

MASTER SAAS SERVICE AGREEMENT

This Master SaaS Service Agreement ("**Agreement**") is made as of _____, 2013 ("**Effective Date**"), between ServiceNow, Inc ("**ServiceNow**") and DES as set forth below.

Pursuant to a separate transaction (the "**Master Contract**") between DES and ServiceNow's authorized reseller ("**Reseller**"), a certain number of DES' customers as set forth in the Master Contract (each a "**Customer**") may purchase from Reseller certain services to be delivered by ServiceNow. This Agreement specifies the terms and conditions under which those services will be provided, apart from price, payment and other terms specified in the Master Contract.

This Agreement, together with the Use Authorization(s) (including the Product Overview attached thereto or referenced therein) and the SaaS Service Guide, is the final and entire agreement of the parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous oral or written agreements, representations and negotiations.

FOR VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES, EACH ACTING UNDER DUE AND PROPER AUTHORITY, EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

Washington State Department of Enterprise Services	ServiceNow, Inc.
Individual signing: (print name) <i>Cherrel Jones</i>	Individual signing: Michael P. Scarpelli (print name)
Signature: <i>[Handwritten Signature]</i>	Signature: <small>Designated by</small> <i>Michael P. Scarpelli</i>
Title: <i>Unit Manager</i>	Title: Chief Financial Officer
Signing date: <i>12/10/13</i>	Signing date: 11/25/2013
DES address for notice: Department of Enterprise Services 1500 Jefferson Street SE P.O. Box 41411 Olympia, WA 98504-1411	ServiceNow address for notice: ServiceNow, Inc. 3260 Jay Street Santa Clara, CA 95054 Attn: General Counsel cc: legalnotices@servicenow.com

GENERAL TERMS AND CONDITIONS

SERVICE NOW
SaaS SERVICE GUIDE

1. PROVISION OF SERVICES

ServiceNow will make the following purchased services available to Customer, subject to the terms and conditions of this Agreement and each use authorization provided by Reseller to Customer (each, a "**Use Authorization**") and the product overview attached thereto or referenced therein ("**Product Overview**"), including without limitation: (a) use of the SaaS Service (as defined below); and (b) any additional services. "**SaaS Service**" means the ServiceNow platform and ServiceNow applications (set forth in a Use Authorization) which are made available by ServiceNow as a software as a service (SaaS) offering online via web access designated by ServiceNow. Each Use Authorization is hereby incorporated into and made a part of this Agreement for that order.

2. ORDERING

2.1. RESELLER ORDERS. Customer shall order and purchase the SaaS Service, Professional Services (as defined in Section 3.9) and other ServiceNow services directly from Reseller pursuant to a separate agreement specifying price, payment and other commercial terms. ServiceNow is not a party to such separate agreement but will provide the purchased SaaS Services pursuant to this Agreement. Reseller is not authorized to make any changes to this Agreement (including any Use Authorization issued hereunder) or bind ServiceNow to any additional or different terms and conditions.

2.2. USE AUTHORIZATION. For each order, Reseller will provide Customer with a Use Authorization and a Product Overview issued by ServiceNow that specify the services that Customer has purchased from Reseller. Customer shall promptly sign the Use Authorization and return it to ServiceNow. ServiceNow shall have no obligation to provide services unless and until it has received the applicable Use Authorization as signed by Customer.

2.3. SAAS SERVICE. When Customer has ordered the SaaS Service, the Use Authorization associated with that order shall specify the term of authorized use of the SaaS Service ("**Subscription Term**") the scope of use, and the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Customer is permitted to use the SaaS Service. Customer may not use or otherwise access the SaaS Service in a manner that exceeds Customer's authorized use as set forth in this Agreement and the applicable Use Authorization. If Customer exceeds its permitted use of the SaaS Service, then Customer will promptly notify ServiceNow and within thirty (30) days thereafter: (i) disable unpermitted use; or (ii) purchase additional subscriptions. ServiceNow or Reseller may review Customer's use of the SaaS Service, and Customer shall provide any reasonable assistance, to verify Customer's compliance with the Agreement. ServiceNow or Reseller may suspend Customer's use of the SaaS Service after giving thirty (30) days' written notice of non-compliance identified in such review or of failure of ServiceNow to receive undisputed payment for Customer's use, in addition to any other rights or remedies ServiceNow may have.

2.4. PAYMENT; CUSTOMER CLAIMS. Customer shall pay Reseller for the services provided hereunder at such prices and other terms upon which Customer and Reseller have agreed. Any warranty claim or claim for partial or total refund of fees paid hereunder, or for service credits or service extensions under the service level agreement, must be made to the Reseller, not ServiceNow

2.5. AFFILIATES "Affiliates" shall mean any person or entity directly or indirectly Controlling, Controlled by or under common Control with a party to the Agreement or a Customer, where "Control" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Customer may, at its option, provide access to the SaaS Service to one or more of its Affiliates ("Customer Affiliates") subject to the terms, conditions and restrictions in the Agreement. Customer shall be responsible for the acts and omissions of the Customer Affiliate for its use of the SaaS Service. No Customer Affiliate shall have the right to take any legal action against ServiceNow under the Agreement.

2.6. ADDITIONAL ORDERS. Customer may place additional orders for ServiceNow services through Reseller.

3. GRANT OF USE RIGHTS; OWNERSHIP; CUSTOMER RESTRICTIONS

3.1. SERVICENOW APPLICATIONS. The Product Overview describes the business processes supported within the ServiceNow applications (collectively, "ServiceNow Applications"). To the extent set forth under a Use Authorization, ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access, configure, customize, and use the purchased ServiceNow Applications to automate the business processes supported within the purchased ServiceNow Applications

3.2. SERVICENOW PLATFORM. The Product Overview describes the ServiceNow platform ("ServiceNow Platform"). To the extent set forth under a Use Authorization, ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access, configure and use the purchased access of the ServiceNow Platform to create custom applications solely to automate business processes not supported within the ServiceNow Applications (each such automated business process, a "Custom Application"). Customer is required to purchase authorized use of the applicable ServiceNow Application in order to automate a business process supported within that ServiceNow Application.

3.3. DOCUMENTATION. ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access and use the user documentation relating to the operation and use of the SaaS Service that is provided by ServiceNow to Customer under the Agreement, as updated by ServiceNow from time to time ("Documentation").

3.4. CUSTOMER DATA. Customer hereby grants ServiceNow a non-exclusive, non-transferable, worldwide right to use the electronic data specifically pertaining to Customer and/or its users that is processed using the SaaS Service (collectively "Customer Data") strictly for the limited purpose of providing the SaaS Service to Customer.

3.5. SOFTWARE. ServiceNow may provide ServiceNow software products ("Software") for use in connection with the SaaS Service. Any Software is licensed and not sold (even if for convenience ServiceNow makes reference to words such as "sale" or "purchase"), and ServiceNow grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive license to install and execute the Software on machines operated by or for Customer solely to permit Customer to use the SaaS Service during the Subscription Term in accordance with the terms and conditions of this Agreement. The Software or Deliverables (as defined in Section 3.9) may include code that is licensed under third party license agreements, including open source, made available or provided with the Software or Deliverables as applicable.

3.6. DEVELOPMENT TOOLS. ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to download and make a reasonable number of copies of the Development Materials (as defined below) for Customer's internal use only; and to use, copy, modify and create derivative works of the Development Materials, in each case solely for Customer's own internal use, in: (A) using, implementing and integrating the ServiceNow Applications with other software and systems; and (B) developing Custom Applications to the extent that Customer is permitted under Section 3.2 and the applicable Use Authorization. "Development Materials" are APIs, development tools, specification, documentation, sample Software code or other development materials that ServiceNow may from time to time make available to Customer for the express purpose of facilitating development of Custom Applications or customizing ServiceNow Applications.

3.7. OWNERSHIP. As between ServiceNow and Customer, all rights, title, and interest in and to all intellectual property rights in the SaaS Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology (as defined in Section 3.9) are owned exclusively by ServiceNow. Except as expressly provided in this Agreement, ServiceNow does not grant Customer (and expressly reserves) any rights, express or implied, or ownership in the SaaS Service, Software, Development Materials, Documentation, and/or ServiceNow Core Technology. ServiceNow shall have a royalty-free, worldwide, non-exclusive, transferable, sub-licensable, irrevocable, perpetual right to make, use, sell, offer for sale, import, or otherwise incorporate into the SaaS Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology, any suggestions, enhancements, recommendations or other feedback provided by Customer relating to the SaaS Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology. As between ServiceNow and Customer, all rights, title and interest in and to all intellectual property rights in any Custom Application made solely by Customer shall be owned by Customer, other than intellectual property rights in the SaaS Service, Software, Development Materials, Documentation and ServiceNow Core Technology.

3.8. RESTRICTIONS. Customer shall not (and shall not permit others to): (i) license, sub-license, sell, resell, rent, lease, transfer, distribute, or time share the SaaS Service, Software, Development Materials or Documentation, or make any of them available for access by third parties, including without limitation, in the manner of a service bureau or hosted application; (ii) create derivative works based on or otherwise modify the SaaS Service, Software, Development Materials (except as provided in Section 3.6

(Development Tools) or Documentation, (ii) disassemble, reverse engineer or decompile the SaaS Service or Software; (iv) access the SaaS Service, Software, Development Materials or Documentation in order to develop a competing product or service, including a Custom Application that automates or otherwise addresses a business process automated by a ServiceNow Application; (v) use the SaaS Service or Development Materials to provide a service for others (however, to the extent Customer provides information technology services to other state agencies, local governments, and public benefit nonprofit corporations as permitted under applicable law, Customer may use the SaaS Service or Development Materials to provide such services); (vi) use the ServiceNow Platform to operate more or different type of applications than permitted under the applicable Use Authorization; (vii) use or send viruses or other harmful computer code; (viii) interfere with the integrity of the SaaS Service or its data; (ix) remove or modify a copyright or other proprietary rights notice on or in the SaaS Service, Software, Development Materials or Documentation; (x) use the SaaS Service or Custom Applications to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (xi) use a computer or computer network to cause physical injury to the property of another; (xii) violate any law or regulation of the United States, any state thereof or other government authority; (xiii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the SaaS Service; (xiv) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the SaaS Service or Custom Application; (xv) disrupt the integrity of the SaaS Service; (xvi) temporarily or permanently remove, copy, add, modify, halt or disable any computer data, computer programs or computer software from a computer or computer network without authorization, (xvii) cause a computer to malfunction, regardless of how long the malfunction persists; or (xviii) alter, disable, or erase any computer data, computer programs or computer software without authorization.

