

Contract Number 07-07-01

for the

**Washington State
Community and Technical Colleges'
Computerized Maintenance
Management System**

Between

Center for Information Services

and

MegaMation LLC

Effective Date: _____

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CONTRACT NUMBER 070701

For

Computerized Maintenance Management System

PARTIES

This Contract is entered into by and between the State of Washington, acting by and through the Center for Information Services, an agency of Washington State government (hereinafter referred to as "CIS") located at 3101 Northup Way, Bellevue, WA 98004-1449 and MegaMation LLC, a corporation with FEIN # 16-1494025 licensed to conduct business in the State of Washington under UBI number **602716957** (hereinafter referred to as "MegaMation" or "Vendor"), located at 2810 Sweet Home Road, Amherst, New York 14228, for the purpose of providing Computerized Maintenance and Management System (hereinafter referred to as "CMMS") software products.

RECITALS

The State of Washington, acting by and through CIS, conducted a competitive solicitation (Exhibit A) as specified in the State of Washington Information Services Board (ISB) Information Technology Investment Standards, on behalf of the Washington State Community and Technical Colleges' Facilities Managers (hereinafter referred to as "Colleges") to procure products in accordance with its authority under chapter 43.105 RCW.

MegaMation submitted a timely proposal to CIS's competitive solicitation (Exhibit B). CIS evaluated all proposals properly submitted in response to the above-referenced competitive solicitation and has identified MegaMation as the apparent successful Vendor.

CIS has determined that entering into a Contract with MegaMation will meet the needs of the Colleges and will be in the Colleges' best interest;

NOW THEREFORE, CIS awards to MegaMation this Contract which shall govern Vendor's furnishing the software products and other related services as indicated on Schedule A titled, Authorized Product and Price List (attached hereto), in accordance with the terms and conditions of this Contract. This Contract is not for personal use.

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

1. Definition of Terms

Definitions as used throughout this Contract shall have the meanings set forth below.

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

"CIS" shall mean the same as the Center for Information Services.

"CIS Contract Administrator" shall mean that person designated by the CIS to administer this Contract on behalf of the Colleges as further defined in the section titled CIS Contract Administrator.

"Colleges" shall mean the Washington State Community and Technical Colleges listed in Schedule C attached hereto.

"Contract" shall mean this document, all schedules and exhibits, and all amendments hereto.

"Delivery Date" shall mean the date by which the Software ordered hereunder must be delivered.

"Execution Date" shall mean the date of the last signature of a party to this Contract.

"Exhibit A" shall mean the competitive solicitation issued by the Center for Information Services.

"Exhibit B" shall mean the Vendor's response dated November 3, 2006.

"FEIN" shall mean the Vendor's Federal Employer Identification Number.

"License" shall mean the right to use the Software that is granted by this Contract and governed by its terms and conditions.

"Licensed Software" shall mean Software that is licensed pursuant to this Contract.

"Order Document" shall mean any official CIS document and attachments thereto specifying the Software to be purchased from the Vendor under this Contract.

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

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

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

"Purchaser" shall mean CIS and Colleges.

"RCW" shall mean the Revised Code of Washington (Washington State Law).

"Related Services/Services" shall mean those services provided under this Contract and related to the products being acquired, that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

“**RFQQ**” shall mean the Request for Quotes and Qualifications used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“**Response**” shall mean Vendor’s Response to the CIS RFQQ for CMMS, Exhibit B hereto.

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

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

“**Software**” shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

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

“**Statement of Work**” or “**SOW**” shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract.

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

“**SSN**” shall mean the Vendor’s Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor’s Federal Tax Identification Number.

“**TIN**” shall mean the Vendor’s Federal Tax Identification Number which may be either FEIN or SSN.

“**UBI**” shall mean the Vendor’s Uniform Business Identifier issued by the Washington State Department of Revenue.

“**Vendor**” shall mean [Vendor Name], its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing Services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“**Vendor Contract Administrator**” shall mean a representative of the Vendor who is assigned as the primary contact person with whom the CIS Contract Administrator shall work for the duration of this Contract unless replaced, with advance CIS approval, by another representative.

CONTRACT TERM

2. Term

2.1. License Term

Unlimited right to use MegaMation software by the Colleges will be renewed annually upon receipt of Annual Payment from CIS as defined in the Authorized Product and Price List attached as Schedule A to this Contract.

2.2. Term of Contract for Purchases

- a. Initial Term. The initial term for this Contract shall be three (3) years, commencing on July 1, 2007.
- b. Subsequent Term. The term of this Contract may be extended by additional three (3) year terms unless terminated by CIS by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

2.3. Term of Statement of Work (SOW)

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

3. Survivorship

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

PRICING, INVOICE, AND PAYMENT

4. Pricing

- 4.1. The Vendor agrees to provide the Software and (or) Related Services at the costs, rates, and fees set forth in the Authorized Product and Price List attached as Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor.
- 4.2. Prices may not be increased during the initial term of the Contract.
- 4.3. If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the CIS Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.4. At least one hundred-twenty (120) days before the end of the then current term of this Contract, license term, or term of maintenance and support, the Vendor may propose license fees and maintenance and support (Service) rate increases by written notice to the CIS Contract Administrator. Price adjustments will be taken into consideration by the CIS Contract Administrator when determining whether to extend this Contract.
- 4.5. Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms.
- 4.6. Purchaser shall reimburse Vendor for travel and other expenses as identified in this Contract or the SOW, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in *the Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoc.htm>). Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement. The amount reimbursed to Vendor is included in calculating the total amount spent under this Contract.

5. Advance Payment Prohibited

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

6. Taxes

The Purchaser will pay sales and use taxes imposed on the Software, Maintenance or Related Services acquired hereunder. The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which the Purchaser does not hold title.

7. Invoice and Payment

Invoices for work performed shall be submitted in writing to CIS in the format designated below. In addition to agreed-upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number **07-07-01**. Additional payment terms or invoice instructions may be agreed upon by CIS and MegaMation.

- 7.1 The Vendor will submit properly itemized invoices and/or vouchers to CIS. Invoices shall provide and itemize, as applicable:
- a) Contract number 07-07-01;
 - b) Vendor name, address, phone number, and Federal Tax Identification Number;
 - c) Description of Software and Services;
 - d) Net invoice price for each item;
 - e) Applicable taxes;
 - f) Other applicable charges;
 - g) Total invoice price; and
 - h) Payment terms including any available prompt payment discounts.
- 7.2 If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement (see subsection 4.6 above).
- 7.3 Such payments shall be due and payable within thirty (30) calendar days after receipt of properly prepared invoices.
- 7.4 Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.

- 7.5 This Contract number 07-07-01 must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. The Purchaser shall not honor drafts, nor Accept goods on a sight draft basis.
- 7.6 Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of receipt of Vendor's properly prepared invoice.

LICENSE GRANT

8. License Grant

- 8.1 Vendor grants to Purchaser a non-exclusive, non-transferable, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract unless stated otherwise.
- 8.2 Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software which bears a copyright notice of any third party.
- 8.3 Purchaser may copy each item of Software to single or multiple hard drives as needed.
- 8.4 Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.
- 8.5 In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.
- 8.6 Source code shall be held in escrow. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to possession of the source code.
- 8.7 At termination of contract, all content developed by Purchaser remains the property of Purchaser.
- 8.8 All data is property of Purchaser and the individual Colleges that generate it.
- 8.9 Vendor understands that Purchaser may provide information processing Services to other users that are agencies of state government and other tax supported entities. Software delivered hereunder may be used in the delivery of these Services. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein

VENDOR RESPONSIBILITIES

9. Software Ownership

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor, as Licensor, hereby warrants and represents to Purchaser as licensee that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

10. Software Delivery

The Vendor shall provide Colleges access to the Software pursuant to this Contract on or before the date specified in the Purchase Order. For any exception to this Delivery Date, the Vendor must notify the Purchaser and obtain prior approval in writing.

11. Software Maintenance and Support Services

Vendor shall provide the following Services:

11.1 Telephone Support. Vendor will provide telephone support, toll-free in the United States, to the Colleges during Business Days and Hours. Vendor's telephone service shall include but is not limited to the following Services:

- a) Assistance related to questions on the use of the subject Software;
- b) Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
- c) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
- d) Information on errors previously identified by Colleges and reported to Vendor and detours to these where available; and
- e) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.

11.2 Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by the Colleges of identified errors or malfunctions in the Software, Vendor will either:

- a) Provide Colleges with detour or code correction to the Software error or malfunctions. Each detour or code correction will accompanied by a level of documentation adequate to inform Colleges of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, or
 - b) Provide Colleges with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable for correcting or working around the error or malfunction.
- 11.3 Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor. Such releases shall be licensed to Purchaser pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release that are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.

