Washington State Department of
Enterprise Services
Contracts and Legal Services Division • Master Contracts and Consulting Unit

1500 Jefferson St. SE
Olympia, WA 98501
http://www.des.wa.gov

Mobile Computing Solution

Master Contract 08313

Washington State Department of Enterprise Services

and

Nova Mobile Solutions, Inc.

Effective Date: Upon DES Signature

DES Reference Number: RFP 08313

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PARTIES

This Master Contract ("Master Contract" or "Contract") is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services ("DES") an Agency of Washington state government located at 1500 Jefferson Street SE Olympia WA, 98504-2445, and Nova Mobile Solutions, Inc. ("Contractor"), a corporation located at 7040 Avenida Encinas #374 Carlsbad, CA 92011 licensed to conduct business in the state of Washington, for the purpose of providing a Mobile Computing Solution as described and identified herein.

RECITALS

WHEREAS The state of Washington, acting by and through DES issued Request for Proposal ("RFP") number 04313/08813 dated December 13th, 2013, for the purpose of purchasing Mobile Computing Solution(s) in accordance with its authority under Chapter 39.26 RCW;

WHEREAS Contractor submitted a timely Solicitation Response;

WHEREAS DES evaluated all properly submitted Responses to the above-referenced Solicitation and has identified Contractor as an Apparent Successful Vendor; and

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

NOW THEREFORE, DES awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's performance as described herein, on an as-needed basis.

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

1 OVERVIEW

1.1 Scope

The scope of this Contract is to provide for mobile computing devices, including laptops, convertibles and tablets, along with corresponding in-vehicle docking stations. The scope also includes any new or additional technologies, which may aid in Purchaser's above-stated objectives while only including mobile devices meant for in-vehicle use. Services may include maintenance, warranty and installation Services.

1.2 Definitions

Agency - State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. "Agency" does not include the legislature but does include colleges, community colleges and universities who choose to participate in state contract(s).

Apparent Successful Vendor - A Bidder who is recommended for Award after evaluation of Responses.

Amendment - An agreement between the parties to change the Contract after it is fully signed by both parties. Such agreement shall be memorialized in a written document describing the agreed upon change including any terms and conditions required to support such change. An Order Document shall not constitute an amendment to a Contract.

Base Price: Price the Contractor places on the Mobile Computing Solution meeting minimum specifications as set forth in the Solicitation. All prices shall be quoted and paid in United States dollars. See also Not-to-Exceed Price.

Business Days - Monday through Friday, 8:00 AM to 5:00 PM, Pacific Time, except for holidays observed by the state of Washington.

Confidential Information - Information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 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. Confidential information also includes any personal information under the provisions of RCW 19.255.010 and RCW 42.56.590.

Contractor - An individual, company, corporation, firm, or combination thereof with which DES enters into a Master Contract for the procurement of materials, supplies, Services, and/or equipment. It shall also include any Subcontractor retained by a Contractor as permitted under the terms of the Master Contract.

Device – A device can include but is not limited to a laptop, convertible, or tablet. The term Mobile Computer may be used interchangeably with the term Device.

Estimated Useful Life - The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

Inspection - An examination of delivered material, supplies, Services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser.

In-Vehicle Docking Station – A mounting system designed to hold and facilitate use of mobile devices within a vehicle.

Lifecycle Cost - The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.

Master Contract - The document formalizing the agreement between the parties pursuant to this Solicitation, together with all incorporated schedules and exhibits, including the Solicitation, the Response, and all Amendments.

Master Contracts and Consulting (MCC) - A unit of the Contracts and Legal Services Division of DES authorized under Chapter 39.26 RCW to develop and administer contracts for goods and Services on behalf of state agencies, colleges and universities, nonprofit organizations and local governments.

Mobile Computing Solution or "Solution" – An ambulatory computing device together with an in-vehicle docking station and warranty as specified herein.

No-Fault Warranty – Covers parts and labor for all damage repairs including misuse and abuse of 2% per year of the total inventory per customer.

Not-To-Exceed Price – Price the Contractor places on the Mobile Computing Solution meeting minimum specifications as set forth in the Solicitation. See also Base Price.