3.9. DELIVERABLES. Subject to the provisions of this Section 3.9, ServiceNow shall assign to Customer any Newly Created IP (as defined below) in Deliverables upon payment in full by Customer of all amounts due for which the Deliverable was created. A "Deliverable" is a deliverable that is created by ServiceNow or a ServiceNow reseller for Customer in the performance of professional services in the implementation, customization or configuration of the Subscription Service ("Professional Services"). "Newly Created IP" means intellectual property in any inventions or works of authorship that are made by ServiceNow or a ServiceNow reseller specifically for Customer in the course of performing Professional Services for Customer, other than ServiceNow Core Technology. "ServiceNow Core Technology" means: (a) ServiceNow technology, methodologies and intellectual property (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation (both printed and electronic) existing as of the Effective Date of this Agreement or otherwise arising in whole or in part outside of work under a Professional Service for Customer; (b) any derivatives, improvements, enhancements or extensions of the foregoing, whether or not conceived, reduced to practice or developed during the term of this Agreement or in performance of Professional Services, as applicable; and (c) any intellectual property anywhere in the world relating to any of the foregoing. To the extent (if at all) any ServiceNow Core Technology is incorporated into a Deliverable, ServiceNow grants to Customer a non-exclusive, royalty-free, nontransferable, non-sublicensable worldwide license to use the ServiceNow Core Technology solely to use the Deliverable in connection with the SaaS Service as contemplated under this Agreement during the Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit ServiceNow's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

3.10. CUSTOMER CONDUCT. Customer is responsible for, without limitation, the following: (a) Customer's implementation of the SaaS Service; (b) protecting the names and passwords of the users to the SaaS Service and preventing and notifying ServiceNow of unauthorized use of the SaaS Service; (c) appointing up to five (5) designated support contacts for purposes of contacting ServiceNow support regarding questions and/or technical issues ("Authorized Customer Support Contacts") and ensuring that the Authorized Customer Support Contacts' information is current in the ServiceNow support portal; (d) the lawfulness of, and results obtained from, all Customer Data submitted by authorized users to the SaaS Service and each user's acts and omissions; (e) using the SaaS Service's available encryption feature for all Customer Data containing sensitive information; (f) using the SaaS Service within the permitted scope and only in accordance with the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Customer is permitted to use the SaaS Service as set forth in the Use Authorization, and (g) using the SaaS Service only in accordance with the Documentation.

4. WARRANTIES

4.1. LIMITED SAAS SERVICE WARRANTY. ServiceNow warrants that during the Subscription Term the SaaS Service, exclusive of Custom Applications and Development Materials, will operate without a Defect, as defined in the SaaS Service Guide, which is attached hereto and incorporated into this Agreement by this reference, that causes a material failure of Customer's production instances of the SaaS Service to perform in accordance with the Product Overview. Customer's exclusive remedy for breach of this warranty is for Reseller and ServiceNow to correct or work around the Defect upon request, subject to and in accordance with the procedures and limitations for receiving Support, as defined in the SaaS Service Guide. If the Defect persists in causing a material failure in Customer's production instances of the SaaS Service to conform to the Product Overview without correction or work-around thirty (30) days after written notice to Reseller and ServiceNow of a warranty claim under this Section 4.1, then Customer may terminate the affected SaaS Service and submit to Reseller a claim for refund of any prepaid subscription fees covering the remainder of the Subscription Term of the affected SaaS Service after the Reseller's or ServiceNow's receipt of Customer's written notice. This Section 4.1 sets forth Customer's exclusive rights and remedies (and ServiceNow's sole liability) in connection with any Defect or other failure of the SaaS Service to perform in accordance with the Product Overview or any other manner. Notwithstanding any other provision in this Agreement, ServiceNow shall have no obligation to support and shall have no liability or obligation due to unavailability, malfunction or degradation of performance in the SaaS Service that is due to a Custom Application Development Materials, or modifications of the ServiceNow Applications by any person other than ServiceNow or a person acting at ServiceNow's direction.

4.2. CUSTOMER DATA LOCATION. All Customer data must be stored and transmitted within the contiguous United States of America only. No offshore data storage (e.g., data center, hosted site or backup, disaster recovery or other locations) will be permitted.

4.2. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, SERVICENOW DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SERVICENOW SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, OR DEVELOPMENT MATERIALS WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

6. CONFIDENTIALITY AND NON-USE RESTRICTIONS

5.1. CONFIDENTIAL INFORMATION. "*Confidential Information*" means all information disclosed by a party ("*Disclosing Party*") to the other party ("*Receiving Party*"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, including without limitation each party's respective business plans and processes; financial and employee data; proprietary technology and product information and designs; the SaaS Service and Software; Development Materials and Customer Data. Confidential Information excludes information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

5.2. PROTECTION. The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or contractors who are bound by confidentiality and non-use and non-disclosure restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof. Each party's obligations set forth in this Section 5 shall remain in effect during the term and three (3) years after termination of this Agreement. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party. Provisions for the return of Customer Data are set forth in Section 8.3 (Return of Customer Data).

6. INDEMNIFICATION

6.1. SERVICENOW OBLIGATION. Subject to the exclusions set forth below, ServiceNow shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand ("*Claim*") alleging that Customer's use of the SaaS Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. If any portion of the SaaS Service becomes the subject of a Claim, ServiceNow may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of the SaaS Service; (c) replace or modify the SaaS Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the SaaS Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in ServiceNow's judgment, then (d) terminate Customer's use of the affected SaaS Service upon forty-five (45) days' written notice, whereupon Customer may submit to Reseller a claim for a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected SaaS Service after the date of termination. Notwithstanding the above, ServiceNow shall have no indemnification obligation or liability for any Claim arising in whole or in part from: (i) any use of the SaaS Service which exceeds the authorized use permitted under this Agreement; (ii) Customer Data; (iii) use of the SaaS Service by Customer in violation of applicable law; (iv) use of the affected SaaS Service after termination in accordance with clause (d) of this Section 6.1; (v) Custom Applications; (vi) modifications to the SaaS Service by any person other than ServiceNow or a person acting at ServiceNow's direction; (vii) modifications made by or at the request of Customer pursuant to a Professional Service by ServiceNow or ServiceNow's reseller; or (viii) use of the SaaS Service in combination with any hardware, software, application or service made or provided other than by ServiceNow.

6.3. PROCESS. All of the foregoing indemnity obligations of ServiceNow are conditioned on Customer notifying ServiceNow promptly in writing of any actual or threatened Claim, Customer using its best efforts to encourage the Office of the Attorney General of Washington to grant ServiceNow sole control of the defense thereof and any related settlement negotiations, and Customer reasonably cooperating and, at ServiceNow's indemnifying party's request and expense, reasonably assisting in such defense. SECTION 6 STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR THIRD PARTY INFRINGEMENT CLAIMS AND ACTIONS.

7. LIMITATIONS OF LIABILITY AND DAMAGES

7.1. LIMITATIONS OF LIABILITY. SERVICENOW SHALL HAVE NO LIABILITY FOR ANY REFUND THAT, IN ACCORDANCE WITH THE TERMS HEREOF, IS TO BE PAID BY THE RESELLER. TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES

PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER UNDER THE USE AUTHORIZATION GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DISCOVERY OF THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) BODILY INJURY OR DEATH, (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (3) CUSTOMER'S OBLIGATION TO PAY AMOUNTS OWED TO RESELLER FOR SERVICES PROVIDED HEREUNDER, AND (4) SERVICENOW'S OBLIGATIONS UNDER SECTION 6 (INDEMNIFICATION).

7.2. EXCLUSION OF DAMAGES. TO THE EXTENT PERMITTED BY LAW, NEITHER SERVICENOW NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COSTS OF SUBSTITUTE GOODS, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO (1) BODILY INJURY OR DEATH; AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

NOTWITHSTANDING THE FOREGOING, THIS SECTION 7.2 SHALL NOT PREVENT CUSTOMER'S RECOVERY FOR LEGALLY REQUIRED: (A) NOTIFICATION COSTS TO THIRD PARTIES INCURRED BY CUSTOMER, (B) CREDIT MONITORING COSTS FOR THIRD PARTIES INCURRED BY CUSTOMER, AND (C) GOVERNMENT OR REGULATORY FINES PAID BY CUSTOMER, IN EACH CASE TO THE EXTENT CAUSED BY SERVICENOW'S MATERIAL BREACH OF THIS AGREEMENT THAT RESULT IN AN UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA, PROVIDED THAT SERVICENOW'S CUMULATIVE AND AGGREGATED LIABILITY AT ALL TIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE LIABILITY AMOUNT SET FORTH IN SECTION 7.1.

8. TERM AND TERMINATION

8.1. TERM AND TERMINATION. This Agreement continues until terminated under the terms of this Agreement or the expiration of the Master Contract. Each party may terminate this Agreement in its entirety either: (i) upon thirty (30) days' prior written notice to the other party, if at the time such notice is served there are no Use Authorizations in effect; or (ii) upon written notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Either ServiceNow or Customer may terminate a SaaS Service or Professional Services effective immediately upon written notice if the other party materially breaches a material obligation under this Agreement or the applicable Use Authorization for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the nonbreaching party. Professional Services are separately ordered from the SaaS Service, and are not required for the SaaS Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the SaaS Service even if the services are enumerated in the same Use Authorization.

8.2. EFFECT OF TERMINATION OF SERVICE. Upon expiration or other termination of the SaaS Service for any reason, Customer shall stop using, and ServiceNow shall stop providing, the terminated SaaS Service. (a) If the SaaS Service is terminated by Customer due to ServiceNow's breach, then Customer may submit to Reseller a claim for refund of all prepaid fees for the remaining portion of the Subscription Term for the terminated SaaS Service after the effective date of termination. (b) If Professional Service is terminated by Customer due to ServiceNow's breach, Customer may terminate the affected Professional Services whereupon Customer may submit to Reseller a claim for refund of any prepaid amounts for unperformed Professional Service under the applicable SOW or a Service Description. (c) If the SaaS Service is terminated by ServiceNow due to Customer's breach, then Customer shall pay to Reseller, within thirty (30) days after the effective date of termination, fees for the terminated SaaS Service that would have been payable for the remainder of the Subscription Term after the effective date of termination. (d) Upon expiration or other termination of the SaaS Service for any reason, Customer shall be eligible to request the return of Customer Data in accordance with Section 8.3 (Return of Customer Data).

8.3. RETURN OF CUSTOMER DATA. Following the end of the Subscription Term, where Customer has not renewed, Customer shall have forty-five (45) days to request a copy of the Customer Data from ServiceNow; and, if requested, ServiceNow shall use commercially reasonable efforts to provide a copy of that data within fifteen (15) days in a mutually agreed upon, commercially standard format at no cost to Customer unless ServiceNow determines in its reasonable discretion that the data output is not routine, in which case the parties shall mutually agree on a statement of work for professional services. After such forty-five (45) day period, ServiceNow shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the SaaS Service.

8.4. SURVIVAL. Upon termination of this Agreement for any reason, Customer shall pay to Reseller all amounts owed by it in connection with the services provided hereunder. Sections 3.7 (Ownership), 3.8 (Restrictions), and 5 (Confidentiality and Non-Use Restrictions) through 9 (General Provisions) of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

9. GENERAL PROVISIONS

9.1. ASSIGNMENT. Neither party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, upon notice and without the other party's

consent (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party, assign this Agreement in its entirety to such party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such party. Any attempted or purported assignment in violation of this Section 9.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. DES may assign this Agreement 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 DES of any of its duties and obligations hereunder.

9.2. NOTICE. Except as otherwise provided herein, all notices shall be in writing and deemed given upon (i) personal delivery, (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (iii) the second business day after mailing, or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the parties as set forth on the signature page of this Agreement or as otherwise agreed to by the parties in writing.

9.3. EXPORT COMPLIANCE. Each party shall comply with United States and foreign export control laws and regulations. Customer acknowledges that the SaaS Service is subject to the U.S. Export Administration Regulations (the "EAR") and that Customer shall comply with the EAR. Without limiting the foregoing, Customer represents and warrants that: (i) Customer is not located in, and shall not use the SaaS Service from, any country that is subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan and Syria); (ii) Customer shall not use the SaaS Service in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicle systems; and (iii) Customer is not prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government. In addition, Customer is responsible for complying with any local laws which may impact Customer's right to import, export or use the SaaS Service.

