calendar days of such event and (b) timely executes Enterprise Services' Assignment, Assumption, and Consent Agreement, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.
- 18.9. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

- 18.10. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS AND/OR SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Goods and/or Services provided in Washington for the purpose of carrying out Contractor's obligations under this Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 18.11. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Contract, such Purchaser shall specify, with its Purchase Order, any applicable requirement or certification that must be satisfied by Contractor at the time the Purchase Order is placed or upon delivery of such Goods and/or Services to Purchaser.
- 18.12. SEVERABILITY. If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 18.13. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 18.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 18.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 18.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 18.17. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Contract, each party shall bear its own attorneys' fees and costs.
- 18.18. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities



are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.


- 18.19. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 18.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 18.21. CAPTIONS & HEADINGS. The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 18.22. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 18.23. NONDISCRIMINATION.
- (a) Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
  - (b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
  - (c) Default. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
  - (d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as

authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

18.24. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON**  
**Department of Enterprise Services**

By:  \_\_\_\_\_  
Elena McGrew  
Its: Statewide Enterprise Procurement  
Manager

**FUSION CAPITAL MANAGEMENT LLC**

By: *Mark A. Lawrence* \_\_\_\_\_  
Mark Lawrence  
Its: Corporate Counsel

**INCLUDED GOODS/SERVICES**

- 1.1 Proposed solutions/products must meet the Office of the National Coordinator for Health IT (ONC) Certified Health IT Product List (CHITPL) certification.
- 1.2 Proposed solutions must support the current and all future versions of USCore HL7, including HL7 Fast Healthcare Interoperability Resources (FHIR).
- 1.3 Proposed solutions must provide the capability to implement interoperability standard, Substitutable Medical Applications, Reusable Technologies (SMART) on FHIR.
- 1.4 Proposed solutions must provide the capability to implement connections to external Clinical Decision Support (CDS) tools.
- 1.5 Proposed solution must be FedRAMP compliant.
- 1.6 Proposed solutions must provide the capability to meet an availability standard of 99.9%
- 1.7 Proposed solutions must provide the capability to display and print at the facility any patient's essential medical data (diagnosis, medications, allergies), and all scheduled appointments in the event of planned or unplanned downtime/outage of the primary/secondary EHR System.
- 1.8 Proposed solutions must provide the capability to interoperate with the client devices using Microsoft Windows Operating system, including MS Windows 10, 11, and future versions when available to the market.
- 1.9 Proposed solution must comply with OCIO requirements regarding media handling and disposal.
- 1.10 Solution must support the authentication, auto-registration, and provisioning of users through Identity Providers. Such providers include, but are not limited to:
  - Microsoft Azure Active Directory (AD) / Office 365 Modern Authentication via OAuth 2.0
  - Active Directory Federated Services (ADFS) with SAML 2.0 requirement
  - Single Sign On (SSO)
- 1.11 Solution is able to handle multiple concurrent users and continue running at optimal speed for basic navigation, downloads, uploads, and system functions, even at speeds as low as 10 mbps.
- 1.12 Solution is compatible with IPV6.
- 1.13 Solution retains configuration settings during application version upgrades.
- 1.14 The solution meets state of Washington minimum level of compliance for accessibility – Web Content Accessibility Guidelines (WCAG) 2.1 Level AA compliance.
- 1.15 Solution provides the ability to track records retention and disposition dates.
- 1.16 All data transfers are encrypted using 256 bit (or higher) TLS 1.2 for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be SHA2 and signed by a trusted third party; no self-signed certificates will be considered.
- 1.17 Proposed solution must be a commercial, off the shelf (COTS) product, that will not require any custom development to meet requirements.
- 1.18 Proposed EHR solution must be capable of being hosted through a commercial cloud system.
- 1.19 Proposed EHR solution must be capable of being hosted internally by Agencies.

Required EHR Functionality/Module	Description	Category	Required/optional/parts	Bidder's Capability to provide functionality
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Scheduling Module	The module requires the ability for scheduling staff to book an appointment, then check patients in on arrival. Visibility between physicians to view entire clinics scheduling.	Administration	Required	FusionEHR includes comprehensive scheduling functionality that accommodates different staff schedules for any hard-timed patient appointments. Clinicians and caregivers can schedule appointments for medical care, dental care, behavioral health, nursing, specialty appointments, and numerous other care types and view these schedules in real time. Caregivers can add, remove, or edit a visit quickly and efficiently with a minimum of clicks. Rescheduling of appointments, or moving an appointment from one provider to another, can be completed through easy drag-and-drop functionality.
Admission, Discharge and Transfer Module	ADT module must be able to perform secure transfers of patient data, as well as storing contact information and other patient information.	Administration	Required	From admissions to discharge, FusionEHR's ADT functionality was developed specifically for governmental agencies with multiple facilities and medical units. Fusion delivers built-in, agency-specific functionality and

			<p>preexisting content to plan for discharges and transfers, complete with external and internal transfer/discharge templates that vary depending on the type of transfer. Care team members also can add discharge summaries, risk assessments, and other documentation to the medical record. All data is securely transferred, with all patient health information stored within the longitudinal health record.</p> <p>FusionEHR provides multiple levels of housing granularity, so a transfer may be from one room to another, one floor to another, one pod to another, one building to another, etc. Any participating agency would decide how to use this granularity to describe their specific group of facilities and the internal layout of each. Transfers enable the sending facility to move all open activities, including tasks</p>
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				associated with a patient, from the sending location to the receiving location to help ensure continuity of care.
Medical Records Transmission Module	Module must compile patient and other records in a variety of requested formats, and output to various file types for distribution based on medical records requests.	Administration	Required	<p>FusionEHR can output patient records as PDF documents and reports as CSV files and other common formats. This information can be approved for release, printed, and given to the specified recipient. Alternately, after approval, patient records can be transmitted via a local Health Information Exchange to specified outside providers, hospitals, or other agencies that are part of the HIE network. FusionEHR also tracks patients' consent to release information within the health record.</p> <p>In addition, Fusion is currently enhancing its disclosure/information release functionality to allow for users to fully</p>

				track and document the medical records request and disclosure process in a dedicated module. The application collects and captures the date of the disclosure, the name/address of the requestor, a description of the information disclosed, and other information relevant or required for the information disclosure process.
Payment and Billing Module (Physician and Facility)	Payment and billing module must enable organizations to enroll members, bill insurance premiums, process referrals and pay claims. Must include ANSI 837 v5010 Institutional and Professional electronic claims and 835 v5010 electronic remittance formats. Must support real-time eligibility and benefits queries and claim status messages with the ability to	Administration	Required	FusionEHR's payment and billing system automates and streamlines all steps in the revenue cycle, from patient intake to AR management, and fully meets all criteria for this requirement. The system can verify insurance coverage automatically or on-demand based on the patient's next appointment. It also alerts users only when they need to intervene. The EHR can send electronic claims in both Professional and Institutional formats to the clearinghouse through 837 files. It can also file claims in real-time using API connectivity. It tracks the claim

