Washington State Department of
Enterprise Services
Contracts and Legal Services

**Master Contract Number 02515**

**between**

**Range Global Services**

**and**

**Washington State Department of Enterprise Services**

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**PARTIES**

This Master Contract (Contract) is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES) an agency of Washington state government located at 1500 Jefferson Street SE Olympia WA, 98504-2445, and *Range Global Services* (Contractor), *located at 2201 Denton Dr. STE 109, Austin, TX 78758* licensed to conduct business in the state of Washington, for the purpose of providing IT professional services as described and identified herein.

**RECITALS**

The state of Washington, acting by and through DES issued request for proposals (RFP) number *02515* dated *April 10, 2015* for the purpose of purchasing satellite phone equipment and services in accordance with its authority under state law.

Contractor submitted a timely response.

DES evaluated all properly submitted responses to the above-referenced solicitation and has identified Contractor as an Apparent Successful Bidder.

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

NOW THEREFORE, DES awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's provisioning of goods and rendering of services as described herein, on an as-needed basis. This Master Contract is not for personal use.

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

## 1 OVERVIEW

### 1.1 Definitions

**Agency** - Any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education, and correctional and other types of institutions.

**Apparent Successful Bidder** - A bidder who is recommended for award following evaluation.

**Amendment** - A change to a legal document.

**Award** - Acceptance of a bidder's offer to enter into a contract.

**Bid** - An offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by DES or an agency of Washington state government.

**Bidder** - An individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by DES or an agency of Washington state government.

**Business days** - Monday through Friday, 8 a.m. to 5 p.m. Pacific Time, except for holidays observed by the state of Washington.

**Confidential information** - Information that may be exempt from disclosure to the public or other unauthorized persons under state or federal statutes. Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card Information, payroll/labor data, driver's license numbers, medical data, law enforcement

records, agency source code or object code, agency security data, and other information identifiable to an individual. Purchasers may identify additional confidential information in a purchase order. Confidential information also includes any personal information under the provisions of state or federal statutes.

**Contractor** - An individual, company, corporation, firm, or combination thereof with which DES enters into a contract for the procurement of materials, supplies, services, and/or equipment. It includes any subcontractor retained by a contractor as permitted under the terms of the contract.

**DES** - The Department of Enterprise Services.

**Master contract** - A contract for specific goods or services, or both, that is solicited and established by DES in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by DES.

**Price** - The price quoted by a bidder in its response as outlined in a solicitation. All prices shall be quoted and paid in United States dollars.

**Procurement Coordinator** - The individual authorized by DES who is responsible for conducting a specific solicitation.

**Purchaser** - An authorized user of a master contract.

**Request for Proposals (RFP)** - A solicitation for proposals.

**Response** - All required submittals prepared and delivered in accordance with a solicitation.

**Responsible** - The capability in all respects of performing all contract requirements in full and meeting the elements of responsibility.

**Responsive** - Conforming in all material respects to the terms and conditions and all other requirements of a solicitation.

**Services** - All service plans (annual, monthly and emergency), and all additional services, including labor, work, analysis, or similar activities provided by a contractor to perform its obligations under the contract

**Solicitation** - Process of notifying prospective or qualified bidders of a solicitor's request for bids on a specified product or project which may be made public through advertising, mailings, or some other method of communication.

**Specifications** - The requirements furnished with solicitations which state the characteristics of the goods and/or services to be purchased to help the bidder determine and understand purchaser requirements.

**State** - The state of Washington acting by and through DES or an authorized purchaser.

**Subcontractor** - One not in the employment of a contractor who performs all or part of the business activities under a master contract or a separate order document.

**Washington's Electronic Business Solution (WEBS)** - The contractor registration and bidder notification system maintained by DES.

## 1.2 Term

### *1.2.1 This Master Contract*

The initial term of this Master Contract shall be one (1) year from the date of last signature affixed below with the option to extend for additional term(s) or portions thereof. Extensions will be exercised at the sole discretion of DES and upon written mutual agreement. The total Contract term, including the initial term and all extensions, will not exceed six (6) years, unless circumstances require a special extension. DES reserves the right to extend with all or some of the Contractors.