9.4. FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

9.5. US GOVERNMENT RIGHTS. All ServiceNow software is commercial computer software and all services are commercial items. "Commercial computer software" has the meaning set forth in Federal Acquisition Regulation ("FAR") 2.101 for civilian agency purchases and the Department of Defense ("DOD") FAR Supplement ("DFARS") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the services are acquired by or on behalf of a civilian agency, ServiceNow provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the services are acquired by or on behalf of any agency within the DOD, ServiceNow provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses Government rights in computer software or technical data.

9.6. ENTIRETY. This Agreement, together with the referenced and/or attached documents, is the final and entire agreement of the parties regarding the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations. In the event of any conflict between this Agreement and any referenced and/or attached documents or Use Authorization(s), Product Overview or SaaS Service Guide, this Agreement shall govern unless such referenced and/or attached document is signed by both parties and manifests a clear intent to override the terms of this Agreement. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ServiceNow which is not set out in this Agreement, the applicable Use Authorization, Product Overview, SaaS Service Guide, SOW or Service Description. Customer's orders are not contingent on, and Customer has not relied on, the delivery of any future functionality regardless of any verbal or written communication about ServiceNow's future plans. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

9.7. WAIVER AND AMENDMENT. A waiver of any right is only effective if it is in writing and only against the party who signed such writing and for the circumstances given. Any modification of this Agreement, a Use Authorization, the Product Overview, the SaaS Service Guide, a SOW or a Service Description must be in writing and signed by authorized representatives of both parties.

9.8. RELATIONSHIP OF THE PARTIES. The parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship. Neither party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other party. ServiceNow may at any time subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

9.9. GOVERNING LAW, VENUE, TIME FOR BRINGING ACTION This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the state of California, without regard to conflict of laws principles. The parties hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Diego, California, or New York, New York, for the purposes of adjudicating any action or proceeding to enforce the terms of this Agreement. To the extent permitted by law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods shall not apply. No cause of action arising hereunder or relating hereto may be brought more than one (1) year after it first accrues. The prevailing party in an action to enforce this Agreement shall be entitled to costs of bringing the claim and reasonable attorneys' and experts' fees and expenses. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's intellectual property rights.

9.10. CONSTRUCTION The SaaS Service and Professional Services shall be provided in the English language unless agreed otherwise. The parties confirm that they have requested that this Agreement and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et ServiceNow les documents connexes soient rédigés en anglais selon la volonté expresse des parties. Capitalized terms not defined herein shall have the meaning set forth or referenced in the SaaS Service Guide. Section headings are for convenience only and are not to be used in interpreting this Agreement.

SAAS SERVICE GUIDE

Capitalized terms not defined herein shall have the meaning set forth in the ordering agreement or the use agreement between Customer and ServiceNow.

1. SUPPORT

During the Subscription Term, ServiceNow shall use reasonable efforts to resolve Defects (defined below) in the SaaS Service ("Support"). Support does not include implementation services; configuration services; integration services; customization services or other custom software development, support for modifications of the ServiceNow Applications by any person other than ServiceNow or a person acting at ServiceNow's direction; support for Development Materials or Custom Applications; training or "how-to", assistance with administrative functions; other professional services; corrections of immaterial Defects or corrections that will degrade the SaaS Service.

A "Defect" means a problem causing the SaaS Service to not conform to the Product Overview. Customer may request Support for a Defect at the online portal <https://its.service-now.com/> or any successor site. ServiceNow or ServiceNow's authorized reseller, as applicable, will use commercially reasonable efforts to initially respond to the Support request in the following target time frames:

Nature of Defect	Production Instance Target Initial Response Time	Non-Production Instance Target Initial Response Time
Availability Defect	Classified as P1 Defect Within 30 minutes at all times	Classified as P2 Defect Within 2 hours at all times
Critical Defect	Classified as P2 Defect Within 2 hours at all times	Classified as P3 Defect Within 12 hours on ServiceNow business days, excluding holidays
Non-Critical Defect	Classified as P3 Defect Within 12 hours on ServiceNow business days excluding holidays	Classified as P4 Defect Within 24 hours on ServiceNow business days, excluding holidays
Other	No target initial response time	No target initial response time

The priority level will be assigned by these guidelines: "P1" is a production instance of the SaaS Service not Available (as defined below); "P2" is a non-production instance not Available or a Defect in a critical function of a production instance; "P3" is a production instance Defect that is not a P1 or P2 request or a Defect in a critical function of a non-production instance; and "P4" is a Defect that is not a P1, P2 or P3 request.

Provided that the Customer chooses to be hosted in ServiceNow's Federal Information Security Management Act (FISMA) datacenter, ServiceNow shall provide 24 x 7 Support composed of US Citizen, US Soil, adjudicated employees. If for any reason one or more instances are migrated to a non-FISMA datacenter, ServiceNow's standard Support shall apply which does not guarantee that employees will be located in the United States or United States citizens.

2. UPGRADES

2.1. INCLUDED IN SAAS SERVICE. "Upgrades" are ServiceNow's releases of the SaaS Service for repairs, enhancements or new features applied by ServiceNow to Customer's instances of the SaaS Service at no additional fee during the Subscription Term. ServiceNow has the discretion to provide new functionality either: (i) as an Upgrade, or (ii) as different software or service for a separate fee. ServiceNow determines whether and when to develop, release and apply any Upgrade to Customer's instances of the SaaS Service.

2.2. NOTICE OF UPGRADES; MAINTENANCE DOWNTIME. ServiceNow shall use reasonable efforts to give Customer thirty (30) days' notice of any Upgrade to the ServiceNow Applications or the ServiceNow Platform. ServiceNow shall use reasonable efforts to give Customer ten (10) days' notice of any Upgrade to the infrastructure network, hardware or software used by ServiceNow to operate and deliver the SaaS Service if ServiceNow in its reasonable judgment believes that the cloud infrastructure Upgrade will impact Customer's use of its production instances of the SaaS Service. ServiceNow will use commercially reasonable efforts to limit the period of time during which the SaaS Service is unavailable due to the application of Upgrades to no more than two (2) hours per month ("Maintenance Downtime"). Notwithstanding the foregoing, ServiceNow may provide Customer with a shorter or no notice period of an Upgrade if necessary, in the reasonable judgment of ServiceNow, to maintain the availability, security or performance of the SaaS Service for other ServiceNow customer(s) or the ability of ServiceNow to efficiently provide the SaaS Service to other ServiceNow customer(s).

3. AVAILABILITY SERVICE LEVEL

If Customer's production instances of the SaaS Service are not Available ninety-nine and eight-tenths percent (99.8%) of the time or more in any calendar month ("SLA"), then Customer's exclusive remedy for failure of the SaaS Service to meet the SLA is for Customer either: (1) to request that the affected Subscription Term be extended for the number of minutes the SaaS Service was not Available in the month in excess of the SLA; or (2) to request that Reseller issue a service credit to Customer for the dollar value

of the number of minutes the SaaS Service was not Available in the month in excess of the SLA (determined at the deemed per-minute rate Reseller charged to Customer for Customer's use of the affected SaaS Service), which Customer may request ServiceNow or ServiceNow's authorized reseller, as applicable, to apply to the next invoice for subscription fees "Available" means that the SaaS Service can be accessed by Customer via a secure password protected web site(s) hosted by ServiceNow, except for: (i) Maintenance Downtime in an amount fewer than two (2) hours per calendar month; and (ii) downtime caused by circumstances beyond ServiceNow's control, including without limitation, modifications of the ServiceNow Applications by any person other than ServiceNow or a person acting at ServiceNow's direction, Custom Applications, a Force Majeure Event, such as, for example, general Internet outages, failure of Customer's infrastructure or connectivity (including without limitation, direct connectivity and virtual private network (VPN) connectivity to the SaaS Service), computer and telecommunications failures and delays not within ServiceNow's control, and network intrusions or denial-of-service or other criminal attacks

Customer must request all service credits or service extensions in writing to Reseller, as applicable, within thirty (30) days of the end of the month in which the SLA was not met, identifying the Support requests relating to the lack of Availability. The total amount of service extension or credits for any month may not exceed the subscription fee for the affected SaaS Service for the month, and has no cash value.

IT SECURITY AND DATA PROTECTION

This IT Security and Data Protection ("Exhibit") is incorporated into the underlying agreement for the purchase of ServiceNow's subscription service between the parties with an Effective Date of _____ ("Agreement"). Capitalized terms used and not defined in this Exhibit shall have the meaning given to them in the Agreement.

ServiceNow may from time to time effect reasonable modification to the policies and practices described below, without Customer's prior consent, provided that any such modification does not materially reduce the commitments, protections or overall level of service provided to Customer immediately prior to such modification.

1. Definitions. Capitalized terms that are not otherwise defined herein shall have the meaning given to them in the Agreement.

1.2. "Breach" means the unauthorized acquisition, access, use or disclosure of Personal Data which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Breach does not include:

(i) Any inadvertent disclosure from an individual who is otherwise authorized to access Personal Data at a facility operated by ServiceNow to another similarly situated individual at the same facility;

(ii) Any unauthorized acquisition, access, use or disclosure of Personal Data caused by a custom application on a ServiceNow platform created by Customer or modifications of the Subscription Service by Customer or a person acting at Customer's direction.

1.3. "Data Subject" means an identified or identifiable natural person.

1.4. "Personal Data" means Customer Data which is comprised of personally identifiable information, protected health and financial information and other non-public personal information.

1.5. "Security Measures" means the measures as described in Section 3.1 below.

1.6. "Security Policies" means ServiceNow's statements of direction for securing company information pertaining to Security Measures and compliance with applicable laws and regulations.

1.7. "Security Procedures" means the step-by-step actions taken to achieve and maintain compliance with Security Measures.

1.8. "Security Technical Controls" means ServiceNow's specific hardware, software or administrative mechanisms necessary to enforce Security Measures in accordance with the terms of the Agreement and this Exhibit as methods for addressing security risks to information technology systems and relevant physical locations, or implementing related policies, related to ServiceNow's provision of the Subscription Service to its customers generally. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement Security Policy elements for ServiceNow's Subscription Service.

1.9. "SaaS Service" means the ServiceNow applications and platform delivered as a software as a service (SaaS) offering online via web access designated by ServiceNow made available by ServiceNow to Customer as purchased by Customer.

2. General Provisions

2.1. Customer acknowledges that its use of the SaaS Service and compliance with the terms of the Agreement may not ensure compliance with any national, state, local, or foreign law, treaty, and/or regulation applicable to the processing, controlling or transferring of Personal Data ("Laws"). Customer represents and agrees that it has an independent duty to comply with any and all Laws applicable to it and that Customer remains fully responsible for the collection of Personal Data, including providing any required disclosures to and obtaining any required consents from Data Subjects, and for the transfer of such data to ServiceNow by way of the SaaS Service. Customer further represents and agrees that it has an independent duty to comply with any and all Laws applicable to it and that neither this Exhibit nor the Agreement shall obligate ServiceNow to comply with any additional Laws not generally applicable to ServiceNow in the delivery of the SaaS Service.