	drive follow-up actions based on payer responses.			status and sends rejected claims to an AR Management workflow. It receives electronic payments through 835 files and applies remittance processing rules to flag underpayments or denials. Those also go to the AR Management workflow, along with any unpaid claims.
Chart Tracking Module	Chart tracking module must notify physicians of missing documentaton based on configurable system triggers. Module must also track completion and authentication on all documents and orders regardless of storage type, including scanned and electronic documents.	Clinical	Required	<p>FusionEHR's chart tracking functionality can be configured to enforce user data entry via hard and soft stops, and can likewise be configured to notify an agency's providers of missing documentation based on client-determined triggers. The module can also track completion and authentication on all documents and orders regardless of storage type, including scanned and electronic documents.</p> <p>Fusion can work with agencies to configure soft and hard stops for virtually any documentation type, including scanned documents, electronic</p>



				documents, and orders. This gives participating Washington agencies the flexibility to create rules that meet the specific needs of their respective organizations without being locked in to hard-coded workflows that might not align with agencies' business needs.
Patient Data Transfer Module	Patient data module must have the ability to share patient data between providers located at different facilities.	Clinical	Optional	<p>FusionEHR interfaces with state and local health information exchanges (HIEs), allowing standardized data to flow freely and securely to and from community providers and those at different facilities. FusionEHR's CCD/CDA Import-Export Package will standardize CCDA output and ensure it is complete and properly formatted before submission to the HIE. The interface with the HIE will reconcile problems, medications, and allergies in CCD/CDA documents into the patient's chart.</p> <p>If this requirement is in reference to providers at different facilities</p>

				<p>who are all within the same agency enterprise, all authorized and permissioned providers would have access to the same patient data regardless of which facility they work in. FusionEHR provides a longitudinal health record for each patient.</p>
Pharmacy Module	<p>Pharmacy module must store patient and medication data in a central repository. Module must manage all processes involved in dispensing and receiving pharmacy supplies.</p>	Clinical	Optional	<p>Your clinicians can document medications with one click from within a patient's chart. In the medication documentation view, physicians can prescribe medication orders in the EHR via our ePrescribe functionality -- these orders are then sent automatically to the participating agency's pharmacy system for ordering and to the eMAR for medication passes.</p> <p>Fusion understands that the scope of this solicitation is for an EHR, but we also note that Answer #2 in the second Question &amp; Answer document states that "providing full pharmacy management systems would provide a benefit to the state." Keeping</p>

			<p>that in mind, Fusion is also the provider of CIPS, a leading pharmacy management system that is seamlessly integrable with FusionEHR and currently in use at hundreds of pharmacies, agencies, and organizations nationwide. This includes Washington State's own Department of Corrections, which also uses Fusion's eMAR.</p> <p>Fusion would be happy to provide pricing for a full-spectrum software suite inclusive of FusionEHR, Fusion's eMAR, and CIPS, for any interested participating agencies. By integrating the EHR, eMAR, and CIPS, State agencies can achieve a truly closed-loop medication management system, maximizing patient safety, improving medication adherence, and enhancing overall healthcare quality.</p>
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Inventory Module	Module must maintain inventory of hospital supplies, and interface with Pharmacy Module for tracking and ordering. Outputs must be updated no less than daily.	Clinical	Optional	FusionEHR maintains accurate counts of inventory items and tracks expiration dates, quantities, period automatic replacement (PAR) levels, maintenance schedules, and other pertinent data. You can also configure notifications to alert users when medication inventory is running low, has been discontinued, or has been stopped, in addition to other criteria.
Infection Control Module	Module must provide infection control surveillance, documentation and reporting. Must provide stewardship tools for antimicrobial usage, antibiogram, days of therapy and medication use optimization.	Clinical	Optional	Agency clinicians can use ad hoc inquiry reports, SSRS, Microsoft Power BI, or any other ODBC-compliant external report builder to develop and run reports to identify, track, and monitor patients at a population level who have tested positive for specific communicable diseases (hepatitis C, HIV, COVID-19, MRSA, tuberculosis, etc.) Users can manage infected patient groups using FusionEHR's BedBoard, which can be configured to designate quarantine beds or wards that are either standalone or part of

				<p>a larger infirmary. Users can select a quarantined patient in BedBoard and then easily navigate through their medical chart to create assessments and treatment plans.</p>
<p>Clinical and Anatomic Pathology Module</p>	<p>Module must support laboratory workflows combining all aspects of laboratory operations.</p>	<p>Clinical</p>	<p>Optional</p>	<p>Lab requisitions are handled through FusionEHR's Lab Manager application, which allows your clinicians to quickly search for specific patients, create or submit lab requisitions, and print or submit requisitions and labels. For additional ease of use, your care team can order labs directly from a patient's chart during an encounter workflow. Laboratory results generate automatically in a patient's chart when ready for review and sign-off, with urgent or abnormal lab results automatically flagged as high priority so that clinicians can prioritize reviews. FusionEHR comes packaged with numerous laboratory order sets for a variety of conditions, and users can configure their own custom order sets.</p>

				Fusion can build HL7 interfaces between FusionEHR and local Washington labs, as well as any specialist laboratories necessary for an agency's medical operations.
Radiology Module	Module must support scheduling, documentation, results communication, tracking and statistical reporting for radiology departments	Clinical	Optional	Clinicians can electronically order radiology tests in FusionEHR or can configure automatic orders based on specific care protocols and standards. FusionEHR will automatically import results directly to a patient's chart through HL7 interfaces with radiology providers. Once results are posted, clinicians automatically receive notifications about responses and tasks they need to complete, such as review and signoff. Users can also route the results to other individuals or groups for further review, documentation, and approval. Every step of the ordering process can be audited for safety and compliance, and all radiology data is reportable.

<p>Ophthalmology Module</p>	<p>Module must support charting, treatment planning, prescription writing and documentaion for eye related care</p>	<p>Clinical</p>	<p>Optional</p>	<p>FusionEHR includes out-of-the-box forms that allow documentation of a broad range of clinical data covering all vision care needs. The system's out-of-the-box ophthalmological examination report covering various aspects of patients' visual health. Provided workflows, templates, and functionalities include:</p> <ul style="list-style-type: none"> <li>• Eye charting and entry of discrete data including refraction, ocular pressures, and ocular measurements</li> <li>• Visual diagrams that providers can annotate and draw on during documentation</li> <li>• Mapped visual field test results</li> <li>• Ability to document ophthalmoscopy results and other data regarding internal eye structures, including the retina, optic disc, and blood vessels</li> <li>• Ocular assessments and diagnosis assignment</li> <li>• Capturing</li> </ul>
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				optical/eyeglass prescription
Dentistry Module	Module must include dental charting, treatment planning, care documtation and risk assesement	Clinical	Optional	FusionEHR features a built-in dental application that provides for the documentation needs of dentists, hygienists, and dental assistants while having their contributions become part of the patient's longitudinal health record. Fusion's dental application provides an in-depth comprehensive sentencing exam. This initial dental assessment allows dental staff to document each tooth one by one at a rapid rate. Dental staff can swiftly add any conditions to a specific tooth while going through each tooth in an orderly manner. Capturing documentation within a dental exam is simple. Dental clinicians can document issues such as chipped



				teeth, missing teeth, whether a tooth has a crown, and other tooth identifiers. All histories of dental examinations can be easily viewed for comparison.
Nurse Module	Module must provide tools to support nursing through triage, providing access to patient records and clinical protocols.	Clinical	Optional	<p>FusionEHR features distinct nursing documentation capabilities in all clinical encounters. Nursing clinical content and workflows in FusionEHR encompass tasks typically associated with a nurse’s day-to-day activities, including intake, discharge, and all caregiving responsibilities between those points in time. The nurses on your care team can leverage evidence-based clinical decision support and resources at the point of care to facilitate more informed decision-making and to ensure that they are utilizing agency-established business rules and protocols.</p> <p>FusionEHR supports standardized nursing terminologies (SNT)—the standard, specialized language</p>

