

**Contract Number T10-MST-290**

**for**

**NEC Aspire Maintenance and Support**

**between**

**The Department of Information Services**

**and**

**BestTel, LLC**



**Effective Date:** 8/13/09

## Table of Contents

1.	Definition of Terms.....	1
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### Contract Term

2.	Term.....	4
3.	Limits of Master Contract Use.....	5
4.	Survivorship.....	5

### Pricing, Invoice And Payment

5.	Pricing.....	5
6.	Advance Payment Prohibited.....	6
7.	Taxes.....	6
8.	Invoice and Payment.....	6
9.	Overpayments to Vendor.....	7

### Vendor's Responsibilities

10.	In-State Presence and Statewide Coverage.....	7
11.	Manufacturer Authorized Distributor.....	7
12.	RFQ Mandatory Requirements.....	7
13.	Vendor Website.....	7
14.	Title to Equipment.....	7
15.	Wiring/Cabling Restrictions.....	8
16.	Wiring / Cabling Support Services Requirements.....	8
17.	General Product Requirements/Compatibility/Specifications/Configurations.....	9
18.	Shipping and Risk of Loss.....	10
19.	Equipment Compatibility/Specifications/Configurations.....	10
20.	Delivery.....	10
21.	Site Security.....	11
22.	Safety.....	11
23.	Facility Access.....	11
24.	Installation and Set-up.....	11
25.	Standard of Performance and Acceptance.....	12
26.	Equipment Warranty.....	13
27.	Equipment Maintenance.....	14
28.	Failure to Respond.....	16
29.	Service Disruptions.....	16
30.	Move/Add/Change Services.....	16
31.	Equipment and Maintenance Documentation.....	17
33.	Spare Parts for Equipment.....	17
34.	Vendor Commitments, Warranties and Representations.....	17
35.	Compliance with Standards.....	17
37.	Protection of Purchaser's Confidential Information.....	17

**Software License**

38. License Grant ..... 18  
39. Software Ownership..... 18  
40. Software Upgrades and Enhancements ..... 19  
41. Software Maintenance and Support Services ..... 19

**Contract Administration**

42. Legal Notices ..... 19  
43. Vendor Account Manager ..... 20  
44. Section Headings, Incorporated Documents and Order of Precedence..... 20  
45. Entire Agreement ..... 21  
46. Authority for Modifications and Amendments ..... 21  
47. Additional Products and Services ..... 21  
48. Independent Status of Vendor ..... 21  
49. Governing Law..... 22  
50. Subcontractors..... 22  
51. Assignment..... 22  
52. Publicity ..... 22  
53. Review of Vendor’s Records ..... 23

**General Provisions**

54. Patent and Copyright Indemnification ..... 23  
55. Save Harmless..... 24  
56. Insurance ..... 24  
57. Industrial Insurance Coverage..... 26  
58. Licensing Standards ..... 26  
59. OSHA/WISHA..... 26  
60. Uniform Commercial Code (UCC) Applicability ..... 26  
61. Antitrust Violations..... 26  
62. Compliance with Civil Rights Laws ..... 27  
63. Severability ..... 27  
64. Waiver..... 27  
65. Treatment of Assets..... 27  
66. Vendor’s Proprietary Information..... 28

**Disputes and Remedies**

67. Disputes..... 28  
68. Attorneys’ Fees and Costs..... 29  
69. Non-Exclusive Remedies ..... 29  
70. Failure to Perform ..... 29  
71. Limitation of Liability ..... 29

**Contract Termination**

72. Termination for Default ..... 30  
73. Termination for Convenience ..... 31  
74. Termination for Withdrawal of Authority..... 31  
75. Termination for Non-Allocation of Funds ..... 31  
76. Termination for Conflict of Interest..... 31  
77. Termination Procedure..... 31  
78. Covenant Against Contingent Fees..... 32

**Activity Reporting and Administration Fee**

79. DIS Master Contract Administration Fee and Collection ..... 32  
80. Activity Reporting..... 32  
81. Failure to Remit Reports/Fees..... 33

**Contract Execution**

82. Authority to Bind ..... 33  
83. Counterparts ..... 34

**Schedules**

- Schedule A: *Authorized Product and Price List*
- Schedule B: *Problem Escalation Procedures*
- Schedule C: *Maintenance Plan*
- Schedule D: *Customer Software License Agreement*

**Exhibits**

- Exhibit A: *DIS Request for Quotation for Small Business Phone Systems*
- Exhibit B: *Vendor's Response*

**CONTRACT NUMBER T09-MST-290**

**for**

**NEC Aspire Maintenance and Support**

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**PARTIES**

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Information Services, an agency of Washington State government (Purchaser or DIS) located at 1110 Jefferson Street SE, Olympia, WA 98504-2445 and BestTel, LLC a Limited Liability Company, licensed to conduct business in the state of Washington (Vendor or BestTel), located at 2238 SE Hawthorn Blvd. for the purpose of providing Small Business Phone Systems.

**RECITALS**

The state of Washington, acting by and through the Department of Information Services, issued a Request for Quotation (RFQ) T09-RFQ-053, dated June 10, 2009 (Exhibit A) for the purpose of purchasing NEC Aspire Maintenance and Support in accordance with its authority under chapter 43.105 RCW.

BestTel, LLC submitted a timely Response to DIS' RFQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQ and has identified BestTel, LLC as the apparently successful Vendor.

DIS has determined that entering into a Contract with BestTel, LLC will meet Purchasers needs and will be in Purchasers best interest.

NOW THEREFORE, DIS awards to BestTel, LLC this Contract, the terms and conditions of which shall govern Vendor's furnishing to Purchasers NEC Aspire Maintenance and Support. This 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 Products or Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Products or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

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 Equipment has passed its Acceptance Testing and shall be formalized in a written notice from Purchaser to Vendor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products are delivered.

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

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

**“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.

**“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, agency source code or object code, and agency security data.

**“Contract”** or **“Master Contract”** shall mean this document, all schedules and exhibits, and all amendments hereto.

**“Delivery Date”** shall mean the date by which the Products ordered hereunder must be delivered.

**“DIS Contract Administrator”** shall mean that person designated by Purchaser to administer this Contract on behalf of Purchaser.

**“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 a Product is functioning properly in accordance with its Specifications.

**“Equipment”** shall mean the Small Business Phone System replacement parts as set forth in this Contract.

**“Exhibit A”** shall mean the RFQ.

**“Exhibit B”** shall mean the BestTel’s Response.

**“Help Desk”** shall mean a service provided by Vendor for the support of Vendor’s Products. Purchaser shall report warranty or maintenance problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

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

**“Manufacturer”** shall mean NEC.

**“Order”** or **“Order Document”** shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Vendor under this Contract.

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

**“Product(s)”** shall mean any Vendor-supplied Equipment, Software and documentation.

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

**“Purchaser(s)”** shall mean those government or nonprofit entities who purchase Small Business Phone Systems under this Master Contract and who have an active Interlocal or Customer Service Agreement (CSA) with DIS. DIS maintains a searchable database of current customers at: <http://techmall.dis.wa.gov/csa/CSAList.aspx>

**“RCW”** shall mean the Revised Code of Washington.

**“RFQ”** shall mean the Request for Quotation used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**“Response”** shall mean Vendor’s Response to the RFQ for NEC Aspire Maintenance and Support, Exhibit B hereto.

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

**“Schedule B: *Problem Escalation Procedures and Disaster Recovery Plan*”** shall mean the attachment to this Contract containing Vendor’s escalation procedures and disaster recovery plan.

**“Schedule C: *Maintenance Plan*”** shall mean the attachment to this Contract that describes Vendor’s maintenance plan.

**“Schedule D: *Customer Software License Agreement*”** shall mean the attachment to this Contract that describes Manufacturer’s License Agreement that supplements the licensing terms contained in this Contract.

**“Services”** shall mean those services provided under this Contract and related to the Products being acquired, that are appropriate to the scope of this Contract and includes such things as installation services, maintenance, training, move/add/change, etc.

**“Small Business Phone System(s)”** or **“System(s)”** shall means a telephone system meant to serve 100 or fewer telephone stations with a five (5) year total cost to Purchaser of under \$75,000.

**“Software”** shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**“Specifications”** shall mean the technical specifications that are published and readily available from the Manufacturer or agreed upon in writing in the statement of work, Orders, or other documentation related to this Contract, including the RFQ, Exhibit A, and Vendor’s Response, Exhibit B.

“**Standard of Performance**” shall mean the criteria that must be met before Equipment 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 Equipment and Equipment that is modified by or with the written approval of Vendor after having been accepted.

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

“**TSD**” Shall mean the DIS Telecommunication Service Division.

“**Vendor**” shall mean BestTel, LLC, its employees and agents. Vendor 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 Vendor as permitted under the terms of this Contract.

“**Vendor Account Manager**” shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“**Vendor Contracting Officer**” shall mean the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“**Vendor Project Manager**” shall mean a representative of Vendor 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 Vendor Project Manager.

“**Warranty Period**” shall mean the period of time as set forth in the section titled **Equipment Warranty** wherein Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications.

“**Work Product**” shall mean all 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. Term of Contract

This Contract’s initial term shall be three (3) years, commencing upon the Effective Date.

This Contract’s term may be extended by a total of up to four years, in renewal terms of one (1) or more years, provided that the extensions shall be at DIS’ option and shall be effected by DIS giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current

Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

### 3. Limits of Master Contract Use

Each purchase under this Master Contract will not exceed a five (5) year total cost of \$75,000 and will serve 100 or fewer telephone stations.

### 4. Survivorship

All purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; License Grant; Software Ownership; Ownership/Rights in Data; Date Warranty; No Surreptitious Code Warranty; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Contract.