*1.2.2 Survivorship*

All of the terms and conditions contained in this Master Contract shall survive the expiration or other termination of this Contract for so long as any purchase order entered into under this Master Contract is still in effect and shall apply to such purchase order.

The terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Work Product and Data; Contractor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Patent and Copyright Indemnification; Proprietary or Confidential Information; Problem Resolution and Disputes; and Limitation of Liability shall survive the termination of this Contract.

All transactions executed for products and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof.

### 1.3 Purchasers

Any contract is available for use by all Washington state, Washington state institutions of higher education, political subdivisions within the state of Washington, tribal entities in the state of Washington, and any Washington non-profit corporation with 501(c)(3) tax exempt status receiving local, state or federal government funds, either directly or through a political subdivision, provided the state agency, institution of higher education, political subdivision, tribal entity or public benefit non-profit corporation has signed a Master Contracts Usage Agreement (MCUA).

## 2 CONTRACT ADMINISTRATION

### 2.1 DES Contract Administrator

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

### 2.2 Administration of Contract

DES will maintain Contract information and pricing, and reserves the right to make it available at a location of its choice.

### 2.3 Contractor Supervision and Coordination

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all requirements specified herein;
2. Identify a point of contact for DES. The Contractor's point of contact will provide oversight of Contractor activities and will serve as the focal point for business, performance, and administrative matters;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's point of contact; and
4. Be bound by all written communications given to or received from the Contractor's point of contact.

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

### 2.4 Post Award Conference

Contractor may be required to attend a post award conference scheduled by the Contract Administrator to discuss Contract performance requirements. The time and place of this conference will be scheduled following the award.

### 2.5 Contract Management

Upon award of this Contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Ensure that those who endeavor to utilize this Contract are authorized purchasers under this Contract.
3. Designate a purchaser service representative who will be responsible for addressing purchaser issues including, but not limited to:
    a. Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
    b. Providing purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.

### 2.6 Changes

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

DES reserves the right to add services, as long as they are within the scope of this Contract, as market conditions change. Such modifications will be evidenced by a Contract amendment.

# 3 SALES REPORTING, FEE REQUIREMENTS AND COLLECTION

## 3.1 Sales Reporting

Contractor shall submit to DES a quarterly sales report of all sales invoiced under this Contract. The report shall identify purchasers who have made purchases under this Contract and the amounts invoiced during the reporting period.

*"Zero" Sales:* Contractor is required to report "zero" sales even if no sales occurred during the reporting period.

Reports are required to be submitted in the electronic format provided by the DES Contract Sales Reporting System. Login credentials will be provided by DES.

Sales report due dates:

| For sales invoiced during the months of: | Report is due: |
|---|---|
| January, February, March | April 30 |
| April, May, June | July 31 |
| July, August, September | October 31 |
| October, November, December | January 31 |

The report may be corrected or modified by DES with subsequent written notice to the Contractor. Upon request, Contractor shall provide contact information for all Purchasers during the term of this Contract.

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

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

## 3.2 Management Fee

All sales made under this Master Contract are subject to a management fee collected by Contractor and remitted to DES.

The fee is 0.74% (less than 1% or .0074) of the sales amounts invoiced under this Master Contract less any taxes, returns, credits, or adjustments during the reporting quarter.

The fee shall be included in all Contractor prices listed in this Contract and shall not be invoiced as a separate line item.

Contractor shall hold the management fee in trust for DES until such fee is remitted to DES.

The Management Fee does not include or supersede any fees or charges owed to governmental entities other than DES. The Management Fee may be subject to Washington state sales tax, depending the tax classification of the good/services being purchased under the contract. Further questions regarding whether or not the Management Fee is subject to sales tax should be directed to the Washington State Department of Revenue. http://dor.wa.gov/Content/Home/Default.aspx

Management Fee payment must reference the Contractor's name, contract number, work request number (if applicable), and the year and quarter for which the management fee is being remitted. 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

DES may, in its sole discretion, increase, reduce or eliminate the Management Fee upon thirty (30) days written notice to the 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.