2.2. ServiceNow provides for the technical architecture that permits Customer to use and process Customer Data, including any Personal Data collected by it, in the SaaS Service. This includes, without limitation, column level encryption functionality. Access to and use of Subscription Service is restricted to Customer's authorized users ("Users") only. Customer shall be responsible for ensuring all Customer Users maintain the security of any passwords, usernames, or other form of authentication involved in obtaining access to the SaaS Service. Usernames and passwords must be uniquely assigned to a specific individual and may not be shared by multiple individuals at any one time or transferred.

2.3. In connection with the SaaS Service, ServiceNow shall comply with SOC 1 financial and operational control objectives and SOC 2 criteria for complying with the trust services principles (collectively, the "Control Objectives"). If ServiceNow wants to change the control environment in a manner such that ServiceNow reasonably determines such control environment will no longer comply with the Control Objectives subsequent to the delivery of the last SOC 1 Type 2 Report or SOC 2 Type 2 Report, ServiceNow shall so notify DES in writing at least sixty (60) days prior to the proposed change, including identifying the planned effective date of such change. ServiceNow shall reasonably cooperate with DES in connection with the terms, obligations and rights set forth in this Agreement.

2.4. Upon written request, ServiceNow shall deliver to DES an electronic copy of a SOC 1 Type 2 Report and SOC 2 Type 2 Report, each of which must cover the previous year, prepared by a nationally-recognized independent certified public accounting

firm. Within forty five (45) days following DES' written request for a letter updating the most recently issued SOC 1 Type 2 Report or SOC 2 Type 2 Report, an authorized senior executive officer of Contractor shall deliver to DES a letter that contains a written description of any material changes to the control environment that would adversely affect the prior delivered SOC 1 Type 2 Report or SOC 2 Type 2 Report to cover the time period not covered under the scope of such most recently issued audit report from the date of such report until the date requested in DES' written request, or if there have not been any such changes, a letter stating that there have not been any changes since the date of the most recently issued report

2.5 If any SOC 1 Type 2 Report, SOC 2 Type 2 Report or other audit report reveals any deficiencies and/or exceptions with respect to the Control Objectives as they apply to DES or otherwise (the "Deficiencies"), ServiceNow shall prepare and deliver to DES a detailed plan for remedying all such Deficiencies (each such plan, a "Remedial Plan") ServiceNow shall deliver such Remedial Plan within a reasonable period of time following identification of any Deficiencies based on the nature and complexity of the Deficiencies to be remedied, not to exceed thirty (30) days following DES' written request for same. ServiceNow shall bear all costs and expenses associated with correcting all Deficiencies.

3. Technical and Organization Safeguards

3.1. Security Measures. ServiceNow shall use industry standard practices and no less than commercially reasonable care to provide a secure environment for Customer Data. ServiceNow will implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of the Customer Data.

3.2. Data Centers. ServiceNow agrees that it shall provide the Subscription Service using a SSAE16 Type II certified or ISO27001 certified (or equivalent) data centers.

3.3. Customer Data Backup. ServiceNow backs up all Customer Data within Customer's instances nightly and maintains six (6) nightly incremental backups, one (1) full nightly backup, and three (3) weekly backups of such Customer Data. Additionally, ServiceNow backs up all Customer Data within Customer's production instances nightly to a storage location at a separate datacenter and maintains the backups of such production Customer Data for the duration stated herein.

3.4. Information Security Policy. As part of its Subscription Service, ServiceNow shall during the term of the Agreement use commercially reasonable efforts to enforce:

- (i) a program of Security Policies, Security Procedures, and Security Technical Controls;
- (ii) a security incident management program;
- (iii) a security awareness program;
- (iv) cloud service continuity and recovery plans, including regular testing;
- (v) change control procedures; and
- (vi) procedures to conduct periodic independent security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for timely remediation.

3.5. Physical Access. As part of its Subscription Service, ServiceNow shall during the term of the Agreement use commercially reasonable efforts to provide:

- (i) physical protection mechanisms for all information assets and information technology;
- (ii) facility entry controls to limit physical access to systems that store or process Customer Data;
- (iii) processes to ensure access to facilities is monitored and restricted on a "need to know" basis; and
- (iv) controls to physically secure all Customer Data and to properly destroy such information in accordance with the Agreement.

3.6. Logical Access. As part of its Subscription Service, ServiceNow shall during the term of the Agreement use commercially reasonable efforts to provide:

- (i) mechanisms for user authentication and authorization in accordance with a "need to know" policy to the ServiceNow systems supporting the Subscription Service;
- (ii) controls to restrict access to ServiceNow systems for remote users, contractors and service providers;
- (iii) timely and accurate administration of user account and authentication management for the ServiceNow systems;
- (iv) processes to ensure assignment of unique identification to each person with computer access;
- (v) processes to ensure ServiceNow-supplied defaults for passwords and security parameters are changed and appropriately managed on an ongoing basis;
- (vi) mechanisms to track all access to Customer Data by unique identification;
- (vii) mechanisms to encrypt or hash all passwords; and
- (viii) a process to revoke access rights of inactive accounts or terminated/transferred Users.

3.7. Security Architecture and Design. As part of its Subscription Service, ServiceNow shall during the term of the Agreement use commercially reasonable efforts to provide:

- (i) a security architecture that reasonably ensures delivery of the Security Measures;
- (ii) functionality in the Subscription Service that enables Customer to encrypt Customer Data in Customer-created fields;
- (iii) processes to ensure regular testing of security systems and procedures;
- (iv) a system of industry standard firewall(s) and intrusion detection technologies to protect Customer Data; and
- (v) database and application layer design processes intended to ensure ServiceNow applications are designed to protect the Customer Data that is collected, processed, used, stored, accessed, and transmitted through such systems.

3.8. System and Network Management. As part of its Subscription Service, ServiceNow shall during the term of the Agreement use commercially reasonable efforts to maintain:

- (i) processes to assess the need for security patches and to implement same,
- (ii) processes to monitor, analyze, and respond to security alerts,
- (iii) appropriate network security design elements that provide for segregation of data;
- (iv) the use and regular update of anti-virus software; and
- (v) processes to regularly maintain, manage and protect the installed software.

3.9 Penetration Tests Customer may request to perform, at its own expense, an application penetration test of the Subscription Service, which shall be no more than once per year. Customer must notify ServiceNow in advance of any tests by submitting a request using ServiceNow's online support portal and completing a penetration testing agreement. ServiceNow and Customer will agree upon a mutually acceptable time for the test, which shall typically be within thirty (30) days of such request. The test shall be of reasonable duration, conducted during reasonable times and shall not unreasonably interfere with ServiceNow's day-to-day operations. Customer shall be entitled to notify ServiceNow should Customer detect any vulnerability. Upon such notice, ServiceNow shall use all commercially reasonable efforts to promptly make any necessary changes to secure the Subscription Service.

4. Breach Notification and Mitigation

4.1 Unless notification is delayed by a law enforcement agency, ServiceNow shall use reasonable efforts to report to Customer any Breach within twenty-four (24) hours of discovery. In addition, ServiceNow shall provide any additional information reasonably requested by Customer for purposes of investigating the Breach and any other available information that Customer may be required to provide to a Data Subject under the Laws at the time of notification or promptly thereafter as information becomes available.

4.2 In the event of a Breach caused by ServiceNow, ServiceNow agrees to use commercially reasonable efforts to investigate the causes of the Breach and promptly take reasonable corrective measures to prevent future Breaches, and to immediately take reasonable steps to mitigate the effects and to minimize any damage or loss resulting from the Breach.

Master Contract

for

**Information Technology Services Management
Software & Professional Services**

between

Washington State Department of Enterprise Services

and

CompuCom Systems, Inc.

Effective Date: November 25, 2013



Table of Contents

1.	Definition of Terms	1
Master Contract Term		3
2.	Term	3
3.	Survivorship.....	4
Pricing, Invoice and Payment.....		4
4.	Pricing.....	4
5.	Advance Payment Prohibited	5
6.	Taxes.....	5
7.	Invoice and Payment	5
8.	Overpayments to Contractor.....	6
Contractor's Responsibilities		6
9.	Purchaser Eligibility	6
10.	RFP Mandatory Requirements	6
11.	Services and Statement of Work.....	7
12.	Commencement of Work.....	7
13.	RESERVED.....	7
14.	RESERVED.....	7
15.	Ownership/Rights in Data.....	7
16.	Security.....	8
17.	Contractor Commitments, Warranties and Representations.....	9
18.	Minority, Women's, and Veteran-Owned Business Enterprise Participation	10
19.	Contractor's Protection of Confidential Information.....	10
20.	Purchaser Security Requirements.....	11
21.	Enterprise Active Directory and Authentication	11
22.	SecureAccess Washington@/ Fortress Anonymous and Authentication.....	12
23.	Enterprise Architecture Integration Architecture Standards.....	12
24.	Purchaser Use of Master Contract.....	12
Master Contract Administration		12
25.	Notices.....	12
26.	Section Headings, Incorporated Documents and Order of Precedence	13
27.	Entire Agreement.....	13
28.	Authority for Modifications and Amendments.....	14
29.	Independent Status of Contractor	14
30.	Governing Law	14
31.	Rule of Construction as to Ambiguities.....	14
32.	Subcontractors	14
33.	Assignment	15
34.	Publicity.....	15
35.	Audits & Review of Contractor's Records.....	15



General Provisions	Error! Bookmark not defined.
36. Patent and Copyright Indemnification	16
37. Save Harmless	17
38. Insurance	17
39. Industrial Insurance Coverage	19
40. Licensing Standards	19
41. Antitrust Violations	19
42. Compliance with Civil Rights Laws	19
43. Severability	20
44. Waiver	20
45. Treatment of Assets	20
46. Contractor's Proprietary Information	20
Disputes and Remedies	21
47. Disputes	21
48. Non-Exclusive Remedies	21
49. Failure to Perform	21
50. Limitation of Liability	22
Master Contract Termination	23
51. Termination for Default	23
52. Termination for Convenience	24
53. Termination for Withdrawal of Authority	24
54. Termination for Non-Allocation of Funds	24
55. Termination for Conflict of Interest	24
56. Termination Procedure	25
57. Transition and Transition Period	25
58. Covenant Against Contingent Fees	25
Activity Reporting, Administration Fee & Performance Reporting	26
59. DES Administration Fee and Collection	26
60. Activity Reporting	26
61. Electronic Funds Transfer	27
62. Failure to Remit Reports/Fees	27
Master Contract Execution	27
63. Authority to Bind	27
64. Counterparts	27
Schedules	1
Schedule A: <i>Price List</i>	
Schedule B: <i>Master SaaS Service Agreement</i>	



Exhibits..... 1

:Exhibits A -RFP No, 13-2000-ACCO

Exhibit B : Contractor;s Reponse to RFP No. 13-2000-Accoand B are not attached but are available upon request from the DES..... 1



MASTER CONTRACT NUMBER 08113

for

ITSM Software and Professional Services

PARTIES

This Master Contract (the "Master Contract") is entered into by and between the State of Washington, acting by and through the Department of Enterprise Services, an agency of Washington State government located at 1500 Jefferson Street SE Olympia WA, 98504-2445 hereinafter referred to as "DES", and CompuCom Systems, Inc., a Delaware corporation, located at 7171 Forest Lane, Dallas, TX 75230 licensed to conduct business in the state of Washington hereinafter referred to as "Contractor," for the purpose of providing Information Technology Services Management software and related professional services, as described and identified herein.

