MASTER CONTRACT NUMBER T13-MST-733

FOR

TELECOMMUNICATIONS CABLING MATERIALS AND SERVICES

BETWEEN

THE DEPARTMENT OF ENTERPRISE SERVICES

AND

E3 SOLUTIONS, INC.

EFFECTIVE DATE: **NOVEMBER 15, 2012**

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Exhibit A: *DES Request for Quotation and Qualifications T12-RFQQ-013 for Cabling Materials and Services*
Exhibit B: *Contractor's Response*

NOTE: EXHIBITS A AND B ARE NOT ATTACHED BUT ARE AVAILABLE UPON REQUEST FROM THE DES CONTRACT ADMINISTRATOR

Master Contract Number T13-MST-733

for

Telecommunications Cabling Materials and Services

PARTIES

This Master Contract ("Contract") is entered into by and between the state of Washington acting through the **Department of Enterprise Services,** an agency of Washington State government (hereinafter "DES"), and **E3 Solutions, Inc.** licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the provisioning of Cabling Materials and Services to the State for **Category A in Region 1 and Category B in Region 1.**

RECITALS

The state of Washington, acting by and through DES, issued a Request for Quotations and Qualifications(RFQQ) dated May 24, 2012 (Exhibit A) for the purpose of establishing Master Contracts for Cabling Materials and Services in accordance with its authority under chapter 43.19.005 RCW.

E3 Solutions submitted a timely Response to DES' RFQQ (Exhibit B).

DES evaluated all properly submitted Responses to the above-referenced RFQQ and has identified E3 Solutions as an apparently successful Vendor.

DES has determined that entering into a Master Contract with E3 Solutions will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DES awards to E3 Solutions this Master Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers Cabling Materials and Services for the following Certified Warranty Manufacturers: **Mohawk CDT and Leviton.** This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Materials or Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Materials or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

This Master Contract shall not be used for any cabling project with a total cost in excess of $1 million. This Master Contract does not cover the supply of accessories or materials independent of cabling installation. Accessories (such as patch cords, jumpers and other support products) can be offered only as part of a cabling installation, maintenance, administration, or repair project, or as additional supplies after a project is completed for a Purchaser. Control equipment such as telephones, televisions, CPUs, etc are also not within the scope of this Master Contract.

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

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

"Acceptance" shall mean that the Materials/Services passed Acceptance Testing and shall be formalized in a written notice from Purchaser to Contractor; or, if there is no Acceptance Testing, Acceptance shall occur when the Materials/Services are delivered.

"Acceptance Date" for Contractor-installed Materials shall mean the date upon which Purchaser Accepts the Materials/Services as provided in the section titled **Standard of Performance and Acceptance**; and for Purchaser-installed Materials, shall mean the date of delivery of the Materials, or, if delivery of partial Orders has been agreed to between Purchaser and Contractor, the last date of delivery of the components of an Order.

"Acceptance Testing" shall mean the process for ascertaining that the Materials meets the standards set forth in the section titled **Standard of Performance and Acceptance,** prior to Acceptance by Purchaser.

"Administration" shall mean the method for labeling, identification, documentation and usage needed to implement moves, adds and changes of the communications infrastructure.

"American Wire Gage" (AWG) shall mean a wire diameter specification.

"Ancillary Equipment" shall mean support products that are added or connected to cabling in a subordinate or auxiliary capacity, such as protectors, ties and wraps. Ancillary Equipment does not include any Control Equipment, such as CPUs, televisions or telephones.

"Attenuation" shall mean the decrease in magnitude of transmission signal strength between points, expressed in dB as the ration of output signal level.

"Backbone" shall mean a cable connection between telecommunication or wiring closets, floor distribution terminals, entrance facilities, and equipment rooms either within or between buildings.

"Building Industry Consulting Service International (BISCI)" is an international non-profit association for telecommunication education.

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

"Cable/Cabling" shall mean a group of wire strands bundled or twisted together or optical fiber(s), within an enveloping sheath, that meets the requirements specified in the RFQQ, this Master Contract and/or Order Document/SOWs. The term includes any combination of cables, jumpers, tie wraps, and support equipment necessary to meet the requirements of the RFQQ, Master Contract, and Order Documents/SOWs.

"Certified Warranty Manufacturer" shall mean the firm that warrants the designated structured cabling system, including all cabling and connectivity components that comprise the telecommunications signal transmission infrastructure for twenty (20) years or more. The component parts may be different manufacturers, but have been "certified" to be compatible with the Certified Warranty Manufacturer's Material/Equipment.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

"Contract" or **Master Contract"** shall mean the RFQQ, the Response, the Contract document, all schedules and exhibits and all amendments.

"Contractor" shall mean E3 Solutions, Inc., its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Master Contract.

"Contractor Account Manager" shall mean a representative of Contractor who is assigned as the primary contact person with whom the DES Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the DES Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

"Contractor Project Manager" shall mean a representative of Contractor who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled **Contractor Project Manager**.

"Control Equipment" shall mean the equipment that controls the signaling through the cable, such as a telephone, CPU or television. Control Equipment is specifically excluded from the scope of the Master Contract.

"Delivery Date" shall mean the date by which the Materials/Services ordered hereunder shall be delivered.

"DES" shall mean the Washington State Department of Enterprise Services.

"DES Contract Administrator" shall mean the Contract Administrator, designated by DES as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DES Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

"Eastern Washington" shall mean the locations within Washington State located east of the Pacific Crest Trail.

"EIA" is the Electronic Industries Association.

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

"Effectiveness Level" shall mean the percentage of time in a month that Cabling is functioning properly in accordance with its Specifications.

"Exhibit A" shall mean the RFQQ.

"Exhibit B" shall mean Contractor's Response.

"Heavy Duty Equipment" shall mean Pickup Truck/Vehicle or Cable Van/Fiber Van.

"Help Desk" shall mean a service provided by Contractor for the support of Contractor's Materials/Services. Purchaser shall report warranty or maintenance problems to Contractor's Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

"Installation" shall mean the placement of communications cabling and optical fiber from the nearest distribution point, including all necessary internal wiring and associated Materials to support the integrity of the facility.

"Installation Date" shall mean the date by which all Materials ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

"Maintenance" shall mean any activity, such as test, measurements, replacement, adjustments or repairs, intended to eliminate faults or to keep Cabling functioning in compliance with the Specifications.

"Manufacturer" shall mean the original equipment manufacturer.

"Master Contract" or **"Contract"** shall mean this document, all schedules and exhibits, all amendments hereto and all Order Documents/SOWs hereunder.

"Materials" shall mean the items needed to perform the requirements specified in the Master Contract and the Order Document/SOW, such as copper wiring and optical fiber voice and data cabling, ancillary, support and component parts within the scope of the contract. This includes blocks, brackets, terminations, jumpers, bonding, surge protection devices, grounding, cabling, conduit, wire mould, outlet boxes, outlets and faceplates, and miscellaneous support products, as set forth in this Contract.

"Order" or **"Order Document"** shall mean any official document and attachments thereto specifying the Materials and/or Services to be purchased from Contractor under this Contract.

"OSHA" is the Occupational Safety and Health Act.

"Outside Plant" (OSP) shall mean communications infrastructure designed for installation exterior to buildings.

"Personal Services" (Services) shall mean professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, pursuant to chapter 39.29 RCW.

"Prevailing Wage" shall mean the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. Prevailing wages are established by the Department of Labor and Industries for each trade and occupation employed in the performance of Public Works. They are established separately for each county and are reflective of local wage conditions. (See 39.12.010 RCW and 39.12.020 RCW.)

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

"Products" shall mean any Contractor-supplied Materials, software and documentation.

"Project" shall mean a specific defined task as described in the Order Document/Statement of Work. A Project usually has a specific begin date and end date, specific objectives and specific resources assigned to perform the work.

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

"Public Work" shall mean work, construction, alteration, repair, or improvement that is executed at Purchaser's cost and declared a "Public Work" by the Purchaser in the Order Document or Statement of Work. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, and utilities construction. (See 39.04.010 RCW.)

"Purchased Services" (Services) shall mean those Services and activities provided by Contractor to accomplish routine, continuing, and necessary functions as set forth in this Master Contract or Statement of Work.

"Purchaser" shall mean DES and Washington State agencies, institutions, school districts and political subdivisions (e.g., counties, cities, public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW and public benefit nonprofit corporations that have executed an Agreement with DES, and shall be collectively referred to as the Purchaser throughout this Master Contract.

"Purchaser Bid/Quote Request Document" shall mean the document used by Purchaser to obtain pricing from Contractor as part of the Second-Tier acquisition process.

"RCW" shall mean the Revised Code of Washington.

"RFQQ" shall mean the Request for Quotations and Qualifications used as a solicitation document to establish this Master Contract, including all its amendments and modifications, Exhibit A hereto.

"Response" shall mean Contractor's Response to the RFQQ for Cabling Materials and Services, Exhibit B hereto.