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that all contract sales have been reported to DES 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 imposition of interest or penalties, and/or the exercise of other remedies provided by law.

### 3.3 Collection

DES will provide an invoice with payment instructions within 30 days of sales reporting. Payment is due within 30 days of the invoice date. Each payment shall reference the following:

1. The Contractor's name as it is known to DES.
2. The Master Contract number.
3. The year and quarter for which the management fee is being remitted.
4. All applicable purchase order numbers for which the Contractor invoiced sales amounts under this Contract during the reporting period.

### 3.4 Failure to Remit Reports/Fees

Failure to accurately report sales and/or remit timely payment of the management fee is cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

### 3.5 Right to Audit

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that purchasers have been properly invoiced and all management fees have been remitted.

Management Fee Changes

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

# 4 PRICING

## 4.1 Price Protection

During the initial 365 days of the Contract, Contractor agrees to provide services at no higher than the rates set forth in Schedule A. Such prices shall not be increased during this period.

Prices established in this contract are considered maximum or "ceiling" prices only. Contractor may elect to provide goods/services at lower rates.

## 4.2 No Additional Charges

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

## 4.3 Price Adjustments

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

## 4.4 Hours and Overtime

Contractor agrees that rates provided in this Contract assume that work is performed during Business Days and Hours. Overtime rates are not allowed unless required by state or federal law. Further, prices are to be considered all-inclusive hourly rates to include all expenses (e.g., overhead, insurance, and administration including but not limited to the management fee) except, in limited circumstances.

# 5 CONTRACTOR REQUIREMENTS

## 5.1 Statewide Payee Desk

In order to receive payment from state agency purchasers, Contractors must be registered with the Statewide Payee Desk. Agency purchasers cannot pay a Contractor who is not registered. Registration materials are available at the DES website.

## 5.2 Washington's Electronic Business Solution (WEBS)

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

### 5.3 Solicitation Requirements

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

### 5.4 Contractor Organizational Capabilities

Upon request, Contractor must provide a brief description of its entity (including business locations, size, areas of specialization and expertise, customer base and any other pertinent information that would aid a Purchaser in formulating a determination about the stability and strength of the entity), including experience and history.

### 5.5 Established Business

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

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

### 5.6 Contractor Certifications

Contractor shall maintain any required certification status for the initial term and any renewals of this Contract. If status is discontinued, this Contract and/or a Purchaser's purchase order may be terminated as set forth elsewhere herein.

### 5.7 Use of Subcontractors

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

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

DES reserves the right to approve or reject any subcontractor.

Specific restrictions apply to contracting with current or former state employees pursuant to current state law.

### 5.8 Subcontracts and Assignments

Contractor shall not subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of DES. Contractor shall provide a minimum of 30 calendar days advance notification of intent to subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for termination of this Contract. The Contractor shall be responsible to ensure that all requirements of the Contract be appropriately communicated to any and all subcontractors. In no event shall the

existence of a subcontract operate to release or reduce the liability of Contractor to DES or an authorized purchaser for any breach in the performance of the subcontractor's duties.

### 5.9 Contractor Authority and Infringement

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

## 6 SERVICES AND STATEMENTS OF WORK

### 6.1 Purchase orders

All goods and services to be performed or delivered under this Contract shall be documented in separate purchase orders established between a purchaser and Contractor. Purchase orders should reference the Master Contract number, and should include an itemization of the goods/service purchased, and contain the authorized signatures of both parties.

### 6.2 Commencement of Work

No work shall be performed by Contractor until a purchase order is executed between a purchaser and Contractor and is received by Contractor.

Upon execution of a purchase order, Contractor will be required to register with the statewide payee desk maintained by DES for payment processing. Washington state agency purchasers cannot pay Contractors until they are registered with the statewide payee desk. Registration materials are available on the DES website.

## 7 SITE SECURITY AND SAFETY

### 7.1 Site Security

While on any purchaser's premises, Contractor, its agents, employees, and subcontractors shall conform in all respects with any and all of purchaser's physical, fire, safety, and other security regulations.