RECITALS

The State of Washington, acting by and through DES issued Request for Proposals, RFP No. 13-2000-ACCO (the "RFP"; attached as Exhibit A), on March 22, 2013 for the purpose of entering into master contracts for the purchase of Software as a Service subscription of Information Technology Services Management software and related professional services in accordance with its authority under chapter 43.19 RCW and chapter 39.26 RCW.

Contractor submitted a timely Proposal (defined below) to the RFP.

DES evaluated all properly submitted Proposals to the RFP and has identified Contractor as an Apparently Successful Vendor.

DES has determined that entering into this Master Contract with Contractor will meet Purchasers needs and will be in Purchasers best interest.

NOW THEREFORE, DES enters into this Master Contract with Contractor the terms and conditions of which shall govern Contractor's reselling to Purchasers SaaS Services for the Information Technology Services software and to perform related professional services as described herein, on a convenience or as needed basis. This Master 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

The following terms as used throughout this Master Contract shall have the meanings set forth below. Other capitalized terms used in this Master Contract and not defined below shall have the meaning ascribed to them in the RFP.

"Business Days" or "Business Hours" shall mean Monday through Friday, 8 AM to 5 PM, local time in Olympia, Washington, excluding Washington State holidays.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, payroll/labor data, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, and information identifiable to an individual. Purchasers may identify additional Confidential Information in a Statement of Work. Confidential Information also includes (1) any Personal Information under the data breach notification provisions of RCW 19.255.010 and RCW 42.56.590 and (2) "Protected Health

Information" as set forth in 45 CFR § 164.50 as currently drafted and subsequently amended or revised.

"Contractor" shall mean CompuCom Systems, Inc., its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Master Contract.

"Contractor Account Manager" shall mean a representative of Contractor who is assigned as the primary contact person with whom the DES Master Contract Administrator shall work with for the duration of this Master Contract and as further defined in the Section titled **Contractor Account Manager**.

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

"OCIO" shall mean the Washington State Office of the Chief Information Officer.

"Preexisting Materials" shall mean all processes, procedures, systems, schematics, tools, know-how and material provided by Contractor, that are delivered under this Master Contract by Contractor to DES or a Purchaser in the performance of Services that were developed by Contractor prior to performance of the Services hereunder.

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

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

"Proposal" shall mean Contractor's Proposal submitted in response to the RFP for Information Technology Services Management Software & Professional Services and attached as Exhibit B hereto.

"Purchaser(s)" shall mean, with respect to use of this Master Contract, Washington State agencies, including but not limited to DES, institutions of higher education, boards, commissions and political subdivisions (e.g., counties, cities, school districts, or public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW, and public-benefit nonprofit corporations that are eligible to receive services from DES under chapter 43.19 RCW or chapter 39.26 RCW.

"RCW" shall mean the Revised Code of Washington.

"Records" shall mean all books, records, documents and other evidence directly relating to this Master Contract, including but not limited to Minority and Women's Business Enterprise participation (if applicable), protection and use of Purchaser's Confidential Information, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature solely invoiced in the performance of this Master Contract, and appropriate books and records (including auditor work papers) documenting the Control Objectives.

"SaaS Services" means the ServiceNow platform and Service Now applications (set forth in a Use Authorization) which are made available by ServiceNow as a software as a service (SaaS) offering online via web access designated as ServiceNow.

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

“Schedule B: Master SaaS Service Agreement” shall mean the attachment to this Master Contract that sets forth certain terms and conditions for the provision of SaaS Services by Solution Provider.

“Services” shall mean all professional services provided by Contractor under this Master Contract, and applicable Statement of Work including but not limited to implementation, training, and support.

“Specifications” shall mean the technical and other specifications set forth in the RFP, and any additional specifications set forth in Contractor’s Proposal, and any additional specifications defined in a Statement of Work.

“Solution Provider” means ServiceNow, Inc., the provider of SaaS Services included in the Proposed Solution.

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

“Subcontractor” shall mean one not in the employment of Contractor, other than the Solution Provider, who is performing all or part of the business activities under this Master Contract or any Statement of Work with Contractor. The term **“Subcontractor”** means Subcontractor(s) of any tier.

“Term” shall mean the period of time specified within a document that it will be in full force and effect and includes, c.g., Initial Term, Renewal Term, and Statement of Work Term, as further defined in Section 2.

“User” shall mean any individual identified by Purchaser from itself or any other state agency, board or commission, who will have access to the Software under this Master Contract and any Statement of Work.

“Work Product” shall mean, collectively, any, data and work first created or produced pursuant to this Master Contract and any Statement of Work, including but not limited to, discoveries, formulae, ideas, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, specifically identified in the statement of Work and developed and paid for by Purchaser, but excluding (1) Contractor’s Preexisting Material and any modifications, improvements, enhancements, changes custom additions, or variations thereto (2) and the Solution Provider’s SaaS Services and any modifications, changes, custom additions, alterations or variations thereto.

Master Contract Term

2. Term

- 2.1. **Term of Master Contract:** This Master Contract’s initial term shall be for a period of three (3) years from the Effective Date (the **“Initial Term”**).
- 2.2. **Renewal of Master Contract:** This Master Contract’s term shall be automatically extended for up to two (2) additional one (1) year periods (each a **“Renewal Term”**) unless DES terminates by giving written notice of its decision not to extend to Contractor

not less than thirty (30) calendar days prior to the then-current Master Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing

2.3. **Term of SOWs**

- a) The term of any SOW executed under this Master Contract shall be set forth in the SOW.
- b) SOWs or renewal SOWs entered into prior to the expiration or other termination of this Master Contract may be completed under the Master Contract terms and conditions in effect when the SOW or renewal SOW was entered into.
- c) New SOWs or renewal SOWs shall not be entered into after the expiration or other termination of this Master Contract.

3. **Survivorship**

- 3.1. All of the terms and conditions contained in this Master Contract shall survive its expiration or other termination for so long as any SOW entered into under this Master Contract is still in effect and shall apply to such SOW.
- 3.2. The terms, conditions and warranties contained in this Master Contract that by their sense and context are intended to survive its expiration, cancellation or termination of this Master Contract shall so survive. In addition, the terms of the Sections titled **Overpayments to Contractor; Ownership/Rights in Data; Contractor Commitments, Warranties and Representations; Contractor's Protection of Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Subcontractors; Publicity; Audits & Review of Contractor's Records; Patent and Copyright Indemnification; Insurance; Contractor's Proprietary Information; Disputes; Limitation of Liability; DES Administration Fee and Collection; and Activity Reporting** shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. **Pricing**

- 4.1. Contractor agrees to provide the SaaS Services and Services at the Prices set forth in the *Price List* attached as Schedule A to this Master Contract. Such Prices may not be increased during the Initial Term of this Master Contract. Prices are considered maximum or "ceiling" prices only. On a project by project basis, Contractor may elect to provide Services to Purchaser for performance of a Statement of Work at a lower Price than originally established in this Master Contract.
- 4.2. Consideration for each SOW will be stated in the Purchaser's SOW. Purchaser shall make payments on SOWs to the Contractor consistent with the terms set out in such SOW. Funding may be federal, state and/or private-grant-based.
- 4.3. Purchaser shall reimburse Contractor for travel and other expenses as identified in a Statement of Work, 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.ofin.wa.gov/policy/contents.asp>). Contractor 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.



- 4.4. At least ninety (90), but not more than one hundred twenty (120), calendar days before the end of the then current term of this Master Contract, Contractor may propose Price increases by written notice to DES. Any such proposed Price increase shall not exceed the lesser of (i) three percent (3%) or (ii) the then most recently published annual increase in percentage points of the U.S. Department of Labor "Consumer Price Index, US City Average, All Items, Not Seasonally Adjusted" (CPI-U, Series Id: CUUR0000SA0). Price adjustments will be taken into consideration by DES when determining whether to extend this Master Contract.
- 4.5. Contractor agrees that all the Prices, terms, warranties, and benefits provided under this Master Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same Services under similar term, such as the same level of skilled personnel, the same time period and the same volume of Services. If, during the Term of this Master Contract, Contractor knowingly enters into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided under this Master Contract, Contractor shall be obligated to provide the same to DES for subsequent Statements of Work.
- 4.6. Contractor agrees that Prices provided in this Master Contract assume that work is performed during Business Days and Hours. Overtime rates are not allowed unless required by state or federal law. Further, Prices are to be considered all-inclusive hourly rates to include all expenses (e.g., overhead, insurance, and administration including but not limited to the Administration Fee outlined in Section 59) except travel (see Section 4.3 above).

5. Advance Payment Prohibited

No advance payment shall be made for Products or Services furnished by Contractor pursuant to a Statement of Work under this Master Contract. Notwithstanding the above, payments for SaaS Services, including support and maintenance services, may be made not more than one (1) year in advance.

6. Taxes

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

7. Invoice and Payment

- 7.1. Contractor will submit properly itemized invoices as indicated in a Statement of Work. Invoices shall provide and itemize, as applicable:
 - a) DES Master Contract number 08113;
 - b) Purchaser Statement of Work contract number;

- c) Contractor name, address, phone number, and Federal Tax Identification Number;
 - d) Description of Products or Services provided;
 - e) Date(s) that Products or Services were provided or made available to Purchaser, including number of hours worked.
 - f) Contractor's Price;
 - g) Net invoice Price;
 - h) Applicable taxes;
 - i) Other applicable charges;
 - j) Total invoice Price; and
 - k) Payment terms including any available prompt payment discounts.
- 7.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of the Products or Services, such acceptance will be specified in the applicable Statement of Work, or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. If applicable, with each invoice Contractor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE or Veteran-owned business under the SOW, as set forth in Section 18 below.
- 7.4. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 7.5. The Contractor's DES Master Contract number and the Purchaser Statement of Work number must appear on all bills of lading, packages, and correspondence relating to any SOW.
- 7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.7. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.

8. Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under any SOW within thirty (30) days' written notice.

Contractor's Responsibilities

9. Purchaser Eligibility

In order to be eligible to purchase under this Master Contract, Purchasers shall have entered into an agreement with DES for the use of master contracts generally. Contractor shall be responsible for verifying Purchaser eligibility. Contractor may contact the Office of Legal Services within DES at 360-407-8771 to ascertain Purchaser eligibility.

10. RFP Mandatory Requirements



The RFP mandatory requirements are essential substantive terms of this Master Contract. Services and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFP.

11. Services and Statement of Work

- 11.1. All Services shall be performed pursuant to the terms of this Master Contract and shall be documented in a Statement of Work established between Purchaser and Contractor.
- 11.2. An SOW shall at a minimum:
 - a) Reference this DES Master Contract number 08113;
 - b) Identify Purchaser's SOW contract number;
 - c) Define project or task objectives;
 - d) Describe the Products to be delivered or scope of Services to be performed;
 - e) Identify deliverables;
 - f) Specify a timeline and period of performance;
 - g) Specify compensation and payment;
 - h) Describe Contractor's roles and responsibilities;
 - i) Describe Purchaser's roles and responsibilities; and
 - j) Provide signature block for both parties.
- 11.3. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Master Contract. In the event of any conflict, this Master Contract will prevail.
- 11.4. Where applicable, all Statements of Work must comply with Executive Order 10-07 regarding Performance-Based Contracting.

