



August 28, 2024

TO: **Workers' Compensation Third Party Claims Administration**

SUBJECT: RFP NO. 072143

**ADDENDUM NUMBER # 04**

This addendum is issued to add, remove, clarify, and amend the following:

### **1. Relationship of the Parties**

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

### **2. Subconsultant and Supplier Relations**

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

### **3. Conflicts of Interest**

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the Services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

### **4. Compliance with Laws**

- a. Consultant agrees to comply with all applicable local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as

required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.

- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.

c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

d. Mandatory Insurer Reporting. Client acknowledges and agrees that Client or its insurance carrier has an obligation to perform mandatory insurer reporting ("MIR"). To the extent that Consultant provides MIR on Client's behalf, Client agrees to properly register (or, as appropriate, to cause its insurance carrier to properly register) with the Centers for Medicare and Medicaid Services as the RRE under MMSEA and to provide to Consultant all relevant information, including the RRE "Identification Number(s)" assigned to Client, and properly designate a MIR reporting agent acceptable to Consultant. Consultant shall not provide MIR in states where Consultant is only providing Claims oversight. Client agrees that for each and every Claim reported to Consultant, Client shall provide the following information as soon as possible, but in no event later than required to comply with applicable law to avoid fines and penalties: claimant's first and last name, social security number, date of birth and gender. Consultant may disclose this and other information to its designated third parties for processing Client's MIR and performing other obligations hereunder. Medicare Secondary Payer Act Compliance. In order to comply with Client's reporting obligations under Medicare, and avoid interest, fees, and penalties associated with failure to properly account for (i) conditional payments under the Medicare Secondary Payer Act ("MSP") or (ii) future medical expenses under the MSP (collectively, "MSP Liabilities"), Client must ensure that the following activities are timely

performed: (a) reporting the Claim or loss to Consultant; (b) providing Consultant (through its preferred vendor) with authorization to investigate conditional payment obligations, and then approving payments relating to conditional payment obligations; and (c) provision of Medicare set-asides or other future medical allocations services, as appropriate.

understood to be confidential given the nature of the information and the circumstances of disclosure. Port's Confidential Information includes Port data relating to

##### **5. Records and other Tangibles**

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

##### **6. Non-Disclosure**

- a. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be

the claim and medical information relating to Port employees that are protected by federal, state and local laws and regulations. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, ~~or~~ (d) was independently developed by the Receiving Party, or (e) is comprised of anonymized/de-identified information of Client that is utilized in connection with data analytics in connection with data analytics or reporting

- b. Obligations. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; (iii) comply with all applicable federal, state and local laws and regulations including but not limited to the Health Insurance Portability and Accountability Act, as amended (“HIPAA”); and (iv) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.
- c. Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## **6 Run-In Claims.**

- a.—To the extent Consultant assumes a Claim incurred prior to the Effective Date or previously administered by

another party, including Claims self-handled by Client (each, a “Run-In Claim”), Client must adhere to Run-In Claim processes reasonably acceptable to Consultant to ensure proper Claim transfer, including supplying certain required information in a format acceptable to Consultant in a reasonable amount of time as discussed and agreed to between the Parties prior to Consultant’s assumption of such Run-In Claims. Consultant shall not be responsible for updating, maintaining or storing Run-In Claim file information (paper or electronic) that is more than ten (10) years old. All files for Run-In Claims assumed by Consultant will be kept “as is,” without any obligation to reorganize such files. Client, where applicable, shall, or shall require its prior service provider to, place a claim file note in the Run-In Claim files or otherwise conspicuously mark such files in a manner to be agreed to by the Parties, with information necessary or convenient for Consultant to attend to time-sensitive events, such as upcoming court deadlines and benefit or settlement payment due dates. Consultant shall not be responsible for any acts, errors or omissions, including any compliance requirements or state, Federal or other reporting requirements, concerning the Run-In Claims prior to its assumption of the same. Client shall indemnify and hold Consultant harmless from any damages arising (i) during any transition period; (ii) as a result of Consultant’s reliance on faulty or incomplete Run-In Claim files or related information; and/or (iii) in whole or in part due to acts or omissions of any party that handled such Run-In Claims prior to Consultant.