## Pricing, Invoice and Payment

### 5. Pricing

- 5.1. Vendor agrees to provide the Services at the Prices set forth in Schedule A. No other Prices shall be charged by Vendor for implementation of Vendor's Response.
- 5.2. Discount levels for Products may not be decreased and Services Prices for Services may not be increased during the term of the Contract.
- 5.3. If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchasers shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the DIS Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 5.4. At least one hundred twenty (120) calendar days before the end of the then-current term of this Contract, Vendor may propose Service rate increases by written notice to the DIS Contract Administrator. Any such percentage increase shall not be greater than five percent (5%) plus the percentage increase in the Consumer Price Index (as reported by the Bureau of Labor Statistics) for the prior annual reporting period. Price adjustments will be taken into consideration by DIS when determining whether to extend this Contract.
- 5.5. Vendor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to the State for subsequent purchases.

- 5.6. Vendor shall *not* be reimbursed for any expenses related to travel, i.e., per diem, meals, lodging, etc.

## **6. Advance Payment Prohibited**

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

## **7. Taxes**

- 7.1. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 7.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## **8. Invoice and Payment**

- 8.1. Vendor will submit properly itemized invoices to the person identified by Purchaser at the address specified by the Purchaser. Invoices shall provide and itemize, as applicable:
- a) DIS Contract number T10-MST-290;
  - b) Vendor name, address, phone number, and Federal Tax Identification Number;
  - c) Description of Services and Products, including type/quantity ordered, model and serial numbers;
  - d) Date(s) of delivery and/or date(s) of installation and set up;
  - e) Price for each item, or Vendor's list Price for each item and applicable discounts;
  - f) Maintenance charges;
  - g) Net invoice Price for each item;
  - h) Applicable taxes;
  - i) Other applicable charges;
  - j) Total invoice Price; and
  - k) Payment terms including any available prompt payment discounts.
- 8.2. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 8.3. Purchaser shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day.
- 8.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.

- 8.5. The DIS Contract number T10-MST-290 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 8.7. If Purchaser fails to make timely payment, Vendor 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 Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or receipt of Vendor's properly prepared invoice, whichever is later.

## **9. Overpayments to Vendor**

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

## **Vendor's Responsibilities**

### **10. In-State Presence and Statewide Coverage**

Vendor shall have a place of business staffed by Vendor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Orders and communications and all sales and Services provided to Purchasers will be through this in-state location. Vendor's Products and Services shall be available under this Master Contract to Purchasers located throughout the state of Washington.

### **11. Manufacturer Authorized Distributor**

During the term of this Master Contract and any renewals, Vendor shall maintain its status as an authorized distributor of NEC Aspire products and services that are the subject of this Master Contract. If Vendor does not maintain its status as an authorized dealer, the contract shall be terminated under the termination for convenience section.

### **12. RFQ Mandatory Requirements**

The RFQ attached as Exhibit A mandatory requirements are essential substantive terms of this Master Contract. Products and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQ.

### **13. Vendor Website**

Vendor shall establish and maintain an Internet website throughout the term of this Master Contract that will provide Purchasers with Product, Service, Master Contract Prices and ordering information. The website will be accessible from the Washington State TechMall.

### **14. Title to Equipment**

Upon successful completion of Acceptance Testing and receipt of Purchaser's letter of Acceptance, Vendor shall convey to Purchaser good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If Purchaser subsequently transfers title to the Equipment to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

## **15. Wiring/Cabling Restrictions**

Vendor shall not sell cable or wiring components and shall not install wiring or cable under this Master Contract except in direct support of a Small Business Phone System purchased under this Master Contract.

## **16. Wiring / Cabling Support Services Requirements**

- 16.1. If Purchaser requests that Vendor install the wiring/cabling during the Small Business Phone System installation, Vendor shall provide Purchaser a firm quote for this service prior to installation. Vendor shall comply with the requirements of this section in all wiring/cabling work under this Master Contract.
- 16.2. All new cables, whether using pedestals, existing conduit, raceways or utility tunnels, will be installed per city, county, and state codes and building and wiring standards, as specified in Information Services Board's Computing and Telecommunications Standards-Building Wiring revised February 2004. (Reference Statewide IT Policies at <http://www.isb.wa.gov/policies/references.aspx>)
- 16.3. Vendor will keep wiring and cable records during installation that correlate station directory number, distribution cable number and station location, serving closet and termination rack location. A clean, legible copy of these records will be given to Purchaser upon project completion.
- 16.4. Vendor will provide Purchaser a complete set of as-built drawings following a project completion that show all distribution cable runs, numbers of pairs, all distribution frames and the location of all instruments and outlets labeled to correlate to drawings and the cable record.
- 16.5. Vendor shall leave no exposed cable or wiring. All wiring and cable will be grouped by cable ties where various cables or wires meet and run parallel. Vendor will label all installed cables.
- 16.6. Unless otherwise specified by the Purchaser, telephone cables will run to central locations designated by the Purchaser as Intermediate Distribution Frames (IDFs) or Main Distribution Frames (MDFs). This cabling will be identified numerically at both ends. VoIP terminations will be in accordance with current IEEE 802.3 Ethernet Standards at the time of installation.
- 16.7. All IDF/MDFs will be coded and labeled according to standard telco coding (binder group labeling).
- 16.8. Telephone cable runs will *not* be spliced or taped.
- 16.9. All between-floor feeder and distribution cabling will be air core pic cable, shielded and bonded. Vendor will be responsible for sleeving and packing all cable openings between floors.

- 16.10. Vendor will connect all floors to their respective IDF's and terminate them at the MDF. Adjacent buildings, within the scope of the Order, will terminate at the MDF.
- 16.11. Vendor will terminate all pairs of inside wire on jacks and station blocks.
- 16.12. The reuse of any existing cable will require prior Purchaser approval and shall detail the following information: cable sizes, location of cable reused, and total amount reused. Vendor will correct existing cable discrepancies when reusing existing cable. Vendor may recommend the replacement of existing cable, if in the Vendor's opinion, it does not meet current industry standards.
- 16.13. Each new terminal location will be supplied with a jack. Each jack will be labeled with the corresponding cable number.
- 16.14. The following will be evaluated by Purchaser to determine TDM and/or VoIP cable/wiring acceptance:
  1. Cable transmission requirements;
  2. Cable routes;
  3. Cable neatness;
  4. Cable functionality;
  5. Industry and Purchaser standards;
  6. Bonding;
  7. Splicing;
  8. Terminations; and
  9. Cable drawings/schematics.

## **17. General Product Requirements/Compatibility/Specifications/Configurations**

- 17.1. Vendor represents and warrants that all Products provided under this Master Contract:
  - a) Are TDM circuit switched or VoIP;
  - b) Will conform to each item's detailed Specifications in all respects;
  - c) Are of new manufacture and in current standard production;
  - d) Will be operable and installed in accordance with Manufacturer's specifications when Vendor provides installation;
  - e) Include an integrated voice mail capability.
- 17.2. Vendor shall be solely responsible for resolving compatibility issues associated with interfacing Products purchased under this Contract with public or private networks or transmission facilities.
- 17.3. At the rates set forth in Schedule A, Vendor will modify Purchaser's existing equipment, as needed, to ensure compatibility with all new Equipment, e.g., line sensors, lead controls. Vendor will also advise Purchaser if any existing equipment, ancillary equipment, or other affected components will not be compatible with the new Equipment.
- 17.4. For the purpose of delivery and performance under this Contract, Products purchased hereunder shall be grouped together in one or more Equipment, firmware, and/or software configurations as set forth in Vendor's Response. Any such configuration shall be deemed incomplete and undelivered if any item within that configuration has not been delivered, or if delivered, not installed or operational in accordance with this Contract's **Delivery and Installation and Set-Up** sections.

## **18. Shipping and Risk of Loss**

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products 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 Vendor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.

## **19. Equipment Compatibility/Specifications/Configurations**

- 19.1. Vendor shall notify Purchaser of the existence of any compatibility issues between Vendor's Equipment and Purchaser's already existing or planned for hardware, software, and cabling. Purchaser will provide Vendor timely access to necessary areas and Equipment sites and shall provide Vendor with a list of any existing or planned for hardware, software, and cabling, as necessary.
- 19.2. Vendor warrants that each item of Equipment 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. Purchaser shall have the right to connect the Equipment purchased hereunder to any equipment manufactured or supplied by others including other computers, peripheral equipment, terminal devices, communications equipment, software and the like that interface with the Equipment purchased hereunder.
- 19.4. If requested by Purchaser, Vendor agrees to identify, on all items of Equipment supplied under this Contract, all appropriate test points for connecting commercially available equipment monitors designed to measure system capacity, performance, or activity.

## **20. Delivery**

- 20.1. Any parts purchased under this Contract shall be completely installed and ready to begin Acceptance Testing within thirty (30) calendar days after Vendor'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 Vendor may be subject to termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.
- 20.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 20.3. The Vendor assumes all responsibility for the delivery, installation and maintenance of all Vendor-supplied equipment, software and support services proposed. Unless otherwise indicated, all systems will be cut over outside of Business Hours.

**21. Site Security**

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

**22. Safety**

Vendor shall observe and comply with WISHA and OSHA 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.

**23. Facility Access**

Vendor understands that Purchaser's building entrances may be controlled for access. When performing work at Purchaser's buildings, Vendor 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.

Vendor understands that in order to obtain access to Purchaser's premises, Vendor may have to be issued a security badge by Purchaser. Vendor shall provide certain personal information, including valid government-issued photo identification, prior to obtaining a security badge when required by Purchaser. Vendor further understands that Purchaser may collect and retain such personal information until the Acceptance Date or for so long as 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 Vendor 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 suspension or termination of access to Purchaser's facilities, or upon the Acceptance Date, Vendor shall return all security badges.

**24. Installation and Set-up**

24.1. When installing a new Small Business Phone System, Vendor 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;
- d) An on-site Manufacturer certified technician on the first day after the cutover until the Small Business Phone System features and instruments are working properly;
- e) On-site user training for the Small Business Phone System;
- f) System administration training; and
- g) Changes that are requested within five (5) Business Days after cutover to up to fifteen percent (15%) of the features and line assignments.