12. Software Documentation

- 12.1 Vendor will provide Software documentation to the Colleges upon the execution of this Contract or as otherwise mutually agreed, adequate for use of Software ordered under the sections of this Contract. Documentation updates will be provided on a no-charge basis.
- 12.2 For all Vendor Software furnished to the Colleges within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to the Colleges, if requested, at no additional cost, sufficient documentation to permit the Colleges to maintain, modify or enhance such purchased or Licensed Software.
- 12.3 Vendor grants to the Colleges the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

13. Software Code Escrow

MegaMation will keep a copy of the latest “As Built” software on a server located at CIS. MegaMation guarantees that the latest copy of the software will be available immediately. In the event that, for any reason, MegaMation ceases to conduct business or ceases to support the software licenses under this contract, CIS has the right to take possession of the source code at no charge.

13.1 Source Code Escrow Package Definition. The term “Source Code Escrow Package” shall mean:

- a) A complete copy in machine-readable form of the source code and executable code of the licensed Software;
- b) A complete copy of any existing design documentation and user documentation; and/or
- c) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

13.2 Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to CIS.

13.3 Delivery of New Source Code into Escrow. If during the term of this Contract, term of license, or term of maintenance and support, Vendor provides Purchaser with a maintenance release or upgrade version of the licensed Software, Vendor shall within ten (10) Business Days deposit with CIS a Source Code Escrow Package for the maintenance release or upgrade version and give Purchaser notice of such delivery.

13.4 Verification of Source Code Escrow Package. At its option and expense, Purchaser may request that the completeness and accuracy of any Source Code Escrow Package be verified.

- a) Such verification may be requested once per Source Code Escrow Package.
- b) Such verification will be conducted by CIS.
- c) Prior to conducting the verification, CIS shall first execute a confidentiality agreement prepared by Vendor that precludes CIS from disclosing any information about the Source Code Escrow Package other than whether the Source Code Escrow Package was found to be complete and accurate.

- d) Unless otherwise agreed at the time by Vendor and CIS, verification will be performed on-site at CIS premises, utilizing CIS equipment and software. Vendor shall make technical and support personnel available as reasonably necessary for the verification.

13.5 Release Events for Source Code Escrow Packages. CIS will assume title and all rights to the Source Code Escrow permanently and free of charge, solely upon the occurrence of one or more of the following "Escrow Release Events:"

- a) Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;
- b) Vendor has wound up or liquidated its business voluntarily or otherwise and CIS has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- c) Vendor has voluntarily or otherwise discontinued support of the Software or fails to support the Software in accordance with its warranties and maintenance obligations.

13.7 Release Event Procedures. If CIS assumes title and all rights to the Source Code Escrow Package:

- a) CIS shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the Contract section titled Vendor's Proprietary Information;
- b) If the release is temporary, Purchaser shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and
- c) Purchaser shall promptly, fully, and completely respond to any and all requests for information from Vendor concerning CIS use or contemplated use of the Source Code Escrow Package.

14. Site Security

While on the Colleges' premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

15. Vendor Commitments, Warranties, and Representations

- 15.1 Any written commitment by the Vendor within the scope of this Contract shall be binding. Failure of either party to fulfill such a commitment may constitute breach.
- 15.2 For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
- a) Prices, discounts, and options committed to remain in force over a specified period of time;
 - b) Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, Services, or other products within the scope of this Contract;
 - c) Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
 - d) Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
 - e) Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, Services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

16. Date Warranty

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains

unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

17. No Surreptitious Code Warranty

- 17.1 Vendor warrants to Purchaser that no copy of the Licensed Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 17.2 As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.
- 17.3 As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 17.4 Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

18. Protection of Confidential Information

- 18.1 Both parties acknowledge that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the parties' services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Both parties agree to

hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Both parties agree to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure. Both parties further agree to either destroy or return all such information at the end of the term of this Contract.

- 18.2 This section does not impose any obligation on either party if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished; (3) furnished by either party to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

19. Privacy Protection

- 19.1 Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Vendor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Purchaser or as provided by law. Vendor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.
- 19.2 The Purchaser reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Vendor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Purchaser. Vendor shall certify return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.
- 19.3 Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Vendor agrees to indemnify and hold harmless the Purchaser for any damages related to the Vendor's unauthorized use of personal information. For purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

20. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Related Services provided pursuant to this Contract is served upon Vendor, Purchaser, or College such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor, Purchaser, and Colleges further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

CONTRACT TERMINATION

21. Termination for Default

- 21.1 If the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the CIS Contract Administrator or the affected College shall give Vendor written notice of such failure or violation which shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If Vendor's failure or violation is not so corrected, this Contract may be terminated immediately by written notice from the CIS Contract Administrator to the Vendor. The option to terminate this Contract shall be at the sole discretion of CIS.
- 21.2 In the event CIS terminates the Contract for default by the Vendor, CIS shall have the right to procure the Software or Services that are the subject of this Contract on the open market, and the Vendor shall be liable for all damages including, but not limited to: (1) the cost difference between the original Contract price for the Software or Services and the replacement costs of such Software or Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of the Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; (3) any other costs to CIS resulting from the Vendor's breach. CIS shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the CIS for the Vendor's default.
- 21.3 If either CIS or the Colleges violate any material term or condition of this Contract or fails to fulfill in a timely and proper manner its performance obligations under this Contract, then the Vendor shall give the CIS Contract Administrator written notice of such failure that shall be corrected by CIS or the Colleges within thirty (30) calendar days. If CIS or the

Colleges' failure to perform is not so corrected, this Contract may be terminated by written notice from the Vendor to the CIS Contract Administrator. The Vendor will notify the CIS Contract Administrator of any notices given to any College for violations of the material terms and conditions before taking any action.

21.4 If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

21.5 This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

22. Termination for Convenience

22.1 When it is in the best interest of the Colleges, the CIS Contract Administrator may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds sections shall be deemed a termination for convenience but will not require such thirty (30) calendar days notice.

22.2 If this Contract is so terminated, CIS is liable only for payments required by the terms of this Contract for Software and Related Services received by CIS or the Colleges prior to the effective date of termination.

23. Termination for Withdrawal of Authority

In the event that the authority of CIS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, CIS may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit CIS to terminate this Contract in order to acquire similar Software from a third party.

24. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, CIS will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. CIS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to CIS in the event this section shall be exercised. This section shall not be construed so as to permit CIS to terminate this Contract in order to acquire similar Software or

Services from a third party. In the event CIS or Colleges have Software or Services on order at the time of the termination of the Contract for convenience, CIS or the Colleges shall have the option of taking delivery of the products on order at the original Contract price.

25. Termination for Conflict of Interest

- 25.1 CIS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:
- a) Ethics in Public Service, chapter 42.52 RCW; or
 - b) Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.
- 25.2 In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, CIS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

26. Termination Procedure

- 26.1 Upon termination of this Contract, CIS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser or CIS any property or Software specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.
- 26.2 Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed-upon price, if separately stated, for the Software or Services received by the Purchaser: PROVIDED THAT, In no event shall the Purchaser pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser determines to be necessary to protect the Purchaser from potential loss or liability.
- 26.3 After receipt of a notice of termination, and except as otherwise directed by the CIS Contract Administrator, the Vendor shall:

- a) Stop work under this Contract on the date, and to the extent specified, in the notice;
- b) If termination is to the Software license purchase sections of this Contract, then Purchaser shall place no further orders and Vendor shall accept no further orders for additional Software license;
- c) If termination is to the Software license, then except as otherwise agreed to by the parties, Purchaser shall, at its option, surrender to Vendor or destroy and provide Vendor with a certificate signed by the Purchaser attesting to the destruction of all copies of the Licensed Software purchased pursuant to this Contract and terminated by this section, remaining in the possession of Purchaser, its employees, or agents;
- d) If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;
- e) As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;
- f) Complete performance of such part of this Contract as shall not have been terminated by the CIS Contract Administrator;
- g) Take such action as may be necessary, or as the Purchaser or CIS Contract Administrator may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which the Purchaser has or may acquire an interest;
- h) Transfer title, excluding Licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the CIS Contract Administrator, any property which is required to be furnished to Purchaser; and
- i) Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.

26.4 The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser or CIS as the result of termination.

DISPUTES AND REMEDIES

27. Disputes

Disputes arising between any Purchaser and Vendor shall be referred to the CIS Contract Administrator for resolution. In the event the CIS Contract Administrator cannot resolve the dispute, then the dispute will be forwarded to the formal dispute resolution process:

- CIS shall appoint a member to the Dispute Panel.
- Vendor shall appoint a member to the Dispute Panel.
- CIS and the Vendor shall jointly appoint a member to the Dispute Panel.
- The Dispute Panel shall evaluate the dispute and make a determination of the dispute.
- The determination of the Dispute Panel shall be final and binding on the parties hereto.
- Each party shall bear the cost of its panel member and share equally the cost of the third panel member.