Order Document - A written communication, submitted by a Purchaser to the Contractor, which details the specific requirements of the Purchaser within the scope of the Contract, such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor.

Percentage Discount on New or Other Technologies – The discount the Contractor provides for technologies it may offer in the future or technologies currently offered but not listed in the original Solicitation.

Product - Materials, supplies, Services, and/or equipment provided under the terms and conditions of this Contract.

Purchaser - An authorized user of the Master Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, Services, and/or equipment under the resulting Master Contract.

Response - A submittal prepared and delivered to DES in accordance with the Solicitation. The Response shall include all required submittals as of the date set forth in the Solicitation schedule or as further requested by DES.

Services - Those Services provided by Contractor relating to the Contract and that are appropriate to the scope of the Contract.

Solicitation - The Request for Qualifications, and any Amendments or revisions thereto, used as a Solicitation document.

Specifications - The explicit requirements furnished with a competitive Solicitation upon which a purchase order or Master Contract is to be based. Specifications set forth the characteristics of the goods and/or Services to be purchased or sold so as to enable the Contractor or supplier to determine and understand requirements of the Purchaser. Specifications may be in the form of a description of the physical or performance characteristics, a reference brand or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or Service for delivery.

State - The state of Washington acting by and through DES or the Purchaser.

Subcontractor - A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of DES.

Vendor - A provider of materials, supplies, Services, and/or equipment.

Washington's Electronic Business Solution (WEBS) - The Contractor registration and Bidder notification system maintained by DES).

1.3 Term

The term of this Contract will commence on the date of DES signature (the "Effective Date") and expire one (1) year thereafter. The term of this Contract may be extended by four (4) additional one (1) year terms by Amendment executed by both parties.

1.4 Purchasers

This Contract will be available for use by all Washington state agencies and authorized parties to the Master Contracts Usage Agreement (MCUA), including institutions of higher education, cities and counties, other political subdivisions or special districts, and nonprofit corporations. Their orders are subject to the same contract terms, conditions and pricing as state agencies.
The Contract will also be available for use by the Oregon Cooperative Purchasing Program (ORCPP) based on the Contractor's acceptance.

While use of the Contract is optional for political subdivisions and nonprofit corporations authorized by the MCUA and ORCPP, these entities' use of the Contracts can significantly increase the purchase volume. DES accepts no responsibility for orders or payment by WSPC or ORCPP members.

- MCUA members: https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx
- ORCPP members: http://www.oregon.gov/DAS/EGS/PS/docs/orcpp/MemberList/orcpp-member-list.html

2 CONTRACT ADMINISTRATION

2.1 Contract Administrator

DES shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

2.2 Administration of Contract

DES will maintain Contract information and pricing, and reserves the right to make it available at des.wa.gov.

2.3 Contractor Supervision and Coordination

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's account manager, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract. The Contractor Account Manager will be the principal point of contact for DES for the duration of this Contract and will provide oversight of Contractor activities conducted hereunder. Contractor account manager will serve as the focal point for business matters, performance matters, and administrative activities under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's account manager assigned to this Contract; and
4. Be bound by all written communications given to or received from the Contractor's Representative.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

2.4 Changes/Amendments

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually-agreed Contract Amendment. However, changes to point of contact information may be updated without the issuance of a mutually-agreed Contract Amendment.

DES reserves the right to add Services as market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized Amendment by the Contract Administrator.

2.5 Statewide Payee Desk

In order to receive payment, Contractors are required to be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington state agencies cannot make payments to Contractor until Contractor is registered. Registration materials are available here: Receiving Payment from the State.

2.6 Sales Reporting Requirements

2.6.1 Contract Usage Report

For each separate Master Contract, on a quarterly basis, Contractor shall provide DES all sales amounts invoiced to the DES Contract Usage Reporting System in the electronic format provided. A login password and a required DES Vendor Number will be provided by DES.

If Contractor has not invoiced any sales amounts during a reporting period for a Master Contract, a Contract usage report will not be required for that reporting period for that Master Contract.