				and key terminology used to capture a nurse’s independent contributions to a patient’s care. SNTs can be customized and configured for your clinical workflows, forms, and reporting. Consistently using SNTs can lead to better communication, increased visibility of nursing interventions, and improved patient care.
Behavior Health Module	Module must offer tools for mental health and substance abuse treatment facilities. Includes inpatient, outpatient and residential levels of care. Must provide the ability for group therapy documentation and activity based cost tracking.	Clinical	Optional	FusionEHR has comprehensive psychiatric and behavioral health offerings that can cover anything from psych evaluations, mental health treatment plans, and group therapy sessions, as well as a comprehensive library of forms that can be leveraged for documenting behavioral health encounters. Initial patient assessments can include behavioral health and psychosocial assessments, suicide or substance abuse risk assessments, and MAT program eligibility assessments. After these assessments are complete, the

				<p>responses will become part of the patient's chart and will prompt all users of relevant alerts, such as suicide risk. In addition, FusionEHR can track and document the status of patients in segregation across multiple housing units. Innovative segregation rounds templates allow behavioral health clinicians to document initial segregation screenings and clearances as well as ongoing observations and care for as long as patients remain in segregation.</p> <p>FusionEHR is bundled with numerous configurable templates, notes, and other patient-related data that can be leveraged for documenting behavioral health visits, as well as searchable DSM-5 psychiatric diagnoses. In addition, FusionEHR offers two standalone modules to support agencies' behavioral health needs:</p>
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			<p><b>Treatment Plan Manager:</b> Fusion’s Treatment Plan Manager, included in our behavioral health suite of offerings, allows users to plan and create long-term patient goals, devise a plan to achieve those goals, and track the progress towards attaining those goals. With Treatment Plan Manager, your behavioral health clinicians can create treatment plans for a patient; identify goals and objectives for a patient’s treatment plan; update, edit, and delete treatment plans; create, edit, and print summaries of a patient’s progress; and create a discharge summary once a treatment plan is completed.</p> <p>The out-of-the-box version of Treatment Plan Manager comes with numerous templates that outline common goals and measurable objectives associated with each treatment plan template— templates include plans for emotional</p>
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				<p>withdrawal, depressive mood, impaired social skills, and uncooperativeness, to name a few. Staff can use any provided template or can create custom, patient-specific templates.</p> <p><b>GroupNotes:</b>  Fusion’s GroupNotes application allows behavioral clinicians to rapidly document group therapy sessions. Clinicians can use GroupNotes to book patient groups, check them out, mark individuals as non-attendees, and create group documentation—and with FusionEHR’s group activity templates, clinicians can document in one place and have that information flow into the health records for any individual who attended the group. It comes equipped with multiple prebuilt templates for different treatments and programs. Permissioned users can build their own templates.</p>
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<p>Rehabilitation Module</p>	<p>Module must provide tools supporting rehabilitation and therapy workflows for inpatient, outpatient and acute care settings. Must provide tracking and monitoring of therapy sessions, length of stay, discharge planning and reporting on outcomes.</p>	<p>Clinical</p>	<p>Optional</p>	<p>FusionEHR is preloaded with various therapy and rehabilitation encounters, workflows, and documentation capabilities, including functionalities specifically dedicated to both physical and occupational therapies. Our stock encounters include forms to allow for comprehensive documentation regarding the patient's initial evaluation and ongoing progress.</p> <p>FusionEHR's BedBoard, which is used to manage patients in specialized housing, can be used as a supportive tool for therapy encounters. Providers can document rehabilitative actions and treatments administered to the patient in BedBoard's Activities tab, which can help providers track and monitor therapy sessions and associated progress.</p>
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Long Term Care	Module must provide assistance in completion and submission of MDS assessments. Must enable real time medication adjudication, tracking therapy and integration with hospital billing systems.	Clinical	Optional	<p>All FusionEHR installations come with numerous out-of-the-box and custom-built assessments. Though none of Fusion's current clients have requested a Minimum Data Set (MDS) assessment as part of their Fusion installs, we are confident we could develop a form assessment using the MDS 3.0 criteria and framework should a potential client need that functionality. FusionEHR's billing/payment functionality does support medication adjudication through integrations.</p> <p>Should participating agencies require more robust long-term care functionality than FusionEHR's native functionalities, additional discovery and pricing will be required.</p>
Home and Hospice Module	Module must support patient care cycle from referral to collection of final claims while meeting regulatory	Clinical	Optional	FusionEHR natively provides numerous hospice and end-of-life care documents as forms through the solution's standard encounter sets. Care team members can manage hospice care

	<p>requirements for certified home health care and hospice care. Module should provide in home care tools for providers working in limited or zero connectivity environments</p>		<p>through FusionEHR's BedBoard application, which can be configured to designate hospice beds or wards that are either standalone or part of a larger infirmary. Clinicians, within BedBoard, can select a patient and easily navigate through their medical chart to create hospice assessments and treatment plans.</p> <p>Please note that pricing for this proposal is based on FusionEHR's native, out-of-the-box home and hospice functionalities, which our clients have found more than sufficient for their agencies' use cases. Any participating Washington agencies who require more advanced functionality than what FusionEHR natively provides may be subject to additional discovery and pricing.</p>
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Secure Chat Module	Module must support instant text messaging between all staff at their workstation, smartphones and tablets. Must support real time push notifications, read receipts, image messaging, group messaging, and voice messaging.	Clinical	Required	<p>FusionEHR's internal messaging system ensures secure, timestamped communication between authorized users via the EHR's alerts and flags function. Your providers also can leverage FusionEHR's alerts and flags functionality to communicate with one another on another patient's chart, if applicable, which leads to enhanced, real-time communication among your care team. We've found that use cases for our corrections-gearred solutions have found this functionality sufficient for their messaging needs.</p> <p>If a participating Washington agency prefers a more robust texting solution inclusive of more advanced features like read receipts and voice messaging, FusionEHR can seamlessly integrate with third-party messaging services, such as Twilio, to fulfill that agency's messaging needs at an additional cost.</p>
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<p>Data Analytics Module(s)</p>	<p>Modules must support extraction and display of data from the EHR system . Displays must be visualized in easy to read dashboards, with data extractable for quality, regulatory and financial performance indicators. Module must support benchmarking metrics, trends in intake and care and allow physicians to search for similar cases.</p>	<p>Clinical</p>	<p>Required</p>	<p>With FusionEHR, agency providers can report on any and all discrete data in the system via two primary methods:</p> <ul style="list-style-type: none"> <li>• Inquiries: Ad-hoc reports that can be generated on the fly for immediate access to patient information and clinical data. The average user can customize an ad hoc inquiry in FusionEHR to meet a specialized need in less than a minute, so caregivers can search by condition or problem (ie, searching for similar cases), as well as a variety of other fields.</li> <li>• Power BI: FusionEHR's SQL database architecture allows our clients to take advantage of utilizing an ODBC-compliant external report builder, such as Power BI, to create custom reports and dashboards on virtually any combination of data points. During implementation, we work hand in hand with clients to help develop simple,</li> </ul>
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				<p>intuitive metric dashboards ranging from user activity information to population health management. Third Party report writing licenses will need to be procured by the agency, as needed.</p> <p>Users can also view height, weight, blood pressure, and other patient demographics in graphs and flowsheets to identify and track patient trends.</p>
Cognitive Computing Module	Cognitive computing module must enable usage of custom predictive modules for the HER/ Predictive models must be able to integrate with decision support systems in real time with up to date patient information to provide actionabl outputs.	Clinical	Optional	Though FusionEHR currently does not include cognitive computing as a feature, our clinical team is in active discussions with third-party artificial intelligence vendors and exploring ways AI and predictive models can assist with EHR documentation.