24.2. Vendor personnel shall be Manufacturer certified in accordance with Manufacturer requirements. Upon request Vendor will furnish a copy of such certification to Purchaser or DIS.

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

- 24.4. Purchaser shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in its installation plan, as modified in writing and agreed to by the parties. Vendor'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 Vendor's Response. Any requirements for the environment not disclosed in Vendor's installation plan will be completed by Vendor at no additional cost to Purchaser. Purchaser will provide standard commercial power. Vendor shall install an external, Manufacturer recommended surge protector between the power source and each major system.
- 24.5. Vendor will acquire any permits, if required, at no additional cost to Purchaser. Vendor shall replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Vendor personnel to their original condition at no additional cost to Purchaser.
- 24.6. At Purchaser's option, all line coordination with the local telephone company, relative to installation of the system, will be the responsibility of the Vendor. All orders for installation, re-termination, or discontinuance of DIS/TSD Centron lines and/or central office services must be processed through DIS/TSD.
- 24.7. Vendor will program Products according to Purchaser's specifications and modify voice terminal faceplates to identify specifically programmed buttons.
- 24.8. Vendor shall install the Equipment, 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. Failure to meet the Installation Date(s) may subject Vendor to termination of an Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.

**25. Standard of Performance and Acceptance**

- 25.1. In addition to the Acceptance Testing set forth in this section, Purchaser may conduct terminal testing and other tests of the installed System. Vendor will provide testing equipment required for demonstration of the System's performance.
- 25.2. After Maintenance is performed on the Purchaser's System, Vendor shall provide Purchaser with documentation of a successful system audit using Vendor's diagnostic routines, as approved by Purchaser, demonstrating that the System meets or exceeds the Specifications. Vendor shall certify to Purchaser in writing that the System is ready for Acceptance Testing. The Acceptance Testing will begin on the day the System is cutover.
- 25.3. Acceptance of a System will be based on the following criteria:
  - Meeting or exceeding the Standard of Performance defined below;
    - a) All installation, wiring, and cabling requirements identified in Section 16 have been satisfied;
    - b) Delivery to Purchaser of complete and updated as-built drawings indicating conformance with specifications;
    - c) Conformance of installation and programming requirements as specified by the Purchaser; and
    - d) Completion of all required training of Purchaser staff (see Section 36 below).

- 25.4. The Standard of Performance for a System is defined as a 100% Effectiveness Level during the Acceptance Testing period set forth below. The voice terminals shall have a 98% trouble-free performance during this period.
- 25.5. The Effectiveness Level for a System is the percentage of time in a month that the System is functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Product by the sum of the Operational Use Time plus the Product Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for a Product is defined as 24 hours per day, 365 days per year. Product Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of a System Failure. System Failure is defined as a malfunction in the Equipment or Software that prevents the accomplishment of the intended function(s) of the System.
- 25.6. Downtime for each incident shall start from the time that Vendor knew or reasonably should have known of the System Failure, or Purchaser makes a bona fide attempt to contact Vendor's designated representative at the prearranged contact point, whichever occurs earlier, until the System is returned to fully operational status in conformance with its Specifications. During periods of System Failure downtime, Purchaser may use operable portions of the System when such action does not interfere with repair of the inoperable portions.
- 25.7. The Acceptance Testing period shall be thirty (30) calendar days, starting from the day of cutover. Purchaser shall maintain appropriate records to ascertain whether the Standard of Performance has been met.
- 25.8. In the event the System does not meet the Standard of Performance during the initial period of Acceptance Testing, Purchaser may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after sixty (60) calendar days the System still has not met the Standard of Performance Purchaser may, at its option: (1) declare Vendor to be in breach of this Contract and terminate this Order; or, (2) demand replacement System from Vendor at no additional cost to Purchaser; or, (3) continue the Acceptance Testing for an additional thirty (30) calendar days. Vendor shall pay all costs related to the preparation and shipping for Systems returned pursuant to this section. Purchaser's option to declare Vendor in breach and terminate this Order shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 25.9. No System shall be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first Purchaser Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from Purchaser to Vendor.

**26. Equipment Warranty**

- 26.1. Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of one (1) year, the Warranty Period, commencing upon the first day after the Acceptance Date.
- 26.2. During the Warranty Period, Vendor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and

their installation and any transportation and delivery fees, shall be at Vendor's expense. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications.

- 26.3. Vendor agrees that all warranty service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.
- 26.4. Vendor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Vendor's Help Desk Services can be reached at 1-877-224-2445.
- 26.5. Vendor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Vendor's employee(s) responding at each level and the elapsed time before the next level of response is invoked. Vendor's escalation procedures are attached as Schedule B.
- 26.6. Non-emergency maintenance/repair response time during warranty will be within eight (8) Business Hours after notification and will be performed during Business Hours. When on-site, Vendor must report to Purchaser's designated coordinator prior to and after each service call. Emergency on-site maintenance/repair response time during warranty will be within four (4) hours, twenty-four (24) hours a day, seven (7) days a week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours from time of notification. Emergency maintenance applies to the following conditions: (i) failure of the entire system; (ii) failure of 50% or more of the system stations; or (iii) failure of 50% or more of the system's trunks.
- 26.7. Any work or upgrade that may affect service must 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.
- 26.8. Purchaser agrees that Vendor 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.
- 26.9. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE IN LIEU OF AND REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY THAT OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

## **27. Equipment Maintenance**

Vendor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

- 27.1. Vendor shall offer maintenance service plan(s) attached as Schedule C to keep the Equipment in good operating condition or restore it to good working order in accordance with the Specifications or, upon Purchaser's prior written approval, to current standards.
- 27.2. Where required by Purchaser, Vendor must offer and provide a maintenance service plan with support twenty-four (24) hours per day, Seven (7) days per week, every day of the year including all holidays.
- 27.3. Vendor personnel responding to maintenance calls, repairing or servicing the system shall be Manufacturer-certified to work on NEC Aspire Phone Systems.
- 27.4. Vendor warrants service availability during the life of the Manufacturer's product hardware for a period of five (5) years from the date the system is placed in service.
- 27.5. Vendor shall maintain a log on Purchaser's premises that details repairs, preventive maintenance and upgrades to the system. The log shall be available for inspection by DIS upon request.
- 27.6. Purchaser shall provide Vendor access to the System to perform maintenance service.
- 27.7. Non-emergency maintenance/repair response time during warranty will be within eight (8) Business Hours after notification and will be performed during normal Business Hours. When on-site, Vendor shall report to Purchaser's designated coordinator prior to and after each service call.
- 27.8. Routine maintenance and any maintenance or upgrade that may affect service must 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.
- 27.9. **Preventive Maintenance.** Vendor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor-supplied information Purchaser shall develop and provide to Vendor in writing the schedule within which Vendor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to Purchaser within or contiguous with remedial maintenance.
- 27.10. **Emergency maintenance.** Emergency maintenance/repair response time on-site during warranty will be within four (4) 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 the following conditions: (i) failure of the entire system; (ii) failure of 50% or more of the system stations; or (iii) failure of 50% or more of the system's trunks.
- 27.11. Upon completion of each maintenance call, Vendor 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.

27.12. There shall be no additional maintenance charges for:

- a) Replacement parts;
- b) Preventive maintenance, regardless of when performed;
- c) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
- d) 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; or
- e) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.

27.13. Maintenance Credits For Equipment Malfunction

- a) Vendor shall grant a credit to Purchaser for any Equipment being maintained by Vendor that fails to perform at an Effectiveness Level of 99.5% trouble-free during any month. The Effectiveness Level for an item of Equipment shall be defined and computed in the same manner as provided for in the **Standard of Performance and Acceptance** section of this Contract. (See Section 25 above).
- b) The credit granted by Vendor shall be fifty percent (50%) of the monthly maintenance fee for each percentage point a machine falls below its required effectiveness level. For example if the credit is 50% and the actual effectiveness level for a machine is 88% instead of the required 90%, the maintenance credit would be 100% of the monthly maintenance fee for that month, i.e., 2 percentage points below the requirement so  $2 \times 50\% = 100\%$  credit.
- c) If the Equipment fails to operate at an Effectiveness Level of 99.5% for two (2) consecutive months, it shall be considered a Failure to Perform.

## 28. Failure to Respond

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

## 29. Service Disruptions

Purchaser may require that work be performed outside of Business Days and Hours. Vendor shall not conduct upgrades, maintenance or warranty work that may affect service or disrupt Purchasers' daily operations during Business Hours without the prior written consent of Purchaser.

## 30. Move/Add/Change Services

Vendor will provide Move/Add/Change services on a times and materials basis using the applicable rates quoted in Schedule A *Price List*. Move/Add/Change service will entail any additional work requested by Purchaser after the installation of the System. This work will

include, but not be limited to purchase of additional Equipment, programming, wiring, and relocation of existing equipment. Vendor will complete the requests for Move/Add/Change services within three (3) business days of such requests.

### **31. Equipment and Maintenance Documentation**

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

### **32. Spare Parts for Equipment**

Vendor 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 System. Vendor guarantees part availability for a minimum of five (5) years from the Acceptance Date of a System by Purchaser. In addition, Vendor 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.

### **33. Vendor Commitments, Warranties and Representations**

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor 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 Vendor in its Response or contained in any Vendor 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.

### **34. Compliance with Standards**

Vendor represents that all Equipment, Software, and elements thereof, including but not limited to documentation and source code, shall meet and be maintained by Vendor to conform to Telcordia standards

### **35. Protection of Purchaser's Confidential Information**

35.1. Vendor 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. Vendor 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. Vendor 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. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 35.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 35.3. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 35.4. In the event of the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the Purchaser (Breach), Vendor 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 Vendor's acts or omissions, Vendor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by DIS or Purchaser in responding to or recovering from the Breach.
- 35.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## **Software License**

### **36. License Grant**

Vendor passes through to Purchaser a license to use the Software and related documentation according to the terms and conditions of this Contract.