### 7.2 Facility Access

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

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

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

### 7.3 Remote Access to Network

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

### 7.4 System Security

Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in performing a purchase order under this Contract and that in providing such access to Contractor, Purchaser places special confidence and trust in Contractor. Contractor acknowledges and understands that any access granted by Purchaser to its computer networks shall be limited, restricted and conditioned upon Contractor's compliance with certain DES policies and practices. Contractor warrants that it will perform all work for or on behalf of Purchasers in full compliance with Information Services Board Security Policy, Standards and Guidelines, the Use of DES Networks Policy and any other security documents and best practices provided by DES ("Security Policies"). Contractor agrees that DES's Security Policies shall serve as the standard for network security and warrants that it shall exercise its best efforts to comply with the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, Self Help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of DES's network, system or data. Vendor staff may be required by Purchaser to complete a certain minimum level of Security Awareness Training coursework depending on the skill and experience levels required by Purchaser. Minimum expectations and recommended coursework are set forth in OCIO Policy.

### 7.5 OSHA and WISHA Requirements

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

## 8 PAYMENT

### 8.1 Advance Payment Prohibited

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

### 8.2 Payment, Invoicing and Discounts

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

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchaser's order document (purchase order).

Each invoice shall be identified by the associated master contract number; the Contractor's Statewide Payee Desk registration, the applicable Purchaser's purchase order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all charges and discounts (if applicable) unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

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

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

## 8.3 Taxes, Fees, and Licenses

### Taxes

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

### Collection of Retail Sales and Use Taxes

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

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

### 8.4 Department of Revenue Registration for Out-of-State Contractors

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

**Fees/Licenses**

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

**Taxes on Invoice**

Contractor shall calculate and enter the appropriate Washington state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with Washington Administrative Code regulations regarding trade-ins.

### 8.5 Minority and Women's Business Enterprise (MWBE) Participation

With each invoice for payment and within 30 days of Purchaser's request, Contractor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its subcontractor (s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's Retention of Records section.

### 8.6 Overpayments to Contractor

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

### 8.7 Miscellaneous Expenses

Expenses related to day-to-day performance under this Master Contract, including but not limited to, travel, lodging, meals, incidentals will **not** typically be reimbursed.

Notwithstanding the forgoing, DES recognizes that there may be occasions when travel will be required. In such case, Contractor must obtain advance written approval of such expenses from the purchaser. Reimbursement shall be at rates not to exceed the guidelines for state employees set forth in the then-current Washington State Administrative and Accounting Manual, and shall not exceed expenses actually incurred.

Contractor shall provide a detailed itemization of expenses and receipts for amounts of $50 or more when requesting reimbursement.

### 8.8 Audits

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

## 9 QUALITY ASSURANCE

### 9.1 Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

Contractor shall use best efforts to ensure that personnel assigned to a purchase order are available until the completion of that purchase order. Any proposal by Contractor for changes, replacement, or substitution of purchase order personnel during the Term of the purchase order shall be submitted to the purchaser purchase order administrator in writing. The Purchaser purchase order Administrator shall have the sole discretion to accept or reject such proposal.

As a condition to accepting Contractor's proposal for personnel changes, Purchaser may require Contractor to compensate Purchaser for any training and administrative costs incurred by Purchaser in association with such replacement. Such compensation will be in the form of a credit against Contractor's monthly invoice charges to Purchaser by Contractor (a) not billing Purchaser for hours worked during the first 10 Business Days replacement personnel begin work, if the method of compensation agreed to in the purchase order is by hourly rates (time and material); or (b) crediting Purchaser an amount not to exceed $5,000 per person replaced, if the method of compensation agreed to in the purchase order is by deliverables (fixed cost).

If Purchaser does not accept Contractor's proposed change and Contractor is unable to provide acceptable personnel to Purchaser within 10 Business Days after the originally assigned personnel have left, then Purchaser may terminate the purchase order pursuant to Section 57 Termination for Convenience.