<p>Population Management Module</p>	<p>Module must meet ACA requirements for Accountable Care Organizations through reports, dashboards and workflow tools to manage patient populations in and out of ACO's. Module must support care coordination with patient populations to address social determinants of health, provide caregivers access to support networks and connect people with community services and measure outcomes</p>	<p>Clinical</p>	<p>Optional</p>	<p>Studying population health through FusionEHR reporting will allow you to look at system-wide data in a structured, actionable manner. With nearly every data field being reportable, your administration staff will be able to provide program planning support. Data will help you identify care trends and shifts in population need that will help determine specialized treatment programs and the use of external providers. To expand the scope and functionality of FusionEHR beyond all that ad-hoc reporting can provide, our solution's SQL database architecture will allow State agencies to take advantage of utilizing an external report builder if they so choose. Any ODBC-compliant report writer that agency staff have access to, such as SSRS or PowerBI, can be used to create custom reports and dashboards. Using these tools together with FusionEHR's provided data</p>
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				schema, custom reports can be designed and imported into FusionEHR for direct use within the system.
Customer Relationship Management Module	Module must proactively monitor patient sentiment and analyze real-time feedback, customize patient outreach materials, leverage external systems to merge data from multiple sources, automate tedious processes to save time and increase value for patients. Must Leverage integrations with external systems to merge data from multiple sources and store it in a centralized place.	Clinical	Optional	<p>FusionEHR offers a wide variety of native functionalities that meet the requirements for customer relationship management functionality, including the following:</p> <ul style="list-style-type: none"> <li>• Patient outreach materials: FusionEHR supports using participating Washington agencies' own patient education handouts (if applicable), which can be easily added to the EHR. In addition, users have access to FusionEHR's native patient education resource, which offers clinical decisioning support tools and patient handout materials. Your clinical team will have full access to English and Spanish versions, at</li> </ul>

			<p>a minimum, of hundreds of printable handouts and patient education materials, all vetted by medical professionals and written at a simplified, fourth-grade reading level to ensure understanding and comprehension by patients at all educational levels.</p> <ul style="list-style-type: none"> <li>• Process automation: Fusion designs intuitive, organized, and sequential clinical workflow will ensure that the form components are intuitive, organized, and sequential. As caregivers complete forms and documents care, the EHR automatically generates relevant workflows that are related to the form being completed. Data autopopulates where applicable during documentation, saving providers valuable time on manual data entry.</li> <li>• Integrations: FusionEHR collects and stores patient health data from within our own systems, as well as</li> </ul>
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			<p>from external sources, such as labs, pharmacies, and other healthcare providers with which the system is integrated. This data is stored centrally in FusionEHR's longitudinal health record to provide clinicians with a comprehensive view of their patient's health history and current status. This centralized approach to data management ensures that all stakeholders have access to the same information, which can improve communication and collaboration among care providers.</p> <p>Pricing for this proposal was developed using FusionEHR's out-of-the-box functions as a baseline. Should a participating Washington agency require a more robust CRM, FusionEHR is integrable with leading third-party CRM tools on the market, subject to discovery and pricing.</p>
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<p>Value based Care Module</p>	<p>Must support quality measure performance for patients under value based care agreements. Requires certified measures to match NCQA specifications.</p>	<p>Clinical</p>	<p>Optional</p>	<p>Fusion's billing and payment system was designed with the flexibility necessary to support billing for value-based care programs. In addition, FusionEHR's robust data extraction and reporting capabilities allow our clients to tailor reports to precisely address the metrics and performance indicators that align with your value-based care goals. With our flexible reporting tools, you can define custom criteria based on your specific value-based care initiatives. This includes tracking patient outcomes, measuring clinical quality, and analyzing cost-effectiveness. The generated reports can be easily exported in various formats, including PDF or CSV, for transmission to payers and other stakeholders.</p> <p>Please note that this proposal's pricing was developed based on FusionEHR's out-of-the-box functionalities. If a</p>
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				participating agency seeks value-based care functionality beyond what FusionEHR natively provides, additional discovery and pricing may be required.
Patient Kiosk Module	Module must support stand alone patient kiosks with touch screen interaction to perform tasks such as checking in, answering questionnaires, signing forms, printing maps. Must include registration and billing integrations to allow patients to make payments and update registration information at kiosks. Must support for multiple languages and vision or hearing impairments	Clinical	Optional	<p>FusionEHR supports integration with standalone touchscreen kiosks to allow patients access to their clinical information and personal health records. Patients can use the kiosks to check in for sick call, complete a symptom questionnaire, and review their medical history. Any data entered into the kiosk is seamlessly shared to FusionEHR in near-real-time, allowing agency providers to quickly take action. For the communities generally serviced by Fusion, these functions have been more than sufficient for agency needs.</p> <p>Some of the more advanced features specified here, such as printing maps, are not commonly used in movement-restricted communities. We're confident that FusionEHR can</p>

				interface with kiosks that offer advanced functionalities such as the ones listed here, but additional pricing, scoping, and fit-gap analyses will be required on an agency-by-agency basis.
Patient Portal Module	Must provide a web based scheduling, medical records, clinical results, provider secure messaging, and pharmacy integration portal for patients. Must support access through PC, Mac, smartphone or tablet in multiple language and support vision or hearing impaired patients.	Clinical	Required	The majority of FusionEHR patient-to-provider-communication use cases are fully satisfied by our software's seamless integration with kiosk systems for sick call and other related functions. FusionEHR is built for correctional institutions and other movement-restricted agencies that often do not allow patients to have certain devices and do not require highly robust patient portal access. Such agencies typically have more control over patient access to medical records and provider communication than other healthcare settings. For example, correctional agencies may have policies in place that restrict patients' ability to communicate with

				<p>providers outside of scheduled appointments.</p> <p>Should a participating Washington agency require a highly robust patient portal as specified in this requirement, FusionEHR supports integration with third-party patient portals that offer the requested features.</p>
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## PRICES FOR GOODS/SERVICES