### **37. Software Ownership**

Vendor shall pass through rights in the Software as specified in Schedule D. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser that Vendor has the right to pass through to Purchaser the licensed rights to the Software provided by Vendor through this Contract. Vendor represents and warrants that to the best of Vendor's knowledge, that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual

knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

### **38. Software Upgrades and Enhancements**

Vendor shall, as part of maintenance purchased pursuant to this Contract:

- 38.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 38.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Products supplied to Purchaser; and
- 38.3. Supply at no additional cost interface modules that are developed by Vendor or Manufacturer for interfacing the Software to other Software products.

### **39. Software Maintenance and Support Services**

Vendor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications and that Purchaser shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to Purchaser.

## **Contract Administration**

### **40. Legal Notices**

- 40.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) 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, via facsimile, to the parties at the addresses and fax numbers 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 Vendor at:**

Best Tel, LLC

**To DIS at:**

State of Washington  
Department of  
Information Services

**Attn: Tamara Gonzalez**  
1140 Willagillespie Rd., Suite 18  
Eugene, OR 97401

**Attn:** Office of Legal  
Services  
Master Contract  
Administrator

**Mailing Address:** PO Box 42445  
Olympia, WA 98504

**Street Address:** 1110 Jefferson Street SE  
Olympia, WA 98504

Phone: (541) 688-5575

Phone: (360) 902-  
3436

Fax: (541) 683-9919

Fax: (360) 664-  
0711 [*not for notices*]

E-mail: [tamarag@callbesttel.com](mailto:tamarag@callbesttel.com)

E-mail:  
[mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov)

- 40.2. 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.
- 40.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Vendor 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. Vendor 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.

#### **41. Vendor Account Manager**

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

Vendor Account Manager: Scott Alden  
Address: 2238 SE Hawthorn Blvd, Portland, OR 97218  
Phone: (503) 265-0451 Fax: E-mail: [Scottalden@callbesttel.com](mailto:Scottalden@callbesttel.com)

#### **42. Section Headings, Incorporated Documents and Order of Precedence**

- 42.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 42.2. 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 and D;
  - b) DIS' RFQ dated June 10, 2009;

- c) Vendor's Response to DIS' RFQ;
- d) The terms and conditions contained on Purchaser's Order Documents, if used; and
- e) All Vendor or Manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

42.3. 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 Contract;
- c) Schedules A, B, C, and D
- d) DIS' RFQ dated June 10, 2009;
- e) Vendor's Response to DIS' RFQ;
- f) The terms and conditions contained on Purchaser's Order Documents, if used; and
- g) All Vendor or Manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

#### **43. Entire Agreement**

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 **Vendor 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.

#### **44. 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 DIS and Vendor.

#### **45. Additional Products and Services**

Vendor may submit new Products and Services with associated discounts or prices to the DIS Contract Administrator. New or changed Products and Services submitted by Vendor shall meet all mandatory requirements of the RFQ. Additional Products or Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to this Master Contract (Schedule A) by an instrument in writing, signed by both Vendor and DIS. Such writing shall include a specific description of the additional Services and/or Products, pricing, and additional terms and conditions as relevant.

#### **46. Independent Status of Vendor**

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 venturers, 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. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, or Title 51 RCW.

#### **47. 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. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

#### **48. Subcontractors**

Vendor may, with prior written permission from DIS Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor 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, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Software Ownership, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

#### **49. Assignment**

49.1. With the prior written consent of DIS Contracting Officer, which consent shall be at Purchaser's sole option, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor 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.

49.2. Purchaser 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.

#### **50. Publicity**

50.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.

- 50.2. Vendor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. Vendor 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 Purchaser *prior* to such use.

## **51. Review of Vendor's Records**

- 51.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this 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 Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this 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 Contract, whichever is later.
- 51.2. 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 Purchaser's 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 Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 51.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 51.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor'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 Contract is calculated or derived from these factors.

## **General Provisions**

### **52. Patent and Copyright Indemnification**

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

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

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

52.2. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser 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 Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Vendor 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 five (5) 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 Vendor.

52.3. Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor;
- c) Use of the Product in a way not specified by Vendor; or,
- d) Use of the Product with equipment not supplied by Vendor;
- e) unless the claim arose against Vendor's Product independently of any of these specified actions.

### **53. Save Harmless**

Vendor shall defend, indemnify, and save 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 Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

### **54. Insurance**

54.1. Vendor shall, during the Term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor 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, Vendor shall provide written notice of such to DIS within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and

maintain the required insurance may, at DIS' sole option, result in this Contract's termination.

- 54.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$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 Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease; and
  - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million.
- 54.3. Purchaser may require Vendor to provide Professional Liability Errors and Omissions insurance in their Order Document as follows:
- Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate. Contractor will pay for insurance premiums to continue such claims made policies or to provide tails for two (2) years beyond the expiration or termination of this Contract.
- 54.4. Vendor shall pay premiums on all insurance policies. DIS shall be named as an additional insured on all general liability and automobile liability policies, and Vendor shall provide a copy of the policy endorsement(s) designating DIS as an additional named insured. Such policies shall also reference this Contract number T10-MST-290 and 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 DIS by the insurer.
- 54.5. All insurance provided by Vendor 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.
- 54.6. Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 54.7. Vendor shall furnish to DIS 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) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS' sole option, result in this Contract's termination.

- 54.8. Vendor shall provide insurance certification to the Purchaser under the Order Document when requested. Failure to provide evidence of coverage may, at Purchaser's sole option, result in termination of the Order.
- 54.9. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

**55. Industrial Insurance Coverage**

Prior to performing work under this Contract, Vendor 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. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

**56. Licensing Standards**

Vendor 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.)

**57. OSHA/WISHA**

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

**58. Uniform Commercial Code (UCC) Applicability**

- 58.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 58.2. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

**59. Antitrust Violations**

Vendor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and services purchased in connection with this 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 Contract.

**60. Compliance with Civil Rights Laws**

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

**61. 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.

**62. Waiver**

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

**63. Treatment of Assets**

- 63.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment and Ownership/Rights in Data** sections. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 63.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 63.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 63.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 63.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 63.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

#### **64. Vendor's Proprietary Information**

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

### **Disputes and Remedies**

#### **65. Disputes**

- 65.1. In the event a bona fide dispute concerning a question of fact arises between Vendor and Purchaser and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 65.2. 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 three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) 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 (3) 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.
- 65.3. 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.
- 65.4. Purchaser and Vendor 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.
- 65.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith,

believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

## **66. Attorneys' Fees and Costs**

- 66.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this 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.
- 66.2. 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.

## **67. 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.

## **68. Failure to Perform**

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

## **69. Limitation of Liability**

- 69.1. The parties agree that neither Vendor nor Purchaser shall 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 a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA**, **Termination for Default**, and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 69.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor 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 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 Vendor, Purchaser, or their respective Subcontractors.

- 69.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor 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 Vendor to meet its required performance schedule.
- 69.4. Neither party 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 Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Vendor written notice of such failure or violation, and the failure or violation shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Vendor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Vendor's failure or violation is not corrected, DIS may pursue immediate termination of this Master Contract, as appropriate. In such event, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Vendor, or Purchaser's or DIS' SWO may be terminated by written notice to Vendor.
- 70.2. In the event of termination of this Master Contract by DIS, DIS shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor 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 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 DIS resulting from Vendor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe DIS and Purchasers for Vendor's default.
- 70.3. If either DIS 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 Vendor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's SWO may be terminated by written notice from Vendor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Vendor to DIS.
- 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 DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor.
- 71.2. Purchaser may terminate its Statement of Work upon sixty (60) days notice to Vendor. If a Statement of Work is so terminated, Purchasers are liable only for payments required by the terms of any SWO for Services received and accepted by Purchaser prior to the effective date of termination.

**72. Termination for Withdrawal of Authority**

In the event that DIS' 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 SWO and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its SWO(s), by seven (7) Business Days written notice to Vendor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

**73. Termination for Non-Allocation of Funds**

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or SWO in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its SWO(s) by seven (7) Business Days written notice to Vendor or otherwise work with Vendor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers 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. DIS or Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

**74. Termination for Conflict of Interest**

DIS may terminate this Master Contract, or Purchaser its SWO(s), by written notice to Vendor if DIS 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 SWO is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Master Contract or any SWO.

**75. Termination Procedure**

- 75.1. Upon termination of this Master Contract or any SWO, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable SWO, may require Vendor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Master Contract or SWO 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 Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Master Contract or SWO 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 Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 75.3. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

## **76. Covenant Against Contingent Fees**

- 76.1. Vendor 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 Vendor.
- 76.2. In the event Vendor 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 Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

## **Activity Reporting and Administration Fee**

### **77. DIS Master Contract Administration Fee and Collection**

- 77.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Vendor and remitted to DIS.
- 77.2. The Master Contract Administration Fee is one half of one percent (1% or .01) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 77.3. Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

### **78. Activity Reporting**

- 70.1 Vendor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Services and Equipment 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 making purchases during each month of that quarter (identified and grouped by state, local or educational entity);
  - d) Total purchaser by each purchaser;
  - e) The total invoice price (excluding sales tax) for each Purchaser;
  - f) The sum of all invoice prices (excluding sales tax) for all Purchasers; and
  - g) The total amount of the DIS Master Contract Administration Fee.

70.2 The Activity Report and the DIS Master Contract Administration Fee shall be submitted on a quarterly basis in accordance with the following schedule:

**For activity in the months: Report & Fee Due:**

January, February, March April 15<sup>th</sup>

April, May, June July 15<sup>th</sup>

July, August, September October 15<sup>th</sup>

October, November, December January 15<sup>th</sup>

70.3 Reports are required to be submitted electronically, in either Microsoft Word or Excel format, via email to [mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov)

70.4 This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.

70.5 Monthly Activity Reports are required even if no activity occurred.

70.6 Upon request by DIS, Vendor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

**79. Failure to Remit Reports/Fees**

79.1. Failure of Vendor 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 Vendor, which may result in DIS terminating this Master Contract with Vendor.

79.2. 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. Vendor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.