28. Attorneys' Fees and Costs

28.1 If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred for such litigation, including necessary fees, costs, and expenses for Services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

28.2 In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

29. Non-Exclusive Remedies

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

30. Failure to Perform

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

31. Limitation of Liability

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

CONTRACT ADMINISTRATION

32. Legal Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Software) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: MegaMation LLC.
Attention: David Mutch
2810 Sweet Home Road
Amherst, New York 14228
1-800-344-8655

to CIS at: CIS
Attention: Procurement Services Manager
12401 SE 320th Street
3101 Northup Way
Bellevue, WA 98004-1449
425-803-9783
425-803-9650 fax
dpoarch@cis.ctc.edu

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

33. Section Headings, Incorporated Documents, and Order of Precedence

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Contract 07-07-01;
- c) Schedule A - Authorized Product and Price List, to this Contract;
- d) Schedule B – Statement of Work
- e) Exhibit A - State of Washington, CIS competitive solicitation;

- f) Exhibit B - Vendor's Response to the Purchaser, including all written information provided with Vendor's response;
- g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to the Purchaser and used to effect the sale of Software to the Purchaser, or purports the Software is fit for a particular purpose or attests to the Software's engineering level, operating condition, functions, capabilities, or merchantability.

34. Entire Agreement

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

35. Additional Services and Software

Purchaser and Vendor agree that additional Services and/or Software, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services and/or Software, pricing and additional terms and conditions as relevant. The additional Services and/or Software shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

36. Authority for Modifications and Amendments

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

37. CIS Contract Administrator

CIS shall appoint a Contractor Administrator who will be the CIS Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The CIS Contract Administrator will manage this Contract

on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract.

38. Vendor Contract Administrator

The Vendor shall appoint a Vendor Contract Administrator for the Purchaser's account. The Vendor Contract Administrator will be the principal point of contact for the CIS Contract Administrator concerning the Vendor's performance hereunder and for receipt of notices. The Vendor Contract Administrator will also serve as the focal point for business matters, support coordination, and administrative activities.

39. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

40. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for King County, Washington.

41. Subcontractors

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

42. Assignment

With the prior written consent of CIS, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall **such assignment affect any** remedies available to the Purchaser or CIS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.

With the prior written consent of the Vendor, which consent shall not be unreasonably withheld, CIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, That such assignment shall not operate to relieve CIS of any of its duties and obligations hereunder.

43. Publicity

The Vendor agrees to submit to CIS all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's or CIS's name is mentioned or language used from which the connection of the Purchaser's or CIS's name therewith may, in CIS's judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of CIS.

44. Review of Vendor's Records

The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the CIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within King County. During the six (6) year period after this Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.

The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

45. Right of Inspection

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

GENERAL

46. Patent and Copyright Indemnification

46.1 Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless or settle any claim against the Purchaser that Software or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor will pay resulting costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:

- a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

46.2 If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and refund its depreciated value. No termination charges will be payable on such returned Software, and Purchaser will pay only those charges that

were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Software has been installed less than one (1) year, all costs related to the initial installation paid by Purchaser shall be refunded by Vendor.

- 46.3 Vendor has no liability for any claim of infringement arising from:
- a) Vendor's compliance with any designs, specifications or instructions of the Purchaser;
 - b) Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Vendor; or
 - c) Use of the Software in a way not specified by Vendor unless the claim arose against Vendor's Software or Services independently of any of these specified actions.
- 46.4 Vendor passes through and assigns to CIS and Purchaser any and all Patent and Copyright Indemnification provided by [Vendor Name].

47. Indemnification

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claim, damage, cost, or liability, including reasonable attorneys' fees resulting from any claims, and for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of its officers, employees, agents, or subcontractors.

48. Industrial Insurance Coverage

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

49. Licensing Standards

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

50. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold CIS and Purchaser harmless from all damages assessed against the CIS and Purchaser as a result of the failure of the items furnished under this Contract to so comply.

51. UCC Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of Services, such Services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

52. Antitrust Violations

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

53. Compliance with Civil Rights Laws

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

54. Quiet Possession and Usage

Vendor warrants that the Purchaser, upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Software for the term provided without suit, molestation, or interruption.

55. Severability

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

56. Waiver

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

57. Treatment of Assets

Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled Software Ownership. As used in this section Treatment of Assets, if the "property" is the Vendor's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.

Any property of the Purchaser furnished to the Vendor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.

The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.

Upon loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

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

58. Vendor's Proprietary Information

Vendor acknowledges that CIS is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, CIS shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, CIS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, CIS will release the requested information on the date specified.

CONTRACT EXECUTION

59. Authority to Bind

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

60. Counterparts

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

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

Approved
State of Washington,
Center for Information Services

Approved
MegaMation

Signature

Corey Knutsen

Print or Type Name

Executive Director

Title

Date

Signature

Print or Type Name

Title

Date

Approved as to Form

Signature

Print or Type Name

Assistant Attorney General

Title

Date

SCHEDULES

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**Schedule A
Authorized Product and Price List
as of July 1, 2007
for
Contract No. 07-07-01
with
MegaMation**

Vendor is authorized to sell only the products identified in this Schedule A at the prices set forth in this Schedule A under the above-referenced Contract.

Annual Subscription Fee: \$141,600

CIS will pay the Annual Subscription Fee as per Section 7 of the CIS Contract No. 07-07-01. Such Annual Subscription Fee is payable on July 1, 2007 and on each July 1st for the term of the contract.

Future Fee Increases: MegaMation will honor the price quoted above for the duration of the three year contract. Any increase at the beginning of year four will not exceed the increase in CPI (Consumer Price Index) as defined by the US Federal Government from July 1, 2007.

Maintenance and/or Support Cost: Included in the Annual Subscription Fee. Maintenance and Support are detailed in the SOW.

Implementation, Installation, Data Conversion: Included in the Annual Subscription Fee. A detailed description of these services is provided in the SOW.

Training: Unlimited internet training is included in the Annual Subscription Fee. A detailed description of these services is provided in the SOW.

On-Site Training: Optional service at a rate of \$1,000 per day plus expenses based on a Buffalo New York departure. A detailed description of these services is provided in the SOW. For the College personnel, the on-site training would assist them in becoming in-house experts who might serve as a resource to the users for the Colleges at large. A detailed description of these services is provided in the SOW.

Additional consultation price per hour: \$125.00

Functionality Highlights:

MegaMation warrants that each college has the ability to do all of the following:

- a. define their own business rules
- b. adapt the database for their own use
- c. generate reports customized for that college
- d. input Unifomat codes

Data structure is not dictated by the software. Each college has the capability of defining the data format they require. MegaMation's software does not mandate a single data format required at every college.

The Annual Subscription Fee quoted above provides for unlimited connection time and an unlimited number of users both for individual colleges as well as the system in total. MegaMation reserves the right to apply industry standard "Time Outs" whereby a connection may be terminated after a set period of inactivity (usually 1 hour)

The functional difference between the HTML page and other way(s) to initiate a work request and a work order is as follows:

The HTML page is generally used for people outside the maintenance department who would be unfamiliar with the MegaMation application but would be familiar with HTML and web page entries. The HTML page is designed to allow a controlled set of functions through industry standard browsers. Typically the functions provided via the HTML page are more limited than the full client but more familiar to work requestors. The HTML page can be customized for each campus that wishes to use it. MegaMation will adapt the HTML page to provide the necessary functions for each college. This service is included in the Annual Subscription Fee.

Server Farm Services: The following services are included in the Annual Subscription Fee.

- 1) MegaMation will provide a secured server on the MegaMation server farm.
- 2) MegaMation will provide and install the necessary Licenses for Citrix, Windows. etc. to provide for unlimited users and usage.
- 3) MegaMation will provide a high speed line for access to the server.
- 4) MegaMation will be the administrator for the application.
- 5) MegaMation will provide the backup infrastructure.
- 6) The off site storage of the backup tape will be the responsibility of MegaMation.
- 7) Physical security is the responsibility of MegaMation.
- 8) Physical Access limitations are the responsibility of MegaMation.
- 9) Maintenance of Hardware is MegaMation's responsibility.

Details of data, network, and physical security are detailed in Section C of the SOW.