### 9.2 Warranties

Contractor warrants that all services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

### 9.3 Cost of Remedy

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

## 10 INFORMATION AND COMMUNICATIONS

### 10.1 Advertising

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

### 10.2 Retention of Records

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

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

### 10.3 Proprietary or Confidential Information

Contractor acknowledges that DES and Purchaser are subject to chapter state law and that this Contract and any purchase orders shall be a public record as defined in state law. Any specific information that is claimed by Contractor to be proprietary must be clearly identified as such by Contractor.

To the extent consistent with state law, DES or Purchaser shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES or Purchaser will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES or Purchaser will release the requested information on the date specified.

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

### 10.4 Non-Endorsement and Publicity

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

### 10.5 Ownership/Rights in Work Product and Data

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.

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.

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.

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 subcontractor s shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate there from ("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.

Contractor shall upon written request provide access to data generated under this Contract and any purchase order to DES, to Purchaser, to the Joint Legislative Audit and Review Committee, and to the state Auditor, as requested, at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models.

### 10.6 Protection of Purchaser's Confidential Information

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

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

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

In the event of the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the Purchaser ("Data Breach"), Contractor agrees to comply with all applicable state and federal statutory provisions. If a data compromise and/or identity theft occurs and is found to be the result of Contractor's acts or omissions, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by DES or Purchaser in responding to or recovering from the Data Breach.

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

## 11 GENERAL PROVISIONS

### 11.1 Governing Law / Venue

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

### 11.2 Severability

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

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

### 11.3 Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under state law (currently Chapter 41.06 RCW, or Title 51 RCW).

### 11.4 Gifts and Gratuities

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

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

### 11.5 Immunity and Hold Harmless

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

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor shall be required to indemnify, defend, and hold harmless the state only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

### 11.6 Personal Liability

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

### 11.7 Insurance

State purchasers will require insurance coverage appropriate to their scope of work.

Contractor agrees to obtain insurance in accordance with purchaser requirements for each of its purchase orders to protect state purchasers should there be any claims, suits, actions, costs, or damages or expenses arising from any negligent or intentional act or omission of Contractor or its subcontractor(s), or their agents, while performing work under the terms of any purchase order.

### 11.8 Nondiscrimination

Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies.

### 11.9 Antitrust

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

### 11.10 Waiver

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

### 11.11 Treatment of Assets

Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Contract or any purchase order, shall pass to and vest in Purchaser pursuant to the Ownership/Rights in Work Product and Data section. As used in this section, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

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

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

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

Contractor shall surrender to Purchaser all Purchaser property upon completion, termination, or cancellation of any purchase order.

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

### 11.12 Patent and Copyright Indemnification

Contractor, at its expense, shall defend, indemnify, and save DES and any Purchaser harmless from and against any claims against DES or Purchaser that any Work Product supplied hereunder, or Purchaser's use of the Work Product within the terms of this Contract or any purchase order, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DES or Purchaser provided that DES or Purchaser:

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

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

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

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

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

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

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

## 12 DISPUTES AND REMEDIES

### 12.1 Problem Resolution and Disputes

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

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

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

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

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

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

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

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

If the subject of the dispute is the amount due and payable by Purchaser for services being provided by Contractor, Contractor shall continue providing services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

### 12.2 Administrative Suspension

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

### 12.3 Force Majeure

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

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

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

results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

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

### 12.4 Alternative Dispute Resolution Fees and Costs

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

### 12.5 Non-Exclusive Remedies

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

### 12.6 Liquidated Damages

Liquidated Damages may be applicable under Purchaser purchase orders. Purchaser shall include any Liquidated Damages clause in its purchase order.

### 12.7 Limitation of Liability

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

Contractor, DES and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the respective fault or negligence of Contractor, DES or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DES or Purchaser acting in either a sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DES, or Purchaser, or their respective subcontractors.

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

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

### 12.8 Federal Funding

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

### 12.9 Federal Restrictions on Lobbying

Contractor certifies that no federal funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

### 12.10 Debarment and Suspension

Contractor certifies, that neither it nor its "principals" (as defined in current state law or other state statute, regulation or policy) is presently debarred, suspended, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or agency.