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

79.4. If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

**Contract Execution**

**80. Authority to Bind**

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

**81. Counterparts**

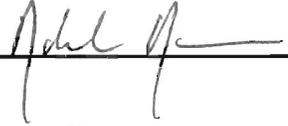
This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*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.

This Contract is effective this \_\_\_\_ day of July 2009.

**Approved**  
State of Washington  
Department of Information Services

**Approved**  
BestTel, LLC

Signature   
 Print or Type Name ROLAND RIVERA Date 8/13/09  
 Title TSD ASSISTANT DIRECTOR

Signature   
 Print or Type Name Trish Harris Date Aug. 3, 2009  
 Title Branch Manager

**Approved as to Form**  
State of Washington  
Office of the Attorney General

Signature \_\_\_\_\_  
 Print or Type Name \_\_\_\_\_  
 Assistant Attorney General  
 Title \_\_\_\_\_ Date \_\_\_\_\_

Vendor Information	
Vendor's UBI Number:	
Minority or Woman Owned Business Enterprise	
Yes: _____	No <input type="checkbox"/>
(Certification Number)	



**Schedule A**

*Authorized Product and Price List*

*Contract T10-MST-290 with BestTel, LLC*

*BestTel is authorized to sell only the Products identified in this Schedule A at the Prices set forth in this Schedule A under this contract.*

PART NUMBER	DESCRIPTION	List	State Discount	Unit
NSG-170108-002	Aspire Handset & Cord - Black	\$ 20.40	10%	\$ 18.36
NSG-170108-001	Aspire Handset & Cord - White	\$ 20.40	10%	\$ 18.36
808920	Installation Cable	\$ 51.00	10%	\$ 45.90
858620	56 KBPS Modem	\$ 170.00	10%	\$ 153.00
859451	Kentrox Satellite 932 CSU	\$ 841.50	10%	\$ 757.35
0890000	Aspire 8-Slot KSU w/o PS	\$ 204.00	10%	\$ 183.60
0890005	Aspire-S KSU	\$ 595.00	10%	\$ 535.50
0890041	22-Button Standard Phone-BK	\$ 185.30	10%	\$ 166.77
0890042	22-Button Standard Phone-WH	\$ 185.30	10%	\$ 166.77
0890043	22-Button Display Phone – BK	\$ 219.30	10%	\$ 197.37
0890044	22-Button Display Phone - WH	\$ 219.30	10%	\$ 197.37
0890045	34-Button Display Phone - BK	\$ 321.30	10%	\$ 289.17
0890046	34-Button Display Phone - WH	\$ 321.30	10%	\$ 289.17
0890047	2-Button Phone – BK	\$ 144.50	10%	\$ 130.05
0890048	2-Button Phone – WH	\$ 144.50	10%	\$ 130.05
0890049	34-Button Super Display Phone – BK	\$ 440.30	10%	\$ 396.27
0890050	34-Button Super Display Phone - WH	\$ 440.30	10%	\$ 396.27
0890051	110B DSS Console – Black	\$ 408.00	10%	\$ 367.20
0890052	110B DSS Console – White	\$ 408.00	10%	\$ 367.20
0890053	24B DLS Console – Black	\$ 253.30	10%	\$ 227.97
0890054	24B DLS Console – White	\$ 253.30	10%	\$ 227.97
0890055	Call Recording Adapter	\$ 85.00	10%	\$ 76.50
0890056	Analog Interface with Ringing	\$ 127.50	10%	\$ 114.75
0890057	Analog Interface w/ o Ringing	\$ 85.00	10%	\$ 76.50
0890058	RS-232C adapter	\$ 221.00	10%	\$ 198.90
0890059	USB adapter	\$ 408.00	10%	\$ 367.20
0890060	IP adapter	\$ 425.00	10%	\$ 382.50
0890062	Enhanced Speakerphone Adapter (Black)	\$ 246.50	10%	\$ 221.85
0890063	Enhanced Speakerphone Adapter (White)	\$ 246.50	10%	\$ 221.85
0890066	Recording adapter for 34-Button IP Phone	\$ 170.00	10%	\$ 153.00
0890067	Power Fail adapter for 34-Button IP Phone	\$ 204.00	10%	\$ 183.60
0890068	XL Power Supply Cabinet	\$ 508.30	10%	\$ 457.47
0890069	XL Power Supply Set	\$ 848.30	10%	\$ 763.47
0890071	Aspire Telephone Trainer	\$ 969.00	10%	\$ 872.10
0890072	Aspire 4-Button IP Phone (BK)	\$ 212.50	10%	\$ 191.25
0890073	Aspire 34-Button IPPhone with PoE (BK)	\$ 348.50	10%	\$ 313.65
0891000	Power Supply	\$ 132.60	10%	\$ 119.34
0891001	KSU Expansion Set	\$ 2,975.00	10%	\$ 2,677.50
0891002	64-Port Basic CPU Card	\$ 595.00	10%	\$ 535.50
0891003	DSP Resource Daughter Board	\$ 306.00	10%	\$ 275.40
0891004	8-Port LS CO Trunk Card	\$ 391.00	10%	\$ 351.90
0891005	4-Port LS CO Trunk Card	\$ 195.50	10%	\$ 175.95



PART NUMBER	DESCRIPTION	List	State Discount	Unit
0891007	4-Port BRI Card (8 trunks)	\$ 1,020.00	10%	\$ 918.00
0891009	PRI/T1 Card	\$ 1,530.00	10%	\$ 1,377.00
0891010	Aspire Mail DMS 4-Port Expansion License.	\$ 2,208.30	10%	\$ 1,987.47
0891011	4-Port E&M Tie Line Card	\$ 510.00	10%	\$ 459.00
0891012	8-Port DID/OPX Card	\$ 765.00	10%	\$ 688.50
0891013	4-Port DID/OPX Card	\$ 510.00	10%	\$ 459.00
0891014	16-Port Aspirephone Card	\$ 306.00	10%	\$ 275.40
0891015	8-Port Aspirephone Card	\$ 153.00	10%	\$ 137.70
0891016	16-Port i-Series Station Card	\$ 612.00	10%	\$ 550.80
0891017	8-Port Analog Station Card	\$ 510.00	10%	\$ 459.00
0891018	8-Port Analog Station Expansion Daughterboard	\$ 510.00	10%	\$ 459.00
0891019	16 Channel VoIP Media Gateway Card	\$ 4,250.00	10%	\$ 3,825.00
0891020	Aspire Mail DMS 10-Seat Expansion License	\$ 510.00	10%	\$ 459.00
0891023	16 Channel VoIP Media Gateway Expansion Daughterboard	\$ 3,400.00	10%	\$ 3,060.00
0891026	SLT Adapter	\$ 255.00	10%	\$ 229.50
0891027	2PGDAD Module	\$ 204.00	10%	\$ 183.60
0891028	8-Port LS/GS CO Trunk Card	\$ 680.00	10%	\$ 612.00
0891029	4-Port LS/GS CO Trunk Card	\$ 297.50	10%	\$ 267.75
0891030	Aspire Mail DMS 4-Port VM w/ DTM and DCC - 4-Pt/1400-Hr	\$ 3,228.30	10%	\$ 2,905.47
0891031	Aspire Mail DMS 8-Port VM w/ DTM and DCC - 8-Pt/1400-Hr	\$ 5,098.30	10%	\$ 4,588.47
0891034	4-Port Aspire Mail Plus Expansion Daughter Board	\$ 2,038.30	10%	\$ 1,834.47
0891036	Aspire Mail DMS 8-Port Expansion Daughterboard	\$ 4,078.30	10%	\$ 3,670.47
0891038	512-Port CPU Card	\$ 3,145.00	10%	\$ 2,830.50
0891039	Feature Upgrade PAL Chip for 0891002	\$ 1,411.00	10%	\$ 1,269.90
0891040	Flash VRS Compact Flash	\$ 969.00	10%	\$ 872.10
0891042	4-Channel VoIP Media Gateway Card	\$ 1,360.00	10%	\$ 1,224.00
0891043	4-Channel VoIP Media Gateway Expansion Daughterboard	\$ 1,360.00	10%	\$ 1,224.00
0891044	2-to-4 Port Aspire Mail Upgrade	\$ 678.30	10%	\$ 610.47
0891045	4-Port Aspire Mail Expansion Daughter Board	\$ 1,358.30	10%	\$ 1,222.47
0891046	4-Port Loop-Start Trunk Card	\$ 153.00	10%	\$ 137.70
0891047	2-Port DID/OPX Card	\$ 306.00	10%	\$ 275.40
0891048	4-Port Analog Station Card	\$ 297.50	10%	\$ 267.75
0891049	4-Port Analog Station Daughter Board	\$ 297.50	10%	\$ 267.75
0891051	8-Port Aspirephone Card	\$ 144.50	10%	\$ 130.05
0891052	Aspire Mail FMS Plus VM - 4-Port/30-Hour	\$ 2,038.30	10%	\$ 1,834.47
0891053	Ethernet Interface Card	\$ 170.00	10%	\$ 153.00
0891054	4-Channel VoIP Media Gateway Card	\$ 1,190.00	10%	\$ 1,071.00
0891055	4-Channel VoIP Media Gateway Daughter Board	\$ 1,190.00	10%	\$ 1,071.00
0891057	8-Port Aspire Mail Plus Expansion Daughter Board	\$ 3,738.30	10%	\$ 3,364.47
0891058	32-Port Aspirephone Card	\$ 722.50	10%	\$ 650.25
0891059	Aspire Mail Plus AMIS Networking Activation	\$ 848.30	10%	\$ 763.47
0891060	Flash Memory PCMCIA Card – System S/W	\$ 338.30	10%	\$ 304.47
0891061	Flash Memory PCMCIA Card – Blank	\$ 85.00	10%	\$ 76.50
0891064	Aspire-S CompactFlash Card - Blank	\$ 68.00	10%	\$ 61.20
0891065	Aspire-S CompactFlash Card - with System Software	\$ 253.30	10%	\$ 227.97
0891066	Aspire Mail 4-Port Exp. License	\$ 1,358.30	10%	\$ 1,222.47