"Schedule A: *Authorized Price List*" shall mean the attachment to this Contract that identifies the authorized Prices to be charged under this Contract.

"Schedule B: *Statement of Work Template*" shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

"Schedule C: *Escalation Procedures*" shall mean the attachment to this Contract that identifies Contractor's escalation procedures.

"Schedule D: *MWBE Certification*" shall mean the attached certificate(s) indicating Contractor's, and/or one or more of Contractor's Subcontractor's status as a minority or women's business enterprise.

"Services" may include both Personal Services and Purchased Services and shall mean those services provided under this Contract and related to the Materials being acquired, that are appropriate to the scope of this Contract and includes such things as cabling installation services, administration and maintenance/repair and engineering support.

"Specifications" shall mean the technical and other specifications set forth in the RFQQ, Exhibit A, and any additional specifications set forth in Contractor's Response, Exhibit B, and the specifications set forth in an Order Document/Statement of Work.

"Standard of Performance" shall mean the criteria that shall be met before Acceptance, as set forth in the section titled **Standard of Performance and Acceptance**. The Standard of Performance also applies to all additional,

replacement or substitute Materials and Materials that are modified by or with the written approval of Contractor after having been accepted.

"State" shall mean the state of Washington.

"Statement of Work" or **"SOW"** shall mean a separate description of the work to be accomplished by Contractor under the terms and conditions of this Contract. An example SOW is attached as Schedule B.

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

"Telecommunications" shall mean any transmission, emission, switching and reception of signs, signals, writings, images, and sounds, that is information of any nature by cable, radio, optical, or other electromagnetic systems.

"TIA" is the Telecommunication Industries Association.

"UL" shall mean Underwriters Laboratories.

"Warranty Period" shall mean the period of time as set forth in the section titled **Cabling Warranty** wherein Contractor warrants that the Materials shall be in good operating condition and shall conform to the Specifications.

"Western Washington" shall mean the locations within Washington State located west of the Pacific Crest Trail.

"Work Product" shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

2. TERM

2.1. This Master Contract's initial term shall be one (1) year, commencing upon the effective date.

2.2. This Master Contract's term may be extended by five (5) additional one (1) year terms, provided that the extensions shall be at DES' option and shall be effected by DES giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term's expiration and Contractor accepting such extension prior to the Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

2.3. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. At purchaser's option, the Order Document/SOW or renewal SOWs entered into prior to the expiration or other termination of the Master Contract (except termination for default) may be completed

subject to all the other terms and conditions of the Master Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as agreed between the Contractor and Purchaser.

3. SURVIVORSHIP

All purchase transactions executed pursuant to the authority of this Master 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 Data; Contractor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Cabling Warranty, Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes;** and **Limitation of Liability**, shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. PRICING

4.1. Contractor agrees to provide the Cabling Equipment and Services to Purchasers at the rates set forth in the *Authorized Price List* attached as Schedule A to this Master Contract. Such rates may not be increased during the initial term of this Master Contract. Contractor may reduce rates at any time.

4.2. Material Prices will be submitted to Purchasers via Contractor response to Purchaser Bid/Quote Request Documents. All items are to be quoted F.O.B. destination. All anticipated shipping costs necessary to meet the delivery schedule must be included in the line item price quote of each item. No additional charges for shipping or handling will be allowed.

4.3. Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements.

4.4. Purchaser shall reimburse Contractor for travel and other expenses as identified in this Contract or the Order Document/SOW, or as authorized in writing in advance by Purchaser, in accordance with the then-current rules and regulations set forth in the Washington State Administrative and Accounting Manual (http://www.ofm.wa.gov/policy/default.asp). Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars ($50) or more when requesting reimbursement.

5. ECONOMIC PRICE ADJUSTMENT

5.1. If DES elects to extend the Master Contract for an additional one-year period, the Contract price for the additional one year shall not increase/decrease by more than the percentage increase/decrease of the U.S. Department of Labor "Consumer Price Index, US City Average, All Items, Not Seasonally Adjusted" (CPI-U). At least sixty (60) calendar days before the end of the initial term of the Master Contract, the Contractor may propose, in writing, a price increase not to exceed the increases reflected in the CPI-U. This information can be accessed at the following websites: http://www.bls.gov or http://www.bls.gov/cpi/

5.2. If during any subsequent renewal period, DES elects to exercise the option to extend the Master Contract, the Contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage of the CPI-U. Contractor must propose the price increase in writing at least 60 days prior to renewal date.

5.3. The baseline index shall be the index announced for the month of April 2012. The allowable percent change shall be calculated by subtracting the baseline index from the index announced for the April in which the renewal option is exercised, and dividing the result by the baseline index. The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum price adjustment increase permitted. The Contractor may offer price decreases in excess of the allowable CPI-U percent change at any time.

5.4. The following example illustrates the computation of percent change using April 2011 as the Baseline:

CPI-U FOR APRIL 2012	230.085
LESS CPI-U FOR APRIL 2011	224.906
EQUALS INDEX POINT CHANGE	5.179
DIVIDED BY PREVIOUS PERIOD CPI-U	224.906
EQUALS	0.0230
RESULTS MULTIPLIED BY 100	0.0230 x 100
EQUALS PERCENT CHANGE	2.3

(230.085 – 224.906 = 5.179) then (5.179 ÷ 224.906 = 0.0230 x 100 = 2.3 %)

5.5. If no request for a price increase is received within the specified time period the Contractor waives its right to a price increase for that extension period.

5.6. Proposed price adjustments will be taken into consideration when determining whether to extend any Master Contract.

5.7. If the CPI-U decreases after the initial term of the Master Contract, or prior to any subsequent renewal period, DES may seek pricing concessions from the Contract in an amount not to exceed the decrease of the CPI-U.

6. ADVANCE PAYMENT PROHIBITED

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

7. TAXES

7.1. Purchaser will pay sales and use taxes, if any, imposed on the Materials and Services acquired hereunder. Contractor shall pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.

7.2. Contractor shall complete registration with the Washington State Department of Revenue within 30 days of notification of contract award, and be responsible for payment of all taxes due on payments made under this Master Contract.

7.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

8. Invoice and Payment

8.1. Contractor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser. Invoices shall provide and itemize, as applicable:

a) Master Contract number T**13-MST-733**;

b) Purchaser's name and address and the Purchaser's Order Number;

c) Contractor name, address, phone number, and Federal Tax Identification Number;

d) Description of Equipment, including quantity ordered, model and serial numbers;

e) Description of Services provided, including hourly rate and total hours for each labor category employed;

f) Date(s) of delivery of Equipment or Services and/or date(s) of Equipment installation and set up;

g) Price for each item;

h) Total purchase Price;

i) Discount for E-rate, if applicable

j) DES Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);

k) Applicable taxes, including permits and bonds;

l) Other applicable charges;

m) Total invoice amount;

n) Payment terms including any available prompt payment discounts; and

o) Upon request of Purchaser, Contractor shall include other Purchaser-specific identifiers;

8.2. If expenses are invoiced, Contractor shall provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars ($50) or more shall be accompanied by a receipt in order to receive reimbursement. (see subsection 4.4 above)

8.3. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Materials or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

8.4. With each invoice Contractor shall provide an Affidavit of Amounts Paid specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section 33.

8.5. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.

8.6. The DES Contract number **T13-MST-733** and Purchaser **Order Document/SOW number** shall appear on all bills of lading, packages, and correspondence relating to this Contract.

8.7. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

8.8. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Cabling Materials and/or Services or receipt of Contractor's properly prepared invoice, whichever is later.

9. Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

Contractor's Responsibilities

10. In-State Presence and Statewide Coverage

Contractor shall have or established, within 30 days of the effective date of this Master Contract, a place of business staffed by Contractor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Order Documents/SOWs and communications and all sales and Services provided to Purchasers will be through this in-state location. Contractor's Materials and Services shall be available under this Master Contract to Purchasers located in **Region 1**.

11. RFQQ Mandatory Requirements

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

12. Mandatory Compliance with Codes and Standards

All Materials and Services covered by this Master Contract shall be performed in compliance with the technical specifications of the RFQQ, the Master Contract, and the Order Document/SOW. Contractor must adhere to the most recent release/version/update to all applicable codes and standards.

13. Statement of Work/Order Document

13.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW or Order Document established between Purchaser and Contractor.

13.2. The terms and conditions of any SOW or Order Document cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

13.3. No work shall be performed by Contractor until an SOW or Order Document is executed by Contractor and Purchaser and is received by Contractor.

13.4. The SOW or Order Document shall reference the Master Contract by number, describe the scope of work to be performed, the estimated total cost of the Project, contractor bonding requirements, and certify whether the work is a public work in accordance with chapter 39.04 RCW.

13.5. Contractor shall keep a record of every Order Document/SOW established under this Master Contract in accordance with the records retention provisions, **Review of Contractor's Records**, herein. Contractor shall provide a copy of any Order Document/SOW to DES upon request.