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

### 12.11 Failure to Perform

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

## 13 CONTRACT TERMINATION

### 13.1 Material Breach

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

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;

4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

### 13.2 Opportunity to Cure

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

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

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

### 13.3 Termination for Cause

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, DES shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover

contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

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

### 13.4 Termination for Default

If Contractor violates any material term or condition of this Contract or any purchase order, as applicable, or fails to fulfill in a timely and proper manner its material obligations under this Contract, or any purchase order, as applicable, then the DES Master 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 30 calendar days or as otherwise agreed. If such breach is not capable of cure within 30 days, Contractor must commence cure within such 30 day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Contract may be terminated immediately by written notice from DES to Contractor, or a purchase order may be terminated by written notice to Contractor from Purchaser.

In the event of termination of an purchase order by Purchaser or this Contract by DES, Purchaser or DES shall have the right to procure the services that are the subject of this 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 services and the replacement costs of such services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the purchase order 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 Purchaser 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 Purchaser for Contractor's default.

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

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.

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

### 13.5 Termination for Convenience

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

Purchaser may terminate a purchase order upon 14 calendar days written notice to Contractor. If a purchase order is so terminated, Purchasers are liable only for payments for Services received and accepted by Purchaser prior to the effective date of termination.

### 13.6 Termination for Withdrawal of Authority

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

### 13.7 Termination for Non-Appropriation of Funds

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

### 13.8 Termination for Conflict of Interest

DES may terminate this Contract, or Purchaser may terminate any purchase order, by written notice to Contractor if DES or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public Solicitations and procurement and performance of contracts. In the event this Contract or any purchase order is so terminated, DES or Purchaser, as applicable, shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract or any purchase order, as applicable.

### 13.9 Termination by Mutual Agreement

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

### 13.10 Termination Procedure

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

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

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

## 14 CONTRACT EXECUTION

### 14.1 Entire Agreement

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

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

### 14.2 Order of Precedence, Incorporated Documents, Conflict and Conformity

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

#### *14.2.1 Order of Precedence*

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

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

#### *14.2.2 Incorporated Documents*

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

1. The Solicitation with all attachments and exhibits, and all amendments thereto;

2. Contractor's Response to the Solicitation;
3. Terms and conditions of purchaser purchase orders, if used; and
4. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect the sale of Services to Purchaser.

*14.2.3 Conflict*

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

*14.2.4 Conformity*

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

**14.3 Legal Notices**

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

**To Contractor at:**

Legal Notices Party: Range Global Services
Attention: Regina Sprhn
Address: 2201 Denton Dr.
City, State Zip: Austin, TX 78758

Phone: 678-293-6779
Email: rcsprehn@dialtonetexas.com

**To DES at:**

Washington State Department of Enterprise Services
Attention: Marci Disken
1500 Jefferson St. SE
Olympia WA 98501

Phone: 360-407-9405
Email: desitps@des.wa.gov

or to purchasers at the address listed on their purchase order.

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

### 14.4 Liens, Claims, and Encumbrances

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

### 14.5 Authority to Bind

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

### 14.6 Counterparts

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

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

**Accepted: DES**

Marci Disken KK 10/2/15
Signature Date

Marci Disken, IT Contracts Specialist
Print Name and Title

**Accepted: Contractor**

9/25/2015
Signature Date

LEE TILLER NATIONAL ACCTS MNGR
Print Name and Title

**DES Authorizing Signature**

Scott Smith 9/30/2015
Signature Date

SCOTT SMITH
Print Name and Title
STATE IT PROCUREMENT MANAGER

**Contractor's Point of Contact**

Enter contact for sales reporting and contract business matters. See Contractor Supervision and Coordination.