## **7. Equitable Relief**

The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section, that such a breach would irreparably harm the Disclosing Party

and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

**8. Services**

- a. **Port's Obligations.**  
Port agrees to provide assistance, cooperation, information, equipment, and data reasonably necessary to enable Consultant to perform the Scope of Work (collectively, "Port Cooperation"). Port acknowledges that Consultant's ability to provide the Services as set forth herein may be affected if Port does not provide Port Cooperation.
- b. **Project Management.**  
Each party shall designate a project manager who shall work together with the other party's project manager to facilitate the efficient delivery of the Services.
- c. **Change Order/Amendments.**  
In order to change the description of Services under the Scope of Work, Port will submit a written request to Consultant specifying the proposed changes in detail and Consultant will provide an estimate of the charges and anticipated changes in the delivery schedule that will result from the proposed change. Consultant will continue performing the Services in accordance with this

Agreement and the Scope of Work until the parties agree in writing on the change in Scope of Work, scheduling, and fees. Consultant shall not be responsible for a delay in the performance of the Services resulting from such change order.

**9. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.

**10.** Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

**11. Invoices**

- a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, title of the Project, total cost, and all authorized expenses, if allowed, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items," and the Costs & Terms attached as Exhibit ("C&T") within thirty (30) days.
- b. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Consultant is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

**12. Costs and Disbursements**

- a. Loss Fund Account – Consultant shall assist Client in establishing a loss fund account with a banking institution, and Client shall fund, or cause its carrier to fund, such account. The initial imprest shall be an amount representing approximately two and one-half (2 ½) times Client's current average Loss Payment history based upon Client's (i) estimated Claim volume and (ii) funding frequency. Consultant reserves the right, in its sole discretion and upon prior notice to Client, to modify the imprest balance required under this Agreement. In the event that Consultant exercises its right to modify the imprest balance, Client shall fund such amount within five (5) business days of Consultant's request. Consultant reserves the right at any time to request Client to prefund any large Loss Payments, which Client shall fund within three (3) business days of Consultant's

request. Client shall maintain the required imprest balance during the term of this Agreement.

b. Payment and Funding Failures: Remedies. Client is solely responsible for all payment obligations under this Agreement. Consultant is not obligated to advance funds to pay Loss Payments or any other obligation of Client.

c. If Client fails to timely and adequately fund and replenish its loss fund account or pay its Service Fees within five (5) business days of receiving payment demand by Consultant, Consultant may, at its election, (i) suspend banking or shutdown the loss fund account and suspend the provision of services; and (ii) report the delinquent account and claim handling status to: (a) Client's insurance carrier and/or broker, if any; (b) applicable government and regulatory agencies; (c) any affected claimant(s); and (d) any other relevant parties.

d. If Client fails to fund its loss fund account or pay any outstanding Service Fees within five (5) business days following the notice described in Section 12.c above, Consultant may (i) convert Client's program to daily issuance via Fed Wire upon forty-eight (48) hours' notice to Client; (ii) report the Claim handling status to appropriate government and regulatory agencies, as applicable; and/or (iii) terminate this Agreement and cease providing Services without further liability to Client.

a-e. Client shall indemnify and hold Consultant harmless and be solely responsible for any and all damages, fines, penalties, bank charges, interest, fees and expenses resulting from Client's failure to timely meet its payment obligations and maintain the loss fund imprest balance, and Client shall pay, or cause its carrier to pay, such amounts promptly upon demand by Consultant. Additionally, Client shall pay all fees, costs and expenses incurred by Consultant in enforcing the payment obligations hereunder, including reasonable attorneys' fees and court costs.

### **13. Time**

Time is of the essence in the performance of this Contract.

### **14. Assignability**

The Consultant may not assign, transfer, or novate all or any portion of the Agreement to a non-related entity, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

### **15. Termination of Agreement**

- a. The Port's Right to Termination for Default:
- i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the Port (a "Breach"); provided that the Consultant has been given a thirty (30) day opportunity to cure.
    1. Cure Notice: If the Port determines that a Breach of this Agreement has occurred the following sequential procedure will apply:
  - ii. The Port will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
  - iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port (not to be more than twenty-one (21) calendar days);
- b. Show Cause Notice:
- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written

Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part.