PART NUMBER	DESCRIPTION	List	State Discount	Unit
0891067	16-Channel VoIP Media Gateway Expansion Daughterboard	\$ 3,400.00	10%	\$ 3,060.00
0891069	Aspire Conference Bridge Card	\$ 1,113.50	10%	\$ 1,002.15
0891080	Ultra CallAnalyst Software Upgrade	\$ 476.00	10%	\$ 428.40
0891081	Ultra CallAnalyst Lite	\$ 187.00	10%	\$ 168.30
0891082	Ultra CallAnalyst Lite - to - Full Upgrade	\$ 969.00	10%	\$ 872.10
0891083	Ultra CallAnalyst Full	\$ 1,020.00	10%	\$ 918.00
0891084	Ultra CallAnalyst Full + 1 Client	\$ 1,513.00	10%	\$ 1,361.70
0891085	Additional 1 Client for Ultra CallAnalyst Full	\$ 493.00	10%	\$ 443.70
0891086	Aspire PC Attendant Software	\$ 950.30	10%	\$ 855.27
0891090	DECT 4-Port Interface Card	\$ 1,572.50	10%	\$ 1,415.25
0891091	DECT 8-Port Interface Card	\$ 1,946.50	10%	\$ 1,751.85
0891092	DECT 12-Port Interface Card	\$ 2,660.50	10%	\$ 2,394.45
0891094	Ultra CallAnalyst Enterprise Remote Site License w/ 128-port License	\$ 1,530.00	10%	\$ 1,377.00
0891095	Ultra CallAnalyst Enterprise Server with 128-Port License	\$ 4,505.00	10%	\$ 4,054.50
0891096	Ultra CallAnalyst Enterprise Remote Site License with No	\$ 935.00	10%	\$ 841.50
0891097	Ultra CallAnalyst Enterprise Additional 128-Port License	\$ 1,122.00	10%	\$ 1,009.80
0891098	Ultra CallAnalyst Enterprise Additional Network Client	\$ 1,062.50	10%	\$ 956.25
0891099	Multi-Site Reporting Thin Client S/W for Ultra CallAnalyst	\$ 306.00	10%	\$ 275.40
0891100	Aspire TAPI 1.x Licenses Qty/5	\$ 831.30	10%	\$ 748.17
0891101	Aspire TAPI 1.x Licenses Qty/1	\$ 185.30	10%	\$ 166.77
0891102	Aspire PC Assistant/25 Clients	\$ 2,463.30	10%	\$ 2,216.97
0891102B	Aspire PC Assistant/25 Clients	\$ 1,190.00	10%	\$ 1,071.00
0891103	Aspire PC Assistant/1 Client	\$ 168.30	10%	\$ 151.47
0891103B	Aspire PC Assistant/1 Client	\$ 85.00	10%	\$ 76.50
0891104	Aspire PC Assistant/10 Clients	\$ 1,477.30	10%	\$ 1,329.57
0891104B	Aspire PC Assistant/10 Clients	\$ 680.00	10%	\$ 612.00
0891105	Aspire PMS License	\$ 297.50	10%	\$ 267.75
0891300	19" Rack Mount Bracket	\$ 595.00	10%	\$ 535.50
0891303	Desk/Floor Mount Bracket	\$ 127.50	10%	\$ 114.75
0892000	Faceplate Kit - 22B Non-Display Telephone (Pkg 10)	\$ 49.30	10%	\$ 44.37
0892001	Faceplate Kit - 22B Display Telephone (Pkg 10)	\$ 49.30	10%	\$ 44.37
0892002	Faceplate Kit - 34B Display Telephone (Pkg 10)	\$ 49.30	10%	\$ 44.37
0892003	Faceplate Kit - 34B Super Disp Telephone (Pkg 10)	\$ 57.80	10%	\$ 52.02
0892004	Null Modem Cable - 9-Pin/6' F-F	\$ 17.00	10%	\$ 15.30
0892005	Aspire Faceplate Rivets (Pkg 25)	\$ 25.50	10%	\$ 22.95
0892006	Aspire-S/IntraMail Demo Kit	\$ 3,060.00	10%	\$ 2,754.00
0892007	Aspire Plastic Wall Mount Plate (Pkg 10)	\$ 40.80	10%	\$ 36.72
0892008	Aspire Wall Mount Hooks (Pkg 10)	\$ 4.25	10%	\$ 3.83
0892009	Metal Wall Plates-for 2Btn Tel (Pkg 5)	\$ 20.40	10%	\$ 18.36
0892014	Aspire IP Softphone	\$ 85.00	10%	\$ 76.50
0892015	Aspire Video IP Softphone	\$ 127.50	10%	\$ 114.75
0892016	Aspire DLS Bracket (Package 5)	\$ 25.50	10%	\$ 22.95
0892017	Faceplate Kit - 110-Button DSS Console (Pkg 5)	\$ 76.50	10%	\$ 68.85
0892018	Faceplate Kit - 24-Button DLS Console (Pkg 5)	\$ 59.50	10%	\$ 53.55
0892025	Aspire 4VOIP/Bluefire IX2010 Bundle	\$ 3,425.50	10%	\$ 3,082.95
0892026	Aspire 16VOIP/Bluefire IX2010 Bundle	\$ 6,315.50	10%	\$ 5,683.95
0892027	Aspire 4VOIP/Bluefire IX1035 Bundle	\$ 4,539.00	10%	\$ 4,085.10



PART NUMBER	DESCRIPTION	List	State Discount	Unit
0892028	Aspire 16VOIP/Bluefire IX1035 Bundle	\$ 7,437.50	10%	\$ 6,693.75
0892029	Aspire IP Telephone/Bluefire IX2010 Bundle	\$ 2,762.50	10%	\$ 2,486.25
0892030	Aspire IP Telephone/Bluefire IX1035 Bundle	\$ 3,876.00	10%	\$ 3,488.40
0892031	Aspire-S/NVM-2e 2pt Bundle	\$ 2,864.50	10%	\$ 2,578.05
0892032	Aspire-S/NVM-2e 4pt Bundle	\$ 3,893.00	10%	\$ 3,503.70
0892033	Aspire-S 4VOIP/Bluefire IX2010 Bundle	\$ 3,255.50	10%	\$ 2,929.95
0892034	Aspire-S 4VOIP/Bluefire IX1035 Bundle	\$ 4,369.00	10%	\$ 3,932.10
0892035	Aspire/Bluefire IX1035-T 16-port Bundle	\$ 7,114.50	10%	\$ 6,403.05
0892036	Aspire/Bluefire IX1035-T 4-port Bundle	\$ 4,224.50	10%	\$ 3,802.05
0892037	Aspire-S 4VOIP/Bluefire IX1035-T Bundle	\$ 4,054.50	10%	\$ 3,649.05
0892101	Aspire inDepth/inDepth Plus/Demo CD	\$ 10.20	10%	\$ 9.18
0892102	Aspire inDepth Software	\$ 3,731.50	10%	\$ 3,358.35
0892103	Aspire inDepth Plus Software	\$ 6,791.50	10%	\$ 6,112.35
0892125	Aspire inDepth Supervisor	\$ 3,731.50	10%	\$ 3,358.35
0892126	Aspire inView for 5 Agents	\$ 2,380.00	10%	\$ 2,142.00
0892127	Aspire inView for 10 Agents	\$ 4,590.00	10%	\$ 4,131.00
0892128	Aspire inView for 15 Agents	\$ 6,120.00	10%	\$ 5,508.00
0892129	Aspire inView for 20 Agents	\$ 6,970.00	10%	\$ 6,273.00
0892130	Aspire inView for 25 Agents	\$ 7,735.00	10%	\$ 6,961.50
0892131	Aspire inView for 30 Agents	\$ 8,500.00	10%	\$ 7,650.00
0892132	Aspire inView for 40 Agents	\$ 10,030.00	10%	\$ 9,027.00
0892133	Aspire inView for 50 Agents	\$ 11,645.00	10%	\$ 10,480.50
0892134	Aspire inView Upgrade to add 5 Agents	\$ 2,380.00	10%	\$ 2,142.00
0892135	Aspire inView Upgrade to add 10 Agents	\$ 4,590.00	10%	\$ 4,131.00
0892136	Aspire inView Upgrade to add 15 Agents	\$ 6,120.00	10%	\$ 5,508.00
0892137	Aspire inView Upgrade to add 20 Agents	\$ 6,970.00	10%	\$ 6,273.00
0892138	Aspire inView Upgrade to add 25 Agents	\$ 7,735.00	10%	\$ 6,961.50
0892139	Aspire inView Upgrade to add 30 Agents	\$ 8,500.00	10%	\$ 7,650.00
0892140	Aspire inView Upgrade to add 40 Agents	\$ 10,030.00	10%	\$ 9,027.00
0892141	Aspire inDepth Lite to inDepth Upgrade	\$ 3,230.00	10%	\$ 2,907.00
0892142	Aspire inDepth Lite to inDepth Plus Upgrade	\$ 6,290.00	10%	\$ 5,661.00
0892143	inDepth to inDepth Plus Upgrade	\$ 3,400.00	10%	\$ 3,060.00
0892144	Aspire inDepth Lite Software	\$ 1,020.00	10%	\$ 918.00
0892153	inDepth Upgrade from i-Series to Aspire	\$ 1,698.30	10%	\$ 1,528.47
0892180	Aspire IntraMail VM - 4-Port/8-Hour	\$ 1,018.30	10%	\$ 916.47
0892182	Aspire IntraMail VM - 8-Port/16-Hour	\$ 1,868.30	10%	\$ 1,681.47
0893000	Aspire Features and Specs Datasheet	\$ 28.90	10%	\$ 26.01
0893001	Aspire Brochure -- Main	\$ 76.50	10%	\$ 68.85
0893002	Aspire Direct Mail Piece	\$ 25.50	10%	\$ 22.95
0893003	Aspire ACD & inDepth Datasheet	\$ 37.40	10%	\$ 33.66
0893004	Bottom Directory Tray (Pkg 10)	\$ 25.50	10%	\$ 22.95
0893005	Aspire IP Datasheet	\$ 43.69	10%	\$ 39.32
0893006	Aspire Conference Bridge Datasheet	\$ 37.40	10%	\$ 33.66
0893007	Aspire PC Attendant Datasheet	\$ 37.40	10%	\$ 33.66
0893008	Aspire Desktop Application Datasheet	\$ 37.40	10%	\$ 33.66
0893020	Aspire Posters	\$ 20.40	10%	\$ 18.36
0893031	Aspire Mail / Aspire Mail DMS Brochure	\$ 47.40	10%	\$ 42.66
0893040	Call Analyst / Enterprise Datasheet	\$ 51.00	10%	\$ 45.90
0893050	Aspire Wireless Datasheet	\$ 59.50	10%	\$ 53.55