Software Modules:

MegaMation DirectLine Modules

- Equipment management & specs
- Maintenance work orders
- Preventive maintenance
- Safety & Standard Procedures
- Inventory/requisitioning
- Purchasing
- Employee timecard
- Document manager
- Quality management
- Calibration
- Tooling
- Readings
- Project control
- Work schedules
- Bar code integration
- Contracts
- Fleet Management Module
- Request for Quotation Module

Facility Modules

- Space Planning Module
- Lock & Key Inventory Module
- Hazardous Materials Module
- Capital Planning Reserve Fund Module
- Budgeting & Chargebacks
- Health & Safety Module

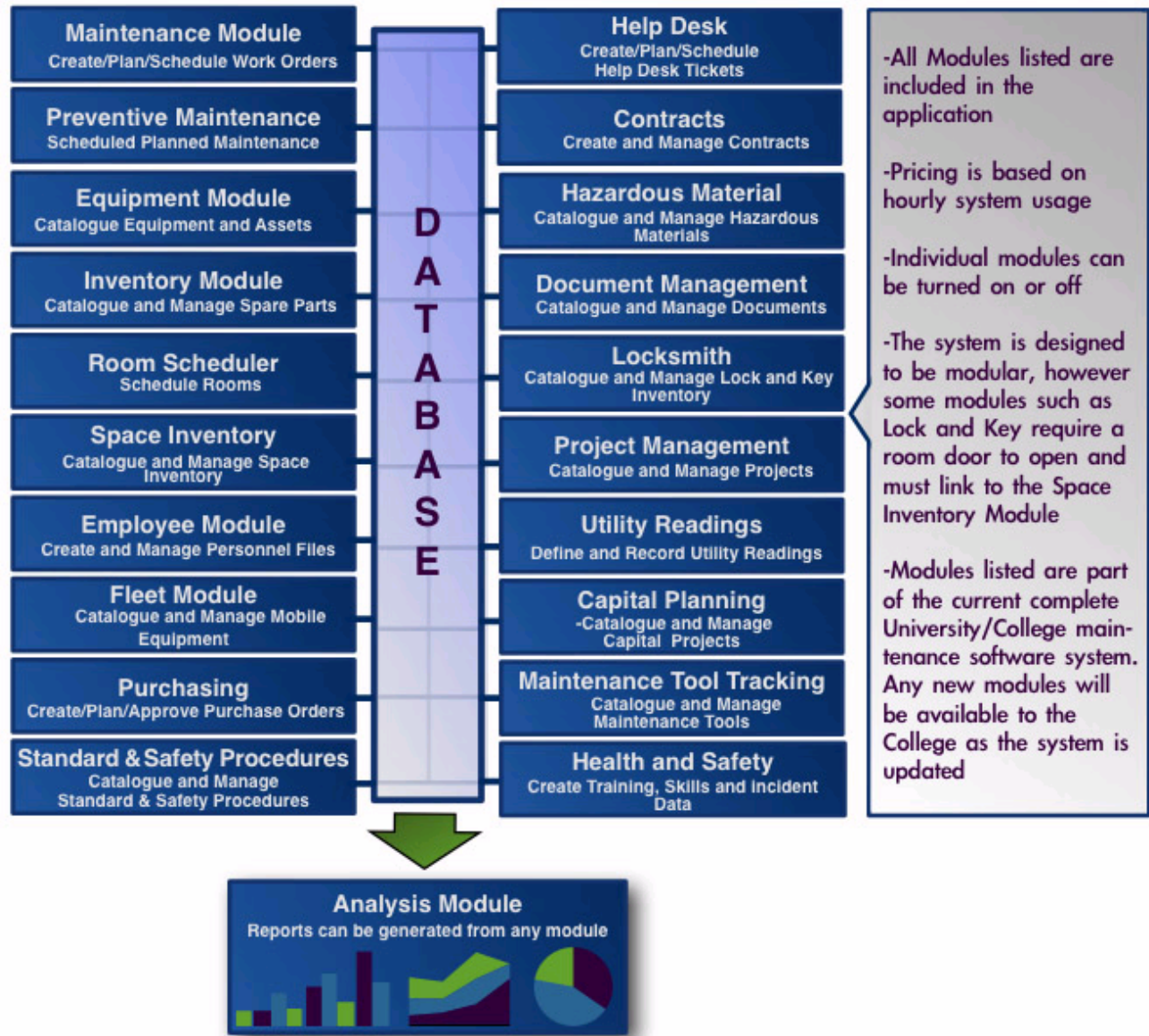
Services MegaMation Personal Account Manager

- Unlimited Internet Training
- Unlimited phone-in support assistance – Watts line
- No limitation to the number of named users
- Unlimited Internet Support Services
- Annual upgrade to enhanced version of software

Web-enabled and Web-server Application Access Including:

- Use of server
- Data storage
- Database back-up (off-site)
- Archiving and administration
- Security and user administration
- Secured internet access

Application Diagram



This Schedule may only be modified in writing by the CIS Contract Administrator.

Schedule B
Statement of Work
for
CMMS Contract Number 07-07-01

This Statement of Work (SOW) is made and entered by and between the Center for Information Services ("CIS") and MegaMation ("Vendor"), for the purchase and implementation of a Computerized Maintenance Management System ("CMMS"). This SOW incorporates by reference the terms and conditions of Contract Number 07-07-01 in effect between CIS and the Vendor and all software and related service specifications provided by the Vendor in their response to the CIS RFQQ attached to this Contract as Exhibit B. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Vendor agree as follows:

1. PROJECT OR TASK OBJECTIVES

MegaMation will supply facilities management software to the Washington State Community and Technical Colleges (Colleges). The software will reside at the MegaMation server farm. Access to the software will be via the internet. Data will be stored at the MegaMation server farm. Data will be transmitted to the Colleges when requested. All data is retained at the Colleges' discretion. Data older than a certain set timeframe can be sent to history files as directed by the Colleges. Data from both the History and current files is accessible by the Colleges. College data is never disposed of except with explicit direction from the Colleges. There is no limit to the amount of historical data that may be archived.

MegaMation will bill CIS for the Annual Subscription fee.

On-Site Training, additional consultation, and additional ongoing training will be provided to the colleges at the prices noted in Schedule A. These services will be coordinated by the colleges directly with MegaMation. MegaMation will bill the colleges for these additional services.

2. TIMELINE AND PERIOD OF PERFORMANCE

The Annual Subscription fee will cover the time period of July 1 through June 30 annually. The subscription will be renewed according to Section 2 and Schedule A of the CIS Contract # 07-07-01.

3. VENDOR STAFF, ROLES AND RESPONSIBILITIES

A. Implementation Plan

Implementation is included in the Annual Subscription Fee. The first step in the implementation of MegaMation's DirectLine Service, is the assignment of an experienced

Account Manager who will contact the college's Project Implementation Team Leader directly via telephone. Using the Implementation Plan described herein, the Account Manager will work closely with the college's Project Implementation Team Leader to understand and articulate business application objectives, to establish implementation priorities, and to assist them through every step of the implementation. Particular attention will be given to using the objectives as laid out in the RFQQ attached to this Contract as Exhibit B to determine milestones of the implementation plan.

During the Functional Analysis and Design Phase of the Implementation Plan (Task ID 18), MegaMation will review the current system with the college representative, and perform a Fit/Gap analysis between the current system and the DirectLine application. During this phase MegaMation will determine which modules are to be utilized and what customizations are required to meet the client's objectives. This phase of implementation will conclude with the client's application being set up on the MegaMation Server and an implementation date being set.

In the Training Phase (Task ID 73), The Account Manager will identify, with the client, who will require access to the application and what security level they will be assigned to, depending on the application's functionality their position requires. All user profiles will be set up during this phase and a decision will be made with the client, whether to train all personnel or to train the trainer. Based on this decision, a training schedule will be set accordingly.

MegaMation provides unlimited on-line training and support.

When requested, optional on-site consultation is available at an additional costing.

Below are defined responsibilities of the Client and MegaMation:

Community & Technical Colleges WA State	MegaMation
- Appoint a Project Implementation Team Leader	- Appoint Account Manager
- Data Collection	- Data Uploading
- Identifying Modifications	- Configuring System
- Availability of Key Personnel Committed to Process	- Availability of Account Manager and Consultation
- Designated In-house Personnel Training OR - Time Commitment for On-Site Training by MegaMation Staff	- Walk Through Training with Key client Personnel OR - On-site Training by MegaMation Staff (additional costs involved)
- Feedback to MegaMation	- Response to Feedback Received
- Commitment to DirectLine Process	- Unlimited On-Line Training and Support

PROCEDURES FOR INSTALLATION

Shared Accountabilities

1. Commitment to achieving milestones and quality standards.
2. Development of a communication plan which; i. identifies the individual at each college who has the authority to speak on behalf of the college to MegaMation LLC with respect to this project. ii. Provides for priority access to key MegaMation and College personnel, especially during the implementation phase. iii. Encourages frank dialogue, raises concerns early, enables conflict resolution and promotes common understanding of milestones and measures. iv. Documents and reports achievement of milestones. v. Tracks progress versus schedule and provides early alert when milestone achievement is at risk.
3. Ensuring that in all respects the College's best interests are served in accordance with the contract.

