
Master Contract

for

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

between

Washington State Department of Enterprise Services

and

Carahsoft Technology Corporation

Effective Date: August 26, 2013

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Exhibit A: *DES Request for Proposals Number 13-2000-ACCO for ITSM Software and Professional Services*

Exhibit B: *Contractor's Proposal*

Note: *Exhibits A and B are not attached but are available upon request from the DES*

MASTER CONTRACT NUMBER 06213

for

ITSM Software and Professional Services

PARTIES

This Master Contract (the "Master Contract") is entered into by and between the State of Washington, acting by and through the Department of Enterprise Services, an agency of Washington State government located at 1500 Jefferson Street SE Olympia WA, 98504 hereinafter referred to as "DES", and *Carahsoft Technology Corp.*, a Maryland corporation, located at 12369 Sunrise Valley Drive Reston, VA 20191 licensed to conduct business in the state of Washington hereinafter referred to as "Contractor," for the purpose of providing Information Technology Services Management software and related professional services, as described and identified herein.

RECITALS

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

Contractor submitted a timely Proposal to the RFP.

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

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

NOW THEREFORE, DES enters into this Master Contract with Contractor the terms and conditions of which shall govern Contractor's providing to Purchasers the Information Technology Services software and related services as described herein, on a convenience or as needed basis. This Master Contract is not for personal use.

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

1. Definition of Terms

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

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

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

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

“**Contractor**” shall mean Carahsoft Technology Corporation, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Master Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Master Contract.

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

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

“**OCIO**” shall mean the Washington State Office of the Chief Information Officer.

“**Preexisting Materials**” shall mean materials and know-how that are delivered under this Master Contract by Contractor to DES or a Purchaser, but that do not originate therefrom.

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

“**Products**” shall mean any equipment or hardware (including any embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for its proper operation) supplied by Contractor, Software, and documentation provided by Contractor under the terms of this Master Contract. The term “Products” shall include Work Product, as defined below.

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

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

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

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

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

“SaaS Services” shall mean Services related to the delivery of a Software-based Proposed Solution through the internet.

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

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

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

“Software” shall mean any software supplied by Contractor, the object code version of computer programs delivered pursuant to this Master Contract. Software also means the source code version, where provided by Contractor. 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 not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“Statement of Work” or “SOW” shall mean a statement of the work to be accomplished by Contractor for a Purchaser under the terms and conditions of this Master Contract attached as Schedule B.

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

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

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

“Work Product” shall mean, collectively, any custom additions and modifications to Contractor’s Preexisting Material, and all data and work products produced pursuant to this Master Contract and any Statement of Work, 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.

Master Contract Term

2. Term

- 2.1. Term of Master Contract: This Master Contract’s initial term shall be for a period of three (3) years from the Effective Date (the “Initial Term”).
- 2.2. Renewal of Master Contract: This Master Contract’s term shall be automatically extended for up to two (2) additional one (1) year periods (each a “Renewal Term”)

unless DES terminates by giving written notice of its decision not to extend to Contractor not less than thirty (30) calendar days prior to the then-current Master Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing

2.3. Term of SOWs

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

3. Survivorship

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

Pricing, Invoice and Payment

4. Pricing

- 4.1. Contractor agrees to provide the Products and Services at the Prices set forth in the *Price List* attached as Schedule A to this Master Contract. Such Prices may not be increased during the Initial Term of this Master Contract. Prices are considered maximum or "ceiling" prices only. On a project by project basis, Contractor may elect to provide Products and/or Services to Purchaser for performance of a Statement of Work at a lower Price than originally established in this Master Contract.
- 4.2. Consideration for each SOW will be stated in the Purchaser's SOW. Purchaser shall make payments on SOWs to the Contractor consistent with the terms set out in such SOW. Funding may be federal, state and/or private-grant-based.
- 4.3. Purchaser shall reimburse Contractor for travel and other expenses as identified in a Statement of Work, or as authorized in writing in advance by Purchaser in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/contents.asp>). Contractor shall provide a detailed itemization of expenses, including description.

amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

- 4.4. At least ninety (90), but not more than one hundred twenty (120), calendar days before the end of the then-current term of this Master Contract, Contractor may propose Price increases by written notice to Purchaser. Any such proposed Price increase shall not exceed the lesser of (i) three percent (3%) or (ii) the then most recently published annual increase in percentage points of the U.S. Department of Labor "Consumer Price Index, US City Average, All Items, Not Seasonally Adjusted" (CPI-U, Series Id: CUUR0000SA0). Price adjustments will be taken into consideration by Purchaser when determining whether to extend this Master Contract.
- 4.5. Contractor agrees that all the Prices, terms, warranties, and benefits provided under this Master Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same Products and Services under similar terms. If, during the Term of this Master Contract, Contractor enters into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided under this Master Contract, Contractor shall be obligated to provide the same to DES for subsequent Statements of Work.
- 4.6. Contractor agrees that Prices provided in this Master Contract assume that work is performed during Business Days and Hours. Overtime rates are not allowed unless required by state or federal law. Further, Prices are to be considered all-inclusive hourly rates to include all expenses (e.g., overhead, insurance, and administration including but not limited to the Administration Fee outlined in Section 61) except travel (see Section 4.3 above).

5. Advance Payment Prohibited

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

6. Taxes

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

7. Invoice and Payment

- 7.1. Contractor will submit properly itemized invoices as indicated in a Statement of Work. Invoices shall provide and itemize, as applicable:

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- a) DES Master Contract number 06213;
 - b) Purchaser Statement of Work contract number;
 - c) Contractor name, address, phone number, and Federal Tax Identification Number;
 - d) Description of Products or Services provided;
 - e) Date(s) that Products or Services were provided or made available to Purchaser, including number of hours worked.
 - f) Contractor's Price;
 - g) Net invoice Price;
 - h) Applicable taxes;
 - i) Other applicable charges;
 - j) Total invoice Price; and
 - k) Payment terms including any available prompt payment discounts.
- 7.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of the Products or Services, or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
 - 7.3. If applicable, with each invoice Contractor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE or Veteran-owned business under the SOW, as set forth in Section 19 below.
 - 7.4. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
 - 7.5. The Contractor's DES Master Contract number and the Purchaser Statement of Work number must appear on all bills of lading, packages, and correspondence relating to any SOW.
 - 7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
 - 7.7. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.

8. Overpayments to Contractor

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

Contractor's Responsibilities

9. Purchaser Eligibility

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

10. RFP Mandatory Requirements

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

11. Services and Statement of Work

- 11.1. All Services shall be performed pursuant to the terms of this Master Contract and shall be documented in a Statement of Work established between Purchaser and Contractor.
- 11.2. An SOW shall at a minimum:
 - a) Reference this DES Master Contract number 06213;
 - b) Identify Purchaser's SOW contract number;
 - c) Define project or task objectives;
 - d) Describe the Products to be delivered or scope of Services to be performed;
 - e) Identify deliverables;
 - f) Specify a timeline and period of performance;
 - g) Specify compensation and payment;
 - h) Describe Contractor's roles and responsibilities;
 - i) Describe Purchaser's roles and responsibilities; and
 - j) Provide signature block for both parties.
- 11.3. Other than as expressly permitted herein, the terms and conditions of any SOW cannot conflict with the terms and conditions of this Master Contract. In the event of any conflict, this Master Contract will prevail.
- 11.4. Where applicable, all Statements of Work must comply with Executive Order 10-07 regarding Performance-Based Contracting.

12. Commencement of Work

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

13. Provision of SaaS Services

- 13.1. SaaS Services may be accessed and used by Purchaser and its authorized Users across the entire spectrum of business and operational activities involving Purchaser and its authorized Users, now and in the future, directly or indirectly. Except as expressly set forth in any SOW, there are no use, user, user type, geographic, facility, site or other similar restrictions on the access or use of the SaaS Services by Purchaser or its authorized Users.
- 13.2. Support and maintenance services for all Software required to deliver SaaS Services and the support and maintenance services are included within the SaaS Services Price and at no additional cost to Purchaser.
- 13.3. Purchaser shall have a present license right in and to the Software that is used to provide the SaaS Services. The rights to the Proposed Solution provided by Contractor under any SOW constitutes "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended, and any SOW shall be governed by