PART NUMBER	DESCRIPTION	List	State Discount	Unit
0893060	Aspire-S Features and Specs Datasheet	\$ 39.10	10%	\$ 35.19
0893100	Aspire Hardware Manual	\$ 51.00	10%	\$ 45.90
0893130	Aspire-S Hardware Manual	\$ 30.60	10%	\$ 27.54
0893200	Aspire Software Manual	\$ 122.40	10%	\$ 110.16
0893400	Aspire Multibutton Feature Handbook	\$ 13.60	10%	\$ 12.24
0893401	Aspire Multibutton Quick Reference Guide	\$ 1.53	10%	\$ 1.38
0893404	Aspire 4-Button IP Phone User Guide	\$ 2.47	10%	\$ 2.22
0893405	Aspire 2-Button Telephone Quick Reference Guide	\$ 2.47	10%	\$ 2.22
0893406	Aspire Single Line Telephone Quick Reference Guide	\$ 1.53	10%	\$ 1.38
0893407	Aspire H.323 Telephone Quick Reference Guide	\$ 2.55	10%	\$ 2.30
0893408	Aspire Cordless II/Cordless Lite II Quick Reference Guide	\$ 2.55	10%	\$ 2.30
0893410	Aspire Mail Quick Reference Guide	\$ 2.04	10%	\$ 1.84
0893411	Aspire Mail Quick Reference Guide for System Admin	\$ 8.50	10%	\$ 7.65
0893420	Aspire IntraMail Quick Reference Guide	\$ 1.70	10%	\$ 1.53
0893421	Aspire IntraMail Quick Reference Guide for System Admin	\$ 5.10	10%	\$ 4.59
0893600	Aspire System Document CD	\$ 8.50	10%	\$ 7.65
0893605	Aspire Mail System Document CD	\$ 10.20	10%	\$ 9.18
0893630	Aspire IntraMail System Document CD	\$ 6.80	10%	\$ 6.12
0893700	Desi Label for 22BTN Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893701	Desi Label for 22BTN Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893702	Desi Label for 34BTN Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893703	Desi Label for Super Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893704	Desi Label for 2BTN Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893705	Desi Label for 110 DSS-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893706	Desi Label for 24 DLS-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893720	Desi Label for 22BTN Tel-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893721	Desi Label for 22BTN Display Tel-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893722	Desi Label for 34BTN Display Tel-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893723	Desi Label for Super Display Tel-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893724	Desi Label-2BTN Tel-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893725	Desi Label for 110 DSS-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893726	Desi Label for 24 DLS-Black (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893730	Desi Label for 22BTN Tel-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893731	Desi Label for 22BTN Display Tel-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893732	Desi Label for 34BTN Display Tel-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893733	Desi Label for Super Display Tel-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893734	Desi Label for 2BTN Tel-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893735	Desi Label for 110 DSS-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893736	Desi Label for 24 DLS-White (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893740	Desi Label for 22BTN Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893741	Desi Label for 22BTN Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893742	Desi Label for 34BTN Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893743	Desi Label for Super Display Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893744	Desi Label for 2BTN Tel-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893745	Desi Label for 110 DSS-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893746	Desi Label for 24 DLS-Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893760	Desi Label for 223BTN Tel-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893761	Desi Label for 22BTN Display Tel-Solid (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893762	Desi Label for 34B Display Tel-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36



PART NUMBER	DESCRIPTION	List	State Discount	Unit
0893763	Desi Label for Super Disp Tel-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893764	Desi Label for 2BTN Tel-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893765	Desi Label for 110 DSS-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893766	Desi Label for 24 DLS-Solid Silver (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893770	Desi Label for 223Btn Tel-Solid Silver/Blank Feature Keys (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893771	Desi Label for 22Btn Display Tel-Solid Silver/Blank Feature	\$ 20.40	10%	\$ 18.36
0893772	Desi Label for 34B Display Tel-Solid Silver/Blank Feature	\$ 20.40	10%	\$ 18.36
0893773	Desi Label for Super Display Tel-Solid Silver/Blank Feature	\$ 20.40	10%	\$ 18.36
0893774	Desi Label for 2Btn Tel-Solid Silver/Blank Feature Keys (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893775	Desi Label for 110Btn DSS-Solid Silver/Blank Feature Keys (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893776	Desi Label for 24Btn DLS-Solid Silver/Blank Feature Keys (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893780	Desi Label for 223Btn Tel-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893781	Desi Label for 22Btn Display Tel-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893782	Desi Label for 34B Display Tel-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893783	Desi Label for Super Display Tel-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893784	Desi Label for 2Btn Tel-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893785	Desi Label for 110Btn DSS-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
0893786	Desi Label for 24Btn DLS-Blank (Pkg 25)	\$ 20.40	10%	\$ 18.36
922450	Doorchime Box	\$ 136.00	10%	\$ 122.40
1770041	NVM-DFx VM	\$ 7,138.30	10%	\$ 6,424.47
1770045	NVM-DFx Lite VM	\$ 5,098.30	10%	\$ 4,588.47
1770051	NVM-DFx D/4 PCI-UF 4-Port Expansion Card	\$ 2,635.00	10%	\$ 2,371.50
1770052	Desktop Messaging – 25-Client Expansion License	\$ 2,125.00	10%	\$ 1,912.50
1770053	Desktop Call Control – 25-Client Expansion License	\$ 1,615.00	10%	\$ 1,453.50
1770055	4-Port Fax Activation Fee w/o Software or Port Card	\$ 2,548.30	10%	\$ 2,293.47
1770056	Text-to-Speech Software – Single Port	\$ 2,548.30	10%	\$ 2,293.47
1770057	AMIS Networking Software	\$ 1,360.00	10%	\$ 1,224.00
1770058	Hotel/Motel Software Package	\$ 1,020.00	10%	\$ 918.00
1770060	Property Management Software Package	\$ 1,360.00	10%	\$ 1,224.00
1770080	NVM DFx Brochure	\$ 75.41	10%	\$ 67.87

**Maintenance Labor Pricing**

Description	Manufacturer's Price	Discount	State Price
Labor rate, maintenance, per hr	\$ 105.00	20%	\$ 84.00
Labor rate, maintenance, overtime, per hr	\$ 157.50	20%	\$ 126.00
Labor rate, installation, per hr	\$ 105.00	20%	\$ 84.00
Labor rate, installation, overtime, per hr	\$ 157.50	20%	\$ 126.00
<b>per port price for NEC Aspire maintenance</b>			<b>\$ 1.60</b>

## **Schedule B**

### ***Problem Escalation Procedures***

Escalation hierarchy:

**Scott Alden, Account Manager,**  
2238 Hawthorne Blvd.  
Portland, Oregon 97214  
503-265-0451 voice  
503-265-0460 fax  
[scottalden@callbesttel.com](mailto:scottalden@callbesttel.com)

**Mike Schrader Service Manager**  
2238 Hawthorne Blvd.  
Portland, Oregon 97214  
503-265-0459 voice  
503-265-0460 fax  
[Mikes@callbesttel.com](mailto:Mikes@callbesttel.com)

**Trish Harris Branch Manager**  
2238 Hawthorne Blvd.  
Portland, Oregon 97214  
503-265-0452 voice  
503-265-0460 fax  
[trishh@callbesttel.com](mailto:trishh@callbesttel.com)

**Dennis Poulin, Managing Member**  
1150 Knutson Ave., Ste 10  
Medford, Oregon 97504  
541-842-1000 voice  
541-842-4329 fax  
[dennisp@callbesttel.com](mailto:dennisp@callbesttel.com)

**Gary Gonzalez, Managing Member**  
1140 Willagillespie Rd., Ste 18  
Eugene, Oregon 97401  
541-688-5575 voice  
541-683-9919 fax  
[garyg@callbesttel.com](mailto:garyg@callbesttel.com)

## **Schedule C**

### ***Maintenance Plan***

The following services are included with you Best Tel maintenance plan

One year parts and labor warranty all equipment provided in this contract

#### **Emergency call guaranteed**

Emergency maintenance/repair response time on site during warranty will be within four (4) hours, twenty-four (24) hours a day, seven (7) days a week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours from time of notification. Emergency maintenance applies to the following conditions:

Failure of the entire system or

Failure of 50% or more of the system stations; or

Failure of 50% or more of the system's trunks

#### **Standard call guaranteed with in 24 hours**

Non-emergency maintenance/repair response time during warranty will be within eight (8) business hours after notification and will be performed during normal Business Hours.

No charge for software upgrades

No labor charge to make remote changes to your system

Unlimited training for employees

Unlimited user guide

Technical service personnel available 24/7/365

Priority dispatch on all service calls

Priority scheduling for adds, moves, and changes

Waiver of labor charges for backup and archiving of system databases

Annual preventative maintenance visit

Annual analysis of connectivity charges, Local and Long Distance audits and recommendations,

Quarterly technology webinars on advanced and emerging business applications

**Schedule D**  
***Customer Software License Agreement***

PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THE ASPIRE: USING THE PRODUCT SHALL INDICATE THAT YOU HAVE ACCEPTED THE TERMS AND CONDITIONS OF THIS LEGAL AGREEMENT. AS REFERENCED HEREIN, IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU SHOULD IMMEDIATELY RETURN THE PRODUCT UNUSED TO THE COMPANY FROM WHICH YOU PURCHASED IT WITHIN A REASONABLE PERIOD OF TIME (NOT TO EXCEED ONE MONTH) FOR A FULL REFUND OF MONEY PAID FOR THE PRODUCT.