<b>Section 1: Implementation Fees</b>		
	<b>Component Pricing Rate Exhibit B-1 <u>Mandatory</u> Requirements</b>	<b>Total Pricing for the Scenario and Exhibit B-1 <u>Mandatory</u> Requirements</b>
Deliverable 1: Project Kickoff and Discovery	<i>\$298,000.00 (Onsite Kickoff and Facility Assessment, Key Decisions Workbook, RTM, Fit Gap Analysis, To Be Workflows, and Project Plans - See 'Initiate' Response to Exhibit B-2 Implementation Plan for Scope of Work)</i>	<b>\$298,000.00</b>
Deliverable 2: Server Setup - Dev	<i>\$30,600.00 (Creation and deployment of the development environment on the Microsoft Azure Government cloud-based hosting architecture)</i>	<b>\$30,600.00</b>
Deliverable 3: Software Installation	<i>\$330,000.00 (COTS software installation on cloud-hosted server)</i>	<b>\$330,000.00</b>
Deliverable 4: Software Configuration	<i>TBD (Will be based on analysis and quoted accordingly - See Response to Exhibit B-2 Implementation Plan for Scope of Work)</i>	<b>TBD</b>
Deliverable 5: Server Setup - UAT	<i>\$30,600.00 (Creation and deployment of the UAT environment on the Microsoft Azure Government cloud-based hosting architecture)</i>	<b>\$30,600.00</b>
Deliverable 6: Data Conversion	<i>TBD (Assuming staff will scan records - See Response to Exhibit B-2 Implementation Plan for Scope of Work)</i>	<b>TBD</b>
Deliverable 7: Testing & Quality Assurance	<i>\$68,750.00 (Unit, Integration, Functional, Regression, Parallel, Stress Testing)</i>	<b>\$68,750.00</b>
Deliverable 8: Server Setup - Prod	<i>\$30,600.00 (Creation and deployment of the production environment on the Microsoft</i>	<b>\$30,600.00</b>

	<i>Azure Government cloud-based hosting architecture)</i>	
Deliverable 9: Training and Go-Live	<i>\$85,000.00 (LMS, Training Materials, Up to 5 days of onsite Train-the-Trainer training and 5 days of onsite go live support - See Response to Exhibit B-2 Implementation Plan for Scope of Work)</i>	<b>\$85,000.00</b>
<p>Note: This pricing is an estimate and is subject to change on a project by project basis as implementation size and scope vary greatly by agency needs. Fusion assumes that there are ~100 clinical, ~100 IT, and ~1,000 patients based on the information found in the Pricing Assumptions tab in this file. Our concurrent user count is based on the ~100 clinical staff only with the understanding that there are 3 shifts since IT staff will not all be in the system at the same time, for a total assumed concurrent user count of 34. Fusion welcomes additional discovery and communication with the State to walk through all aspects of our proposal to confirm alignment with solicitation expectations.</p>		

<b>Section 2: Annual Subscription Fees for Exhibit B-1 Mandatory Requirements</b>		
<i>Subscription fees have to include all support and maintenance as provided in Services Level Agreement (SLA).</i>	<b>Year 1</b>	<b>Year 2</b>
<b>Hosting Fees on Commercial Cloud</b>	<i>\$900.00/year/concurrent user (includes managed hosting services for Dev, UAT, and Prod environments on Microsoft Azure Government)</i>	<i>\$900.00/year/concurrent user (includes managed hosting services for Dev, UAT, and Prod environments on Microsoft Azure Government)</i>
<b>Per User License Pricing</b>		
<i>Base EHR Module</i>	<i>\$5,995.00/concurrent user</i>	<i>\$5,995.00/concurrent user</i>
<i>Scheduling Module</i>	<i>Included in Base EHR</i>	<i>Included in Base EHR</i>
<i>Admission, Discharge and Transfer Module</i>	<i>Included in Base EHR</i>	<i>Included in Base EHR</i>
<i>Medical Records Transmission Module/Release of Information</i>	<i>\$600.00/unique user (excludes HIE)</i>	<i>\$600.00/unique user (excludes HIE)</i>
<i>Payment and Billing Module (Physician and Facility)</i>	<i>\$11,750.00/provider</i>	<i>\$11,750.00/provider</i>
<i>Chart Tracking Module</i>	<i>Included in Base EHR (excludes configuration fees)</i>	<i>Included in Base EHR (excludes configuration fees)</i>
<i>Secure Chat Module</i>	<i>Included in Base EHR (excludes 3rd party options)</i>	<i>Included in Base EHR (excludes 3rd party options)</i>

<i>Data Analytics Module</i>	<i>\$480/unique user (via PowerBI)</i>	<i>\$480/unique user (via PowerBI)</i>
<i>Patient Portal Module</i>	<i>\$2,500.00/year/provider (excludes call and text message rates)</i>	<i>\$2,500.00/year/provider (excludes call and text message rates)</i>

Note: See Response to Exhibit B-3 Module List for additional information. Fusion assumes that there are ~100 clinical, ~100 IT, and ~1,000 patients based on the information found in the Pricing Assumptions tab in this file. Our concurrent user count is based on the ~100 clinical staff only with the understanding that there are 3 shifts since IT staff will not all be in the system at the same time, for a total assumed concurrent user count of 34. Fusion welcomes additional discovery and communication with the State to walk through all aspects of our proposal to confirm alignment with solicitation expectations.

**Section 3: Annual Subscription Fees for Optional Modules, Third-Party Add-Ons, and Other Services**

<i>Subscription fees have to include all support and maintenance as provided in Services Level Agreement (SLA).</i>	<b>Year 1</b>	<b>Year 2</b>
<i>Patient Data Transfer Module / Health Information Exchange</i>	<i>\$1,200.00/provider (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$1,200.00/provider</i>
<i>Pharmacy Module</i>	<i>\$4,250.00/unique user (does not include installation, training, hosting and/or configuration costs, as needed)</i>	<i>\$4,250.00/unique user</i>
<i>Inventory Module</i>	<i>\$350.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$350.00/concurrent user</i>
<i>Infection Control Module</i>	<i>\$500.00/concurrent user (includes BedBoard application and Base EHR reporting tools - excludes third party reporting/analytics tools, installation, training, and/or configuration costs, as needed)</i>	<i>\$500.00/concurrent user</i>
<i>Clinical and Anatomic Pathology Module/Lab Manager</i>	<i>\$195.00/concurrent user (does not include installation, training, interface development with laboratory information system, and/or configuration costs, as needed)</i>	<i>\$195.00/concurrent user (excludes interface maintenance fees, if applicable)</i>

<i>Radiology Module</i>	<i>TBD - Pricing varies based on radiology information system interface specifications</i>	<i>TBD - Pricing varies based on radiology information system interface specifications</i>
<i>Ophthalmology Module</i>	<i>\$1,950.00/unique user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$1,950.00/unique user</i>
<i>Dentistry Module</i>	<i>\$2,750.00/unique user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$2,750.00/unique user</i>
<i>Nurse Module</i>	<i>Included in Base EHR</i>	<i>Included in Base EHR</i>
<i>Behavioral Health Module/GroupNotes</i>	<i>\$1,550.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$1,550.00/concurrent user</i>
<i>Rehabilitation Module</i>	<i>\$500.00/concurrent user (includes BedBoard application and Base EHR workflows - does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$500.00/concurrent user</i>
<i>Long Term Care</i>	<i>\$500.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$500.00/concurrent user</i>
<i>Home and Hospice Module</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Cognitive Computing Module</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Population Management Module</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Customer Relationship Management Module</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Value based Care Module</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Patient Kiosk Module</i>	<i>TBD - Monthly Fee + Per Transaction Fee (Based on Volume)</i>	<i>TBD - Monthly Fee + Per Transaction Fee (Based on Volume)</i>
<i>BedBoard/Infirmiry Module</i>	<i>\$500.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$500.00/concurrent user</i>
<i>Electronic Signature Module</i>	<i>\$145.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$145.00/concurrent user</i>