Section 365(n) of the Bankruptcy Code, as applicable, in the event Contractor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Contractor or the trustee in bankruptcy rejects such SOW. In the event Contractor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Contractor or the trustee in bankruptcy rejects the SOW under Section 365 of the Bankruptcy Code, Purchaser shall have the right to: (a) treat the SOW as terminated; or (b) retain Purchaser's rights under the SOW, specifically including the right to exercise its rights granted herein to the Software (and to all work-in-progress relating thereto). Failure by Purchaser to assert its right to retain its benefits to the intellectual property embodied in the software pursuant to Section 365(n)(1)(B) of the Bankruptcy Code with respect to an executory contract rejected by Contractor or the trustee in bankruptcy shall not be construed by the courts as a termination of such SOW by Purchaser under Section 365(n)(1)(A) of the Bankruptcy Code. Any attempted assignment of any SOW by Contractor or the trustee in bankruptcy to a third party shall be subject to such third party providing "adequate assurance of future performance" (as referenced in Section 365(f) of the Bankruptcy Code) to Purchaser. Among other requirements as may be reasonably imposed, "adequate assurance" shall include a third party's express written agreement to assume all of Contractor's obligations under such SOW.

- 13.4. Solution Provider license use will be governed by the terms found in Schedules C, *Salesforce (GSA 01.30.2012 – Carahsoft Final) Service Terms*, and D, *BMC Master Subscription Services Agreement*.

14. Use of Contractor's Software

- 14.1. SaaS Services will be provided for the number of concurrent Users and named Users specified by Purchaser in a Statement of Work. Users will have access to the SaaS Services 24 hours per day, 7 days per week, except for interruptions by reason of maintenance or downtime beyond Contractor's reasonable control. Purchaser shall have the right to replace one named User with another.
- 14.2. Purchasers shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software or SaaS Services; provided, however, that Purchasers shall have the right to disassemble, reverse compile, reverse engineer or otherwise translate the Software and SaaS Services for purposes of creating interoperable computer programs.
- 14.3. Users will not transmit or share identification or password codes to persons other than authorized users or in any way permit the misuse of such codes in order to circumvent the intended and granted access to and use of the Software and SaaS Services.

15. Ownership/Rights in Data

- 15.1. Contractor represents and warrants that it owns the Software and has title to and all rights necessary to deliver the Software to, or permit the use of the Software by, Purchaser, and has obtained rights for such delivery or use from any third party software included in Contractor's Software. No title, ownership or interest in the Contractor's Software or any of its parts, in any third party Software incorporated into Contractor's Software, or applicable rights therein such as patents, copyrights and trade secrets, is transferred to DES or Purchaser.
- 15.2. Contractor hereby grants to Purchaser a non-exclusive, royalty-free, irrevocable license to use, publish, translate, reproduce, deliver, perform, display, and dispose of

Preexisting Material. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

- 15.3. Purchaser shall have and retain all ownership, right, title, interest and all intellectual property rights to Work Product. To the extent that any such rights in the Work Product vest initially with the Contractor by operation of law or for any other reason, Contractor hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to Purchaser. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 15.4. Contractor warrants that it has full rights to assign and license Work Product and Preexisting Material to Purchaser.
- 15.5. During the Term and any time thereafter, Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section, and when so obtained or vested, to maintain, renew, and restore the same.
- 15.6. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy, disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 15.7. Contractor shall exert best efforts to advise DES and Purchaser of all known or potential infringements of publicity, privacy or of intellectual property rights of the Preexisting Material furnished under this Master Contract or any SOW. DES and Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Master Contract or any SOW. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

16. Data Storage, Transmission and Archive

All Purchaser data must be stored and transmitted within the contiguous United States of America only. No offshore data transmission (e.g., for support services) or storage (e.g., data center, hosted site or backup, disaster recovery or other locations) will be permitted.

17. Security

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

17.1. Facility Access.

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

Contractor understands that in order to obtain access to Purchaser's premises, Contractor may have to be issued a security badge by Purchaser. Contractor shall provide certain personal information, including valid government-issued photo identification, prior to

obtaining a security badge when required by Purchaser. Contractor further understands that Purchaser will collect and retain such personal information for so long as the SOW is in effect and such individual(s) has access to the premises. Purchaser reserves the right to conduct background checks and deny an application for a security badge. Failure of Contractor to comply with Purchaser's security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser's facilities. Upon the earlier of termination of the SOW, or suspension or termination of access to Purchaser's facilities, Contractor shall return all security badges.