12. Commencement of Work

No work shall be performed by Contractor until this Master Contract and the applicable Statement of Work is executed by Contractor and DES or Purchaser, as applicable, and is received by Contractor.

13. RESERVED.

14. RESERVED.

15. Ownership/Rights in Data

- 15.1 Contractor represents and warrants that it has all rights necessary to resell the SaaS Services. No title, ownership or interest in the Contractor's Software or any of its parts, in any third party Software incorporated into Contractor's Software, or applicable rights there in such as patents, copyrights and trade secrets, is transferred to DES or Purchaser.
- 15.2 Contractor hereby grants to Purchaser a non-exclusive, royalty-free, irrevocable license to use, reproduce, copy and display any such deliverables that are part of the Services as necessary in the conduct of Purchaser's own operations. This license is perpetual, provided Purchaser is not otherwise in breach of the Agreement or the applicable SOW.
- 15.3 Purchaser shall have and retain all ownership, right, title, interest and all intellectual property rights to Work Product. To the extent that any such rights in the Work Product vest initially with the Contractor by operation of law or for any other reason, Contractor

hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to Purchaser. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 15.4. Contractor warrants that it has full rights to assign and license Work Product and Preexisting Material to Purchaser.
- 15.5. During the Term and any time thereafter, Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section, and when so obtained or vested, to maintain, renew, and restore the same.
- 15.6. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy, disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

16. Security

While on DES or any Purchaser's premises, Contractor, its agents, employees, and Subcontractors shall conform in all respects with any and all of Purchaser's physical, fire, safety, and other security regulations as provided to Contractor within a reasonable time prior to working on Purchaser's premises.

16.1. Facility Access.

Contractor understands that Purchaser's building entrances may be controlled for access. In the event Contractor performs any work at Purchaser's buildings, Contractor agrees to become familiar with Purchaser's building and security policies as provided by Purchaser and, upon review, further agree to observe and comply with all Purchaser's building and security policies or procedures.

Contractor understands that in order to obtain access to Purchaser's premises, Contractor may have to be issued a security badge by Purchaser. Contractor shall provide certain personal information, including valid government-issued photo identification, prior to obtaining a security badge when required by Purchaser. Contractor further understands that Purchaser will collect and retain such personal information for so long as the SOW is in effect and such individual(s) has access to the premises. Purchaser reserves the right to conduct background checks to the extent allowed by applicable law and deny an application for a security badge. Failure of Contractor to comply with Purchaser's security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser's facilities. Upon the earlier of termination of the SOW, or suspension or termination of access to Purchaser's facilities, Contractor shall return all security badges.

16.2. Remote Access to Network for Services

Contractor understands that in order to obtain remote access to Purchaser's Local Area Network (LAN), email, or supported computing environments through a remote access connection ("Remote Access"), Contractor must comply with Purchaser's Remote Access policy and any other applicable policies or procedures as specified in the applicable Statement of Work. Contractor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.



16.3. System Security

As to Services delivered directly by Contractor pursuant to a Statement of Work, Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in performing an SOW and that in providing such access to Contractor, Purchaser places special confidence and trust in Contractor. Contractor acknowledges and understands that any access granted by Purchaser to its computer networks shall be limited, restricted and conditioned upon Contractor's compliance with certain policies and practices. Contractor warrants that it will perform all work for or on behalf of Purchaser in full compliance with OCIO security policies, standards, and guidelines, and any other security documents and best practices provided by DES ("Security Policies"). Contractor agrees that the Security Policies shall serve as the standard for network security and warrants that it shall exercise its best efforts to comply with the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, Self Help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of DES's network, system or data. Contractor staff may be required by Purchaser to complete a certain minimum level of security awareness training coursework depending on the skill and experience levels required by Purchaser. Minimum expectations and recommended coursework are set forth here:
<http://ofm.wa.gov/ocio/policies/documents/141.pdf>.

16.4. Safety

Contractor shall observe and comply with applicable WISHA and OSHA regulations, all applicable safety and environmental laws and regulations, and upon review and acceptance, all of Purchaser's rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including but not limited to physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies disclosed to Contractor prior to performing Services.

17. **Contractor Commitments, Warranties and Representations**

17.1. Any written commitment by Contractor in this Master Contract or any Statement of Work shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Master Contract or any SOW for Services, as applicable. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in this Master Contract, in its Proposal or contained in any Contractor Statement of Work for Services, or manufacturer publications, formal written materials, schedules, charts, diagrams, tables, descriptions, other formal written representations of Contractor which are clearly intended to effect a sale to DES or Purchaser.

17.2. Contractor represents and warrants that:

The Services performed by Contractor shall possess all of the functional capabilities described in (i) any Statement of Work; (ii) Contractor's Proposals; (iii) at Contractor's demonstration; (iv) all of the written, printed, electronic or other format materials published by Contractor to DES or Purchaser; and (v) any current user, operations and service manuals of Contractor that Contractor publishes and uses for the express purpose of providing the Services.

- 17.3. As a reseller of SaaS Services, Contractor, to the extent permitted by Solution Provider and applicable law, assigns and passes through to Purchaser any and all (a) end-user warranties provided by Solution Provider, (b) intellectual property indemnities, and (c) other liabilities of the Solution Provider. Contractor does not provide any independent warranties, intellectual property indemnities or other product liability with respect to SaaS Service.
- 17.4. EXCEPT AS PROVIDED IN THIS SECTION 17, CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST CLAIMS OF PATENT INFRINGEMENT OR THE LIKE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE THE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY.

18. Minority, Women's, and Veteran-Owned Business Enterprise Participation

If applicable, with each invoice for payment and within thirty (30) days of Purchaser's request, Contractor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE or Veteran-Owned certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE or Veteran-Owned certification(s) and specify the amounts paid to each Subcontractor so certified under any SOW. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with the **Audits & Review of Contractor's Records** section.

19. Contractor's Protection of Confidential Information

- 19.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with the Services performed under this Master Contract or any SOW may consist of Confidential Information. Contractor agrees to hold such Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Master Contract or an SOW to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Master Contract or an SOW; and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without DES or Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement. Contractor agrees to implement the same standard of care as it uses to protect its own Confidential Information but no less than reasonable standard of care.
- 19.2. If Contractor is requested or required to disclose any Confidential Information by subpoena, discovery request, or other legal process, Contractor will provide DES or Purchaser with reasonable written notice prior to disclosure so that a protective order or other appropriate remedy to prevent the disclosure of such Confidential Information may be sought. Contractor agrees to cooperate with DES or Purchaser in its efforts to obtain such protective order or other appropriate remedy.
- 19.3. Immediately upon expiration or termination of this Master Contract or an SOW, Contractor shall, at the disclosing party's option: (i) certify that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information; or (iii) take whatever other reasonable steps that are required of Contractor to protect Confidential



Information. Items (i), (ii), and (iii) above notwithstanding and subject to the remainder of this Section 19, Contractor shall keep one copy of Confidential Information for archival purposes only.

- 19.4. Contractor shall maintain a log documenting the following: the Confidential Information receiveinformation performance of Services of this Master Contract or an SOW; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with **Audits & Review of Contractor's Records**.
- 19.5. DES and Purchasers reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Master Contract or an SOW.
- 19.6. Violation of this section by Contractor or its Subcontractors may result in termination of this Master Contract or an SOW, and demand for return of all Confidential Information, monetary damages, or penalties.

20. Purchaser Security Requirements

- 20.1. Purchasers who use the State's TCP/IP backbone network, K-20 network, or Inter Governmental Network ("IGN") must consult with Washington State Consolidated Technology Services ("CTS") regarding business rules and escalation procedures to be set forth in any SOW with respect to state networks and state network security.

State of Washington
Consolidated Technology Services
Attn: Service Desk Manager
1115 Washington St. SE, OB-2
PO Box 42445
Olympia, WA 98504-2445

- 20.2. For state network problem escalation, the CTS Service Desk will be the initial point of contact for Contractor or Purchaser concerning any problems with the state networks. CTS Service Desk can be reached at 1-888-241-7597, or (360) 753-2454.

21. Enterprise Active Directory and Authentication

- 21.1. The Washington Enterprise Active Directory (EAD) is an identity management directory service and security system. This allows the State to manage and administer user accounts, authentication, security policies, and organizational resources such as user id and passwords, computers, printers, and servers within the State Governmental Network (SGN).
- 21.2. Contractor will use commercially reasonable efforts so that any Services provided under any SOW shall, where applicable, fully leverage the EAD and that any systems implemented in the State with internal state users shall be authenticated using the EAD for user authentication on the SGN.
- 21.3. Contractor recognizes that the state has a single sign-on strategy in place to minimize the establishment of multiple user stores for authentication and any inconsistent application implemented is likely to cause damage and irreparable harm. If required under the terms

of any SOW, Contractor represents and warrants that specified Work Product shall be consistent with this single sign-on strategy.

22. SecureAccess Washington@/ Fortress Anonymous and Authentication

22.1. As between Contractor and Purchaser, Purchaser shall be responsible for allowing or denying access and for validating individuals requesting access for any SaaS Services.

23. Enterprise Architecture Integration Architecture Standards

As specified in the applicable SOW, Contractor represents and warrants that, where applicable, Contractor's Services will be compliant with the state of Washington's Enterprise Architecture Integration Architecture Standards, which govern the planning and construction of all applications that share data with other agencies. The state's complete list of EA Integration Architecture Standards and supporting architectural reference documents are available at:
<http://ofm.wa.gov/ocio/policies/manual.asp>.

Purchaser's Responsibilities

24. Purchaser Use of Master Contract

24.1. This Master Contract may be used only by Purchasers who have entered into an agreement with DFS for the use of master contracts generally and is not for personal use. Purchaser shall comply with all the terms and conditions of this Master Contract, including but not limited to Contractor's Proprietary Information.

24.2. Reference of this Master Contract Number and/or Purchaser's signature on any related SOW document signifies agreement to comply with these requirements. Failure to abide by these requirements may result in Purchaser forfeiting the right to make future purchases under this Master Contract or other DES master contracts.

Master Contract Administration

25. Notices

25.1. Any notice or demand or other communication required or permitted to be given under this Master Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Master Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

*CompuCom Systems, Inc.
Attn: Contractor Account Manager
7171 Forest lane,
Dallas, TX 75320*



Phone: *Randy Bycraft (503) 706-1368*
Fax: *Contractor Account Manager Fax*
E-mail: *Rbycraft@CompuCom om*

To DES at:

Department of Enterprise Services
Attn: **DES Contract Administrator**

If by US Postal Service

PO Box 41411

Olympia, WA 98504-1411

If by Overnight Courier

1500 Jefferson St SE

Olympia WA 98504-1411

Phone: () -
Fax: (360) 407-9174

Email: @des.wa.gov

or to **Purchasers** at the address listed on their Statement of Work.

- 25.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

26. Section Headings, Incorporated Documents and Order of Precedence

- 26.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 26.2. Each of the documents listed below is, by this reference, incorporated into this Master Contract as though fully set forth herein. In the event of any inconsistency in this Master Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
 - b) This Master Contract (excluding Schedule B);
 - c) The SOW;
 - d) Schedule B;
 - e) the RFP;
 - f) Contractor's Proposal;
 - g) All Contractor or manufacturer publications, formal written materials and schedules, charts, diagrams, tables, descriptions, other formal written representations which are clearly intended to effect a sale to purchaser.