NOTE: For each report, Contractor must identify every Purchaser who has made purchases during the reporting period. The "Miscellaneous" option may only be used with prior approval by DES. Refer sales reporting questions to the Contract Administrator. Use of this option without prior approval by DES may be cause for Contract termination.

2.6.2 Due Date

Reports must be submitted electronically within 30 days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

Failure to provide reports in accordance with the schedule above may be cause for Contract termination.

2.7 Contractor Fee Requirements

2.7.1 Management Fee

Contractor shall pay DES a management fee equal to 0.74% of the total sales amounts invoiced, less any taxes, returns, credits, or adjustments, of all sales ("total net sales") under this Master Contract. Contractor shall hold the management fee in trust for DES until such fee is remitted to DES.

The management fee will be included in Contractor's pricing and will not be included as a separate line item on any invoice submitted to a Purchaser.

2.7.2 Payment Instructions

DES will provide an invoice for each Master Contract with payment instructions within 30 days of Contract usage reporting based on each Contract usage report detailed in the subsection above. Payment of the management fee is due within 30 days of the date of the DES invoice.

NOTE: Contractors with multiple Master Contracts agree to provide separate management fee payments for every Master Contract in which they have reported sales.

Each separate management fee payment must reference the following:

1. The Contractor's Name as it is known to DES, if not already included on the face of the check.
2. The Master Contract number.
3. The year and quarter for which the management fee is being remitted.

Failure to provide the management fee as detailed herein may be cause for Contract termination.

2.7.3 Right to Audit

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that Purchasers have been properly invoiced and all management fees have been remitted. Failure to accurately report total net sales, to submit a timely Contract usage report, or remit timely payment of the management fee, may be cause for Contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

2.7.4 Changes to Management Fee

DES may, at its sole discretion, increase, decrease, or eliminate the management fee upon 30 days written notice to Contractor. Any decrease to, or elimination of, the management fee, shall be reflected in Contract pricing commensurate with the adjustment. DES reserves the right to negotiate Contract pricing with the Contractor in the case of an upward adjustment of the management fee.

2.8 Washington's Electronic Business Solution (WEBS)

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS), maintained by DES. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain accurate information in WEBS.

3 PRICING

3.1 Price Protection

Contractor must guarantee to provide Products and Services at no higher than the rates set forth in Exhibit C.

3.2 Discount on Future Added Technologies.

Any additional technologies added to this contract shall be within the stated scope of the contract and shall only be added by an amendment signed by both parties. Contractor shall guarantee a 5% discount off MSRP on all such additional technologies.

3.3 No Additional Charges

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrator's sole discretion, additional charges may be allowed.

3.4 Customs/Brokerage Fees

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither DES nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

3.5 Price Adjustments

Price adjustments will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices such as the U.S. Department of Labor's Consumer Price Index. The grant of any price adjustment will be at the sole discretion of DES. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted and such price adjustment shall be set forth in a written Amendment to the Contract. Price adjustments granted by DES shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

3.6 Best Pricing

For the term of the Contract, pricing for all Products will be no greater than the prices quoted in the bidder's response. If, however, during the Contract period lower prices and rates become effective through reduction in Manufacturer's or Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 Solicitation Requirements

The Solicitation requirements are essential substantive terms of this Master Contract. Products and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the Solicitation. All terms and conditions of the RFP shall be incorporated into this Contract. DES reserves the right to require receipt of proof of compliance with any of the requirements in this section within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph. Contractor shall maintain compliance with these requirements throughout the life of this Contract.

4.2 Established Business

Prior to commencing performance, or prior to that time if required by DES, Purchaser, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this Contract.

DES or Purchaser reserves the right to require receipt of proof of compliance with said requirements within 10 calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.3 Contractor Certifications

Contractor shall maintain any required certification status for the initial term and any renewals of this Contract. If status is discontinued, this Contract may be terminated as set forth elsewhere herein.

4.4 Authorized Service Provider and Product Reseller Certifications

Where applicable, upon request, Contractor must provide evidence of its status as an authorized service provider or Product reseller. Contractor shall maintain its authorized service provider or Product reseller status for the initial term and any extensions of the resulting contract. If this status is discontinued, this Contract may be terminated.