17.2. Remote Access to Network.

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

17.3. System Security

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

17.4. Security Incident Response

If Contractor becomes aware of any breach, including but not limited to unlawful access to any Purchaser data stored on or at Contractor's equipment or facilities, or unauthorized access to such equipment or facilities, which may result in loss, disclosure, or alteration of Purchaser data (each a "Security Incident"), Contractor will take the following actions:

- Notify Purchaser of the Security Incident immediately following discovery;
- Investigate the Security Incident and provide Purchaser with detailed information about the Security Incident;
- Take steps to mitigate the effects and to minimize any damage or loss resulting from the Security Incident; and

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- Provide cooperation and assistance to Purchaser in fulfilling its mitigation, investigation, and notification obligations under applicable law or regulation, including assisting third parties retained by Purchaser for such purposes.
 - Permit Purchaser to conduct, with reasonable prior written notice, under reasonable time, place and manner conditions, pursuant to appropriate confidentiality and technical restrictions, and at its own expense, an audit of Solution Provider's systems, policies and procedures relevant to the security and integrity of Purchaser data.

If a Security Incident is found to be the result of Contractor's failure to take reasonable security precautions, including, but not limited to, adoption and enforcement of a technology security policy, Contractor will assume complete responsibility for notifying affected individuals as directed by Purchaser.

17.5. Safety

Contractor 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.

18. Contractor Commitments, Warranties and Representations

- 18.1. Any written commitment by Contractor within the scope of this Master Contract or any Statement of Work shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Master Contract or any SOW, as applicable. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Proposal or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium used to effect a sale to DES or Purchaser.
- 18.2. Contractor represents and warrants that:
- a) The Solution shall possess all of the functional capabilities described in (i) any Statement of Work; (ii) Contractor's Proposal; (iii) at Contractor's demonstration; (iv) all of the written, printed, electronic or other format materials published or otherwise made available by Contractor to DES or Purchaser; and (v) any user, operations and similar manuals that Contractor or other software manufacturer makes generally available to customers, that relate to the functional, operational and/or performance capabilities of the Software or SaaS Services, as applicable; and
 - b) All such functions described in subsections (a) will be performed without any level 1 (high) defects or level 2 (medium) defects.
- 18.3. Except as may be otherwise expressly set forth in a Statement of Work, the various components of the Proposed Solution:
- a) Are designed to and shall not require multiple User sign-ons, forced sign-offs within, across or among all product lines, including Solutions provided to Purchaser;
 - b) Shall have the same "look and feel" within a product line; and
 - c) Either share a common database used across components of the Proposed Solution; or if there are multiple databases, the data among such databases is coordinated.

synchronized or otherwise managed by the Proposed Solution without the need of a separate interface.

- 18.4. To the extent the Proposed Solution has mobile features and/or using a mobile platform, the mobile component of the Proposed Solution complies with any laws, guidance, recommendations, guidelines or reports published by any regulatory or governmental bodies setting forth practices, policies and procedures to govern the use of mobile devices. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to particular Solution for as long as a Purchaser is receiving SaaS Services

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

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

20. Contractor's Protection of Confidential Information

- 20.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Master Contract or any SOW may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Master Contract or an SOW; to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Master Contract or an SOW; and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without DES or Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by DES or Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 20.2. If Contractor is requested or required to disclose any Confidential Information by subpoena, discovery request, or other legal process, Contractor will provide DES or Purchaser with reasonable written notice prior to disclosure so that a protective order or other appropriate remedy to prevent the disclosure of such Confidential Information may be sought. Contractor agrees to cooperate with DES or Purchaser in its efforts to obtain such protective order or other appropriate remedy.
- 20.3. Immediately upon expiration or termination of this Master Contract or an SOW, Contractor shall, at the disclosing party's option: (i) certify that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information; or (iii) take whatever other steps required of Contractor to protect Confidential Information.
- 20.4. Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Master Contract or an SOW; the purpose(s) for which the Confidential Information was received; who received,

maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with **Audits & Review of Contractor's Records**.

- 20.5. DES and Purchasers reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Master Contract or an SOW. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 20.6. Violation of this section by Contractor or its Subcontractors may result in termination of this Master Contract or an SOW, and demand for return of all Confidential Information, monetary damages, or penalties.