<i>Electronic Medication Administration Module</i>	<i>\$2,450.00/unique user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$2,450.00/unique user</i>
<i>Document Management Module</i>	<i>\$145.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$145.00/concurrent user</i>
<i>Form Development/Editing Module</i>	<i>\$750.00/unique user (does not include training or configuration costs, as needed)</i>	<i>\$750.00/unique user</i>
<i>Order Management Module</i>	<i>\$145.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$145.00/concurrent user</i>
<i>Formulary Module</i>	<i>\$145.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$145.00/concurrent user</i>
<i>Non-Formulary Module</i>	<i>\$145.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$145.00/concurrent user</i>
<i>Compliance Manager Module</i>	<i>\$500.00/concurrent user (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$500.00/concurrent user</i>
<i>Medication Ordering Module (ePrescribe)</i>	<i>\$750.00/provider (excludes interface development and/or third party network fees such as Surescripts)</i>	<i>\$750.00/provider (excludes 3rd party network fees)</i>
<i>Medication Ordering Module (EPCS)</i>	<i>\$500.00/provider (excludes onboarding and/or configuration costs, as needed)</i>	<i>\$500.00/provider</i>
<i>Revenue Cycle Management Services</i>	<i>10% of collections</i>	<i>10% of collections</i>
<i>Medical Devices (Various based on needs)</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Voice Dictation Software</i>	<i>TBD - Pricing varies based on needs</i>	<i>TBD - Pricing varies based on needs</i>
<i>Telemedicine/Telehealth Module</i>	<i>\$2,160.00/provider (does not include installation, training, and/or configuration costs, as needed)</i>	<i>\$2,160.00/provider</i>
<i>Immunization Module</i>	<i>\$1,200.00/provider (does not include installation, training,</i>	<i>\$1,200.00/provider</i>



	<i>and/or configuration costs, as needed)</i>	
<i>Additional cost for Architecture and Design: for development and/or recommendations surrounding system architecture and design. Architecture includes virtual, physical, and process components</i>	\$275/hour (excludes 3rd party fees where applicable)	\$275/hour (excludes 3rd party fees where applicable)
<i>Additional cost for Integration Layer: to support integration between the Core/Enterprise EHR solution and any non-core components, such as third-party modules</i>	\$275/hour (excludes 3rd party fees where applicable)	\$275/hour (excludes 3rd party fees where applicable)
<i>Additional cost for Professional Services: for additional services, custom development, and support of the EHR and all other modules/applications provided under this contract</i>	\$275/hour (excludes 3rd party fees where applicable)	\$275/hour (excludes 3rd party fees where applicable)
<p>Note: See Response to Exhibit B-2 Implementation Plan and Exhibit B-3 Module List for additional information. Fusion assumes that there are ~100 clinical, ~100 IT, and ~1,000 patients based on the information found in the Pricing Assumptions tab in this file. Our concurrent user count is based on the ~100 clinical staff only with the understanding that there are 3 shifts since IT staff will not all be in the system at the same time, for a total assumed concurrent user count of 34. Fusion welcomes additional discovery and communication with the State to walk through all aspects of our proposal to confirm alignment with solicitation expectations. Fusion reserves the right to add/remove optional modules upon further discussion with the State.</p>		

**INSURANCE REQUIREMENTS**

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
  - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
  - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
  - d. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE.** Professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including the loss of use thereof, and damages because of negligent acts, errors, and omissions in any way related to this Contract.
  - e. **CYBER RISK LIABILITY INSURANCE.** Cyber Risk insurance, on an occurrence form. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract. Limits are \$4,000,000 per claim/\$8,000,000 annual aggregate.

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

2. **INSURANCE CARRIER RATING.** Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's

Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

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

Email: DESContractsTeamCypress@des.wa.gov

*Note:* For Email notice, the Email Subject line must state:

**Contract Insurance Certificate – Statewide Contract No. 23023 –  
EHR Solutions**

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) calendar days prior written Legal Notice by Contractor to Enterprise Services.

Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

\* \* \* END OF INSURANCE REQUIREMENTS \* \* \*

## Service Level Agreement

1. **INTRODUCTION.** This Service Level Agreement (“SLA”) describes the performance standards and service levels to be achieved by Licensor in providing the Licensed Software. This is subject to the provisions of the Agreement which are incorporated herein by reference. In the event of a conflict between the provisions of the Agreement and any provision of this SLA, the Agreement will govern.
2. **DEFINITIONS.** Unless otherwise set forth in this SLA, capitalized terms not separately defined will have the respective meanings ascribed in the Agreement. As used in this SLA, the following terms shall have the following meaning:
  - 2.1. **“Bug”** means a fault in the application or service that requires code modifications and a new version release.
  - 2.2. **“Days and Hours of Coverage”** means the days of coverage as set out in Section 4.1 of this SLA.
  - 2.3. **“Incident”** means a reproducible failure of the Licensed Software to operate in substantial conformity with the Agreement; whose origin can be isolated to a single cause and whose failure was not caused by improper use of the Licensed Software or a Bug.
  - 2.4. **“Maintenance Fee”** means the annual amount paid by the Licensee to Licensor for the maintenance and support of the Licensed Software.
  - 2.5. **“Minimum System Requirements”** means the hardware and software standards otherwise necessary for the Licensed Software to efficiently operate.
  - 2.6. **“Planned Downtime”** refers to the mandatory maintenance windows that take place on the first and third Wednesday of each month from 2 am to 4 am EST.
  - 2.7. **“Preliminary Severity Level”** means the level assigned to a reported Incident by Licensee which shall only be used for intake purposes.
  - 2.8. **“Resolve”** means the provision of: (a) services that correct the Incident; (b) information to the Licensee that corrects the Incident; (c) information to the Licensee on how to obtain a software solution that corrects the Incident; (d) notice to the Licensee that the Incident is caused by a known, unresolved issue or an incompatibility issue with the Licensed Software; (e) information to the Licensee that identifies the Incident as being corrected by upgrading to a newer release of the Licensed Software; (f) notice to the Licensee that the Incident cannot be resolved; or notice to the Licensee that the Incident has been identified as arising out of or resulting from a service exception. “Resolution” has a correlative meaning.
  - 2.9. **“Resolution Time”** means the time frame in which Licensor must Resolve an Incident.
  - 2.10. **“Respond”** means Licensor’s initial communication with Licensee, whether by helpdesk, telephone, email or otherwise, acknowledging a Ticket. **“Response”** has a correlative meaning.
  - 2.11. **“Response Time”** means the time frame in which Licensor must Respond.
  - 2.12. **“Severity Level”** means the level assigned to a reported Incident by Licensor based on the description of the Incident under this SLA.
  - 2.13. **“Service Credits”** means the portion of Maintenance Fees withheld as a set-off against the annual Maintenance Fee.
  - 2.14. **“Severity 1”** means an Incident that does not qualify as a Severity 2 or Severity 3 Incident but nonetheless prevents minor functionality from operating or causes minor functions to operate with incorrect results.