4.5 Dealer authorization

Where applicable, Contractor shall maintain dealer authorization from the manufacturer.

4.6 Use of Subcontractors

In accordance with Solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors.

Prior to performance, Contractor shall identify all Subcontractors who will perform Services in fulfillment of Contract requirements, including their name, the nature of Services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

DES reserves the right to approve or reject any and all Subcontractors that are identified by Contractor.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

4.7 Subcontracts and Assignments

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of DES. Contractor shall provide a minimum of 30 calendar days advance notification of intent to subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract be appropriately communicated to any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Subcontractor's duties.

4.8 Contractor Authority and Infringement

Contractor is authorized to sell under this Contract, only those materials, supplies, Services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, Services and/or equipment. Further, Contractor may not intentionally infringe on other established state Contracts.

5 ORDERING

5.1 Ordering Requirements

Contractor must ensure that Authorized Purchasers can place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

- Upon receipt of a purchase order the Contractor must send written confirmation to the Purchaser.
- If requested, the Contractor must supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
- Contractor must notify Purchaser of any surcharges or other price adjustments if applicable and as Contract allows.

5.2 Delivery Requirements

5.2.1 Delivery

Contractor must ensure that delivery of goods will be made as required in the Contract terms, the Purchase Order, or as otherwise mutually agreed in writing between the Purchaser and Contractor. The following apply to all deliveries:

- The Contractor must deliver the goods during Purchaser's normal work hours and within Contract time frames or as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.
- The Contractor must verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly.
- The Purchaser may refuse shipment when delivered after normal working hours.
- Failure to comply with agreed upon delivery times may subject Contractor to liquidated damages and/or other damages.
- The acceptance of late delivery does not constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.
- The Contractor must make all deliveries to the applicable delivery location as indicated in the Contract or Purchase Order.
- The Contractor is responsible for verifying delivery conditions/requirements with the Purchaser prior to the delivery.
- When applicable, the Contractor must take all necessary actions to safeguard items during inclement weather.

- All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract identifier and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- The Contractor must not initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise will be borne solely by the Contractor.

5.2.2 Receipt of Goods:

Inspection and rejection: The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered, and are ready for Acceptance. If applicable, the state reserves the right to independently test, at Contractor's expense, any Product of questionable freshness, quality, or origin delivered against this Contract. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. At the Purchaser's option and without limiting any other rights, the Purchaser may require the Contractor to:

- Repair or replace, at Contractor's expense, any or all of the damaged goods.
- Refund the price of any or all of the damaged goods.
- Accept the return of any or all of the damaged goods.

Alternatively and at the Purchaser's option, any possible damage to the Product may be noted on the receiving report and the cost deducted from final payment.

Acceptance: Acceptance shall be as specified in the Contract or Purchase Order. In the event that there is a formal Acceptance Testing period required in the solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing period required, Acceptance occurs when the Products are delivered and inspected.

5.2.3 Shipping and Risk of Loss:

Unless the Contract specifies otherwise, Contractor shall ship all Goods freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Goods and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Goods ordered hereunder that occurs prior to Delivery Date or Acceptance, whichever is applicable, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date or Acceptance, whichever is applicable, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.2.4 Site security:

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

5.2.5 Installation:

When applicable, installation by Contractor shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The state reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by the state.

5.2.6 Title to Product:

Upon Delivery or Acceptance, whichever is applicable, Contractor shall convey to Purchaser good title to the Goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5.2.7 Labeling:

Individual shipping cartons shall be labeled with the name of the Purchaser, order number, Contract number, Contractor, and state stock numbers. Where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life shall also be included.

6 SITE SECURITY AND SAFETY

6.1 Site 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.

6.2 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, and further agrees 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 Contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to conduct background checks 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 Contract, or suspension or termination of access to Purchaser's facilities, Contractor shall return all security badges.

6.3 Remote Access to Network

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. Contractor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.