21. Facility and Security Requirements

- 21.1. Contractor and the data center in which SaaS Services are delivered shall be an ISO 27001/27002 compliant, certified and audited no less than annually by a qualified third party, with storage capacity capable of storing and otherwise supporting the data needs as described in the RFP.
- 21.2. Delivery of Contractor's Proposed Solution must comply with the Washington State Office of the Chief Information Officer IT Security Policy 141 and IT Security Standards 141.10. <http://ofm.wa.gov/ocio/policies/documents/141.10.pdf>
- 21.3. The Proposed Solution must pass the w3.org validator test (<http://www.w3.org/QA/Tools/>) and be compatible with federally regulated accessibility standards (Section 508, <http://www.section508.gov/>).
- 21.4. All data transfers must be encrypted using 128bit (or higher) SSL for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be signed by a trusted third party. No self-signed certificates will be considered.
- 21.5. The Proposed Solution must provide data recovery capability that adheres to the OCIO Disaster Recovery and Business Resumption Standard 151.10, at a minimum: <http://ofm.wa.gov/ocio/policies/documents/151.10.pdf>
- 21.6. Purchasers who use the State's TCP/IP backbone network, K-20 network, or Inter Governmental Network ("IGN") must consult with Washington State Consolidated Technology Services ("CTS") regarding business rules and escalation procedures to be set forth in any SOW with respect to state networks and state network security.

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

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

22. Enterprise Active Directory and Authentication

- 22.1. The Washington Enterprise Active Directory (EAD) is an identity management directory service and security system. This allows the State to manage and administer user accounts, authentication, security policies, and organizational resources such as user id and passwords, computers, printers, and servers within the State Governmental Network (SGN).
- 22.2. Contractor represents and warrants that any Services provided under any SOW shall, where applicable, fully leverage the EAD and that any systems implemented in the State with internal state users shall be authenticated using the EAD for user authentication on the SGN.
- 22.3. Contractor recognizes that the state has a single sign-on strategy in place to minimize the establishment of multiple user stores for authentication and any inconsistent application implemented is likely to cause damage and irreparable harm. Contractor represents and warrants that any Work Product produced under any SOW shall be consistent with this single sign-on strategy.

23. SecureAccess Washington®/ Fortress Anonymous and Authentication

- 23.1. Contractor represents and warrants that any Services provided under any SOW shall, when applicable, fully leverage the available security gateways of the SGN and that any systems implemented in the State for users external to state government shall be protected by either the SecureAccess Washington gateway, the Transact Washington gateway, or Fortress Anonymous (<http://www.cts.wa.gov/products/security/security.aspx>).
- 23.2. Contractor represents and warrants that any systems implemented in the State with external (non-SGN) users shall be authenticated using the State SecureAccess Washington Gateway and that Contractor will not create a separate user store in fulfilling any SOW.
- 23.3. The Purchaser agency shall be responsible for allowing or denying access and for validating individuals requesting access for any applications owned by it.

24. Enterprise Architecture Integration Architecture Standards

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

Purchaser's Responsibilities

25. Purchaser Use of Master Contract

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

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

Master Contract Administration

26. Notices

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

To Contractor at:

Carahsoft Technology Corp.
Attn: Ellen Lord
12369 Sunrise Valley Drive Suite D2
Reston, VA 20191

Phone: 703-871-8500 Manager
Fax: 703-871-8505
E-mail: contracts@carahsoft.com

To DES at:

Department of Enterprise Services
Attn: DES Contract Administrator
If by US Postal Service
PO Box 41411
Olympia, WA 98504-1411

If by Overnight Courier
1500 Jefferson St SE
Olympia WA 98504-1411

Phone: (360) 407-9429
Fax: (360) 407-9174
Email: scott.geist@des.wa.gov

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

- 26.2. 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.

27. Section Headings, Incorporated Documents and Order of Precedence

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

27.2. Each of the documents listed below is, by this reference, incorporated into this Master Contract as though fully set forth herein. In the event of any inconsistency in this Master Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) This Master Contract;
- c) the RFP;
- d) Contractor's Proposal;
- e) Schedules C and D;
- f) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect a sale to Purchaser.