- ii. In the event the Consultant is unable to cure a Breach of this Agreement within the requisite cure period, the Port may withhold payment owed the Consultant and instruct the Consultant to stop work to refrain from incurring additional costs until the Port is reasonably satisfied that the Breach has been corrected or any dispute between the parties in respect of the Breach has been settled by the parties.
- iii. No increase in total price or period of performance shall result from breach of this Agreement; and
  - i. Nothing herein shall be deemed to affect or waive any other rights of the Port.
- b. Notice of Termination:
  - i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port

shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments made under this provision

exceed the Total Price set forth in this Agreement. This provision shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
  1. Promptly discontinue all Services (unless the notice directs otherwise) ;
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other

information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.

3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

c. The Port's Right to To Termination for Convenience:

- i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.
- ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:
  1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
  2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
  3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.
- iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
  1. Promptly discontinue all Services (unless the notice directs otherwise);
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port

all Port Data including specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other

information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;

3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to

this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.

- iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement

Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the Port is responsible.

- v. Termination settlement costs and proposals are subject to audit verification by the Port.

- vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

d. Consultant's Right to Termination for Default:

Other than termination for the payment obligations set forth in Section 12, Consultant may also terminate for the Port's breaches of any material representation, warranty or obligation contained in this Agreement, and the Port fails to remedy such breach within sixty (60) days from the date it

receives written notice of the breach from Consultant.

**16. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to this Agreement may be consolidated and resolved in one forum.

**17. Venue & Governing Law**

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be governed by the laws of the State of Washington.

**18. Integration and Merger/ Extent of Agreement**

a. This Agreement represents the entire and integrated understanding between the Port and Consultant with respect to the Scope of Work, and supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant with respect to the Scope of Work. No verbal agreement or conversation between any officer, agent,

associate or employee of Port and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

**19. Non-Discrimination**

a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

**20. Indemnity / Hold Harmless Clause**

~~a.~~ The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, and employees from and against any and all claims (including but not limited to the

- a. Port's employees), liability, damages, losses, expenses or actions, fees and costs of attorneys or consultants to the extent arising out of the negligent acts and omissions of the Consultant, its officers, employees or sub-contractors including but not limited to failure to comply with any applicable state, federal, local, law, statute, rule, regulation. This duty to indemnify, defend and hold harmless shall survive the termination or expiration of this Agreement.
- b. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.
- c. Furthermore, Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss

or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

- d. Liability Limitation. Notwithstanding anything contained in this Agreement to the contrary, (i) neither Party will be liable for any indirect, special, incidental or consequential damages, whether based in contract, tort or any other legal theory, even if advised of the possibility of such loss or damage; and, (ii) the maximum liability of either Party with respect to any losses, claims, damages, liabilities, judgments, costs and expenses (whether in tort, contract, statute or otherwise, collectively, "Damages") relating to or arising out of this Agreement shall not exceed (a) \$1,000,000 with respect to all Damages relating to a single Claim; or (b) \$3,000,000 with respect to all Damages under this Agreement in the aggregate; provided, however, this Section 20(d) shall not be deemed to limit or impact Client's payment or funding obligations under this Agreement.
- e. Additional Limitations. Consultant shall not be liable to the Port as a result of (i) damages that result from the absence of any consent or authority required to be obtained by or from any third party; (ii) failure to achieve a desired result, so long as Consultant has acted reasonably and in good faith based upon the information available at the time; (iii) acts, errors or omissions of any retained legal counsel; and (iv) any vendors or any third parties engaged, selected, chosen or recommended by the Port.
- ~~e.f.~~ The provisions of this Section 1920 shall survive the expiration or termination of this Agreement.

**21. General Insurance Requirements** The Consultant shall procure and maintain during the life of this Agreement such insurance in the amounts set forth below which policies cover claims or damages for, IT or cyber liability, professional liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of

IT systems control, which may arise from operations under this Agreement, whether such operations be by itself or by anyone directly or indirectly employed by either of them.

**22. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to

exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- e. **Negotiated Agreement:** The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. **No Personal Liability:** No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

**23. Key Personnel**

The Consultant's key personnel, as described in the Consultant selection submittals (the "Key Personnel"), shall be assigned to the Project. The Port must consent to any changes to the Key Personnel. Such consent shall not be unreasonably withheld.