6.4 System Security

Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in performing under this Contract 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 DES policies and practices. Contractor warrants that it will perform all work for or on behalf of Purchasers in full compliance with Information Services Board Security Policy, Standards and Guidelines, the Use of DES Networks Policy, and any other security documents and best practices provided by DES ("Security Policies"). Contractor agrees that DES's 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 in OCIO Policy #141 - Securing Information Technology Assets.

6.5 OSHA and WISHA Requirements

Contractor shall observe and comply with OSHA and WISHA regulations, all applicable safety and environmental laws and regulations, and 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.

7 PAYMENT

7.1 Advance Payment Prohibited

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

7.2 Payment, Invoicing and Discounts

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Contractors must register with the Statewide Payee Desk, maintained by DES, in order to be paid for Contract sales. Washington state agencies cannot make payments to a Contractor until it is registered.

Each invoice shall be identified by the associated Contract number; the Contractor's Statewide Payee Desk registration number assigned by DES, the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1 percent per month on the amount overdue or a minimum of $1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for Services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

7.3 Taxes, Fees, and Licenses

7.3.1 Taxes

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay state of Washington taxes on all applicable materials, supplies, Services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

7.3.2 Collection of Retail Sales and Use Taxes

In general, Contractors engaged in retail sales activities within the state of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the state of Washington is significantly associated with Contractor's ability to establish or maintain a market for its Products in Washington state. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, Service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. Sends other staff into the state of Washington (e.g. Product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
5. Other factors identified in WAC 458-20 .

7.4 Department of Revenue Registration for Out-of-State Contractors

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and contact the Department of Revenue for additional information (see WA State Dept. of Revenue Registration Requirements). When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the state of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

7.4.1 Fees/Licenses

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any change or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

7.4.2 Taxes on Invoice

Contractor shall calculate and enter the appropriate Washington state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

7.5 Minority and Women's Business Enterprise (MWBE) Participation

With each invoice for payment and within 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 certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's Retention of Records section.

7.6 Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within 30 days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent per month on the amount due, until paid in full.

7.7 Audits

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for Contract termination.

8 QUALITY ASSURANCE

8.1 Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract 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 Contract. 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 its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

8.2 Materials and Workmanship

The Contractor is required to furnish all materials, supplies, equipment and/or Services necessary to perform contractual requirements. Materials, supplies, equipment and/or Services used in the performance of this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies, and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

8.3 Warranties and Maintenance

Contractor warrants that all Products and Services provided under this Contract shall conform to Exhibit A and Exhibit B.

8.4 Standard of Quality/Consistency Over Term of Contract

If, in the sole judgment of DES or the Purchaser, any Product is determined not to be in conformance with specifications, the Purchaser may take any or all of the following actions:

- The Product may be returned at Contractor's expense and the Purchaser reimbursed for any payments.
- The Contract may be terminated without any liability to the State of Washington or Purchaser.

8.5 Cost of Remedy

Cost of remedying defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective data and work products (collectively called "Work Product") will be charged against the Contractor.

9 INFORMATION AND COMMUNICATIONS

9.1 Advertising

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from DES.

9.2 Retention of Records

Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, Services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by DES, personnel duly authorized by the DES, the Washington state Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

9.3 Proprietary or Confidential Information

Contractor acknowledges that DES and Purchaser are subject to chapter 42.56 RCW and that this Contract 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, the Public Disclosure Act, DES or Purchaser shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES or Purchaser will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES or Purchaser will release the requested information on the date specified.

DES or Purchaser's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as DES or Purchaser retains Contractor's information in DES or Purchaser records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

9.4 Non-Endorsement and Publicity

Neither DES nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES.

9.5 Protection of Purchaser's Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with or in performance of this Contract may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without 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, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards, including but not limited to those prescribed by the Purchaser, to prevent unauthorized access to Confidential Information. Contractors that may come into contact with medical data or Protected Health Information will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

Immediately upon expiration or termination of this Contract, Contractor shall, at DES's or Purchaser's option: (i) certify to DES or Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to DES or Purchaser; or (iii) take whatever other steps DES or Purchaser requires of Contractor to protect DES's or Purchaser's Confidential Information.