ID	MEGAMATION SAMPLE IMPLEMENTATION SCHEDULE	Duration	Start	Finish
1	STANDARD IMPLEMENTATION	40 days	1/1/05 8:00	2/25/05 17:00
3	PROJECT INITIATION	2 days	1/1/05 8:00	1/2/05 17:00
4	CLIENT RESEARCH	2 days	1/1/05 8:00	1/2/05 17:00
5	Visit client's web site - learn about their business	2 days	1/1/05 8:00	1/2/05 17:00
6	Get copy of business application review notes	2 days	1/1/05 8:00	1/2/05 17:00
7	Client Welcome	2 days	1/1/05 8:00	1/2/05 17:00
8	Introduction to client	2 days	1/1/05 8:00	1/2/05 17:00
9	Establish communication preferences and expectations	2 days	1/1/05 8:00	1/2/05 17:00
10	Establish roles, responsibilities and shared accountabilities	2 days	1/1/05 8:00	1/2/05 17:00
11	Identify Account Manager	2 days	1/1/05 8:00	1/2/05 17:00
12	Identify project champion	2 days	1/1/05 8:00	1/2/05 17:00
13	Introduce MegaMation team	2 days	1/1/058:00	1/2/05 17:00
14	Establish objectives	2 days	1/1/05 8:00	1/2/05 17:00
15	Establish critical success factors	2 days	1/1/05 8:00	1/2/05 17:00
16	Send user manual	2 days	1/1/05 8:00	1/2/05 17:00
18	FUNCTIONAL ANALYSIS AND DESIGN PHASE	3 days	1/1/05 8:00	1/5/05 17:00
19	Review current system	3 days	1/1/05 8:00	1/5/05 17:00
20	Perform Fit/Gap analysis	3 days	1/1/05 8:00	1/5/05 17:00
21	Determine which modules will be required	3 days	1/1/05 8:00	1/5/05 17:00
22	Identify customizations that will be required	3 days	1/1/05 8:00	1/5/05 17:00
23	Establish desired implementation date	3 days	1/1/05 8:00	1/5/05 17:00
24	Set up client's application on server and create initial users	0 days	1/1/05 8:00	1/1/05 8:00
26	DATA COLLECTION PHASE	10 days	1/6/05 8:00	1/19/05 17:00
27	DEFINE EQUIPMENT AND HIERARCHY STRUCTURE	10 days	1/6/05 8:00	1/19/05 17:00
28	Equipment numbering scheme	10 days	1/6/05 8:00	1/19/05 17:00
29	Equipment hierarchy and parent/child relationships	10 days	1/6/05 8:00	1/19/05 17:00
30	Equipment administration, class, status, department	10 days	1/6/05 8:00	1/19/05 17:00
31	General Ledger account codes for back charging and costing	10 days	1/6/05 8:00	1/19/05 17:00
32	Equipment specifications - nameplate plus specific attributes such as size, amps, volts etc.	10 days	1/6/05 8:00	1/19/05 17:00
33	Event reading units and initial reading entry	10 days	1/6/05 8:00	1/19/05 17:00

34	DEFINE SAFETY AND STANDARD PROCEDURES	10 days	1/6/05 8:00	1/19/05 17:00
35	Standard procedures for common equipment associated with the PM and corrective action/repair	10 days	1/6/05 8:00	1/19/05 17:00
36	Safety procedures for the plant associated with the PM and corrective action/repair	10 days	1/6/05 8:00	1/19/05 17:00
37	DEFINE PREVENTIVE MAINTENANCE PROGRAMS	10 days	1/6/05 8:00	1/19/05 17:00
38	Preventive Maintenance frequencies	10 days	1/6/05 8:00	1/19/05 17:00
39	PMs	10 days	1/6/05 8:00	1/19/05 17:00
40	DEFINE THE WORK ORDER REQUIREMENTS	10 days	1/6/05 8:00	1/19/05 17:00
41	Work order administration, status, type, priority, trades, assign to	10 days	1/6/05 8:00	1/19/05 17:00
42	Capture existing work order history	10 days	1/6/05 8:00	1/19/05 17:00
43	Capture employee information	10 days	1/6/05 8:00	1/19/05 17:00
44	DEFINE MATERIAL HANDLING PROCEDURES FOR INVENTORY AND PROCUREMENT	10 days	1/6/05 8:00	1/19/05 17:00
45	Define part numbers and structure	10 days	1/6/05 8:00	1/19/05 17:00
46	Define inventory classes	10 days	1/6/05 8:00	1/19/05 17:00
47	Capture Supplier information	10 days	1/6/05 8:00	1/19/05 17:00
48	Capture existing requisition, receiving and issuing history	10 days	1/6/05 8:00	1/19/05 17:00
49	DEFINE DOCUMENT MANAGEMENT AND SCANNING REQUIREMENTS	10 days	1/6/05 8:00	1/19/05 17:00
50	Document availability	10 days	1/6/05 8:00	1/19/05 17:00
51	Scanning and cataloguing procedures	10 days	1/6/05 8:00	1/19/05 17:00
52	DEFINE INTERFACE REQUIREMENTS TO OTHER SYSTEMS	10 days	1/6/05 8:00	1/19/05 17:00
53	Define database structure	10 days	1/6/05 8:00	1/19/05 17:00
54	Delivery of populated spreadsheets, or database, or completion of data entry	0 days	1/19/05 17:00	1/19/05 17:00
56	DATA UPLOAD PHASE	8 days	1/20/05 8:00	1/29/05 17:00
57	Analysis of populated spreadsheets	5 days	1/20/05 8:00	1/26/05 17:00
58	Data cleansing by client	5 days	1/20/05 8:00	1/26/05 17:00
59	Modifications to upload process if required or development of new upload process	5 days	1/20/05 8:00	1/26/05 17:00
60	Audit data received	5 days	1/20/05 8:00	1/26/05 17:00
61	Data verification with client	5 days	1/20/05 8:00	1/26/05 17:00
62	Coding of PO approved customizations	3 days	1/27/05 8:00	1/29/05 17:00
63	Client sign-off	0 days	1/29/05 17:00	1/29/05 17:00
65	WALKTHROUGH PHASE	3 days	1/30/05 8:00	2/3/05 17:00
66	Review data with key personnel to ensure the data has been interpreted and mapped properly	3 days	1/30/05 8:00	2/3/05 17:00
67	Walkthrough defined data flow and functionality	3 days	1/30/05 8:00	2/3/05 17:00

68	Review Fit/Gap analysis to ensure compliance	3 days	1/30/05 8:00	2/3/05 17:00
69	Identify and quote additional required customizations	3 days	1/30/05 8:00	2/3/05 17:00
70	Revisit implementation date	3 days	1/30/05 8:00	2/3/05 17:00
71	Client sign-off of data upload	0 days	2/3/05 17:00	2/3/05 17:00
73	TRAINING	6 days	2/4/05 8:00	2/11/05 17:00
74	PREPARATION AND PLANNING PHASE	2 days	2/4/05 8:00	2/5/05 17:00
75	Identify User Groups	2 days	2/4/05 8:00	2/5/05 17:00
76	Define all users and security levels	2 days	2/4/05 8:00	2/5/05 17:00
77	Create all users in MPC and Citrix	2 days	2/4/05 8:00	2/5/05 17:00
78	Determine whether to train the trainer or train all	2 days	2/4/05 8:00	2/5/05 17:00
80	FULL SCALE TRAINING PHASE	4 days	2/6/05 8:00	2/11/05 17:00
81	Train all relevant personnel on the modules and procedures that apply to them	1 day	2/6/05 8:00	2/6/05 17:00
82	End User operation on data entry and general operation of the software program	1 day	2/6/05 8:00	2/6/05 17:00
83	Report Generation	1 day	2/6/05 8:00	2/6/05 17:00
84	Identify additional requirements for customization	4 days	2/6/05 8:00	2/11/05 17:00
85	Fine tune system, internal policies and procedures	4 days	2/6/05 8:00	2/11/05 17:00
86	Revisit implementation date	4 days	2/6/05 8:00	2/11/05 17:00
87	Define continuous training and new employee training plan	4 days	2/6/05 8:00	2/11/05 17:00
88	Client sign-off and feedback on training	0 days	2/11/05 17:00	2/11/05 17:00
90	CUT OVER PHASE	10 days	2/12/05 8:00	2/25/05 17:00
91	Final data collection (if required)	10 days	2/12/05 8:00	2/25/05 17:00
92	Final upload (if required)	10 days	2/12/05 8:00	2/25/05 17:00
93	Parallel processing if necessary	10 days	2/12/05 8:00	2/25/05 17:00
94	Hand off to Customer Support	10 days	2/12/05 8:00	2/25/05 17:00
95	Client signs off and goes live with MPC application	0 days	2/25/05 17:00	2/25/05 17:00
97	POST IMPLEMENTATION PHASE	0 days	2/25/05 17:00	2/25/05 17:00
98	Evaluate degree to which objectives were met	0 days	2/25/05 17:00	2/25/05 17:00
99	Evaluate critical success factors	0 days	2/25/05 17:00	2/25/05 17:00
100	Audit usage	0 days	2/25/05 17:00	2/25/05 17:00
101	Client sign off of project implementation	0 days	2/25/05 17:00	2/25/05 17:00
102	Access to unlimited on-line training	0 days	2/25/05 17:00	2/25/05 17:00

B. Database Migration and Conversion

Database Migration and Conversion services are included in the Annual Subscription Fee. Data and history files are easily uploaded from existing systems into the database. Spreadsheet data collection templates will be used to facilitate this data upload process.

In many cases, data may be captured and converted in one step. Other cases may require more steps. In either case, MegaMation guarantees that customers will be able to convert their existing files into the MegaMation product so they will not need to build their system from scratch. Often the data contained in legacy systems may be corrupted, incomplete or simply outdated. In situations like these, the account management team performs a database validation and corrects errors before going live making certain that customers have the right information when they log into the system for the first time.