Contact: LEE TILLER
Phone: 678-332-8317
Email: LTILLER@RANGEGLOBAL.NET

## A. Price List

**Basic Satellite Phone Service Fees**

| Annual Service Plan | Service Fee | Plan Minutes | Additional Minutes | Voice Mail | Price |
|---|---|---|---|---|---|
| RANGE 60 | N/A | 60 PER MONTH | .99C PER | INCLUDED | $1,320 PER YEAR |
| | | | | | |
| | | | | | |
| * THE PHONE WILL BE PROVIDED AT NO COST ON THIS PLAN. | | * MINUTES MAY BE POOLED AT NO CHARGE | | | |

| Monthly Service Plan | Service Fee | Plan Minutes | Additional Minutes | Voice Mail | Price |
|---|---|---|---|---|---|
| CUSTOMER 50 | N/A | 50 PER MONTH | .99C PER | INCLUDED | $79 MONTHLY FOR 12 MONTHS |
| | | | | | |
| * THE PHONE MUST BE PURCHASED FOR THIS RATE | | * MINUTES MAY BE POOLED AT NO CHARGE | | | |

| Emergency Service Plan | Service Fee | Plan Minutes | Additional Minutes | Voice Mail | Price |
|---|---|---|---|---|---|
| RANGE 5 | N/A | 5 PER MONTH | $1.10 PER | INCLUDED | $45 MONTHLY FOR 12 MONTHS |
| | | | | | |
| * THE PHONE MUST BE PURCHASED FOR THIS RATE | | * POOLING OF MINUTES NOT AVAILABLE | | | |

| | | | |
|---|---|---|---|
| Additional "spare" rechargeable battery | IRIDIUM/ BAG20801 | $60 | $0 |
| AC travel charger | IRIDIUM/ CTD0901 | $55 | $0 |
| !Auto accessory adapter | IRIDIUM /AUT0901 | $35 | $0 |
| Hands-free headset | IRIDIUM/HFH06 01 | $11 | $0 |
| Portable external auxiliary antenna with eighty (80) feet of coaxial cable | | | |
| Case | IRIDIUM/HOL08 01 | $25 | $0 |

### Additional Equipment, Parts, Items:

| Equipment/Parts/Items | Make/Model # | List Price | State Price |
|---|---|---|---|
| Vehicle mount | BEAM/9555PD | $1,270 | $975 |
| 4 bay battery charger | SAT PHONE STORE/A-SAT-THGY-9555 | $485 | $550 |
| Rubberized protective case | RANGE GLOBAL | 25 | |

## CONTRACT AMENDMENTS

## Additional Features:

| Service/Feature | Fee/monthly service charge | Comments |
|---|---|---|
| Activation Fee---Recommend, waived for this contract | $0 | |
| Personal 800/888/877 toll free number | $10 | |
| Custom Greetings | $0 | |
| Custom Coverage | $0 | |
| Batteries | $0 | INCLUDED ON FULL RANGE PROGRAM |
| Insurance | $0 | INCLUDED ON FULL RANGE PROGRAM |
| Phone replacement fees | $0 | INCLUDED ON FULL RANGE PROGRAM |
| Loss or damage fees | $0 | INCLUDED ON FULL RANGE PROGRAM |
| Shipping charges for replacement units (Note: it is recommend the vendor be responsible for all shipping charges). | $0 | |
| Any additional charges, fees or taxes | $0 | |

## Other Optional Services:

| Other Optional Services | Fee/monthly service charge | Comments |
|---|---|---|
| RENTAL PROGRAM AVAILABLE | 200 PER MONTH | THIS PROGRAM IS DESIGNED IN THE EVENT PHONES ARE NEEDED FOR A SHORT PERIOD OF TIME AND NOT ON AN ANNUAL BASIS. |

## Equipment Cost:

Note: "Kit" to include a handset with capacity for hands-free functionality, battery included in handset and an additional "spare" battery, AC travel charger, auto accessory adapter, hands- free headset, portable external auxiliary antenna with eighty (80) feet of coaxial cable and case

| Equipment | Make/Model # | List Price | State Price |
|---|---|---|---|
| Kit: | | | |
| Handset - Iridium 9555 *or equivalent* (battery included) | IRIDIUM 9555 | $1,200 | • INCLUDED ON ANNUAL RATE PLAN<br>• $950 ON BOTH<br>• MONTHLY & EMERGENCY PLANS |