DES and Purchasers reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

In the event of the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the Purchaser ("Data Breach"), Contractor agrees to comply with all applicable state and federal statutory provisions, including but not limited to RCW 19.255.010 and RCW 42.56.590. If a data compromise and/or identity theft occurs and is found to be the result of Contractor's acts or omissions, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by DES or Purchaser in responding to or recovering from the Data Breach.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, and/or payment of monetary damages, or penalties.

10 GENERAL PROVISIONS

10.1 Governing Law / Venue

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

10.2 Severability

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given

effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

10.3 Survivorship

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Work Product and Data; Contractor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Patent and Copyright Indemnification; Proprietary or Confidential Information; Problem Resolution and Disputes; and Limitation of Liability shall survive the termination of this Contract.

10.4 Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. 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.

10.5 Gifts and Gratuities

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26.020, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, Services, or anything of economic value in conjunction with state business or Contract activities.

Under RCW 39.26.020 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or Services.

10.6 Immunity and Hold Harmless

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform the Contract. 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 to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

10.7 Personal Liability

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the state of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

10.8 Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/Service may be detailed elsewhere in a solicitation or its appendices.

a. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Subcontractor(s) must 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.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

b. Specific requirements

Employer's Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than $1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for Services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of Services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, Products/completed operations, personal injury and advertising injury, and

contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General aggregate limits (other than Products-completed operations)	$2,000,000
Products-completed operations aggregate	$2,000,000
Personal and advertising injury aggregate	$1,000,000
Each occurrence (applies to all of the above)	$1,000,000
Fire damage limit (per occurrence)	$50,000
Medical expense limit (any one person)	$5,000

c. Business Auto Policy (BAP)

In the event that Services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this Service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than $1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

d. Additional insurance provisions

All above insurance policies shall include, but not be limited to, the following provisions:

Additional insured:

The State of Washington and all Authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of policy cancellation/Non-renewal:

For insurers subject to Chapter 48.18 RCW (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to this Contract. Written notice shall include the affected Contract reference number.

e. Surplus lines

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee 20 calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Cancellation for non-payment of premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

Identification:

Policy(ies) and certificates of insurance shall include the affected Contract reference number.

f. Insurance carrier rating

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

g. Excess coverage

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

h. Limit adjustments

The state reserves the right to increase or decrease limits as appropriate.

10.9 Industrial Insurance Coverage

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DES may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

10.10 Nondiscrimination

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further Contracts with DES. The Contractor

shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

10.11 Antitrust

DES maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the state of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, Services and/or equipment purchased under this Contract.

10.12 Waiver

Failure or delay of DES or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or DES' or Purchaser's acceptance of or payment for materials, supplies, Services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of DES or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by DES or Purchaser of any existing or future right and/or remedy available by law.

10.13 Treatment of Assets

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 Contract, shall pass to and vest in Purchaser pursuant to the Ownership/Rights in Work Product and Data section. As used in this section, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

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

Contractor shall be responsible for any loss of or damage to property of Purchaser which results from Contractor's negligence or which results from Contractor's failure to maintain and administer that property in accordance with sound management practices.

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

Contractor shall surrender to Purchaser all Purchaser property upon completion, termination, or cancellation of any Services performed under this Contract.

All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

10.14 Patent and Copyright Indemnification

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 Work Product supplied hereunder, or Purchaser's use of the Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar

proprietary right of a third party worldwide. 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:

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

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.

If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Work Product and provide Purchaser a refund equal to the entire amount Purchaser paid to Contractor for Contractor's provision of the Work Product.

Contractor has no liability for any claim of infringement arising solely from:

Contractor compliance with any designs, specifications or instructions of Purchaser;

Modification of the Work Product by Purchaser or a third party without the prior knowledge and approval of Contractor; or

Use of the Work Product in a way not specified by Contractor; unless the claim arose against Contractor's Work Product independently of any of these specified actions.

11 DISPUTES AND REMEDIES

11.1 Problem Resolution and Disputes

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the Purchaser and Contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein.

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 three Business Days. The initiating party shall have three Business Days to review the Response. If after this review a resolution cannot be reached, both parties shall have three Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three Business Days.