C. Application Service Provider Security

All elements of the following security requirements are included in the Annual Subscription Fee unless otherwise indicated. Some elements reiterate that they are included in the Annual Subscription for additional clarity. In addition to these security measures, MegaMation may be asked to sign a Data Sharing Agreement in accordance with Washington State Department of Information policy. The template for this agreement is attached to the CIS Contract #07-07-01 as Attachment 1.

Data Elements

The following data elements may be collected by Vendor's Applications: driver's license numbers, emergency contact information, training records, home addresses, phone numbers, DOB, start date. This data falls in the Sensitive category of the CIS ASP Security Policy. The following requirements and considerations are appropriate for this category. Should more sensitive data be collected such as SSNs Vendor will notify CIS. Vendor and CIS will then negotiate for increased security measures.

Web Security

I. Data Transmission

Username, passwords, and all personal information as well as any other data transmitted to and within the Vendor system must be encrypted using, at minimum, an external, 1024 bit key length and 128 bit Secure Socket Layer certificate, an industry standard means of encrypting Web site traffic.

MegaMation uses SSL, VeriSign certificates and Citrix Presentation Manager to provide the standards requested above.

II. Technology

MegaMation provides the user with Java or Active X components. The Java and Active X are used by the desktop to connect to the MegaMation server farm.

III. Back-end Language

MegaMation uses the Revelation Toolset which uses OpenInsight as the base language as well as supporting Java, HTML and XML.

IV. Quality Assurance

MegaMation uses a set of standards that all modifications must follow for implementation. A full test environment provides the same accessibility as the production system. The environment used for development is a repository-based technology that allows changes from the master library into the client system. Client objects are then modified at the client level, without compromising the master system. In this way, the master system is modified without affecting the client-developed objects. The development tool set also includes a Run Time Deployment kit that allows the promotion of the client changes to the clients' production system. The test environment is used to validate the design, operation and final implementation of any changes to the production system. Because the test system includes all of the production objects and data elements, this is a comprehensive test of the interaction of all system functions.

V. Code Review

MegaMation's review committee has established an approach to the delivery of services that minimizes the potential of access to MegaMation's server farm.

MegaMation's internal Audit committee consists of the following personnel;

Bob Mutch ----- President

Hank Huizinga ----- Manager of R&D

Outside consultant --- Board Member who's company specializes in Web Design and security.

Mark Stratford ----- Senior Analyst R&D

Xwave Personnel ---- A division of Aliant, the local telephone company, provides analysis of infrastructure.

This committee meets on a regular basis to review all aspects of MegaMation's infrastructure and focuses on the following:

- 1) Review of Security for front end and review of the intrusion detection results
- 2) Review of individual servers for attempted security violations
- 3) Review of related support calls
- 4) Review of Microsoft security intrusion reports

5) Review of Revelation security changes.

These are the high level reviews performed on a regular basis, a minimum of quarterly for the committee. Internal members of the team meet on a daily and weekly basis.

The strategy used by this team to reduce the potential of intrusion is as follows:

- 1) MegaMation restricts access to the infrastructure via a Cisco box utilizes the capabilities of this box to report intrusions.
- 2) Only compiled code is allowed for user access.
- 3) No incoming e-mail or direct access for file transfers is allowed on the servers. MegaMation has performed a number of other functions to harden the server but cannot share them because this would compromise the security design.
- 4) MegaMation guarantees that all of the latest tested Microsoft version and patches are installed on each server.
- 5) Megamation uses Citrix as the primary access, thus limiting full access to the server farm.
- 6) Use of OICGI for Web pages is limited to communicating with a compiled API developed by Megamation, thereby eliminating database intrusion.

All detections or weaknesses are eliminated as soon as possible by either updating the particular component of the infrastructure or by modifying the compiled API to limit the access via a backdoor.

Data Access by Vendor Personnel

Access to accounts, applications, or data stored on vendor's systems shall be via secure channel using SSH or VPN technologies with a minimum of AES-128 encryption. This access will use separate, managed administration accounts requiring complex passwords or two-factor authentication and access will be limited to only those employees of the client with a defined need for management and maintenance of the applications, data, or services. Under no circumstances will data be stored on mobile devices or removable storage apparatus.

MegaMation presently uses SSH and VPN technologies with 128-bit encryption to access client data and will use these technologies to access data for the Colleges. Standards for complex passwords, two-factor authentication and limited access are met or exceeded.

Data Access by Users

Vendor's system must provide strong password protected access for users. Vendors must provide mechanisms to ensure that users will only have access to their own data. Administrative toolsets will require password authentication, and provide a User

Management module to enforce user security levels within the administration section of the system based on defined user groups and roles. This module may be used to control administrative user access to all modules within Vendor's system.

MegaMation's present security system for limiting the access by user is via the web password, followed by a user password to MegaMation's server farm that will limit access by function and date to a user group or user profile. MegaMation's security module is an administrative module that will have limited access by password and is used to enforce security-level access to each user on the system.

Account Management

Vendor must provide information on the account generation, maintenance and termination process, for both maintenance as well as user accounts. Include information as to how an account is created, how account information is transmitted back to the user, and how accounts are terminated when no longer needed.

The web-based access account is created and maintained by an administrative person within MegaMation. The password on this account controls the access to MegaMation's infrastructure and is defined in consultation with clients. The account management for each user can be controlled by MegaMation, or it can be controlled by a user defined by the client. MegaMation's security system allows a user group to be defined within the account structure specified by the client. . The client also specifies what access to information and functions is available to sets of users and individual users within their organization. To terminate a user, the client or authorized MegaMation person will use the security module to delete the user name identified. The changes can be reviewed online to an authorized person or via a report that identifies the list of user names.

Strong Passwords

Strong passwords can be defined as passwords or pass phrases complicated by length, upper and lower case letters, numbers and symbols in some combination. Length must be a minimum of 8 characters, and the password or pass phrase must be comprised of characters and numbers, with the addition of at least one upper case character or one symbol (such as # or &). Passwords or pass phrases of less than 8 characters are not allowed, and longer phrases should be encouraged. The vendor must describe the standard followed for strong passwords or pass phrases.

The user defines the length of passwords and the composition of these passwords. This is done during the implementation review. MegaMation can comply with any and all password requirements.

Attack Prevention and Response

Vendor should utilize technology for the prevention of network attacks. Tools vary across the industry. Tools such as firewalls, web application firewalls, anti-virus gateway scanners, spyware gateway scanners, SPAM filters on email gateways, and procedures

for log analysis and network traffic monitoring help prevent or identify attacks on networks. The vendor must provide information about the kind and types of tools and procedures used to prevent attacks, as well as standard procedures used to respond to attacks.

MegaMation's network is secured and protected by a pair of fully managed Cisco PIX 515E Firewalls with redundant failover configuration. MegaMation maintains and follows strict processes for firewall management, as well as for ongoing monitoring of security activity at the firewall. Firewall provisioning, change management, alerting, monitoring, backups, support and reporting activities follow well-defined processes based on industry best practices. MegaMation has established thresholds for suspicious activity on this firewall, which will generate a security alert to MegaMation's managed security services team on a 7/24 basis. MegaMation's managed security services team will follow an incident management process to evaluate the risk of this security alert and take appropriate actions. Firewall logs for these devices are retained for security purposes. This log information will include communications from the internet that are blocked by the firewall and Intrusion Detection System (IDS) alerts generated by the PIX firewall. This information will be retained centrally by MegaMation's managed security services team.

Data Backup

Data stored on backup media (drives, tapes, disks, etc.) shall be encrypted. In the case of on-line backup strategies that employ the Internet for transport, the transmission of backup data shall be encrypted. Security protocols and procedures shall be in place to prevent the loss or destruction of backup media. The physical security and environmental requirements at the storage facility shall be the same as those required for the primary site.

MegaMation currently maintains a master site with backup capability in a separate site that is physically removed by 1200 miles. Data is backed up daily on a tape drive. The backup is validated daily and then the tape is stored offsite in a fireproof vault. This backup facility will be maintained for the duration of this contract.

Backups are performed from the backup server and utilize a backup utility that runs without any outages. MegaMation has a complete set of utilities that allow us to create user specific downloads and will utilize secure FTP to create user requested backups. Data is backed up daily and weekly to removable storage which is taken off-site. The data format is backed up using Brightstor ArcServ data backup utilities to tape drives stored off-site.