27. Entire Agreement

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

28. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Master Contract or any Statement of Work shall be effective or binding unless it is in writing and signed by DES and/or Purchaser, as applicable, and the Contractor. Only DES shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Master Contract.

29. Independent Status of Contractor

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

30. Governing Law

This Master Contract and any SOW shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County or the county in which Purchaser is located within the state of Washington.

31. Rule of Construction as to Ambiguities

Each party to this Master Contract acknowledges that such party has reviewed this Master Contract and participated in its drafting and agrees that no provision of this Master Contract shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have drafted, structured or dictated such provision or provisions.

32. Subcontractors

- 32.1. Contractor may, with prior written permission from Purchaser, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Upon request by DES, Contractor shall provide a copy of the unexecuted final version of any proposed agreement to be entered into between Contractor and a Subcontractor prior to execution.
- 32.2. In addition to DES' rights under Section 32.1, for Subcontractors providing data center facility services, Contractor shall ensure that all such Subcontractor agreements include provisions naming DES as a direct and intended third party beneficiary or otherwise granting DES the right to directly enforce Contractor's rights against such Subcontractor. DES shall have the right to withhold its consent to any such proposed subcontract until DES is satisfied that such obligations have been appropriately addressed in the proposed subcontract agreement.
- 32.3. If DES determines, in its sole discretion, that any previously approved Subcontractor is not satisfactorily performing its obligations, DES reserves the right to require Contractor to replace such Subcontractor with another Subcontractor or for Contractor to directly perform such obligations.

32.4. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Master Contract and any SOW, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to DES or Purchasers, including but not limited to personal injury, physical loss, harassment of DES or Purchaser's employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Master Contract or any SOW occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Contractor's Records** sections of this Master Contract and any SOW shall apply to all Subcontractors.

33. Assignment

- 33.1. With the prior written consent of DES, which consent shall not be unreasonably withheld, Contractor may assign this Master Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DES or Purchasers that may arise from any breach of the sections of this Master Contract, or warranties made herein or any SOW including but not limited to, rights of setoff.
- 33.2. DES may assign this Master 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 DES of any of its duties and obligations hereunder.

34. Publicity

- 34.1. The execution of this Master Contract or any SOW with Contractor is not in any way an endorsement of Contractor by DES or Purchaser, as applicable, and shall not be so construed by Contractor in any advertising or other publicity materials.
- 34.2. Contractor agrees to submit to DES or Purchaser, as applicable, all advertising, sales promotion, and other publicity materials relating to this Master Contract or any Statement of Work furnished by Contractor wherein DES or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DES or Purchaser's name therewith may, in DES or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, or any other communication media in existence or hereinafter developed without the express written consent of DES or Purchaser, as applicable, prior to such use.

35. Audits & Review of Contractor's Records

- 35.1. Contractor shall maintain Records which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract. Contractor shall retain Records for six (6) years after the expiration or termination of this Master Contract. Records involving matters in litigation related to this Master Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Master Contract, whichever is later.

- 35.2. All Records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by DES, Purchaser, and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Master Contract's Term, Contractor shall provide access to Records within Thurston County, Washington or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 35.3. Contractor shall incorporate in its subcontracts the records retention and review requirements of this Section 35.
- 35.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Master Contract is calculated or derived from these factors.
- 35.5. Contractor shall upon written request provide access to data generated under this Master Contract and any Statement of Work to DES, to Purchaser, to the Joint Legislative Audit and Review Committee, and to the State Auditor, as requested, at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models.
- 35.6. Except as otherwise expressly provided otherwise in this Section 35, each party shall bear its own costs and expenses incurred in connection with performing its obligations and/or exercising its rights hereunder, including costs and expenses charged by its own independent auditors.

General Provisions

36. Patent and Copyright Indemnification

- 36.1. Contractor, at its expense, shall defend, indemnify, and save DES and any Purchaser harmless from and against any claims against DES or Purchaser that any Services supplied hereunder, or Purchaser's use of the same within the terms of this Master Contract or any SOW, infringes any US patent, copyright, trade secret, trademark, or other similar proprietary right of a third party. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DES or Purchaser provided that DES or Purchaser:
- a) Promptly notifies Contractor in writing of the claim, but DES' or Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- 36.2. If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at Contractor's option and expense, either to procure for Purchaser the right to continue using the Services or to replace or modify the same so that they become noninfringing and functionally equivalent, obtain for Purchaser at Contractor's

expense, the right to continue to use the Services. If use of the Services is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will provide Purchaser a refund equal to the entire amount Purchaser paid for provision of such Services .

- 36.3. Contractor has no liability for any claim of infringement arising solely from:
- a) Contractor compliance with any designs, specifications or instructions of Purchaser,
 - b) Modification of the Services by Purchaser or a third party without the prior knowledge and approval of Contractor; or
 - c) Use of the Services in a way not indicated by Contractor; use of the Services in conjunction with hardware, software, systems or methods not provided by Contractor or specified in the SOW.
 - d) Purchaser's failure to obtain proper licenses for hardware, software or tools provided by Purchaser for use hereunder

unless the claim arose against the Services independently of any of these specified actions.

THE RIGHTS PROVIDED IN THIS SECTION SHALL BE THE EXCLUSIVE REMEDY OF CLIENT FOR THIRD PARTY CLAIMS FOR INFRINGEMENT ARISING OUT OF CONTRACTOR'S WORK PRODUCT INCLUDED IN THE SERVICES

- 36.4. As a reseller of SaaS Services, Contractor, to the extent permitted by the Service Provider and applicable law, assigns and passes through to DES or Purchaser any and all (a) end-user warranties provided by the Service Provider, (b) intellectual property indemnities, and (c) other liabilities of the Service Provider. Contractor does not provide any independent warranties, intellectual property indemnities or other product liability with respect to SaaS Services. However, nothing in this section will reduce or limit Contractor's independent obligations under this Master Contract.

37. Save Harmless

Contractor shall defend, indemnify, and save DES and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to real or tangible personal property of such third parties arising from intentional, reckless or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor shall be required to indemnify, defend, and hold harmless the state, only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend and hold harmless Purchaser, DES, the State and other agencies, officials, agents or employees of the state.

38. Insurance

- 38.1. Contractor shall, during the Term of this Master Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Master Contract, Contractor shall

provide written notice of such to DES within five (5) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DHS' sole option, result in this Master Contract's termination.

- 38.2. The minimum acceptable limits shall be as indicated below for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$2 million per occurrence/\$4 million general aggregate;
 - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - d) Professional Liability Errors and Omissions, with a deductible not to exceed \$500,000, conditioned upon subsection 38.3, and coverage of not less than \$5,000,000 per occurrence/\$10,000,000 general aggregate including cyber liability coverage.
 - e) Crime Coverage with a deductible not to exceed \$500,000, conditioned upon subsection 41.3 of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and
 - f) Limits may be met using a combination of primary and excess coverage.
- 38.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall: (i) continue such coverage for three (3) years beyond the expiration or termination of the last SOW, naming DES and Purchaser as an additional insured on the Professional Liability Coverage and providing DES with certificates of insurance on an annual basis; and (ii) for three (3) years beyond the expiration or termination of this Master Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate.
- 38.4. Upon a minimum of thirty days' prior written notice, Purchasers may require additional coverage or terms as included in a Statement of Work.
- 38.5. Contractor shall pay premiums on all insurance policies. DES shall be named as an additional insured on all general liability and automobile liability policies, and Contractor shall provide a copy of the policy endorsement(s) designating DES as an additional named insured. Such policies shall also reference this Master Contract number 08113 and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DES by the insurer.
- 38.6. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 38.7. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.



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- 38.8. Contractor shall furnish to DES copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Master Contract's Effective Date, and copies of renewal certificates and endorsements of all required insurance within thirty (30) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DES' sole option, result in this Master Contract's termination.
 - 38.9. Contractor shall provide insurance certification to the Purchaser under a Statement of Work when requested. Failure to provide evidence of coverage may, at Purchaser's sole option, result in termination of the SOW.
 - 38.10. By requiring insurance herein, DES does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DES or any Purchaser in this Master Contract or any SOW.

39. Industrial Insurance Coverage

If Contractor has operations in the State, prior to performing work under this Master Contract, Contractor 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 Master Contract. DES or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor that might arise under the industrial insurance laws during the performance of duties and services under this Master Contract.

40. Licensing Standards

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

41. Antitrust Violations

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

42. Compliance with Civil Rights Laws

During the performance of this Master Contract and any SOW, Contractor 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 Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Master Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with DES.

43. Severability

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

44. Waiver

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

45. Treatment of Assets

- 45.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Master Contract or any SOW, shall pass to and vest in Purchaser pursuant to the Ownership/Rights in Data section. As used in this section **Treatment of Assets**, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, as specified herein, not title, is passed to and vested in Purchaser.
- 45.2. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Master Contract or any SOW.
- 45.3. Contractor shall be responsible for any loss of or damage to real or tangible personal property of Purchaser that results from Contractor's negligence or intentional misconduct.
- 45.4. Upon loss or destruction of, or damage to any Purchaser real or tangible personal property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 45.5. Contractor shall surrender to Purchaser all Purchaser property upon completion, termination, or cancellation of any Statement of Work.
- 45.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

46. Contractor's Proprietary Information

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

Disputes and Remedies

47. Disputes

- 47.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot otherwise be resolved between the parties or by DES, either party may initiate the dispute resolution procedure provided herein.
- 47.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall then have five (5) Business Days to review the response. The parties shall then have five (5) Business Days to negotiate in good faith to resolve the dispute.
- a) If the dispute is not resolved by the parties during this negotiation period, either party may request a Dispute Resolution Panel to be convened by requesting it in writing and identifying the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate the second panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next five (5) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and its attorneys' fees and share equally the cost of the third panel member.
- 47.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has been invoked and issued its decision on the matter in dispute.
- 47.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Master Contract that are not affected by the dispute.
- 47.5. If the subject of the dispute is the amount due and payable by Purchaser for Products or Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

48. Non-Exclusive Remedies

Unless otherwise provided in this Agreement, the remedies provided for in this Master Contract shall not be exclusive but are in addition to all other remedies available under law.

49. Failure to Perform

If Contractor fails to perform any substantial obligation for Services under this Master Contract or any SOW, DES and/or Purchaser, as applicable, shall give Contractor written notice of such failure to perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then DES or Purchaser may withhold all monies due and payable to

Contractor, without penalty to DES or Purchaser, until such failure to perform is cured or otherwise resolved.