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. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

DES, the 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 Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for 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.

11.2 Administrative Suspension

When in the state's best interest, DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than 30 calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

11.3 Force Majeure

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract Amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: DES reserves the right to authorize an Amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or Services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.

11.4 Alternative Dispute Resolution Fees and Costs

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

11.5 Non-Exclusive Remedies

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

11.6 Liquidated Damages

DES and or the Purchasers and the Contractor agree that the liquidated damages provisions in the Contract are a reasonable forecast of the actual damages that would be suffered by the Purchaser in the event of Contractor's nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due Purchaser in the event of a breach, and that such liquidated damages will be assessed as set forth herein.

Any delay by Contractor in meeting the Delivery Date, Installation Date, maintenance or repair date, or other applicable date set forth in this Contract will interfere with the proper implementation of Purchaser's programs and will result in loss and damage to Purchaser.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Contractor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that Contractor shall pay such amounts as liquidated damages and not as a penalty.

Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability.

11.7 Limitation of Liability

The parties agree that Contractor, DES and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on breach of the Security of the System, patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Contractor, DES and Purchaser shall not 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 or of the public enemy, acts of a governmental body other than DES or Purchaser acting in either a sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the

reasonable control and without fault or negligence of Contractor, DES, or Purchaser, or their respective Subcontractors.

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 and Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Contractor, DES and Purchaser shall not be liable for personal injury to another party or damage to another party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

11.8 Federal Funding

In the event that federally funded Solicitations result from this Contract, the Contractor may be required to provide additional information (free of charge) at the request of DES or Purchaser and additional restrictions may apply.

11.9 Federal Restrictions on Lobbying

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, Amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

11.10 Debarment and Suspension

Contractor certifies, that neither it nor its "principals" (as defined in RCW 39.26.010 (9) or other state statute, regulation or policy) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or Agency.

As new laws, rules, and policies are implemented, they will apply to this Contract.

11.11 Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, DES and/or Purchaser, as applicable, shall give Contractor written notice of such failure to perform. If after 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.

12 CONTRACT TERMINATION

12.1 Material Breach

A Contractor may be terminated for cause by DES, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform Services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written Amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

12.2 Opportunity to Cure

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, DES may issue a written cure notice. The Contractor may have a period of time in which to cure. The DES is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of DES. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, DES may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;
5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

12.3 Termination for Cause

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to

suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, DES shall have the right to procure for all Purchasers any replacement materials, supplies, Services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience" or (3) Contractor or its principals are debarred as defined in 49 CFR. 29.105 (p). The rights and remedies of DES and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

12.4 Termination for Convenience

When, at the sole discretion of DES, it is in the best interest of the state, DES may terminate this Contract, in whole or in part, by 14 calendar day's written notice to Contractor.

12.5 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 Contract and prior to normal completion, DES may terminate this Contract, or Purchaser may terminate its Order(s), by seven calendar days written notice to Contractor. No penalty shall accrue to DES or Purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Contract, or Purchaser to terminate any Order, in order to acquire similar Products and Services from a third party.

12.6 Termination for Conflict of Interest

DES may terminate this Contract costs 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 Solicitations and procurement and performance of contracts. In the event this Contract 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 Contract, as applicable.

12.7 Termination by Mutual Agreement

DES and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

12.8 Termination Procedure

Upon termination of this Master Contract, DES or Purchaser, in addition to any other rights provided in this Master Contract may require Contractor to deliver to Purchaser any property

specifically produced or acquired for the performance of such part of this Master Contract as has been terminated. The section titled Treatment of Assets shall apply in such property transfer.

Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Products and 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 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.

Contractor shall pay any amounts due Purchaser as the result of termination within 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 per month until paid in full.

13 CONTRACT EXECUTION

13.1 Entire Agreement

This Contract document and all citations and subsequently issued Amendments comprise the entire agreement between DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

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

13.2 Order of Precedence, Incorporated Documents, Conflict and Conformity

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

13.2.1 Order of Precedence

In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

1. Applicable federal and state statutes, laws, and regulations;
2. Mutually agreed written Amendments to this Contract
3. This Contract and all Schedules thereto;
4. The Solicitation with all attachments and exhibits, and all Amendments thereto;
5. Contractor's Response to the Solicitation;
6. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect the sale of Products and Services to Purchaser.