14. Ownership/Rights in Data

14.1. Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

14.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

14.3. Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

14.4. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

14.5. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material

furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

15. Title to Materials

Upon successful completion of Acceptance Testing and receipt of Purchaser's letter of Acceptance, Contractor shall convey to Purchaser good title to the Materials, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. If Acceptance Testing is not required by the Order Document/SOW, the Contractor shall convey to Purchaser good title to the Materials upon receipt of payment.

16. Shipping and Risk of Loss

Contractor shall ship all Materials purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Materials and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Materials ordered hereunder that occurs prior to Acceptance, 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 Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

17. Delivery

17.1. Contractor shall be responsible for making the arrangement for delivery, unloading, and storage of materials for each project. Purchaser will assume no responsibility for receiving any materials shipped to Purchaser's facility by or on behalf of the Contractor.

17.2. No storage area will be available at Purchaser's facility for long-term storage of Contractor's materials or supplies unless so stated in the Purchaser's SOW.

17.3. If providing for any storage for the convenience of the Contractor, the Purchaser assumes no responsibility for any items that may be lost, stolen, damaged, or destroyed, and will not take possessions of or title to any items prior to installation and Acceptance.

17.4. All Materials purchased under this Contract shall be completely installed and ready to begin Acceptance Testing within the time period specified in the Order Document or SOW after Contractor's receipt of an Order. Extensions will be granted at the sole option of the Purchaser. Time is of the essence with respect to delivery and Contractor may be subject to liquidated damages or termination of an Order/SOW or of this Contract and/or other damages available under law for failure to deliver on time.

17.5. All deliveries made pursuant to this Contract shall be complete. Unless Contractor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages shall be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document/SOW number. Contractor's delivery receipt shall be signed by an authorized representative of Purchaser for all deliveries made hereunder.

18. Site Security

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

18.1. Facility Access

Contractor understands that all Purchaser's building entrances are controlled for access. 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 shall 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. 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 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.

Contractor is responsible for coordinating with Purchaser for facility access. Contractor shalll coordinate with Purchaser to schedule project work to allow maximum access to the Contractor while minimizing disruption of Purchaser's business. Contractor will frequently be required to work after normal buisness hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and on weekends.

Upon the earlier of termination of the Contract, or suspension or termination of access to Purchaser's facilities, Contractor shall return all security badges.

18.2. Safety

Contractor shall observe and comply with OSHA/WISHA regulations, all applicable safety and environmental laws and regulations, and all Purchaser's rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

It is the Contractor's responsibility to meet all state/federal rules and regulations pertaining to the presence of asbestos or other hazardous materials. Purchaser does not contemplate work in any area that contains hazardous materials, unless specified in writing in the SOW. Contractor shall cease all work in any area where hazardous materials are discovered and shall immediately notify Purchaser in writing. The Purchaser shall be responsible for determining the disposition of hazardous materials identified by the Contractor.

19. Material Compatibility, Specifications and Configurations

19.1. Contractor shall be responsible to notify Purchaser of the existence of any compatibility issues between Contractor's Materials and Purchaser's already existing or planned for hardware, software or cabling. Purchaser will provide Contractor access in a timely fashion to necessary areas and equipment sites and shall provide Contractor with a list of any existing or planned for hardware, software and cabling, as necessary.

19.2. Materials delivered hereunder will conform to that item's detailed Specifications in all respects including, but not limited to; physical characteristics, operating characteristics, space requirements, power requirements,

maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.

19.3. If requested by Purchaser, Contractor agrees to identify on all Materials supplied under this Master Contract, all appropriate test points for connecting commercially available equipment monitors designed to measure system capacity, performance, or activity.

20. Installation and Set-up

20.1. Contractor shall separately itemize all installation and physical requirements for Materials as listed below:

a) Ventilation or Air conditioning

b) Electrical requirement

c) Special grounding

d) Cabling requirement

e) Weight (floor loading)

f) Space requirements

g) Humidity and temperature limits

h) Noise level

20.2. When installing Materials, Contractor will provide, at no additional charge:

a) A written installation support plan and schedule addressing staffing, site preparation requirements, resource allocation, testing procedures;

b) Site surveys;

c) Station reviews to identify user requirements; and

d) An on-site Manufacturer certified technician during and after the Project until the Materials operate properly;

20.3. Contractor personnel shall be Manufacturer certified in accordance with Manufacturer requirements. Upon request Contractor will furnish a copy of such certification to Purchaser or DES.

20.4. Purchaser shall have access to the work site at all times during installation.

20.5. Purchaser shall prepare the environment to house the Materials based upon written requirements provided by Contractor in its installation plan, as modified in writing and agreed to by the parties. Contractor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Contractor's Response. Any requirements for the environment not disclosed in Contractor's installation plan will be completed by Contractor at no additional cost to Purchaser. Purchaser will provide standard commercial power. Contractor shall install an external, Manufacturer recommended surge protector between the power source and each major system.

20.6. Contractor shall be responsible for acquiring any required permits.

20.7. Contractor shall replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Contractor personnel to their original condition at no additional cost to Purchaser.

20.8. All debris generated by Contractor shall be picked up and lawfully disposed of at the conclusion of each work day. Hallways shall be kept free of debris, scaffolds, etc., during peak use. Traffic control devices, safety barricades, and other such devices shall be utilized where necessary.

20.9. Contractor is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called "cabling") may be located within or on Purchaser's grounds and facilities.

20.10. Before beginning work on or about Purchaser's premises, Contractor shall contact Purchaser's communications network control center to determine if Purchaser's cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any work that may impact underground utilities not owned by Purchaser, Contractor agrees to notify affected owners under the requirements of chapter 19.122 RCW, Underground Utilities.

20.11. Purchaser hereby permits Contractor to interface with such cabling and design engineering systems in support of the delivery of the Materials and Services ordered under this Master Contract.

20.12. Contractor shall install the Materials, with all features, options, parts and wiring ordered by Purchaser, ready for Acceptance Testing, on or before the Installation Date(s) specified in the Order Document/SOW. Failure to meet the Installation Date(s) may subject Contractor to liquidated damages or termination of an Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.

20.13. After installing the Materials, Contractor shall provide Purchaser with documentation of a successful system audit using Contractor's diagnostic routines, as approved by Purchaser, demonstrating that the Materials meet or exceed the Specifications. Contractor shall certify to Purchaser in writing that the Materials are ready for Acceptance Testing. If after reviewing such documentation Purchaser agrees that the Materials are ready for Acceptance Testing, Purchaser shall begin Acceptance Testing, as set forth in the section titled **Standard of Performance and Acceptance**.

21. Standard of Performance and Acceptance

21.1. This section establishes a Standard of Performance that shall be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Materials and any Materials that are modified by or with the written approval of Contractor after having been Accepted.

21.2. All installation, wiring, and cabling requirements identified in the Order Document/ SOW must be satisfied. All Materials must be tested, functional and certified, based on ANSI/TIA/EIA installation requirements and approved by the Purchaser and/or Purchaser's on-site coordinator prior to acceptance for payment. Minimum testing of copper cable is to include Wire Map, continuity, NEXT and attenuation in accordance with ANSI/TIA/EIA-568. Minimum testing for fiber cable is to include testing the attenuation and polarity of the installed cable with an optical loss test set (OLTS) and the installed condition of the fiber cabling with an optical time domain reflectometer (OTDR). Multimode backbone links shall be tested at 850 nm and 1300 nm in accordance with ANSI/EIA/TIA-526-14A. Singlemode backbone links shall be tested at 1310 nm and 1550 nm in accordance with ANSI/TIA/EIA-526-7.

21.3. Inspections, tests, measurements or other acts or functions performed by State personnel shall in no manner be construed as relieving the Contractor from full compliance with requirements. Upon Purchaser notification of defective or unauthorized equipment or materials, and unacceptable installation/repair practices, the Contractor will immediately replace or modify affected practices or parts at no additional cost to the Purchaser.

21.4. Acceptance of Materials and Services will be based as follows or as detailed in Purchaser Order Document/SOW. Fifteen (15) consecutive days of one-hundred percent (100%) trouble-free performance where:

a) 100% of all terminations are operational and the Effectiveness Level is 100%;

b) 100% of all ancillary equipment is operational and the Effectiveness Level is 100%;

c) Labeling and as-built drawings have been completed according to Purchaser's specifications and provided to the Purchaser.

21.5. The Effectiveness Level is the percentage of time in a month that the Materials are functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Materials by the sum of the Operational Use Time plus the Materials Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for Materials is defined as the total time the Materials would normally be used. Materials Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of Materials Failure. Materials Failure is defined as a malfunction that prevents the accomplishment of the intended function(s) of the Materials.

21.6. Downtime for each incident shall start from the time that Contractor knew or reasonably should have known of the Materials Failure, or Purchaser makes a bona fide attempt to contact Contractor's designated representative at the prearranged contact point, whichever occurs earlier, until the Materials are returned to fully operational status in conformance with its Specifications. During periods of Materials Failure downtime, Purchaser may use operable portions of the Materials when such action does not interfere with repair of the inoperable portions.