Data will be available for download or backup to college server daily if required and arrangements for periodic disaster recovery, backups, and copies will be made available to colleges as required. The MegaMation support team has access to the backups as required. Each college will have the ability to define data back up

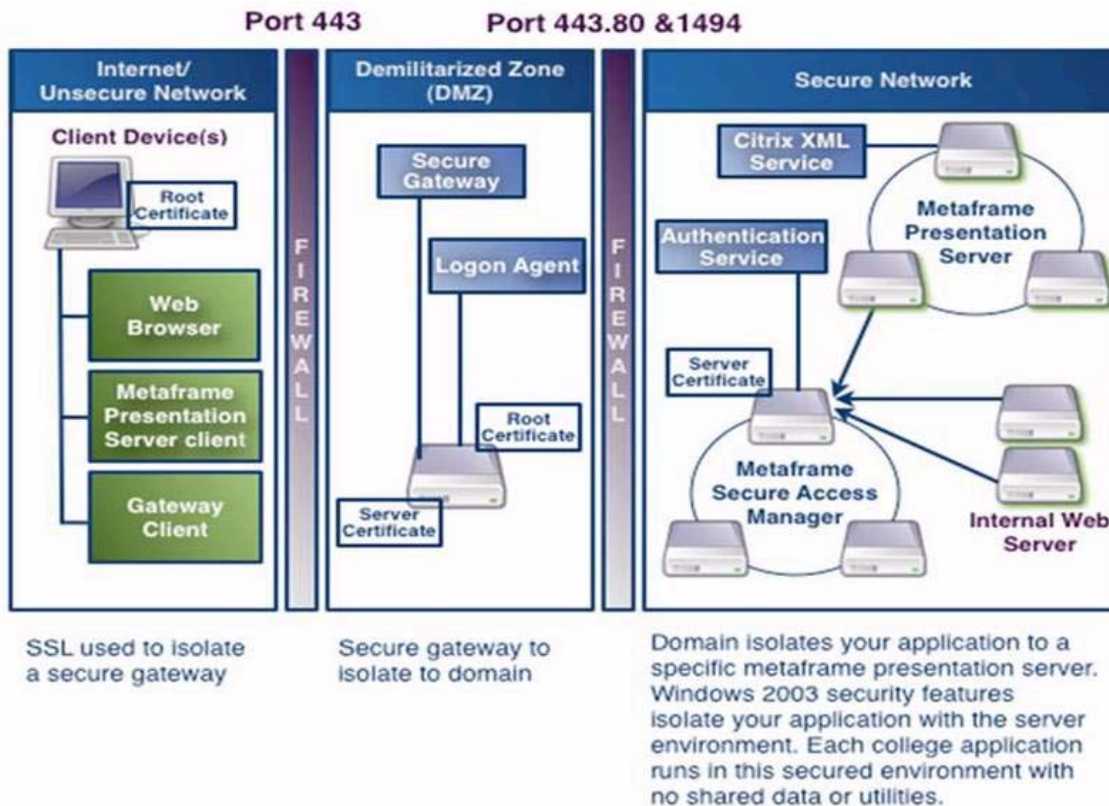
parameters to meet their own needs. MegaMation acknowledges that all data entered in the application remains the property of the Colleges at all times.

Network Diagram

MegaMation's server farm consists of Windows 2003 software running on Dell servers in a number of domains. The security capability of Windows 2003 is used to isolate client applications from each other in these domains. The SSL servers are isolated from the main domains and utilize a VeriSign certificate with the secure gateway technology from Citrix. The insertion scripts and access to the database is via MegaMation's compiled code. At no time does anyone outside of the firewall have access to the source/scripting code. The database uses SQL capabilities and is not provided to the client base. It therefore has absolutely no capability of corrupting the database structure for each college. The network diagram and hardening of MegaMation's servers eliminates the possibility of access to the servers on the server farm. So as not to expose the details of MegaMation's network for security reasons, the diagram below depicts a high-level network design. MegaMation will discuss network details with a selected number of college personnel for a more complete review upon completion of a signed non-disclosure agreement.

MegaMation uses the Citrix client and SSL with a VeriSign to validate the security of the network. Specific detection and remediation practices may be reviewed with appropriate CIS personnel as requested.

Network Diagram



Firewalls

See the Network Diagram above. The network is protected by a pair of fully managed Cisco PIX 515E Firewalls with redundant failover configuration. MegaMation has implemented the network as recommended by Citrix. MegaMation is willing to provide more details, if required, to CIS personnel upon completion of a signed non-disclosure agreement.

Physical Security

Hosting Facility

MegaMation uses an XWave secured site in Halifax, Nova Scotia. XWave is a division of Bell Aliant (telephone company) that sells consulting services and hosted facilities to the business community. Aliant Managed Network Services is located at 5201 Duke St., Upper Mall, Halifax, NS, B3J 1N9 t: 902.486.7140 c: 902.221.7360. The site is the central switching building for Bell Aliant because of the support systems and fail proof structure necessary for the building's function. Geographically, the site is also statistically in the lowest echelon of geographical and weather risks.

Physical Access to Hosting Facility

The site is secured with 7/24 security guards and has full video systems for recording activity on the site. The site also has duplicate non-destructive fire control systems, duplicate backup generators contained within a windowless concrete structure. Access to all interior spaces is regulated by a digital security code system.

Equipment Security

The equipment is in a secured climate-controlled limited access and locked cage environment.

Facility Status

MegaMation will communicate any changes in status for the hosting facility to the CIS Contract Administrator.

Host Security

Hardening

Users are validated by a hardened server in the DMZ zone using SSL encryption. After validation, only communication through one port is allowed from the DMZ to the server farm. The servers are protected by a pair of fully managed Cisco PIX 515E firewalls with redundant failover configuration. Only services required by the MegaMation application are active.

Patches

The Microsoft notification network is monitored daily by MegaMation staff. Critical patches are applied as released and standard Microsoft patches are applied monthly. DirectLine patches are applied as required by MegaMation.

Host Monitoring

MegaMation servers are monitored to ensure availability and performance. MegaMation maintains and follows strict processes for firewall management, as well as for ongoing monitoring of security activity at the firewall. Firewall provisioning, change management, alerting, monitoring, backups, support and reporting activities follow well-defined processes based on industry best practices. MegaMation has established thresholds for suspicious activity on this firewall, which will generate a security alert to the MegaMation managed security services team on a 7/24 basis. The MegaMation managed security services team will follow an incident management process to evaluate the risk of this security alert and take appropriate actions.

Relocation of Electronic Data Storage Facility

MegaMation will notify CIS in the event that MegaMation plans to relocate the Electronic Data Storage Facility. This notification will be sent at least 30 days prior to moving MegaMation servers. MegaMation understands that CIS retains the option to cancel the contract in the event that the new site does not meet CIS approval.

Environment

The MegaMation server farm is in an environment that has a dual HVAC system and dual sources of chilled water to supply the HVAC system. Because this is the main switching building for the telephone company, there are numerous monitoring systems, including all of the ones identified by the RFP.

Facility Monitoring

Vendor should monitor environmental, internet connectivity, power, and facility metrics measured with alarms via pager, SMS and e-mail to "24/7 on call" Vendor staff if operational parameters are breached.

Notification

MegaMation will provide, as required by Washington State Law, that any individual affected by a security breach be notified as per the requirements of the law.

Washington State law requires that affected individuals be notified of security breaches. Pursuant to RCW 19.255.010, Disclosure, notice – Definitions – Rights, remedies, Vendor agrees that, in the event of any breach in data security where unencrypted personal information of a College's client was, or is reasonably believed to have been, acquired by an unauthorized person, Vendor will notify CIS of the security breach within 24 hours and assist CIS with the notification action required under the law. Vendor shall be responsible for financial expenses associated with said notification and any consequence of the breach including but not limited to financial restitution to affected individuals and costs of any resulting legal action.

<http://search.leg.wa.gov/pub/textsearch/ViewRoot.asp?Action=Html&Item=2&X=609162151&p=1>

Indemnification

MegaMation indemnifies and holds harmless CIS and the colleges for all costs and damages related in any way to the misuse of data or breach of security that occurs while data is in the possession or control of MegaMation, without limitation, including all notification costs and requirements as set forth in RCW 42.17.31922

Compliance with Laws and Regulations

MegaMation agrees to maintain FERPA compliance (see <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>) as well as compliance with HIPPA and Federal Security regulations. Any breach of this provision may result in termination of the Contract and the demand for return of all personal information.

Browsers

MegaMation supports all common browsers on PC and Mac using the protocols identified above.

ADA Compliance

MegaMation's software conforms to the ADA standards defined in Section 508 of the Rehabilitation Act, The Americans with Disability (ADA) and meets or exceeds Priority Level 1 W3C.

Data Importing and Exporting

MegaMation has created a number of industry standard upload routines and a library of standard templates. These routines will be used to upload existing data and will establish the most appropriate standards for the Colleges to conform to and use. These will be established during the implementation phase. MegaMation also provides a document management module that supports all Windows acceptable extensions (i.e. .doc, .xls, .jpg, etc).

Support and Maintenance

Support and Maintenance are included in the Annual Subscription Fee. MegaMation is responsible for and provides full support and maintenance for the infrastructure including server hardware, server software, databases and installation.

Future Integration

Integration or interfacing is not included in the Annual Subscription Fee. MegaMation has developed a number of standard interfaces that allow retrieval, insertion, updating and deleting data in SQL databases. Interfaces would be quoted at an additional fee on a case by case basis.