- 2.15. **“Severity 2”** means an Incident wherein use of the Licensed Software or a subsystem is interrupted or a Licensed Software failure otherwise causes major functions to operate with incorrect results, such as data processing errors.
- 2.16. **“Severity 3”** means an Incident wherein the Licensed Software or a main subsystem is unavailable, preventing the Licensed Software or a core function from operating or causing core functions or major functionality to operate with grossly incorrect results, such as material data processing errors.
- 2.17. **“Technical Contact”** means the Licensee identified individual(s) who serve as Licensee’s sole contact(s) between Licensee and Licensor in connection with day-to-day matters relating to the provision of support and are responsible for reporting Incidents, providing consents and approvals on behalf of Licensee, and communicating with and providing timely and accurate information and feedback to Licensor in connection with the support.
- 2.18. **“Ticket”** means the Technical Contact’s submission of an Incident to the Licensor’s helpdesk system.
- 2.19. **“Third-Party Materials”** means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content, or specifications; (b) software, hardware, system, network, or other product, facility, equipment, or device; and (c) accessories, components, parts, or features of any of the foregoing.
3. **AVAILABILITY REQUIREMENT.** Licensed Software shall have a monthly uptime of 99.9% to be calculated using the formula identified as Attachment A. Planned Downtime and any unplanned downtime of which Licensor gives at least forty-eight (48) hours advance notice shall not be included in “Downtime per Month” in Attachment A.
4. **SUPPORT.**
- 4.1. Licensor shall perform its support obligations during the following Days and Hours of Coverage:
- 4.1.1. Twenty-four (24) hours a day, seven (7) days a week for Severity 2 and Severity 3 Incidents;
- and
- 4.1.2. Monday-Friday, 8:00 AM to 4:00 PM EST for Severity 1 Incidents.
- 4.2. Licensee agrees to provide Licensor with access to Licensee’s network, systems, and/or computers to install and use remote access software (**“Remote Access Software”**) necessary for Licensor to provide remote support to Licensee. The Remote Access Software contains technological measures designed to collect and transmit to Licensor certain diagnostic, technical, usage and related information, including information about Licensee’s computers, systems, network and any Third-Party Materials, related to or derived from Licensee’s use of Licensed Software. Licensee acknowledges and agrees that: (a) Licensor may collect, maintain, process and use this information in the course of providing support under this SLA, and (b) all or portions of the Remote Access Software may remain on Licensee’s network, system, and/or computers after an incident is resolved and until the Agreement is terminated.
- 4.3. All support shall be conducted remotely by Licensor within the United States.
- 4.4. Licensor may change any aspect of the Services, provided that no such change materially reduces or otherwise has a materially adverse effect on: (a) Licensor’s level of effort in providing support; or (b) Licensor’s obligation to provide support under this SLA.

- 4.5. Licensor may perform support services by or through third parties ( each, a “**Subcontractor**”), but shall remain fully responsible for any Subcontractor’s compliance with the Agreement and SLA.
- 4.6. In connection with the performance of support, Licensee shall provide Licensor personnel with all such cooperation and assistance as they may reasonably request, or otherwise may reasonably be required, to enable Licensor to perform its obligation, and exercise its rights, under and in accordance with the Agreement and this SLA, including:
  - 4.6.1. reasonable and uninterrupted access, both physical and virtual, to the Licensed Software and Licensee’s premises, systems, networks, and facilities;
  - 4.6.2. a safe working environment;
  - 4.6.3. reasonable access to the appropriate Licensee personnel, including network systems, operations, and applications personnel; and
  - 4.6.4. all necessary authorizations and consents, whether from third-parties or otherwise, inconnection with any of the foregoing.
- 4.7. The following are examples of different issues to clarify what types of scenarios fall under what Severity Level.
  - 4.7.1. Severity 3: All users are simultaneously unable to log in, post-upgrade patient safety errors, configuration problems causing timeouts, or inability to open a pass to administer medication.
  - 4.7.2. Severity 2: User error from incorrect workflows, database errors and performance issues, data integration errors, the application’s minor components do not work as intended but aworkaround is available.

**5. SUPPORT REQUESTS.**

- 5.1. Licensee shall promptly notify Licensor of any Incident and provide Licensor with reasonable detail of the nature and circumstances of the Incident. Licensee shall take all necessary steps to replicate the Incident prior to submitting a Ticket.
- 5.2. Licensee shall back up all data, files, and information prior to submitting a Ticket and assumes sole responsibility for any lost data or altered files or information.
- 5.3. Licensee shall ensure its Technical Contact(s) have the requisite organization authority, skill, experience, and other qualifications to perform their duties. Licensee shall provide at least thirty (30) days prior written notice to Licensor of any replacement or change in the name or contact information of any Technical Contact.
- 5.4. Licensor will grant access to a helpdesk system and support phone line where the Technical Contacts can communicate Incidents to Licensor.
- 5.5. If the Licensee encounters an Incident, the Technical Contacts shall notify Licensor using the contact method(s) that correspond to the Incident level, as set forth below.
  - 5.5.1. Severity 1 – helpdesk system
  - 5.5.2. Severity 2 – helpdesk system
  - 5.5.3. Severity 3 – First the Licensor support phone line and then the helpdesk system.
- 5.6. If the Licensee encounters an Incident, the Technical Contacts shall (a) diagnose and assign a Preliminary Severity Level for the Incident; and (b) depending on the Preliminary Severity Level, submit a support request to Licensor by opening an Ticket in the helpdesk system or calling Licensor’s support phone line.

**6. INCIDENT MANAGEMENT.**

- 6.1. Licensor shall review the Ticket and assign a Severity Level. If the Preliminary Severity Level and the Severity Level differ, the Severity Level shall control
- 6.2. Licensor shall conduct a root cause analysis of the Incident upon notification.
- 6.3. Licensor shall Respond to and Resolve Incidents in accordance with the applicable Severity Levels, Response Times, and Resolution Times.
- 6.4. Response Times and Resolution Times are described in the table identified as Attachment B.
- 6.5. Response Time shall be calculated from the moment a Ticket is created until the moment Licensor Responds.
- 6.6. Resolution Time shall be calculated as the time between the Licensor’s Response and the time the Licensor’s helpdesk system indicates in the Ticket that the Incident is Resolved.

**7. SERVICE CREDITS.**

**7.1. Licensed Software Uptime Service Credit**

- 7.1.1. Based on the total number of months in an annual term in which the Licensed Software uptime falls below the threshold described in Section 3, Licensee shall be eligible for Service Credits based on the corresponding percentage set forth in the table identified as Attachment C.
- 7.1.2. Licensed Software Uptime Service Credits will only be provided for months in which the Licensee has a license for the full calendar month.

**7.2. Response and Resolution Time Service Credit.**

- 7.2.1. Based on the total number of months in an annual term in which the Licensor fails to meet the timelines set forth in Attachment B with ninety-five percent (95%) accuracy per month (the **“Monthly Timeline Accuracy Percentage”**) to be calculated using the formulas identified as Attachment D, Licensee shall be eligible for Service Credits based on the corresponding percentage set forth in Attachment E.