21.7. If the Materials and/or Services does not meet the Standard of Performance during the first period of Acceptance Testing, Purchaser at its sole option may continue on a day-to-day basis until the Standard of Performance has been met, or terminate the Order/SOW without penalty, or demand replacement Materials or Services and/or corrections from the Contractor at no additional cost and continue the Acceptance Testing for an additional fifteen (15) consecutive calendar days after receipt of replacement Materials. Purchaser's option to terminate the Order/SOW shall remain in effect until exercised or until such time as the Acceptance Testing is successfully completed. Contractor shall pay all costs related to the preparation and shipping of Materials returned pursuant to this section. Purchaser's option to declare Contractor in breach and terminate this Order shall not be waived by Purchaser's decision to continue Acceptance Testing beyond the delineated testing period.

21.8. Purchaser, at its sole discretion, will determine whether the Materials and/or Services have successfully completed Acceptance Testing. Contractor shall not bill Purchaser until this Standard of Performance is met.

Upon successful completion of the Acceptance Testing, Purchaser will provide a written notice of a successful Acceptance Testing to the Contractor's Project Manager.

21.9. Contractor must provide support for the period up to the issuance of Acceptance by Purchaser. This support must include troubleshooting, the correction of any bugs or deficiencies, and the resolution of any operating problems. During this period, Contractor will provide, at no additional cost, unlimited technical support by telephone. If a problem cannot be resolved within forty-eight (48) hours of Purchaser's initial notification, Contractor shall provide at no additional cost onsite service and support to resolve the problem.

22. Materials Warranty

22.1. Contractor warrants that the Materials shall be in new, of the latest design, of good quality, free of defects, and in conformance with the RFQQ, Master Contract and Order Document/SOW (including EIA/TIA Category Certifications for cables and termination components). All materials and work not in conformance with the RFQQ, Master Contract, and Order Document/SOW and EIA/TIA Category Certifications for cables and termination components shall be replaced free-of-charge to Purchaser during the base-offer warranty period, commencing upon the first day after the Acceptance Date.

22.2. During the Warranty Period, Contractor shall adjust, repair, or replace all Materials that are 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. Any defective Materials shall be repaired or replaced for Purchaser so that it conforms to the Specifications.

22.3. 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. 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 Materials warranties.

22.4. Contractor's Warranty Period

The base-offer warranty period for the building wiring system shall be a minimum of ninety (90) days, and can be increased by the Order Document/SOW which shall start on the "Acceptance Date."

22.5. Repaired Cabling/Materials Warranty

The Contractor will provide a minimum of ninety (90) days warranty from the time of acceptance by Purchaser on the installed/repaired materials including basic common equipment, terminal equipment and all other ancillary equipment.

22.6. Contractor shall provide Help Desk Services for reporting warranty issues and for trouble-shooting problems. Contractor's Help Desk Services can be reached at 1-866-452-0240.

22.7. Contractor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Materials 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. Contractor's escalation procedures are attached as Schedule C.

23. Materials Maintenance

23.1. Non-emergency maintenance/repair callback response time during warranty will be within eight (8) Business Hours after notification. On-Site response time to routine maintenance/repair requests such as Moves, Adds, and Changes (MACs) shall be within three (3) Business Days of request, unless otherwise negotiated by Purchaser and Contractor. Routine maintenance/repair will be performed during Business Hours. When on-site, Contractor shall report to Purchaser's designated coordinator prior to and after each service call.

23.2. Emergency on-site maintenance/repair response time during warranty will be within two (2) hours, twenty-four (24) hours per day, seven (7) days per week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours after notification. Emergency maintenance applies to: (i) Failure of signaling; (ii) Failure of power supply; and (iii) Failure of any terminals deemed critical by Purchaser to the functioning of Purchaser's business functions.

23.3. If Contractor's maintenance personnel fail to meet response times identified above, Contractor shall be assessed liquidated damages, as set forth in the subsection of this Contract titled **Liquidated Damages – Specific**, for each "late" hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival.

23.4. Any work or upgrade that may affect service shall be coordinated with Purchaser's coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser's prior written approval.

23.5. Purchaser agrees that Contractor will not be liable for any damages caused by Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation.

23.6. Contractor personnel responding to maintenance calls, repairing or servicing the system shall be Manufacturer-certified to work on the Materials.

23.7. Contractor shall maintain a log on Purchaser's premises that details repairs, maintenance and upgrades to the system. The log shall be available for inspection by Purchaser and/or DES upon request.

23.8. Purchaser shall provide Contractor access to the system to perform maintenance service.

23.9. When on-site, Contractor shall report to Purchaser's designated coordinator prior to and after each service call.

23.10. Upon completion of each maintenance call, Contractor shall furnish a maintenance activity report to Purchaser, which shall include, as a minimum, the following:

a) Date and time notified;

b) Date and time of arrival;

c) Type and serial number(s) of machine(s);

d) Time spent for repair;

e) Description of malfunction;

f) List of parts replaced; and

g) Additional charges, if applicable.

23.11. There shall be no additional maintenance charges for:

a) Replacement parts;

b) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;

c) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material.

24. Failure to Respond

In cases where Contractor does not respond within the required time, Purchaser shall have the option of acquiring repair from another Manufacturer certified source and Contractor shall be responsible for full reimbursement of costs incurred by Purchaser. Maintenance by another Manufacturer certified source when Contractor has failed to respond will not constitute grounds to void the warranty.

25. Materials and Maintenance Documentation

Contractor shall prepare and maintain records in accordance with the state of Washington's documentation requirements. If Purchaser has a cabling management system, Contractor is responsible for working with the Purchaser's cabling management personnel to provide a format compatible with this system. For remodeling projects, Contractor is responsible for updating appropriate records.

26. Spare Parts

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 Materials. Contractor guarantees part availability for a minimum of seven (7) years from the Acceptance Date of Materials by Purchaser. In addition, Contractor shall have a complete on-site "crash kit" of spare parts or a permanent maintenance facility with a full parts inventory within a distance that will meet the specified emergency on-site response times.

27. Contractor Licensing/Certification and Staffing Requirements

Failure of Contractor to maintain any of the following requirements constitutes a material breach of this Master Contract:

a) Contractor shall maintain certification from the Manufacturer(s) that provides structured cabling system twenty (20) year or more warranties as identified in Contractor's Response.

b) Contractor shall have employed staff or subcontractors that meet the certification criteria for installation for each Manufacturer upon which award of this Master Contract is predicated.

c) Contractor shall maintain one or more Registered Communications Distribution Designers (RCDD) on staff. A subcontractor cannot fulfill this requirement.

d) Contractor shall have employed staff or subcontractors that meet the Licensed Electricians licensing requirements of chapter 19.28 RCW.

e) Contractor shall employ an individual who currently possesses a telecommunications administrator certificate that meets the requirements of chapter 19.28.430 RCW.

28. Annual Reporting

On an annual basis, within thirty (30) days of the signing anniversary date, Contractor shall submit to DES a manufacturer's verification that the firm continues to hold certification(s) for providing twenty (20) year installation warranty of a structured cabling system, as identified in Exhibit B. Contractor shall also provide updates on current staff certification (industry sponsored and non-manufacturer specific) and verification of current State licensing and insurance requirements.

29. Public Works

This Master Contract is not a "Public Works" contract. Depending on the nature of the work to be performed, the Purchaser may declare any project (or work) performed under the contract to be a "Public Works." If a project is a Public Works, it will be declared in the Order Document/Statement of Work. It is the responsibility of the Purchaser to make a determination as to whether work performed under this agreement qualifies as a public work. See RCW 39.04 for more information.

Contractor shall comply with all statutory and administrative requirements concerning public works, including without limitation, prevailing wage.

30. Prevailing Wage

Contractor shall comply with all requirements and procedures pertaining to prevailing wages established by the Washington State Department of Labor and Industries. Whenever a project is subject to the Federal Davis-Bacon Act, Contractor and all Subcontractors shall pay at least the higher rate of the Federal or State prevailing wage.

31. Project Manual

Contractor shall develop and maintain a public Project Manual for all Public Work projects. The manual shall include at a minimum:

a) A cover sheet that lists project number, date(s) of work, name of Purchaser, and bid number(s), if applicable;

b) Title sheet, including Contractor's name, project title, date, name, telephone numbers and addresses of all participating entities, and signature of Contractor's Project Manager.

c) All solicitation documents (Request for Quote, Order Document/SOW) correspondence between parties, Delegation of Authority, insurance forms, bid documents (Quotes) drawings, "as-built" documents, minutes of all meetings, all invoices, list of subcontractors, subcontract(s) and their bid documents, etc.

32. 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.

33. Minority and Women's Business Enterprise (MWBE) Participation

With each invoice for payment and within thirty (30) days of Purchaser Contract Administrator'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 **Review of Contractor's Records** section.

34. Protection of Purchaser's Confidential Information

34.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance 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 to prevent unauthorized access to Confidential Information.