50. Limitation of Liability

50.1. EXCEPT AS SET FORTH IN SECTION 50.2:

- a) WITH RESPECT TO CONTRACTOR'S LIABILITY TO DES OR PURCHASER, CONTRACTOR'S ENTIRE LIABILITY FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO ANY SOW FOR SERVICES, SHALL NOT EXCEED THE FEES PAID OR TO BE PAID UNDER THE APPLICABLE SOW FOR SERVICES. HOWEVER, CONTRACTOR'S ENTIRE LIABILITY FOR SERVICES UNDER THIS MASTER AGREEMENT SHALL NOT EXCEED TEN MILLION DOLLARS.
- b) WITH RESPECT TO PURCHASER'S LIABILITY TO CONTRACTOR, PURCHASER SHALL BE LIABLE TO CONTRACTOR ONLY FOR UNPAID AND UNDISPUTED INVOICES FOR PRODUCTS AND SERVICES AND EXPENSES AND FEES (INCLUDING ANY INVOICES LATER DETERMINED TO BE VALID).
- c) IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FOR THE PURPOSES OF THIS SUBSECTION c), DAMAGES NOT SUBJECT TO EXCLUSION SET FORTH ABOVE (BUT SUBJECT TO THE LIMITATION STATED IN SUBSECTION a) ABOVE) INCLUDE (1) COSTS IN DISCLOSING OR NOTIFYING AFFECTED INDIVIDUALS OF UNAUTHORIZED ACCESS TO OR DISCLOSURE OF THE DATA SUBJECT'S PERSONAL INFORMATION, (2) CREDIT MONITORING FOR UP TO TWENTY-FOUR (24) MONTHS FOR AFFECTED INDIVIDUALS, (3) DAMAGES ASSESSED AGAINST PURCHASER AND AWARDED TO INDIVIDUALS WHOSE PERSONAL INFORMATION IS SUBJECT TO SUCH UNAUTHORIZED ACCESS OR DISCLOSURE, (4) ANY ADDITIONAL REASONABLE AND DOCUMENTED COSTS OF ANY MITIGATION, REMEDIES OR PLANS IMPLEMENTED BY PURCHASER IN RESPONSE TO SUCH UNAUTHORIZED ACCESS OR DISCLOSURE, AND (5) GOVERNMENT FINES, PENALTIES AND AWARDS TO THIRD PARTIES AGAINST PURCHASER FOR FAILURE TO COMPLY WITH APPLICABLE OPEN RECORDS LAWS AS A RESULT OF A LOSS OF PURCHASER DATA. FURTHER, TO THE EXTENT CONTRACTOR, OR ITS SUBCONTRACTORS ARE THE DIRECT CAUSE OF LOSS OF DATA, CONTRACTOR SHALL RESTORE SUCH DATA FROM THE STATE'S BACKUP SYSTEM AT NO ADDITIONAL CHARGE TO PURCHASER.

- d) Liability of Service Provider is stated in Schedule B.

50.2. Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in Section 50.1 shall not apply to: (a) claims arising as a result of personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) claims arising as a result of damage to real property or tangible personal property (caused by a party or its employees, agents and/or subcontractors); (c) breaches of Confidential



Information; (d) Contractor's failure to comply with its obligations under Patent and Copyright Indemnification; (e) any amounts owed by Contractor to DES as an Administration Fee, and (f) any gross negligence or willful misconduct on the part of Contractor.

- 50.3 To the extent a party elects to cure any failure by it to comply with its obligations under this Master Contract or any SOW, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the cap on damages described in Section 50.1.
- 50.4 Neither Contractor, DES nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the respective fault or negligence of Contractor, DES or Purchaser. Such causes may include, but are not restricted to, acts of God, acts of a governmental body other than DES or Purchaser acting in either a sovereign or contractual capacity, acts of war or terrorism (other than cyberwarfare), 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 Contractor, DES, or Purchaser, or their respective Subcontractors.
- 50.5 If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Products to be delivered or Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 50.6 Neither Contractor, DES nor Purchaser shall be liable for personal injury to another party or damage to another party's property except personal injury or damage to real or tangible personal property proximately caused by such party's respective fault or negligence.

Master Contract Termination

51. Termination for Default

- 51.1 If Contractor violates any material term or condition of this Master Contract or any SOW, as applicable, or fails to fulfill in a timely and proper manner its material obligations under this Master Contract, or any SOW, as applicable, then DES or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from DES to Contractor, or a Statement of Work may be terminated by written notice to Contractor from Purchaser.
- 51.2 In the event of termination of an SOW by Purchaser or this Master Contract by DES, Purchaser or DES shall have the right to procure the Services that are the subject of such agreements on the open market and Contractor shall be liable for all damages, including, but not limited to, the reasonable, actual and direct cost difference between the original Master Contract price for the Services and the replacement costs of those acquired from another vendor. DES and Purchaser shall provide a separate invoice for such costs, with supporting documentation, due under this Section 51.2 within thirty (30) days of procuring replacement Services.

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- 51.3. If either DES or Purchaser violates any material term or condition of this Master Contract or any SOW, as applicable, or fails to fulfill in a timely and proper manner its obligations under this Master Contract or an SOW, as applicable, then Contractor shall give DES or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DES or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Statement of Work may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DES.
- 51.4. If the failure to perform is without Contractor's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 51.5. This section shall not apply to any failure(s) to perform that results from the willful, reckless or negligent acts or omissions of the aggrieved party.

52. Termination for Convenience

- 52.1. When, at the sole discretion of DES, it is in the best interest of the State, DES may terminate this Master Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.
- 52.2. Purchaser may terminate a Statement of Work upon thirty (30) calendar days written notice to Contractor. If an SOW is so terminated, Purchasers are liable only for payments for Products and Services received and accepted by Purchaser prior to the effective date of termination.

53. Termination for Withdrawal of Authority

In the event that DES's or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any SOW and prior to normal completion, DES may terminate this Master Contract, or Purchaser may terminate its Statement(s) of Work, by seven (7) calendar days written notice to Contractor. No penalty shall accrue to DES or Purchaser in the event this section is exercised. This section shall not be construed to permit DES to terminate this Master Contract, or Purchaser to terminate any SOW, in order to acquire similar Products or Services from a third party.

54. Termination for Non-Allocation of Funds

If funds are not allocated to DES to continue this Master Contract, or to Purchaser to continue any SOW, in any future period, DES may terminate this Master Contract, or Purchaser may terminate any SOW by thirty (30) calendar days written notice to Contractor, or work with Contractor to arrive at a mutually acceptable resolution of the situation. DES or Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period(s). DES or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DES or Purchaser in the event this section is exercised. This section shall not be construed to permit DES to terminate this Master Contract, or Purchaser to terminate any SOW, in order to acquire similar Products or Services from a third party.

55. Termination for Conflict of Interest

DES may terminate this Master Contract, or Purchaser may terminate any SOW, by written notice to Contractor if DES or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, *Ethics in Public Service*, or any other laws regarding ethics in public

acquisitions and procurement and performance of contracts. In the event this Master Contract or any SOW is so terminated, DES or Purchaser, as applicable, shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Master Contract or any SOW, as applicable.

56. Termination Procedure

- 56.1. In addition to the procedures set forth below, if Purchaser terminates a Statement of Work, Contractor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 56.2. Upon termination of this Master Contract or any SOW, DES or Purchaser, in addition to any other rights provided in this Master Contract and applicable SOW, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Statement of Work as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 56.3. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services and SaaS Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or SOW had not been terminated. Failure to agree on such determination shall be a dispute within the meaning of the section of this Master Contract entitled **Disputes**. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 56.4. Contractor shall pay any amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

57. Transition and Transition Period

In the event of the expiration or termination of an SOW, Contractor, upon Purchaser's request, will work with Purchaser to facilitate the transfer of Purchaser data and Services to Purchaser or a third party service provider, subject to the terms of this Master Contract and the applicable SOW. Purchaser shall pay for the use of the SaaS Services, pro-rated during the transition period at the then current monthly rate as set forth in Schedule A. Purchaser shall also pay for any professional services requested during the transition period at a rate agreed between the parties plus verifiable travel and expenses. Any transition services fees will be agreed to by both Parties prior to the commencement of any work and an order form will be executed documenting the agreed to services.

58. Covenant Against Contingent Fees

- 58.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Master Contract or any SOW upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.
- 58.2. In the event Contractor breaches this section, DES shall have the right to annul this Master Contract without liability to DES, and Purchaser shall have the right to either annul any SOW without liability to Purchaser or, in Purchaser's discretion, deduct from

payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting & Administration Fee

59. DES Administration Fee and Collection

- 59.1. Contractor shall pay a Master Contract administration fee of 0.74% to DES on all State sales under this Master Contract ("Administration Fee").
- 59.2. DES may increase, decrease, or eliminate the Administration Fee and the Administration Fee must be rolled into the Contractor's current pricing, not as a separate line item on the invoice, by way of written notification to the Contractor. Any adjustments to the Administration Fee shall be reflected in contract pricing commensurate with the adjustment. DES reserves the right to negotiate Master Contract Prices with the Contractor when the Administration Fee results in a Price increase. Administration Fee written notifications shall become effective for new Statements of Work or amendments to existing SOWs thirty (30) calendar days after notification, unless DES grants additional time
- 59.3. The Administration Fee shall be paid quarterly. DES will send an invoice each quarter, based on usage reported (money received, less any taxes, returns, credits, or adjustments) thirty (30) days after the close of each calendar quarter. Payment must reference this Master Contract number 08113, the Statement of Work number (if any) and the year and quarter for which the Administration Fee is being remitted, and be sent to:

Name:	State of Washington, Dept. of Enterprise Services Finance Dept
Address:	1500 Jefferson Street Mail Stop 41460 Olympia WA 98501
Additional:	Contract #: 08113, Quarter/Year: _____

- 59.4. Contractor shall hold the Administration Fee in trust for DES until the Fees are remitted to the DES Master Contract Administrator, along with the Master Contract Activity Report.

60. Activity Reporting

- 60.1. The Contractor shall provide a Sales and Subcontractor Report to DES on a quarterly basis in the electronic format provided by the Master Contracts & Legal Services Unit at: <https://fortress.wa.gov/ga/apps/CSR/login.aspx> ("Activity Report").
- 60.2. Activity Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.
- 60.3. Activity Reports may be corrected or modified by DES with subsequent written notice to Contractor.
- 60.4. Activity Reports are only required even if any activity occurred.

60.5. Upon request by DES, Contractor shall provide, in the format requested, the contact information for all Purchasers during the Term of the Master Contract.

61. Electronic Funds Transfer

When agreed by DES and Contractor, the Administration Fee can be paid through Electronic Funds Transfer (EFT) to an Automated Clearing House (ACH). Contractor can utilize the ACH Debit option, which is an arrangement between the Contractor and DES's bank. Contractor initiates the action, specifying the amount of funds and the effective date of payment. On the effective date, the funds are withdrawn from Contractor's account and transferred to the DES account. Contractor will be provided by separate instrument the DES account information and a toll-free number to initiate the quarterly transaction. There is no additional cost to Contractor.

62. Failure to Remit Reports/Fees

- 62.1. Failure of Contractor to submit the Activity Report together with the Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DES terminating this Master Contract.
- 62.2. DES will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.
- 62.3. If the performance issues are resolved, DES, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

Master Contract Execution

63. Authority to Bind

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

64. Counterparts

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

[Remainder of this page intentionally left blank.]

In Witness Whereof, the parties hereto, having read this Master 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 Department of Enterprise Services	
<i>Meryl Brooks</i> <i>Dale Colbert</i>	
Signature	
<i>Meryl Brooks</i>	<i>12/19/13</i>
Print or Type Name	Date
<i>JRH Manager</i>	
Title	

Approved Contractor	
<i>John Carmain</i>	
Signature	
<i>John Carmain</i>	
Print or Type Name	Date
<i>Senior Attorney</i>	
Title	

Approved as to Form	
State of Washington Office of the Attorney General	
Signature	
Print or Type Name	
Assistant Attorney General	
Title	Date

Contractor Information
Contractor's UBI Number: 601039241