28. Entire Agreement

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

29. Authority for Modifications and Amendments

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

30. Independent Status of Contractor

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

31. Governing Law

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

32. Rule of Construction as to Ambiguities

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

33. Subcontractors

- 33.1. Contractor may, with prior written permission from Purchaser, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Upon request by DES, Contractor shall provide a copy of the unexecuted final version of any proposed agreement to be entered into between Contractor and a Subcontractor prior to execution.
- 33.2. In addition to DES' rights under Section 33.1, for Subcontractors providing data center facility services, Contractor shall ensure that all such Subcontractor agreements include provisions naming DES as a direct and intended third party beneficiary or otherwise granting DES the right to directly enforce Contractor's rights against such Subcontractor. DES shall have the right to withhold its consent to any such proposed subcontract until DES is satisfied that such obligations have been appropriately addressed in the proposed subcontract agreement.
- 33.3. If DES determines, in its sole discretion, that any previously approved Subcontractor is not satisfactorily performing its obligations, DES reserves the right to require Contractor to replace such Subcontractor with another Subcontractor or for Contractor to directly perform such obligations.
- 33.4. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Master Contract and any SOW, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to DES or Purchasers, including but not limited to personal injury, physical loss, harassment of DES or Purchaser's employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Master Contract or any SOW occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Contractor's Records** sections of this Master Contract and any SOW shall apply to all Subcontractors.
- 33.5.

34. Assignment

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

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

35. Publicity

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

36. Audits & Review of Contractor's Records

- 36.1. Contractor shall maintain Records which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract. Contractor shall retain Records for six (6) years after the expiration or termination of this Master Contract. Records involving matters in litigation related to this Master Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Master Contract, whichever is later.
- 36.2. Contractor will audit the security of the computers and computing environment that it uses in processing Purchaser data in performing SaaS Services under this Master Contract and the physical data centers from which such SaaS Services are provided. This audit: (a) will be performed at least annually; (b) will be performed according to ISO 27001 standards; (c) will be performed by independent third party security professionals at Contractor's expense; (d) will result in the generation of an audit report ("Security Audit Report"); and (e) may be performed for other purposes in addition to satisfying this section. Within thirty (30) days of Contractor's receipt, Contractor will provide the Security Audit Report to DES. At its sole cost and expense, DES will have the right, through its internal staff, another agency of the State, or a third party auditor, to audit Contractor's security standards related to the services provided under this Master Contract. Any such audit will occur on Contractor's premises, during normal working hours, subject to Contractor's reasonable policies and regulations, and no more than once annually. Contractor will be responsible for correcting any deficiencies identified in either the Security Audit Report or any DES security audit.
- 36.3. This Section 36.3 shall apply to Contractor and to each Subcontractor providing any component of the SaaS Services. Without limiting the generality of the foregoing, Contractor's data center provider (if an entity other than Contractor) shall constitute a Subcontractor for purposes of this Master Contract.

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- a) In connection with providing the SaaS Services, Contractor shall comply with SOC 1 financial and operational control objectives and SOC 2 criteria for complying with the trust services principles (collectively, the "Control Objectives"). Contractor shall provide to DES for its review no later than sixty (60) days prior to the commencement of Contractor audits undertaken in this subsection an electronic or written copy of the scope of audit (including the services and classes of transactions, procedures, accounting records, control environment and customer reporting) and Control Objectives used or to be used in the audits described below in this subsection. Control Objectives shall include the audit of policies, practices and procedures involving the delivery of the Solution via mobile devices and platforms. If DES determines as a result of any such review that Contractor must comply with additional and/or different control objectives or expand the scope of its audit, DES shall so notify Contractor in writing and such control objectives and/or expanded scope of audit thereafter shall constitute the scope of audit and/or Control Objectives for purposes of this Master Contract. If Contractor wants to change the control environment, reduce the scope of audit or any of the Control Objectives subsequent to the delivery of the last SOC 1 Type 2 Report or SOC 2 Type 2 Report, Contractor shall so notify DES in writing at least sixty (60) days prior to the proposed change, including identifying the planned effective date of such change, and such proposed changed control environment, scope of audit and/or Control Objective(s) shall be subject to the DES review process described above in this Section 36.3. Contractor shall cooperate with DES and its auditors (including DES' internal, independent third party, and/or State, auditors) in connection with the terms, obligations and rights set forth in this Section 36.3.
- b) In accordance with the requirements set forth in this Section 36.3, Contractor shall cause a nationally-recognized independent certified public accounting firm to conduct audits with respect to the Control Objectives at least once annually and to promptly prepare, no later than March 31 of each year, SOC 1 Type 2 Reports and SOC 2 Type 2 Reports following each such audit. No later than April 15 of each year, Contractor shall deliver to DES a full and complete electronic copy of each such SOC 1 Type 2 Report and SOC 2 Type 2 Report, each of which must cover the previous calendar year. Within forty-five (45) days following DES' written request for a letter updating the most recently issued SOC 1 Type 2 Report or SOC 2 Type 2 Report, an authorized senior executive officer of Contractor shall deliver to DES a letter that contains a written description of any material changes to the control environment that would adversely affect the prior delivered SOC 1 Type 2 Report or SOC 2 Type 2 Report to cover the time period not covered under the scope of such most recently issued audit report from the date of such report until the date requested in DES' written request, or if there have not been any such changes, a letter stating that there have not been any changes since the date of the most recently issued report.
- c) At DES' sole cost and expense, DES shall have the right (either through its own audit staff, an independent third party auditor or an Agency of the State) to conduct reviews and audits of the type covered by SOC 1 Type 2 Reports and SOC 2 Type 2 Reports or other reviews and audits to ensure compliance with the Control Objectives and Contractor's other obligations. Such reviews or audits will be conducted during regular business hours, will be subject to Contractor's reasonable security policies (which will not apply to the extent they prevent or interfere with DES' right to conduct a review or audit as described in this Section 36.3) and will not unreasonably interfere with Contractor's business activities. Further, within the scope of each such review or audit, such reviewers and/or auditors shall have the right to examine and