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

34.3. Purchaser reserves 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.

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

Purchaser's Authority and Responsibilities

35. Purchaser Use of Master Contract

35.1. This Master Contract may be used only by Purchasers who have an Agreement with DES and is not for personal use. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document/SOW signifies agreement to comply with these requirements. Failure to abide by these requirements may result in the Purchaser forfeiting the right to make future purchases under this or other Master Contracts.

35.2. Purchaser shall comply with the terms and conditions of this Master Contract, including but not limited to the notice requirements set forth in the provision titled **Contractor's Proprietary Information**. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document/SOW signifies agreement to comply with and protect Contractor's confidential or proprietary information.

36. Master Contract Use

36.1. Purchasers will conduct Second-Tier acquisitions among the pool of Telecommunications Cabling Materials and Services Contractors as follows:

36.2. Direct Buy

Purchases under ten thousand ($10,000) dollars are exempt from the Second-Tier acquisition process. Purchasers may buy directly from any Cabling Master Contractor. The direct buy threshold may be changed by DES at any time.

36.3. Purchases Over the Direct Buy Threshold

Purchasers must obtain bids/quotes from a minimum of three (3) Cabling Contractors for all Materials and/or Services with a total cost in excess of ten thousand dollars.

This Master Contract shall not be used for cabling projects with a total estimated cost in excess of $1 million. Such projects shall be individually competitively bid.

Purchasers shall conduct Second-Tier acquisitions of Purchased Services consistent with policies and standards adopted by the OCIO: http://ofm.wa.gov/ocio/policies/manual.asp

Purchasers shall conduct Second-Tier acquisitions of Personal Services consistent with policies and standards adopted by the OCIO http://ofm.wa.gov/ocio/policies/manual.asp, chapter 39.29 RCW and the State Administrative and Accounting Manual ("SAAM") chapter 15 http://www.ofm.wa.gov/policy/15.htm.

Purchasers may consider criteria other than financial in their selection of a Vendor. Additional criteria may include, but not be limited to, performance bonding, labor resources, and Vendor experience.

Contract Administration

37. Legal Notices

37.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except for subpoena or notice of legal process and except notice of malfunctioning Materials) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either 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, or via facsimile, 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. Contact information for the Contractor and DES is as follows:

To Contractor at:	To DES at:	
E3 Solutions, Inc.	State of Washington	
	Department of Enterprise Services	
	Master Contracts and Consulting	
Attn: Derek Karel	**Attn:** Master Contract Administrator	
PO Box 72	***If by US Postal Service:***	***If by Overnight Courier:***
Yakima, WA 98907	1500 Jefferson St. SE	1500 Jefferson St. SE
	Mail Stop 41017	
	Olympia, WA 98504	Olympia, WA 98501
Phone: 509-452-0240	Phone: 360-407-8772	
E-mail: derekk@ecubedsolutions.com	E-mail: mcadmin@dis.wa.gov	

Contact information for Purchasers shall be at the address, email, and fax or phone number listed on their Order Document/SOW.

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

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

38. Contractor Account Manager

Contractor shall appoint an Account Manager for the State's account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for DES concerning Contractor's performance under this Contract. Contractor shall notify the DES Contract Administrator, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Contractor Account Manager: Derek Karel

Address: PO Box 72, Yakima, WA 98907

Phone: 509-452-0240 Fax: 509-452-3001 E-mail: derekk@ecubedsolutions.com

39. Contractor Project Manager

Contractor shall assign a Contractor Project Manager for each Purchaser project. Purchaser shall have approval rights over the Contractor Project Manager, or any replacements thereof. The Contractor Project Manager shall be the principal point of contact for Purchaser and shall coordinate Contractor's activities. The Contractor Project Manager shall produce and maintain a complete plan for all Contractor-related activities concerning cable installation, administration and maintenance.

40. Section Headings, Incorporated Documents and Order of Precedence

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

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

a) Schedules A, B, C, D, E and F;

b) DES' RFQQ (Exhibit A);

c) Contractor's Response to DES' RFQQ (Exhibit B);

d) The terms and conditions contained on Purchaser's Order Documents/SOW, if used; and

e) 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 Purchaser and used to effect the sale of Materials to Purchaser.

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

a) Applicable federal and state statutes, laws, and regulations;

b) Sections of this Master Contract;

c) Schedules A, B, C, D, E and F;

d) DES' RFQQ (Exhibit A);

e) Contractor's Response to DES' RFQQ (Exhibit B);

f) The terms and conditions contained on Purchaser's Order Documents/SOW, if used; and

g) 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 Purchaser and used to effect the sale of Materials to Purchaser.

41. Entire Agreement

This Master 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 Master 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.

42. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by DES and Contractor.

43. Additional Equipment and Services

Contractor may submit new Equipment (such as additional Heavy Duty Equipment) and Services with associated discounts or prices to the DES Contract Administrator. New or changed Equipment and Services submitted by Contractor shall meet all mandatory requirements of the RFQQ. Additional Equipment or Services that are determined by DES to be appropriate to the scope of this Master Contract, may be added to Schedule A of this Master Contract by an instrument in writing, signed by both Contractor and DES. Such writing shall include a specific description of the additional Equipment and/or Services, pricing, and additional terms and conditions as relevant. If approved by DES, the new offering(s) will be added to the Master Contract by amendment.

44. Independent Status of Contractor

In the performance of this Master Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Master Contract. 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 (State Civil Service Law) or Title 51 RCW (Industrial Insurance).

45. Governing Law

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

46. Rule of Construction as to Ambiguities

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

47. Subcontractors

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

48. Assignment

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

48.2. DES may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

49. Publicity

49.1. The award of this Master Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Materials/Services by DES or Purchaser and shall not be so construed by Contractor in any advertising or other publicity materials.

49.2. Contractor agrees to submit to DES, all advertising, sales promotion, and other publicity materials relating to this Master Contract or any Equipment furnished by Contractor wherein DES' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DES' or Purchaser's name with Contractor's Materials or Services may, in DES' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DES or Purchaser *prior* to such use.

50. Review of Contractor's Records

50.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Master Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Master Contract. Records involving matters in litigation related to this Master Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Master Contract, whichever is later.

50.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DES Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Master Contract's term, Contractor shall provide access to these items within Thurston County or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

50.3. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

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

General Provisions

51. Patent and Copyright Indemnification

51.1. Contractor, at its expense, shall defend, indemnify, and save DES and Purchaser harmless from and against any claims against DES or Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, 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:

a) Promptly notifies Contractor in writing of the claim, but DES' or Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and

b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.

51.2. If such claim has occurred, or in Contractor's opinion is likely to occur, DES and Purchaser agree to permit Contractor, at its option and expense, either to procure the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the 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 Product and provide Purchaser a refund. In the case of Product, Contractor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of ten (10) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Contractor.

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

a) Contractor's compliance with any designs, specifications or instructions of Purchaser;

b) Modification of the Materials by Purchaser or a third party without the prior knowledge and approval of Contractor;

c) Use of the Materials in a way not specified by Contractor; or,

d) Use of the Materials with equipment not supplied by Contractor;

unless the claim arose against Contractor's Materials or Services independently of any of these specified actions.

52. Save Harmless

Contractor shall defend, indemnify, and save DES and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligation to defend, indemnify, and save DES and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent DES or Purchaser negligence.

53. Insurance

53.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to DES within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DES' sole option, result in this Contract's termination.

53.2. The minimum acceptable limits shall be as indicated below, with no deductibles, unless otherwise indicated, for each of the following categories:

a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with no deductible, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than $1 million per accident;

c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease, with no deductible, with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;

d) Umbrella policy, with no deductible, providing excess limits over the primary policies in an amount not less than $3 million; and

e) Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. DES shall be named as an additional insured on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) designating DES as an additional named insured. Such policies shall also reference this Master Contract number T13-MST-733and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DES by the insurer.

53.3. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

53.4. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

53.5. Contractor shall furnish to DES copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates and endorsements of all required insurance within thirty (30) days after the renewal date. These certificates of insurance shall expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DES sole option, result in this Contract's termination.

53.6. By requiring insurance herein, DES does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DES in this Master Contract.

53.7. Purchasers may require Contractor to obtain additional insurance. Such additional insurance requirements will be identified in the Order Document/SOW.

54. Industrial Insurance Coverage

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

55. Licensing Standards

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

56. OSHA/WISHA

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

57. Uniform Commercial Code (UCC) Applicability

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

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

58. Antitrust Violations

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

59. Compliance with Civil Rights Laws

During the performance of this Master Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Master Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with the State.

60. Severability

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

61. Waiver

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

62. Treatment of Assets

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

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

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

62.4. 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.

62.5. Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.

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

63. Contractor's Proprietary 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 shall be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, DES and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DES or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES or Purchaser will release the requested information on the date specified.

Disputes and Remedies

64. Disputes

64.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot be resolved between the parties or by the DES Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

64.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.

a) If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) 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 five (5) Business Days.

b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

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

64.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.