**7.3. Service Credit Exceptions.** Service Credits shall not be owed or accrue if:

- 7.3.1. Licensor’s failure to meet the uptime, Response Time, or Resolution Time was reasonably related to or caused in whole or in part by Licensee’s delay or failure to:
  - 7.3.1.1. perform any obligations under the Agreement or SLA;
  - 7.3.1.2. promptly notify and adequately inform Licensor of an Incident;
  - 7.3.1.3. timely respond to Licensor inquiries related to Incidents;
  - 7.3.1.4. adequately manage and coordinate Licensee third-parties;
  - 7.3.1.5. achieve and maintain Minimum System Requirements;
  - 7.3.1.6. provide Technical Contacts; or
- 7.3.2. An Incident is caused in whole or in part by:
  - 7.3.2.1. Licensee’s negligence, abuse, misapplication, or misuse of the Licensed Software;
  - 7.3.2.2. Licensee’s operation, modification, configuration, relocation, damage, installation, or integration of the Licensed Software other than by Licensor without Licensor’s written permission;
  - 7.3.2.3. Third-Party Materials;
  - 7.3.2.4. A Force Majeure event (including abnormal physical or electrical stress).
  - 7.3.2.5. Licensee created workflows, forms, or reports;



- 7.3.3. Licensee is utilizing beta software, software that Licensor makes available for testing or demonstration purposes, temporary software modules or software for which Licensor does not receive a license fee;
- 7.3.4. Licensee breaches or fails to comply with the Agreement or SLA;
- 7.3.5. There are past-due amounts owed to Licensor by Licensee.
- 7.3.6. Licensee fails to install any Maintenance Release that Licensor has previously made available to Licensee during at least two prior Planned Downtimes;
- 7.4. To receive any Service Credits, Licensee must make a written request for the Service Credit by filing a Ticket. The request must be filed within thirty (30) calendar days from the end of the annual term in which Licensee became eligible for such Service Credits. Any accrued Service Credits which are timely requested shall be deducted from the following annual term's Maintenance Fees. In the event there is no following annual term, no duly accrued and timely requested Service Credits shall be owed and Licensee waives any and all rights to receive such service credits.
- 7.5. Licensee's sole remedy and Licensor's sole Liability for any breach of this SLA by Licensor shall be the Service Credits as defined and described herein. Licensor's sole remedy and Licensee's sole liability for any breach of this SLA by Licensee shall be the exclusion and non-accrual of Service Credits as defined in Section 7.4.
- 8. **MAINTENANCE RELEASE.** During the Term, Licensor will provide Licensee with Maintenance Releases (including updated Documentation) that Licensor may make generally available to its licensees. All Maintenance Releases, on being provided by Licensor to Licensee hereunder, are deemed Licensed Software subject to all applicable terms and conditions in this Agreement. Licensor will install all Maintenance Releases as soon as practicable. Licensee does not have any right hereunder to receive any New Versions of the Licensed Software that Licensor may, in its sole discretion, release from time to time. Licensee may license any New Version that Licensor makes generally available to its licensees at Licensor's then-current list price and subject to a separate agreement or amendment, provided that Licensee is in compliance with the terms and conditions of this Agreement.

**Attachments A-F**

<b>Attachment A</b>	$\text{Monthly Uptime Percentage} = \frac{(\text{Available Time per Month}) - (\text{Downtime per Month})}{(\text{Available Time per Month})}$																										
<b>Attachment B</b>	<table border="1"> <thead> <tr> <th>Severity Level</th> <th>Response Times</th> <th>Resolution Times</th> </tr> </thead> <tbody> <tr> <td>Severity 1</td> <td>24-hours</td> <td>15 Business Days</td> </tr> <tr> <td>Severity 2</td> <td>12-hours</td> <td>7 Days</td> </tr> <tr> <td>Severity 3</td> <td>1 hour</td> <td>24-48 Hours</td> </tr> </tbody> </table>	Severity Level	Response Times	Resolution Times	Severity 1	24-hours	15 Business Days	Severity 2	12-hours	7 Days	Severity 3	1 hour	24-48 Hours														
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<b>Attachment C</b>	<table border="1"> <thead> <tr> <th>Total # of Months</th> <th>Licensed Software Uptime Service Credit</th> </tr> </thead> <tbody> <tr><td>0-1</td><td>.5% of the Maintenance Fee</td></tr> <tr><td>2</td><td>.6% of the Maintenance Fee</td></tr> <tr><td>3</td><td>.7% of the Maintenance Fee</td></tr> <tr><td>4</td><td>.8% of the Maintenance Fee</td></tr> <tr><td>5</td><td>.9% of the Maintenance Fee</td></tr> <tr><td>6</td><td>1% of the Maintenance Fee</td></tr> <tr><td>7</td><td>1.1% of the Maintenance Fee</td></tr> <tr><td>8</td><td>1.2% of the Maintenance Fee</td></tr> <tr><td>9</td><td>1.3% of the Maintenance Fee</td></tr> <tr><td>10</td><td>1.4% of the Maintenance Fee</td></tr> <tr><td>11</td><td>1.5% of the Maintenance Fee</td></tr> <tr><td>12</td><td>1.6% of the Maintenance Fee</td></tr> </tbody> </table>	Total # of Months	Licensed Software Uptime Service Credit	0-1	.5% of the Maintenance Fee	2	.6% of the Maintenance Fee	3	.7% of the Maintenance Fee	4	.8% of the Maintenance Fee	5	.9% of the Maintenance Fee	6	1% of the Maintenance Fee	7	1.1% of the Maintenance Fee	8	1.2% of the Maintenance Fee	9	1.3% of the Maintenance Fee	10	1.4% of the Maintenance Fee	11	1.5% of the Maintenance Fee	12	1.6% of the Maintenance Fee
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<b>Attachment D</b>	$\text{Monthly Response Time Percentage} = \frac{(\text{Incidents Responded to per Month}) - (\text{Incident Response Time-frames Exceeded per Month})}{(\text{Incidents Responded to per Month})}$ $\text{Monthly Resolution Time Percentage} = \frac{(\text{Incidents Resolved per Month}) - (\text{Incident Resolution Time-frames Exceeded per Month})}{(\text{Incidents Resolved per Month})}$ $\text{Monthly Timeline Accuracy Percentage} = \frac{(\text{Monthly Response Time Percentage}) \times (\text{Monthly Resolution Time Percentage})}{2}$																										

<b>Attachment E</b>	<b>Total # of Months</b>		<b>Response and Resolution Time Service Credit</b>	
	0-1		.5% of the Maintenance Fee	
	2		.6% of the Maintenance Fee	
	3		.7% of the Maintenance Fee	
	4		.8% of the Maintenance Fee	
	5		.9% of the Maintenance Fee	
	6		1% of the Maintenance Fee	
	7		1.1% of the Maintenance Fee	
	8		1.2% of the Maintenance Fee	
	9		1.3% of the Maintenance Fee	
	10		1.4% of the Maintenance Fee	
	11		1.5% of the Maintenance Fee	
	12		1.6% of the Maintenance Fee	

<b>Attachment F</b>	<b>Resource</b>	<b>Minimum</b>	<b>Recommended</b>
	Form Factor Preference	In Order: Desktop, Laptop, Tablet	In Order: Desktop or Laptop
	CPU	Single dual core 3 Ghz or faster (Pentium 4 <sup>th</sup> Generation Intel i-3 or better)	Single dual core 3 Ghz or faster (Pentium 6 <sup>th</sup> Generation Intel i-5 or better)
	RAM	8GB	16GB
	OS	Windows 10 32 or 64 Bit Operating System	
	Network	100Mbps	1Gbps
	Browser	Client hosted: Google Chrome. Fusion hosted: Google Chrome and/or Firefox.	
	Storage	SATA HDD with 50GB available space	SSD Hard drive with 126GB available space
	Monitor	19" Color SVGA with 1920 x 1080 or better resolution	23" Color LED with 1920 x 1080 or better resolution









# 23023ContractFusion

Final Audit Report

2024-03-28

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By:	Mark Lawrence (Mark.Lawrence@fusionmgt.com)
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