13.2.2 Incorporated Documents

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The Solicitation with all attachments and exhibits, and all Amendments thereto;
2. Contractor's Response to the Solicitation;
3. The terms and conditions contained on Purchaser's Order Documents, if used; and
4. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect the sale of Products and Services to Purchaser.

13.2.3 Conflict

To the extent possible, the terms of this Contract shall be read consistently.

13.2.4 Conformity

If any provision of this Contract violates any Federal or state of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

13.3 Legal Notices

Any notice or demand or other communication required or permitted to be given under this 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 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:

Nova Mobile Solutions, Inc.

Attn: John Lucan
Director of Sales

7040 Mobile Solutions, Inc.

Carlsbad, CA 92011

Phone: 415-897-2230

Email: jlucan@novmobility.com

To DES at:

If by courier:	If by US Postal Service:
WA State Department of Enterprise Services Attn: Contract Administrator 1500 Jefferson St SE	WA State Department of Enterprise Services Attn: Contract Administrator PO Box 41411

Olympia WA 98501	Olympia, WA 98504-1411

Phone: 360-407-8505
Email: momi.friedlander@des.wa.gov

or to Purchasers at the address listed on their Order.

Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

13.4 Liens, Claims, and Encumbrances

All materials, equipment, supplies and/or Services shall be free of all liens, claims, or encumbrances of any kind, and if DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

13.5 Authority to Bind

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

13.6 Counterparts

This 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 Contract signed by each party, for all purposes.

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

Approved

WA State Department of Enterprise Services

Signature 4/11/14 Date

Sylvia Simmons, Contracts Specialist

Approved

Nova Mobile Solutions, Inc.

Signature 4-10-14 Date

George Echer, CEO

Print or Type Name and Title

Authorizing Signature for DES

Signature 4-11-14 Date

Dale Colbert, Procurement Unit Manager

EXHIBIT A

Warranty Provisions

1. The warranty shall be no-fault and shall warrant that the Equipment will be in good operating condition and conform to the Specifications. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications. Computers returned for repair will receive a 2-day in-shop turnaround on repairs. This includes preventive maintenance and coverage for No Trouble Found instances up to 5%.

2. Customer will receive overnight priority shipping to and from the client's location for covered repairs in the United States. Non-Battery consumables, such as the AC power adapter, feet, hatches and stylus are covered.

3. The warranty period shall be three (3) years with options to purchase up to two (2) separate one (1) year extensions. During the Warranty Period, Contractor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Contractor's expense. Contractor agrees that all warranty Service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Contractor further agrees to act as the sole point of contact for warranty Service.

4. Where repairs can be made by the end-user, a field replacement kit will be provided free of charge. This supports greater in-field productivity where the end-user retains possession of the unit.

5. If Contractor is a reseller, Contractor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.

6. Contractor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Contractor's Help Desk Services shall be reached at a toll-free number.

7. Contractor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Contractor's employee(s) responding at each level and the elapsed time before the next level of response is invoked.

Equipment Documentation

1. Contractor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract.

2. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor's Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference.

3. If Contractor maintains its technical, electrical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

EXHIBIT B

Maintenance Provisions

Contractor shall provide prompt problem resolution for hardware or software related failures.

Contractor shall provide a one hour callback by a Customer Support Center for problem resolution and technical support on all reported failures during Normal Business Hours, Monday through Friday, between the hours of 8:00 a.m. - 5:00 p.m. Pacific Standard Time, excluding state recognized Holidays.

Equipment and Maintenance Documentation
Contractor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor's Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference. If Contractor maintains its technical, electrical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

Spare Parts for Equipment
Contractor shall make available to Purchaser either a depot repair center and/or an availability guarantee of component parts and sub-assemblies necessary for on-going maintenance and operation of the Products. Contractor guarantees part availability as long as manufacturer manufactures parts and sub-assemblies for the Products ordered pursuant to this contract.