64.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

64.5. 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.

65. Attorneys' Fees and Costs

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

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

66. 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.

67. Liquidated Damages

67.1. Liquidated Damages - General

a) Any delay by Contractor in meeting the installation date, as applicable, will interfere with the proper implementation of Purchaser's programs, causing loss and damage to Purchaser.

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

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

67.2. Liquidated Damages – Specific

a) If Contractor does not have the Materials installed by the Installation Date agreed upon between Purchaser and Contractor, then Contractor shall provide a revised Installation Date and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified Installation Date and the date that Contractor actually installs the Materials and Materials are operational in accordance with the **Standard of Performance and Acceptance** section an amount of five hundred dollars ($500) per day, for each calendar day between the specified Installation Date and the date that Contractor actually installs the Materials.

b) If the revised Installation Date is more than twenty (20) calendar days from the original Installation Date, then by written notice to Contractor, Purchaser may immediately terminate the right of Contractor to install the Materials and Purchaser may obtain substitute Materials from another vendor. In this event, Contractor shall be liable for fixed and agreed-upon liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Materials are installed or a maximum of forty-five (45) calendar days from the original Installation Date, whichever occurs first.

68. Failure to Perform

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

69. Limitation of Liability

69.1. 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 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 or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA**, **Termination for Default**, and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

69.2. Contractor, DES and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either 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 its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DES, Purchaser, or their respective Subcontractors.

69.3. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

69.4. Neither Contractor, DES nor Purchaser shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

70. Termination for Default

70.1. If Contractor violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its material obligations under this Master Contract, then the DES Contract Administrator or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be

corrected by Contractor within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Contractor shall commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from the DES Contracting Officer to Contractor, or an Order Document/SOW may be terminated by written notice to Contractor from Purchaser.

70.2. In the event of termination of an Order Document/SOW by Purchaser or this Master Contract by DES, Purchaser or DES shall have the right to procure the Equipment and Services that are the subject of this Master Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Equipment and Services and the replacement costs of such Equipment and Services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order Document/SOW or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DES resulting from Contractor's breach. DES and Purchasers shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DES or Purchasers for Contractor's default.

70.3. If either DES or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Contractor shall give DES or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DES or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DES.

70.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

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

71. Termination for Convenience

71.1. When, at the sole discretion of DES, it is in the best interest of the State, the DES Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Contractor.

71.2. Purchaser may terminate its Order Document/SOW upon sixty (60) days notice to Contractor. If an Order Document/SOW is so terminated, Purchasers are liable only for payments for Materials and Services received and accepted by Purchaser prior to the effective date of termination.

72. Termination for Withdrawal of Authority

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

73. Termination for Non-Allocation of Funds

If funds are not allocated to DES or a Purchaser to continue this Master Contract or Order in any future period, DES may terminate this Master Contract, or Purchaser may terminate its Order(s) by seven (7) Business Days written notice to Contractor or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. DES or Purchasers will not be obligated to pay any further charges for Materials or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DES or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Master Contract, or a Purchaser to terminate its Order Document/SOW(s) in order to acquire similar Materials or Services from a third party.

74. Termination for Conflict of Interest

DES may terminate this Master Contract, or Purchaser its Order Document/SOW(s), by written notice to Contractor if DES or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any Order Document/SOW(s) is so terminated, DES and Purchasers shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Master Contract or any Order Document/SOW(s).

75. Termination Procedure

75.1. Upon termination of this Master Contract or any Order Document/SOW(s), DES and Purchaser, in addition to any other rights provided in this Master Contract and applicable Order Document/SOW, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Order Document/SOW as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

75.2. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Materials 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 or Order Document/SOW had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

75.3. Contractor shall pay amounts due Purchaser or DES as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser or DES may charge interest on the amounts due at one percent (1%) per month until paid in full.

76. Covenant Against Contingent Fees

76.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Contractor.

76.2. In the event Contractor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser's discretion, deduct from payments due to Contractor, or

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

Activity Reporting and Administration Fee

77. DES Master Contract Administration Fee and Collection

77.1. All purchases made under this Master Contract are subject to a DES Master Contract Administration Fee, collected by Contractor and remitted to DES.

77.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total purchase price prior to adding the cost of permits, performance bonds, and sales tax.

77.3. The Master Contract Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.

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

78. Activity Reporting

78.1. Contractor shall submit to the DES Contract Administrator a monthly Activity Report of all Materials and Services purchased under this Master Contract. The report shall identify:

a) This Master Contract number;

b) The month in which the purchase occurred;

c) Each Purchaser, identified by state, local or educational entity, making purchases during the reporting quarter;

d) The total purchase price (excluding sales tax) for each Purchaser;

e) The DES Master Contract Administration Fee for each Purchaser;

f) The sum of all purchase prices (excluding sales tax) for all Purchasers; and

g) The total amount of the DES Master Contract Administration Fee

78.2. The reports and DES Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

For activity in the months:	Report & Fee Due:
January, February, March	April 15th
April, May, June	July 15th
July, August, September	October 15th
October, November, December	January 15th

78.3. Reports are required to be submitted electronically in the spreadsheet template provided by DES. Quarterly reports are required even if no activity occurred. Reports are to be sent electronically via E-mail to: mcadmin@dis.wa.gov

78.4. This report may be corrected or modified by the DES Contract Administrator with subsequent written notice to Contractor.

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

78.6. DES shall have the right to examine Contractor's records associated with purchases under the Master Contract in order to ensure compliance with all requirements of the Master Contract.

79. Electronic Funds Transfer

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

80. Failure to Remit Reports/Fees

80.1. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DES terminating this Master Contract with Contractor.

80.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Contractor shall notify the DES Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.

80.3. The DES Contract Administrator will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.

80.4. If the performance issues are resolved, DES, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

Contract Execution

81. Authority to Bind

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

82. Counterparts

This Master Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Master 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 to each and every particular and have thus set their hands hereunto.

Approved

State of Washington

Department of Enterprise Services

Signature

Dale Colbert 11-14-12

Print or Type Name *Date*

Procurement Unit Manager

Title

Approved

E3 Solutions, Inc.

Signature

DEREK A KAREL 11/9/12

Print or Type Name *Date*

President

Title

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Suzanne Shaw

Print or Type Name

Assistant Attorney General

Title *Date*

Contractor Information
Contractor's UBI Number: 602307117
Minority or Woman Owned Business Enterprise Yes _____ No ☒ (Certification Number)

Schedule A

Authorized Price List

as of **November 15, 2012**

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

Category A – Region 1

Labor Category	Labor Rate (per hour)	Overtime Rate (per hour)	Holiday Rate (per hour)
Project Manager	$ 50.00	$ 62.50	$ 62.50
Inside Foreman	$ 40.00	$ 50.00	$ 50.00
RCDD	$ 50.00	$ 62.50	$ 62.50
EL06 Low Voltage	$ 40.00	$ 50.00	$ 50.00
EL01 Electrician	$ 45.00	$ 56.25	$ 56.25
EL09 Telecom Tech	$ 35.00	$ 43.75	$ 43.75
Heavy Equipment Category	**Daily Rate (per 8 hr day)**	**Overtime Rate (per 8 hr day)**	**Holiday Rate (per 8 hr day)**
Pickup Truck/Vehicle	$ 50.00	$ 50.00	$ 50.00
Cable van/Fiber van	$ 50.00	$ 50.00	$ 50.00

Category B – Region 1

Labor Category	Labor Rate (per hour)	Overtime Rate (per hour)	Holiday Rate (per hour)
Project Manager	$ 50.00	$ 62.50	$ 62.50
Inside Foreman	$ 40.00	$ 50.00	$ 50.00
RCDD	$ 50.00	$ 62.50	$ 62.50
EL06 Low Voltage	$ 40.00	$ 50.00	$ 50.00
EL01 Electrician	$ 45.00	$ 56.25	$ 56.25
EL09 Telecom Tech	$ 35.00	$ 43.75	$ 43.75
Heavy Equipment Category	**Daily Rate (per 8 hr day)**	**Overtime Rate (per 8 hr day)**	**Holiday Rate (per 8 hr day)**
Pickup Truck/Vehicle	$ 50.00	$ 50.00	$50.00
Cable van/Fiber van	$ 50.00	$ 50.00	$50.00

Schedule B

Statement of Work Template

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

The details of the specific Equipment and Services, project or tasks should be negotiated by Purchaser and Contractor and memorialized in an Order Document or Statement of Work (SOW). The Master Contract requires that the Order Document or SOW address the minimum following areas:

- Identify the Purchaser and the Contractor;
- Reference the Master the Contract number under which the Order Document or SOW is being issued;
- Scope and Description of Work, Specifications, and Deliverables;
- Responsibilities of the Parties;
- Timeline and Period of Performance;
- Payment Amount;
- Additional Terms and Conditions Specific to the Order Document or SOW; and
- Signature Block

Schedule C

Escalation Procedures

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

All projects are assigned a project manager / project coordinator. That individual is responsible for the project from start to finish and will work directly with the customer representative throughout. Project notes are kept throughout the duration of the project to assist in tracking progress. Issues that arise during the project are typically dealt with at the project level but in the event a situation surfaces that cannot be handled at that level, upper management will intervene. The escalation process begins with the lead technician which will be assigned at the start of the project. They will report to the project manager in turn who reports to the president of the company. Due to the active involvement of the owner of the company all customers have the ability to directly contact him if necessary.