**24. Business Arrangements.**

As part of Consultant's comprehensive and integrated claims administration services model, Consultant may partner with select vendors and service providers who Consultant believes are similarly best in class. Through Consultant's partners, Consultant provides a full range of medical management and ancillary claims management services, which may be procured on a wholesale or negotiated basis. Consultant may receive revenue from these arrangements corresponding to the services provided by Consultant for procurement of discounted rates, program integration and management, and technological and service enhancements.

**24-25. Insurance - Assumption of Risk**

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and other insurance as required by contract for this project in commercially reasonable amounts as set forth below that are designed to protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the

activities performed under this Agreement. If this Agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.

Consultant shall procure and maintain, during the term of this Agreement, insurance in the following amounts:

- i. Commercial General Liability: \$1,000,000 per occurrence and \$3,000,000 aggregate.
- ii. Automobile Liability (in respect of the Services): covering owned,

non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and

- i. Professional Liability of not less than \$2,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
  - iii. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by State of Washington.
  - iv. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
  - v. Through its own or its preferred vendor's insurance policies, E&O/Cyber Liability: \$5,000,000 in coverage for cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them.
- b. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement. Except for professional liability or cyber insurance, waivers of subrogation shall be provided by endorsement.
  - c. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of

Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.

**25-26. Payment Schedule**

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.
- b. Consultant shall submit detailed invoices showing the following:
  - i. Invoice Number, Contract number, Title, Invoice Period.
  - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.

**26-27. Compensation**

- a. **NO Change** Consultant expenses will be reimbursed ~~at~~ cost with the exception of:
  - i. Subconsultant services will be reimbursed at cost plus negotiated markup.
  - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. **Rates:** Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.

- i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.

- e. **Rates and Markup** are defined in the attached Rate Sheet and made a part of this contract.

**27-28. Deliverables**

All deliverables fully defined in this Agreement.

**28-29. Extent of Agreement**

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.

**29-30. Warranties**

- a. **No Warranties regarding data restoration:** Consultant will use its commercially reasonable efforts to deploy the Services and make effective recommendations regarding data protection technologies but cannot affect the manufacturer's product from a warranty perspective, nor guarantee that such third-party products or technologies will be effective, free of bugs or other defects. The recoverability of data in the event of network or system failure is subject to the integrity of the media, success of backup procedures, and other factors that may be outside the control of Consultant. Therefore, CONSULTANT CANNOT AND DOES NOT MAKE ANY REPRESENTATIONS, PROMISES, OR WARRANTIES THAT THE PORT WILL BE ABLE TO RESTORE DATA AS A RESULT OF FOLLOWING ANY SUCH CONSULTANT RECOMMENDATIONS. NO WARRANTIES REGARDING SECURITY OF THE PORT

CONFIDENTIAL  
INFORMATION FROM  
ELECTRONIC THREATS &  
HACKING. In providing the  
Services, Consultant shall use  
commercially reasonable efforts  
to ensure that the Port's  
Confidential Information is kept  
secure; however, the Port  
understands, acknowledges,  
and agrees as follows:

- i. The nature of the Internet, e-mail, and other forms of electronically storing and communicating information are subject to ever-changing and evolving vulnerabilities, some, or all of which cannot be reasonably anticipated or protected against even with the use of reasonable care, including, without limitation, Electronic Threats & Hacking.
  - ii. Anything in this agreement or the description of services to the contrary notwithstanding, consultant makes no representation, warranty or guarantee that the port's confidential information or its systems will be protected from breach or exposure by electronic threats & hacking.
- b. Limited Warranty From Third Party Providers: To the extent authorized under applicable third-party manufacturer or third-party provider agreements, Consultant shall provide or assign to the Port all third party product or service warranties associated with the hardware, equipment, software, or other services the third party provided in connection with the Services under this Agreement. the Port acknowledges and agrees that:
- i. Third-party Provider agreements for hardware, equipment,

software, or services provided in connection with the Services, vary in the terms, conditions, and limited warranties they respectively provide; and some third-party Provider agreements either may not provide any warranties, or may prohibit Consultant from transferring to the Port any limited warranty they do provide;

- ii. Consultant does not and will not provide any separate, independent, or concurrent warranty of any kind or nature for third party hardware, equipment, software, or services provided in connection with the Services; and
- iii. The Port shall make any warranty claims with respect to hardware, equipment, software, or services supplied by third parties in connection with the Services, directly to the manufacturer, vendor, licensor or third-party provider of such hardware, equipment, software, or services, and not to Consultant.