audit the Records (defined below) and question and interview any personnel with knowledge about the Control Objectives and other financial, operational, security, physical or other aspects of the SaaS Services. If the report identifies Deficiencies (defined below) requiring remediation, DES shall deliver to Contractor a full and complete copy of the report.

- d) Solution Providers use independent third party assessors to conduct its audits. Because a Solution Provider's third party auditors may change from time to time, Carahsoft will provide information regarding the names of such auditors to DES upon request.
- e) If any SOC 1 Type 2 Report, SOC 2 Type 2 Report or other audit report reveals any deficiencies and/or exceptions with respect to the Control Objectives or otherwise (the "Deficiencies"), Contractor or Solution Provider shall prepare and deliver to DES a detailed plan for remedying all such Deficiencies (each such plan, a "Remedial Plan"). Contractor or Solution Provider shall deliver such Remedial Plan to DES within a reasonable period of time following identification of any Deficiencies based on the nature and complexity of the Deficiencies to be remedied, not to exceed thirty (30) days following DES' written request for same. Contractor or Solution Provider shall bear all costs and expenses associated with correcting all Deficiencies.
- f) Additionally, upon DES's reasonable belief that a Solution Provider is not in compliance with its security policies and procedures under this Master Contract regarding Purchaser data or if such audit is required by DES's governmental regulators, DES may conduct, either itself or through a third party independent contractor selected by DES at DES's expense, an on-site audit and review of Solution Provider's architecture, systems and procedures used in connection with the SaaS Services. Such audit and review shall be conducted up to one time per year, with one week's advance notice. Any audits described in this Section shall be conducted during reasonable times and upon reasonable advance notice to Solution Provider and shall be of reasonable duration and shall not unreasonably interfere with Solution Provider's day-to-day operations. In the event that DES conducts an audit through a third party independent contractor, such independent contractor shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in this Master Contract to protect Solution Provider's proprietary information. If such an audit requires the equivalent of more than one business day of time expended by a Solution Provider employee, DES agrees to reimburse Solution Provider for any additional time expended at Solution Provider's then current professional services rates.

- 36.4. All Records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by DES, Purchaser, and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Master Contract's Term, Contractor shall provide access to Records within Thurston County, Washington or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 36.5. Contractor shall incorporate in its subcontracts the records retention and review requirements of this Section 36.

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- 36.6. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Master Contract is calculated or derived from these factors.
- 36.7. Contractor shall upon written request provide access to data generated under this Master Contract and any Statement of Work to DES, to Purchaser, to the Joint Legislative Audit and Review Committee, and to the State Auditor, as requested, at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models.
- 36.8. Except as otherwise expressly provided otherwise in this Section 36, each party shall bear its own costs and expenses incurred in connection with performing its obligations and/or exercising its rights hereunder, including costs and expenses charged by its own independent auditors.

