

**1. Relationship of the Parties**

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

**2. Subconsultant and Supplier Relations**

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

**3. Conflicts of Interest**

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

**4. Compliance with Laws**

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (**OSHA**), Washington Industrial Safety and Health Act (**WISHA**), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by

law while on or occupying [PORT/NWSA]-owned properties.

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

**5. Records and other Tangibles**

- a. **Port Data** means any data, records, or information provided by or pertaining to Port of Tacoma and Northwest Seaport Alliance, collectively referred to as the Port Entities, including but not limited to operational, financial, and personal data.
- b. The [PORT/NWSA] is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (**CORE**) (Current Version at time of execution). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the [PORT/NWSA] upon termination of the Agreement or otherwise as requested by the [PORT/NWSA].
- c. The [PORT/NWSA] or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

**6. Custom Code and/or Custom Reports**

Any custom code or custom reports requested by The [PORT/NWSA] and written or otherwise created by Consultant shall be owned by The [PORT/NWSA], but Consultant shall retain the right to use and sell the custom code or custom reports in whole or in part. The source code used by Consultant to create or write custom code or custom reports will only be provided to The [PORT/NWSA] once payment for all outstanding invoices has been received in full and/or both parties are satisfied that all obligations under this Agreement have been met.

**7. Disclosure**

All information developed by the Consultant, all analyses or opinions reached by the Consultant (Instruments of Service) and all information made available to the Consultant by the Port Data, shall not be disclosed by the Consultant without the written consent of the [PORT/NWSA].

**8. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the

Services, the [PORT/NWSA] shall pay Consultant as specified in the Agreement.

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

#### **9. Invoices**

- a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, title of the Project, total authorized, total current invoice, hours, hourly rate, and all authorized expenses, if allowed, in accordance with the [PORT/NWSA]'s "Guidelines for Consultant Fees and Reimbursable Items", within thirty (30) days.
- b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Consultant is unable to provide an invoice, they shall advise the [PORT/NWSA] in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

#### **10. Costs and Disbursements**

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

#### **11. Standard of Care**

- a. Consultant shall perform the Services to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such Services.
- b. The [PORT/NWSA]'s approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the [PORT/NWSA] arising from the Consultant's errors, omissions, or negligent performance of the Services.

#### **12. Time**

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule, including any established milestones and task completion dates, and the overall period of performance. The completion

dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the [PORT/NWSA] which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

#### **13. Assignability**

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

#### **14. Termination of Agreement**

- a. Termination for Default:
  - i. The [PORT/NWSA] may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the [PORT/NWSA]; provided that the Consultant has been given an opportunity to cure.
    1. Cure Notice: If the [PORT/NWSA] determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the [PORT/NWSA] deems said breach to warrant corrective action, the following sequential procedure will apply:
  - ii. The [PORT/NWSA] will provide the Consultant with a written Cure Notice,

- notifying the Consultant of the nature of the breach.
- iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the [PORT/NWSA];
- b. Show Cause Notice:
- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the [PORT/NWSA] will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the [PORT/NWSA] in writing within seven (7) calendar days of any reason the [PORT/NWSA] should not terminate this Agreement. At the expiration of the seven (7) calendar day period the [PORT/NWSA] may commence termination of this Agreement in whole or in part.
  - ii. The [PORT/NWSA] may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the [PORT/NWSA] is satisfied that the breach has been corrected.
  - iii. No increase in total price or period of performance shall result from breach of this Agreement; and
  - iv. Nothing herein shall be deemed to affect or waive any other rights of the [PORT/NWSA].
- c. Notice of Termination:
- i. If the [PORT/NWSA] terminates this Agreement for default, the [PORT/NWSA] shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the [PORT/NWSA] incurs because of the Consultant's default. In such event, the [PORT/NWSA] shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the [PORT/NWSA] at the date of termination, the cost to the [PORT/NWSA] of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the [PORT/NWSA] of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the [PORT/NWSA] from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the [PORT/NWSA]:
1. Promptly discontinue all Services (unless the notice directs otherwise);
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the [PORT/NWSA] specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the [PORT/NWSA] has paid the Consultant for such items.
  3. Upon termination, the [PORT/NWSA] may take over the Services and prosecute the same to completion by agreement with another party or otherwise.
- d. Termination for Convenience:
- i. The [PORT/NWSA] may terminate this Agreement, for the convenience of the [PORT/NWSA]. The [PORT/NWSA] shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.

- ii. If the [PORT/NWSA] terminates this Agreement for convenience, the [PORT/NWSA] shall pay the Consultant for the following items:
    - a) An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
    - b) Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
    - c) Reasonable termination settlement costs the Consultant actually incurred unless the [PORT/NWSA] determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.
  - iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the [PORT/NWSA]:
    - a) Promptly discontinue all Services (unless the notice directs otherwise);
    - b) No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the [PORT/NWSA] all Port Data including specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the [PORT/NWSA] has reimbursed the Consultant for such costs;
    - c) Take any action necessary, or that the [PORT/NWSA] may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the [PORT/NWSA] has or may acquire an interest.
  - iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the [PORT/NWSA] a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
    - a) Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
    - b) As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
    - c) Documentation supporting all costs identified in the Termination Settlement Proposal; and
    - d) A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the [PORT/NWSA] is responsible.
    - v. Termination settlement costs and proposals are subject to audit verification by the [PORT/NWSA].
    - vi. Upon termination, the [PORT/NWSA] may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- 15. Disputes**  
If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The [PORT/NWSA] reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to this Agreement may be consolidated and resolved in one forum.
- 16. Venue & Governing Law**  
Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.
- 17. Integration and Merger/ Extent of Agreement**  
a. This Agreement represents the entire and integrated understanding between the [PORT/NWSA] and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the [PORT/NWSA] and Consultant. No verbal agreement or conversation between any

officer, agent, associate or employee of [PORT/NWSA] and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

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

#### **18. Non-Discrimination**

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

#### **19. Indemnity / Hold Harmless Clause**

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, and employees from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, but only to the extent of the negligence, gross negligence, willful misconduct, of Consultant or its officers, employees, or subcontractors; or to the extent arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, or subcontractors provided, however, that for any defense obligation related to a claim for which Contractor has

insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.

- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise out of negligence, gross negligence or willful misconduct on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.
- c. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultants' indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.
- d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.
- e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

#### **20. General Insurance Requirements**

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, or by anyone directly or indirectly employed by either of them, and shall comply with any such insurance requirements as determined by the [PORT/NWSA].

#### **21. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by [PORT/NWSA] of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by [PORT/NWSA] of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by [PORT/NWSA], in writing. [PORT/NWSA]'s failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or [PORT/NWSA]'s waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. No Personal Liability: No officer, agent or authorized employee of either [PORT/NWSA] or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

## **22. Key Personnel**

The Consultant's key personnel, as described in the Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the [PORT/NWSA].

## **23. Insurance - Assumption of Risk**

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and other insurance as required by contract for this project that shall protect Consultant and any subconsultant

performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the [PORT/NWSA] will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.

- b. Consultant shall submit to the [PORT/NWSA], prior to the commencement of services, certificates of insurance evidencing:
  - i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$3,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
  - ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
  - iii. Professional Liability of not less than \$2,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the [PORT/NWSA] on an annual basis for each of the three years.
  - iv. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
  - v. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
- c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the [PORT/NWSA] in writing within ten (10) days of receipt of notice of coverage being suspended,

voided, cancelled or materially reduced. Except for professional liability, the Port of Tacoma and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.

- d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the [PORT/NWSA] in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.

#### **24. Payment Schedule**

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

#### **25. Compensation**

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

renegotiated and agreed to by both parties in a written amendment.

- i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup are defined in the attached Rate Sheet and made a part of this contract.

#### **26. Deliverables**

All deliverables fully defined in this Agreement.

#### **27. Security – Transportation Worker Identification Credential (TWIC)**

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.
- c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

#### **28. Extent of Agreement**

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

#### **29. Warranties**

- a. No Warranties regarding data restoration: Consultant will use its Best Efforts to deploy the Services and make effective recommendations regarding data protection technologies but cannot affect the manufacturer's product from a warranty perspective, nor guarantee that such third-party products or technologies will be effective, free of bugs or other defects. The recoverability of data in the event of network or system failure is subject to the integrity of the media, success of backup procedures,

and other factors that may be outside the control of Consultant. Therefore, CONSULTANT CANNOT AND DOES NOT MAKE ANY REPRESENTATIONS, PROMISES, OR WARRANTIES THAT THE [PORT/NWSA] WILL BE ABLE TO RESTORE DATA AS A RESULT OF FOLLOWING ANY SUCH CONSULTANT RECOMMENDATIONS. NO WARRANTIES REGARDING SECURITY OF THE [PORT/NWSA] CONFIDENTIAL INFORMATION FROM ELECTRONIC THREATS & HACKING. In providing the Services, Consultant shall use Best Efforts to see that the [PORT/NWSA]'s Confidential Information is kept secure; however, the [PORT/NWSA] understands, acknowledges, and agrees as follows:

- i. The nature of the Internet, e-mail, and other forms of electronically storing and communicating information are subject to ever-changing and evolving vulnerabilities, some, or all of which cannot be reasonably anticipated or protected against even with the use of reasonable care, including, without limitation, Electronic Threats & Hacking.
  - ii. ANYTHING IN THIS AGREEMENT OR THE DESCRIPTION OF SERVICES TO THE CONTRARY NOTWITHSTANDING, CONSULTANT MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE [PORT/NWSA]'S CONFIDENTIAL INFORMATION OR IT SYSTEMS WILL BE PROTECTED FROM BREACH OR EXPOSURE BY ELECTRONIC THREATS & HACKING.
- b. Limited Warranty From Third Party Providers:  
To the extent authorized under applicable third-party manufacturer or third-party provider agreements, Consultant shall provide or assign to the [PORT/NWSA] all third party product or service warranties associated with the hardware, equipment, software, or other services the third party provided in connection with the Services under this Agreement. the [PORT/NWSA] acknowledges and agrees that:
- i. Third-party Provider agreements for hardware, equipment, software, or services provided in connection with the Services, vary in the terms, conditions, and limited warranties they respectively provide; and some third-party Provider agreements either may not provide any warranties, or may prohibit Consultant from transferring to the [PORT/NWSA] any limited warranty they do provide;
  - ii. Consultant does not and will not provide any separate, independent, or

concurrent warranty of any kind or nature for third party hardware, equipment, software, or services provided in connection with the Services; and

- iii. The [PORT/NWSA] shall make any warranty claims with respect to hardware, equipment, software, or services supplied by third parties in connection with the Services, directly to the manufacturer, vendor, licensor or third-party provider of such hardware, equipment, software, or services, and not to Consultant.
- c. Disclaimer of Warranties:  
EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS-IS," "WHERE-IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) WITH RESPECT TO THE SERVICES. CONSULTANT EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING, OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. USE OF THE SERVICES IS ENTIRELY AT THE [PORT/NWSA]'S OWN RISK AND, EXCEPT AS SET FORTH IN THIS SECTION, CONSULTANT SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR SUCH USE.