Problems occurs – notify the project lead– an attempt to resolve the issue will be made immediately.

If problem cannot be resolved, the project manager will address the issue - contact will be made with the customer representative to discuss any issues and define acceptable solutions. The project manager will then take the necessary steps to correct the issue which may take up to 2 days.

If the problem cannot be resolved by the project manager, the owner of the company (Derek Karel President) will address the issue and take the necessary steps to correct the situation.

As changes are made to our escalation procedures we will forward those changes to the contract manager within the DES department.

Schedule D

MWBE Certification

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

E3 Solutions, Inc. is not certified by the Office of Minority and Women's Business Enterprises.

Schedule E

American Reinvestment and Recovery Act Requirements

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

1. Recovery Act Reporting Requirements; Section 1512(c) of the Recovery Act (if applicable).

Contractor acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

Purchasers who are recipients of Recovery Act funds must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. Purchasers will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Contractors receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Contractor agrees to provide to Purchasers all reports, documentation, or other information, as may be required by the Purchaser, to meet reporting obligations under the Recovery Act. Contractor's receipt of funds is contingent on Contractor meeting the reporting requirements of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Contractors receiving Recovery Act funds should be aware that Recovery Act section 1512(c) provides:

> Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—
>
> (1) The total amount of recovery funds received from that agency;
> (2) The amount of recovery funds received that were expended or obligated to projects or activities; and
> (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
> (a) The name of the project or activity;
> (b) A description of the project or activity;
> (c) An evaluation of the completion status of the project or activity;

(d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or sub-grants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. Section 1512 of the Recovery Act: Registration with Central Contractor Registration (CCR) (if applicable)

Recipients of funds under the Recovery Act shall register with the Central Contractor Registration (CCR) database at https://www.bpn.gov/ccr/. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be included on the cover page or other designated place in the Contract.

3. Section 1602 of the Recovery Act: Preference for Quick-Start Activities (if applicable)

In using funds made available in the Recovery Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of the Recovery Act. Recipients shall also use funds in a manner that maximizes job creation and economic benefit.

4. Section 1604 of the Recovery Act: Limit on Funds (if applicable)

None of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

5. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009 (if applicable).

Contractor shall comply with Section 1605 of the Recovery Act unless (1) compliance has been waived by the Federal Agency providing the funds; or (2) compliance with the Recovery Act conflicts with an international trade agreement.

A. Section 1605 of the Recovery Act provides:

Use of American Iron, Steel, and Manufactured Goods.

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

1. applying subsection (a) would be inconsistent with the public interest;

2. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

B. International Trade Agreements.

Contracts for the procurement of goods and services in the amount of $528,000 or more and for construction services in the amount of $7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

C. Waivers.

Contractor shall provide Purchaser with information and applicable supporting data as may be required by Purchaser to support any request for waiver of compliance with Section 1605 (b) of the Recovery Act. The following applies to requests for waivers submitted to Purchaser:

(a) Definitions.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been:

(1) Processed into a specific form and shape; or

(2)Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and **"Public work"** means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the Recovery Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this term and condition.

(2) This requirement does not apply to the material excepted by the Federal Government.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that:

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the Contractor will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the Contractor shall adjust the award amount or redistribute budgeted funds in accordance with requirements adopted pursuant to the Recovery Act.

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers should be provided to Purchaser:

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign steel, iron or manufactured good			
Domestic steel, iron or manufactured good			
Item 2			
Foreign steel, iron or manufactured good			
Domestic steel, iron or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.]

[Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

6. *Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 – Davis-Bacon Act (if applicable).*

All laborers and mechanics employed by Contractor and subcontractor on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at http://www.dol.gov/whd/. Wage determinations can be found at http://www.wdol.gov.

The Contractor shall include this provision and require this provision to be contained in all subcontracts for work performed under this Contract.

The work performed by this Contract may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Contractor is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

7. *Non-supplanting of State and Local Funds (if applicable).*

Contractors must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at

http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm

8. *Protection of Whistleblowers (if applicable).*

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct,) a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;

- Abuse of authority related to the implementation or use of covered funds; or
- Violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

9. ARRA - Listing Recovery Act Jobs With The Employment Security Department (If Applicable).

Purchases may be made under this Contract that are funded with federal stimulus funds (under the American Recovery & Reinvestment Act), which has strict reporting requirements for funds spent and jobs created or retained (See Exhibit A, attached and incorporated into this Contract as additional instructions). For all such purchases, all job openings created by the Contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Sub-Contractors hired by the Contractor also must be required to list jobs and report hiring results to WorkSource. Existing Contractor or Sub-Contractor employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Contractor's consideration. The Contractor also has the discretion to use other, additional recruitment systems and retains the right to make all hiring decisions. To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or arra@esd.wa.gov.

Schedule F

Subcontractors

for

Contract Number T13-MST-733

with

E3 Solutions, Inc.

Vendor	UBI#	Type of Work
Primary Electric and Design LLC 20 Lye Loop Selah, WA 98942	603078276	Electrical, Underground Excavation, Duct Installation
Pro-Com Inc. 2124 136th Ave E Sumner, WA 98390	602500006	Aerial, Splicing, Underground Trenching & Directional Boring

State of Washington DEPARTMENT OF ENTERPRISE SERVICES *1500 Jefferson St. SE, Olympia, WA 98501 •*	**CONTRACT AMENDMENT**	
	Contract Number: T13-MST-733 (05912)	**Date Issued:** April 29, 2013
	Amendment Number: E3 Solutions, Inc. 13-01	**Effective Date:** 7/1/13

This Contract Amendment is issued under the provisions of the State Contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

Purpose: To add or revise, as applicable, the provisions of the contract relating to a Management Fee. The following language regarding the Management Fee and Sales & Subcontractors Reporting is added to the contract.

Effective July 1, 2013,

1. Section 77 and 79 of the Contract shall be deleted in its entirety and replaced with the following new language:

Management Fee:

Contractor shall pay the Department of Enterprise Services (DES) a fee equal to 0.74% (Management Fee) of the total invoice price, less any taxes, returns, credits, or adjustments, of all sales ("Total Net Sales") under this Contract. Contractor shall hold the Management Fee in trust for DES until such fees are remitted to DES.

The Management Fee will be included in Contractor's pricing, as set forth in the contract (including all amendments), and will not be included as a separate line item on any invoice submitted to a Purchaser.

DES may, at its sole discretion, increase, decrease, or eliminate the Management Fee upon thirty (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.

Contractor will provide DES with a sales report detailing Total Net Sales for the preceding quarter ("Sales Report"), in accordance with the Sales & Subcontractors Report section of this Amendment using the requirements and schedule set forth below. DES will send an invoice within 30 days after each quarter, based on the Sales Report. Payment of the Management Fee is due within thirty (30) days of the date of the DES invoice.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all Management Fees have been paid. Failure to accurately report Total Net Sales, to submit a timely Sales 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.

Management Fee payment must reference the Contract number, Work Request Number (if applicable), the year and quarter for which the Management Fee is being remitted, and the Contractor's Name as it is known to DES, if not already included on the face of the check. All payments must be sent to:

Name:	State of Washington, Dept. of Enterprise Services Finance Dept
Address:	1500 Jefferson Street Mail Stop 41460 Olympia WA 98501
Additional:	Contract #: _____, Quarter/Year: _____ Contractor's Name as it is known to DES (if not already included on the face of the check).

2. Section 78 of the Contract shall be deleted in its entirety and replaced with the following new language:

Sales & Subcontractors Reporting:

The Contractor shall provide a Sales and Subcontractor Report to the Master Contracts & Consulting Unit on a quarterly basis in the electronic format provided by the Master Contracts & Consulting Unit at: https://fortress.wa.gov/ga/apps/CSR/Login.aspx. A sample Sales & Subcontractor report can be found at: http://www.ga.wa.gov/PCA/SL/ExternalForms/contracting/usage.doc. Contractor must report by customer number and must report when no sales are made. Estimates and averages will not be accepted. Actual sales figures must reported.

Schedule:

Contractor will provide Usage Reports and Management Fees quarterly, per the following schedule:

FOR ACTIVITY IN THESE MONTHS:	SALES REPORTS DUE	MANAGEMENT FEES DUE
January, February and March	April 30th of same year	Within 30 days of DES Invoice date
April, May and June	July 31st of same year	Within 30 days of DES Invoice date
July, August and September	October 31st of same year	Within 30 days of DES Invoice date
October, November and December	January 31st of following calendar year	Within 30 days of DES Invoice date

3. Section 4.1 of the Contract shall be deleted in its entirety and replaced with the following new language:

Contractor agrees to provide the Cabling Equipment and Services to Purchasers at the rates set forth in the Authorized Price List attached as Schedule A to this Amendment to the Master Contract. Such rates may not be increased during the initial term of this Master Contract except take into consideration the increase of, and inclusion of, the Management Fee in the Labor Rates. With regard to any future adjustments to the Management Fee, DES reserves the right to negotiate contract pricing with the Contractor as set forth above.