Upgrades

Upgrades are included in the Annual Subscription Fee. MegaMation will provide all upgrades to the MegaMation software provided in this contract at no additional cost. This is an all-inclusive service that includes unlimited training, installation of the upgrade and testing for the upgraded system. Upgrades are applied by MegaMation staff on the MegaMation server. The upgrades are transparent to the users. The upgrades are applied with agreement on timing from the project lead at the College and with the MegaMation account manager's direction.

Annual Assurance

MegaMation agrees to sign an Annual Assurance document as provided by CIS reiterating their commitment to the security provisions of this contract. The document may be a vehicle for detailing mutually agreed to changes in the contract's security provisions. The document will assure the Purchaser that the data remains in the location originally agreed to in the contract, or will provide the new location and information related to the new Electronic Data Storage Facility.

D. System Response Time

System Performance: It is MegaMation's objective to provide a maximum of 2 second application response time for greater than 75% of the simple transactions. A simple transaction will be the time for someone to key in a Work Order number or a Purchase Order number and have the information fully transmitted to the client's computer. The two areas that most affect this are the MegaMation infrastructure response and the Internal Client Network. MegaMation's infrastructure consists of a direct high speed channel to the Internet and a series of Intel/Windows based units. This unit design allows us to manage the response time very effectively and to ensure unlimited scalability.

Network performance: While internet response times are monitored, MegaMation does not have direct control over its response time. Historically, response time varies between 50 and 200 milliseconds. MegaMation consistently meets minimum application response time with these values. Access to bandwidth on the Internet is unlimited because the server farm is installed in the main switching center of a telephone company. Scalability in both processor capacity and bandwidth is virtually unlimited.

E. Support

Support is included in the Annual Subscription Fee. MegaMation assigns new clients an Account Manager and all services are coordinated under their leadership. The Account Manager has a Client Management team that is responsible for the success of the implementation and continued benefits to the client. They provide unlimited support

that has a performance standard of answering over 90% of the support calls live, and 100% of the support requests are acknowledged within 60 minutes. The Account Manager coordinates training sessions as described in the MegaMation Implementation Schedule.

Account Manager - Laszlo Podor

MegaMation's Customer Support Center provides the Colleges with applications and technical expertise by providing telephone support, issue resolution, new software releases, and continuous enhancements. Each customer has unlimited access to MegaMation's 1-800 support line. Each incoming call is tracked using Megamation's CRM solution.

Laszlo Podor
Account Manager
MegaMation LLC
+1 (902) 835-6115
+1 (866) 930-8900 (toll free from North America)
mailto:lpodor@MegaMationsystems.com

MegaMation Support (North America): (800) 344-8655 ext.244
<mailto:support@MegaMationsystems.com>

F. Software Upgrades

Software upgrades are included in the Annual Subscription Fee. As the needs of customers and the marketplace evolve, MegaMation will incorporate new features into the Software. Colleges will receive these updated and enhanced versions of the software as part of the Annual Subscription Fee.

G. Training

On line training and support via the internet is included in the Annual Subscription Fee. MegaMation trainers use the internet to train new users. Trainers will use teleconferencing and shadowing techniques to interact with each participant in a dynamic live environment. Sharing the navigational experience with the trainer will give users a hands-on approach to learning the system.

If on-site training is required, MegaMation will provide this as an optional service at a rate of \$1,000 per day plus expenses based on a Buffalo New York departure. Group sessions – especially at the beginning of implementation – may be the best way to deliver on-site training. Initial training might be valuable at multiple sites around the state. Onsite training can be provided for either small groups at a single college or larger groups from a number of Colleges.

In addition to group or one-on-one training at the time of the implementation, trainers are at user disposal on an on-going basis. Trainer availability is included as part of the Annual Subscription Fee. Contact the account manager and schedule a training session with one of MegaMation's trainers. There is no charge for this service.

For users who are well versed in maintenance management systems and who require less hands-on training, there is training manuals and help files found on every session and page in the application. They are designed to assist users with the inner workings of the entire system.

H. Software Modifications

Software Customization

Customizations which do not involve changes to the source code are included in the Annual Subscription Fee. Examples of these include; establishing data structure, setting user defaults, custom reports etc. Changes requiring alterations to the source code are billed at the rate of \$125.00 per hour. An example would be to create a new function which is currently not part of the application.

Customization services can be as simple as changing a field name or adding an additional field or as multifaceted as adding a whole new level of functionality. The scope of the work that needs to be done will dictate how the account team will handle it. In many cases there are tools inherent in the system to allow users to make changes themselves. MegaMation will train these users in the use of these tools to make them more self-sufficient and responsive to the needs of their constituents. Larger more complex customization projects are typically managed by the MegaMation Account Management Team.

Software Adaptations

Software Adaptations are included in the Annual Subscription Fee. Similar to Software Customization, but not identical, adaptations are more like personal touches to the system. For instance, users may need a specific report that is not automatically generated by the standard system. Users may prefer to use a different naming definition than what is in the standard system. The account management team is available to make these changes on customers' behalf or train the customer to do it for themselves.

4. PURCHASER STAFF, ROLES AND RESPONSIBILITIES

CIS will pay the Annual Subscription fee in accordance with the terms and conditions of this CIS Contract #07-07-01. Additional services and payments will be coordinated by each college requesting such services.

CIS Contract Administrator:

Deborah Poarch
CIS Procurement Services Manager
PH: 425-803-9783
Fax: 425-803-9650

Billing Contact for Annual Subscription Fee:

Elisa Zavaglia
CIS Financial Services Manager
PH: 425-803-9
Fax: 425-803-9650
3101 Northup Way
Bellevue, WA 98004

5. COLLEGE STAFF, ROLES AND RESPONSIBILITIES

Since the MegaMation Software is provided as an ASP model, there are a number of considerations for the amount of effort required from College staff. The implementation document identifies the personnel responsible for the various segments of the implementation phase. MegaMation estimates that one (1) person at five (5) hours monthly will be required for the administration of security passwords and user maintenance. When Washington Colleges are implemented, the main functions will be to provide existing data to MegaMation, identify users and security for each college, and to take the training necessary to use the software in their particular business process.

**Schedule C
Authorized Purchasers
Center for Information Services
Member Institutions**

College	Address	City, State Zip
Bates Technical College	1101 S Yakima Avenue	Tacoma WA 98405
Bellevue Community College	3000 Landerholm Circle SE	Bellevue WA 98007
Bellingham Technical College	3028 Lindbergh Avenue	Bellingham WA 98225
Big Bend Community College	7662 Chanute Street	Moses Lake WA 98837
Cascadia Community College	19017 120th Avenue NE, Suite 102	Bothell WA 98011
Centralia College	600 W Locust Street	Centralia WA 98531
Clark College	1800 E McLoughlin	Vancouver WA 98663
Clover Park Technical College	4500 Steilacoom Boulevard SW	Tacoma WA 98499
Columbia Basin College	2600 N 20th	Pasco WA 99301
Center for Information Services	3101 Northrup Way, Suite 100	Bellevue WA 98004
Edmonds Community College	20000 68th Avenue W	Lynnwood WA 98036
Everett Community College	2000 Tower Street	Everett WA 98201
Grays Harbor College	1620 Edward P. Smith Drive	Aberdeen WA 98520
Green River Community College	12401 SE 320th Street	Auburn WA 98092
Highline Community College	PO Box 98000	Des Moines WA 98198
Lake Washington Technical College	11605 132nd Avenue NE	Kirkland WA 98034
Lower Columbia College	PO Box 3010	Longview WA 98632
North Seattle Community College	9600 College Way N	Seattle WA 98103
Olympic College	1600 Chester Avenue	Bremerton WA 98337
Peninsula College	1502 E Lauridsen Boulevard	Port Angeles WA 98362
Pierce College Ft. Steilacoom & Pierce Puyallup	9401 Farwest Drive SW	Lakewood WA 98498
Renton Technical College	3000 NE 4th Street	Renton WA 98056
Seattle Central Community College	1701 Broadway	Seattle WA 98122
Shoreline Community College	16101 Greenwood N	Shoreline WA 98133
Skagit Valley College	2405 E College Way	Mount Vernon WA 98273
South Puget Sound Community College	2011 Mottman Road SW	Olympia WA 98512
South Seattle Community College	6000 16th Avenue SW	Seattle WA 98106
Spokane Community College	1810 N Greene Street	Spokane WA 99217
Spokane District	2000 N Greene Street	Spokane WA 99217
Spokane Falls Community College	W 3410 Fort George Wright Drive	Spokane WA 99224
State Board for Community & Technical Colleges	319 7th Avenue	Olympia WA 98504
Tacoma Community College	6501 S 19th Street	Tacoma WA 98466
Walla Walla Community College	500 Tausick Way	Walla Walla WA 99362
Wenatchee Valley College	1300 Fifth Street	Wenatchee WA 98801
Whatcom Community College	237 W Kellogg Road	Bellingham WA 98226
Yakima Valley College	PO Box 22520	Yakima WA 98907