## LICENSE AGREEMENT

NEC Infrontia, Inc. ("NECII") grants the end-user ("You") the right to use the software preinstalled on the Aspire you acquired ("Product") pursuant to the following terms and conditions ("Agreement").

### 1. TERMS

- (1) This Agreement is effective upon usage of the Product and shall remain in force until terminated.
- (2) You may terminate it voluntarily at any time by written notice as indicated in Section 9.
- (3) NECII may terminate this Agreement without notice upon your failure to abide by this Agreement.
- (4) All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damage, and NECII or its supplier's proprietary rights shall survive termination.

### 2. LICENSE

NECII grants you a nonexclusive and limited license to use the software solely on the Product which is provided to you as preinstalled in the Product ("Software").

### 3. RESTRICTIONS

- (1) You may not rent or lease the Software, but you may transfer the Product, the Software in its entirety and accompanying documentation on a permanent basis, provided that you retain no copies of the Software and the recipient agrees to be bound by all of the terms and conditions of this Agreement.
- (2) You agree not to modify, alter, decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the Software.
- (3) You may not copy the Software.
- (4) You may not use the Software other than in connection with the Product.
- (5) You will not export or re-export the Software without the appropriate United States or foreign government licenses.

### 4. TITLE

Title to and ownership of the Software, related documentation and any reproduction thereof shall remain with NECII and its suppliers and the trademarks are the property of such trademark owners. This Agreement does not grant you any right (by license, ownership or otherwise) in or to patents, copyrights, trade secrets, trade names, trademarks or any other intellectual property right with respect to the Software.

### 5. COPYRIGHT

THE SOFTWARE IS COPYRIGHTED AND, EXCEPT AS PERMITTED BY THIS AGREEMENT, YOU MAY NOT DUPLICATE THE SOFTWARE OR DISCLOSE IT TO ANY OTHER PARTY.

### 6. LIMITED WARRANTY

YOU AGREE THAT THE SOFTWARE IS PROVIDED AND LICENSED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NECII AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE. YOU BEAR THE ENTIRE RISK RELATING TO THE QUALITY OF THE SOFTWARE AND, IF THE SOFTWARE PROVES TO HAVE ANY DEFECTS, YOU ASSUME THE COST OF ANY NECESSARY SERVICING OR REPAIRS. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THAT THE ABOVE EXTENSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIAL LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

### 7. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NECII OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFIT, INTERRUPTION OF BUSINESS,

OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF NECII OR ITS SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NECII OR ITS SUPPLIER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNT YOU ACTUALLY PAID FOR THE SOFTWARE PORTION OF THE PRODUCT. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

8. OTHERS

- (1) This Agreement shall be construed and interpreted according to the laws of Connecticut.
- (2) The Software is a "commercial item" as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, NECII provides the Software to U.S. Government End Users only pursuant to the terms and conditions therein.

9. NOTICE

NEC Infrontia, Inc.  
6535 N. State Highway 161, Irving, Texas 75039-2402  
Attn: Contracts Management  
Main Telephone: 214-262-2000



**Amendment 10-01  
to  
Master Contract # T10-MST-290  
For  
NEC Aspire Maintenance and Support**

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This Amendment 10-01 to Master Contract T10-MST-290 is entered into by and between the Department of Information Services (DIS), an agency of the state of Washington, and BestTel, LLC (Contractor).

Pursuant to Section 44, *Authority for Modifications and Amendments*, the parties agree to amend Contract as follows:

The purpose of this Amendment is to include the standard contract provisions applicable when funds from the American Recovery and Reinvestment Act (ARRA) are being used. These provisions have been approved as to form by the Office of the Attorney General for the State of Washington. Purchasers shall clearly designate when ARRA provisions apply on the Purchase Order, Statement of Work or other Order Document provided to the Contractor to assure Contractor has notice that the Purchase is governed by the applicable ARRA contract provisions below.

1. The parties hereby agree to add after Schedule D, a new Schedule E:

**American Reinvestment and Recovery Act of 2009 Requirements**

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 [www.ccr.gov](http://www.ccr.gov). 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/esa/whd/contracts/dbra.htm> . 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 grand 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](mailto:ARRA@esd.wa.gov).

2. Section 42, *Section Headings, Incorporated Documents and Order of Precedence*, is deleted in its entirety and replaced with the following new Section 42:

**42. Section Headings, Incorporated Documents and Order of Precedence**

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

42.2. 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 and E;
- b) DIS' RFQ dated June 10, 2009;
- c) Vendor's Response to DIS' RFQ;
- d) The terms and conditions contained on Purchaser's Order Documents, if used; and
- f) All Vendor 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 Equipment to Purchaser.

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

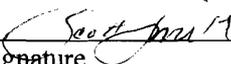
- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Contract;
- c) Schedules A, B, C, D and E;
- d) DIS' RFQ dated June 10, 2009;
- e) Vendor's Response to DIS' RFQ;
- f) The terms and conditions contained on Purchaser's Order Documents, if used;  
and
- g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

All other terms and conditions of the original Master Contract, as amended, shall remain in full force and effect.

This Amendment, effective upon the date of DIS' signature is executed by the persons signing below, who warrant, respectively, that they have the authority to execute it on behalf of the party indicated.

**IN WITNESS WHEREOF**, the parties have read and understand this Amendment 10-01, and by their signatures below, agree to each and every particular.

**ACCEPTED**  
**Washington State**  
**Department of Information Services**

  
 \_\_\_\_\_  
 Signature  
 Scott Smith  
 \_\_\_\_\_  
 Print or Type Name  
 Planning and Design Manager  
 \_\_\_\_\_  
 Title 12/29/09  
Date

**ACCEPTED**  
**BestTel, LLC**

  
 \_\_\_\_\_  
 Signature  
 Tamara H. Gonzalez  
 \_\_\_\_\_  
 Print or Type Name  
 Member of LLC  
 \_\_\_\_\_  
 Title 12-7-09  
Date



**Amendment 11-02**  
**to**  
**Master Contract # T10-MST-290**  
**For**  
**NEC Aspire Maintenance and Support**

Pursuant to Section 44, *Authority for Modifications and Amendments*, this amendment 11-02 to Master Contract T10-MST-290 is entered into between the Department of Information Services (DIS), an agency of the state of Washington, and BestTel, LLC (Contractor).

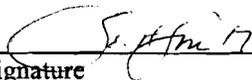
Recognizing Contractor changed its name from BestTel, LLC to TouchPoint Networks, LLC as evidenced by the Articles of Amendment filed with the Oregon Secretary of State on October 5, 2010 (attached as Exhibit "A"), and the change being effective September 22, 2010, the parties agree to amend Contract as follows:

1. The contract covered by this amendment is amended by substituting the name "BestTel, LLC" for the name "TouchPoint, LLC" wherever it appears in the contract.

This amendment accomplishes a change of entity name only and all rights and obligations of DIS and of the Contractor under the contract are unaffected by this change. All other terms and conditions of the original Master Contract, as amended, shall remain in full force and effect.

This Amendment 11-02 shall be effective as of date of signature by DIS.

**ACCEPTED**  
*Washington State*  
*Department of Information Services*

  
 \_\_\_\_\_  
 Signature  
 Scott Smith  
 \_\_\_\_\_  
 Print or Type Name  
 TIS PROGRAM COORDINATOR  
 \_\_\_\_\_  
 Title Date

**ACCEPTED**  
*BestTel, LLC*

  
 \_\_\_\_\_  
 Signature  
 Charles E. Whiteley  
 \_\_\_\_\_  
 Print or Type Name  
 PARTNER  
 \_\_\_\_\_  
 Title Date



**Amendment Number 13-03  
to  
Master Contract Number T10-MST-290  
for  
NEC Aspire Maintenance and Support**

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In accordance with Provision 44 *Authority for Modifications and Amendments* of Master Contract T10-MST-290, this Amendment is entered into between the State of Washington, **Department of Enterprise Services** (DES) and **TouchPoint, LLC.** (Vendor).

1. Pursuant to Section 2 (Term), the parties agree to extend the term of this Master Contract for an additional one (1) year term from August 13, 2012 through August 12, 2013.
2. Section 41, Vendor Account Manager is deleted in its entirety and replaced with the following:

**41. Vendor Account Manager**

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

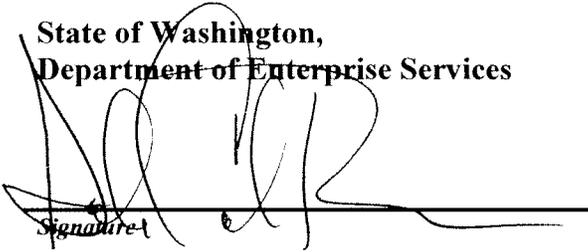
Vendor Account Manager: Tina Muswick  
Address: 2238 SE Hawthorn Blvd, Portland, OR 97218  
Phone: (541) 842-1000      Fax:      E-mail:  
[tinam@asktouchpoint.com](mailto:tinam@asktouchpoint.com)

All other provisions of Master Contract T10-MST-290, as previously amended, shall remain in full force and effect.

This Amendment 13-03 shall be effective as of August 13, 2012.

Approved

State of Washington,  
Department of Enterprise Services

  
Signature

Dale Colbert

Print or Type Name

Procurement Unit Manager

Title

Date

Approved

TouchPoint, LLC

  
Signature

GARY GONZALEZ

Print or Type Name

PRESIDENT

Title

9/21/12

Date

RECEIVED  
SEP 26 2012