Authorizing Signatures

This contract amendment, consisting of three (3) pages and zero (0) attachment(s) consisting of 0 pages is executed by the persons signing below that warrant that they have the authority to execute this contract amendment.

(Contractor Authorized Representative Signature) *(Date)*	**For State:** for Sylvia Sammons - 6/28/13 *(Procurement Coordinator Signature)* (Date)
Print Name Derek A Karel	**Print Name** Sylvia Sammons
Telephone No. 509-452-0240	**Telephone No.** 360-407-8226
Company e3 Solutions Inc	**Company** Dept. Enterprise Services Master Contracts & Consulting
Mailing Address P.O. Box 72 Yakima WA 98907	**Mailing Address** P. O. Box 41411 Olympia, WA 98504-1411
Physical Address 410 S 3rd Street Yakima WA 98901	**Physical Address** 1500 Jefferson St. SE Olympia, WA 98501
Email: derekk@ecubedsolutions.com	**Email:** sylvia.sammons@des.wa.gov

DES Approval

MCC Manager		Signature/Date	6-28-13

Appendix E
Category A

Vendor Name: e3 Solutions Inc.

Vendor must fill in Pricing for each Region applied for. If Vendor is only applying for one Region, enter N/A for Pricing in the non-applicable Region.

Region 1 Pricing
Eastern Washington

Labor Category	Labor Rate (per hour)	Overtime Labor Rate (per hour)	Holiday Labor Rate (per hour)
Project Manager	50.37	62.96	$62.96
Inside Foreman	40.3	50.38	$50.38
RCDD	50.37	62.96	$62.96
EL06 Low Voltage	40.3	50.38	$50.38
EL01 Electrician	45.33	56.66	$56.66
EL09 Telecom Tech	35.26	44.08	$44.08

Heavy Equipment Category	Daily Rate (per 8 hr day)	Overtime Rate (per 8 hr day)	Holiday Rate (per 8 hr day)
Pickup Truck/Vehicle	50.37	50.37	$50.37
Cable van/Fiber van	50.37	50.37	$50.37

Region 2 Pricing
Western Washington

Labor Category	Labor Rate (per hour)	Overtime Labor Rate (per hour)	Holiday Labor Rate (per hour)
Project Manager	N/A	N/A	N/A
Inside Foreman	N/A	N/A	N/A
RCDD	N/A	N/A	N/A
EL06 Low Voltage	N/A	N/A	N/A
EL01 Electrician	N/A	N/A	N/A
EL09 Telecom Tech	N/A	N/A	N/A

Heavy Equipment Category	Daily Rate (per 8 hr day)	Overtime Rate (per 8 hr day)	Holiday Rate (per 8 hr day)
Pickup Truck/Vehicle	N/A	N/A	N/A
Cable van/Fiber van	N/A	N/A	N/A

Appendix E
Category B

Vendor Name: e3 Solutions Inc.

Vendor must fill in Pricing for each Region applied for. If Vendor is only applying for one Region, enter N/A for Pricing in the non-applicable Region.

Region 1 Pricing
Eastern Washington

Labor Category	Labor Rate (per hour)	Overtime Labor Rate (per hour)	Holiday Labor Rate (per hour)
Project Manager	50.37	62.96	$62.96
Inside Foreman	40.3	50.38	$50.38
RCDD	50.37	62.96	$62.96
EL06 Low Voltage	40.3	50.38	$50.38
EL01 Electrician	45.33	56.66	$56.66
EL09 Telecom Tech	35.26	44.08	$44.08

Heavy Equipment Category	Daily Rate (per 8 hr day)	Overtime Rate (per 8 hr day)	Holiday Rate (per 8 hr day)
Pickup Truck/Vehicle	50.37	50.37	$50.37
Cable van/Fiber van	50.37	50.37	$50.37

Region 2 Pricing
Western Washington

Labor Category	Labor Rate (per hour)	Overtime Labor Rate (per hour)	Holiday Labor Rate (per hour)
Project Manager	N/A	N/A	N/A
Inside Foreman	N/A	N/A	N/A
RCDD	N/A	N/A	N/A
EL06 Low Voltage	N/A	N/A	N/A
EL01 Electrician	N/A	N/A	N/A
EL09 Telecom Tech	N/A	N/A	N/A

Heavy Equipment Category	Daily Rate (per 8 hr day)	Overtime Rate (per 8 hr day)	Holiday Rate (per 8 hr day)
Pickup Truck/Vehicle	N/A	N/A	N/A
Cable van/Fiber van	N/A	N/A	N/A

Washington State Department of Enterprise Services Contracts & Legal Services Division • Master Contracts & Consulting 1500 Jefferson St. SE Olympia, WA 98501 (360) 407-2210 http://www.des.wa.gov Mail To: PO Box 41411 Olympia, WA 98504-1411	**Contract Amendment**	
	Master Contract:	T13-MST-733 (05912)
	Amendment Number:	13-02
	Contractor:	e3 Solutions, Inc.
	Date Issued:	10/23/2013
	Date Effective:	Upon DES Signature

This Contract Amendment is issued under the provisions of the Master Contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.

The parties agree to modify the contract as follows:

1) Pursuant to Section 2 (Term), the parties agree to extend the term of this Master Contract for an additional one year term from November 15, 2013 through November 14, 2014.

2) Effective October 1, 2011, the Department of Information Services (DIS) was reorganized into the Department of Enterprise Services (DES). All references to "Department of Information Services" or "DIS" are hereby replaced by "Department of Enterprise Services" or "DES" respectively.

All other provisions of this Master Contract, as previously amended, shall remain in full force and effect.

Authorizing Signatures:

This Contract Amendment, consisting of *one* page is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

Approved

State of Washington,
Department of Enterprise Services

P.O. Box 41411

Olympia, WA 98504

Signature 11-4-13 Date

Dale Colbert, Procurement Unit Manager

Approved

e3 Solutions

PO Box 72

Yakima, WA 98907

Signature 10-24-13 Date

Derek Karel , President

Washington State Department of
Enterprise Services
Contracts and Legal Services

IT Cabling – T13-MST-733 (05912)

Contract Amendment 13-03

Date Issued: 10/6/2014
Effective Date: 11/14/2014
Amendment Number: 13-03
Contractor Name: e3 Solutions, Inc.

This Contract Amendment is issued under the provisions of [the contract referenced above]. The changes authorized are within the scope of the original contract. All rights and obligations of the parties are governed by the terms of the original contract, including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

Pursuant to Section 2 (Term), the parties agree to extend the term of this Master Contract for an additional one year term from November 15, 2014 through November 14, 2015.

All other provisions of this Master Contract, as previously amended, shall remain in full force and effect.

Authorizing Signatures

This Contract Amendment, consisting of one page is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

e3 Solutions Inc (509)452-0240 PO Box 72 Yakima, WA 98907 derekk@ecubedsolutions.com	**Neva Peckham,** DES Master Contracts and Consulting (MCC) (360) 407-9411 PO Box 41411 Olympia WA 98504-1411 Neva.Peckham@des.wa.gov
Derek Karel 10/20/14 **Signature** **Date**	Neva J Peckham 10/28/14 **Signature** **Date**
	Rebecca Riley, Acting IT Procurement and Contracts Manager
	Rebecca R. Riley 10/29/14 **Signature** **Date**

Washington State Department of
Enterprise Services
Contracts and Legal Services

IT Cabling – T13-MST-733 (05912)

Contract Amendment 13-04

Date Issued: 6/03/15
Effective Date: 11/14/2015
Amendment Number: 13-04
Contractor Name: e3 Solutions, Inc.

This Contract Amendment is issued under the provisions of [the contract referenced above]. The changes authorized are within the scope of the original contract. All rights and obligations of the parties are governed by the terms of the original contract, including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

Pursuant to Section 2 (Term), the parties agree to extend the term of this Master Contract for an additional one year term from November, 15, 2015 through November 14, 2016.

All other terms and conditions of this Master Contract shall remain unchanged.

Authorizing Signatures

For Contractor:

Derek Karel, e3 Solutions, Inc.
509-452-0240
PO Box 72
Yakima, WA 98907
derekk@ecubedsolutions.com

Signature Derek Karel

Date 6-5-15

For State of Washington:

Marci Disken, DES Contracts, Procurement & Risk Management
360-407-9405
PO Box 41411
Olympia, WA 98504-1411
Marci.disken@des.wa.gov

Signature Marci Disken

Date 6/30/15

CPRM Authorizing Manager:

Signature

Date 6/30/15 KK