General Provisions

37. Patent and Copyright Indemnification

- 37.1. Contractor, at its expense, shall defend, indemnify, and save DES and any Purchaser harmless from and against any claims against DES or Purchaser that any Products supplied hereunder, or Purchaser's use of the same within the terms of this Master Contract or any SOW, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DES or Purchaser provided that DES or Purchaser:
- a) Promptly notifies Contractor in writing of the claim, but DES' or Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- 37.2. If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Products or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Products is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Products and provide Purchaser a refund equal to the entire amount Purchaser paid for provision of such Products.
- 37.3. Contractor has no liability for any claim of infringement arising solely from:
- a) Contractor compliance with any designs, specifications or instructions of Purchaser;
 - b) Modification of the Products by Purchaser or a third party without the prior knowledge and approval of Contractor; or
 - c) Use of the Products in a way not specified by Contractor;

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

38. Save Harmless

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

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

39. Insurance

- 39.1. Contractor shall, during the Term of this Master Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Master Contract, Contractor shall provide written notice of such to DES within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DES' sole option, result in this Master Contract's termination.
- 39.2. Through any combination of primary, excess, umbrella, Contractor or Subcontractor, coverage, 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 \$2 million per occurrence/\$4 million general aggregate;
 - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - d) Professional Liability Errors and Omissions, including Cyber Liability coverage, with a deductible not to exceed \$25,000, conditioned upon subsection 40.3, and coverage of not less than \$2,000,000 per occurrence/\$2,000,000 general aggregate; and
 - e) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 40.3, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

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- 39.3. All Professional Liability Errors and Omissions coverage and Crime Coverage shall: (i) continue such coverage for six (6) years beyond the expiration or termination of the last SOW, naming DES and Purchaser as an additional insured and providing DES with certificates of insurance on an annual basis; and (ii) for six (6) years beyond the expiration or termination of this Master Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at DES's sole option, in the event the policyholder fails to do so.
- 39.4. Purchasers may require additional coverage or terms as included in a Statement of Work.
- 39.5. Contractor or Subcontractor shall pay premiums on all insurance policies. DES shall be named as an additional insured on all general liability and automobile liability policies, and Contractor or Subcontractor shall provide a copy of the policy endorsement(s) designating DES as an additional named insured. Such policies shall also reference this Master Contract number 06213 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 DES by the insurer.
- 39.6. All insurance provided by Contractor or a Subcontractor 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.
- 39.7. Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 39.8. Contractor or Subcontractor shall furnish to DES copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Master Contract's Effective Date, and copies of renewal certificates and endorsements of all required insurance within thirty (30) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DES' sole option, result in this Master Contract's termination.
- 39.9. Contractor shall provide insurance certification to the Purchaser under a Statement of Work when requested. Failure to provide evidence of coverage may, at Purchaser's sole option, result in termination of the SOW.
- 39.10. By requiring insurance herein, DES does not represent that coverage and limits will be adequate to protect Contractor or Subcontractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DES or any Purchaser in this Master Contract or any SOW.

40. Industrial Insurance Coverage

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

41. Licensing Standards

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

42. Antitrust Violations

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

43. Compliance with Civil Rights Laws

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

44. Severability

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

45. Waiver

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

46. Treatment of Assets

- 46.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Master Contract or any SOW, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 46.2. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Master Contract or any SOW.

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- 46.3. Contractor shall be responsible for any loss of or damage to property of Purchaser that results from Contractor's negligence or that results from Contractor's failure to maintain and administer that property in accordance with sound management practices.
 - 46.4. Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
 - 46.5. Contractor shall surrender to Purchaser all Purchaser property upon completion, termination, or cancellation of any Statement of Work.
 - 46.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

47. Contractor's Proprietary Information

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

Disputes and Remedies

48. Disputes

- 48.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot otherwise be resolved between the parties or by DES, either party may initiate the dispute resolution procedure provided herein.
- 48.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall then have five (5) Business Days to review the response. The parties shall then have five (5) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute is not resolved by the parties during this negotiation period, either party may request a Dispute Resolution Panel to be convened by requesting it in writing and identifying the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate the second panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next five (5) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and its attorneys' fees and share equally the cost of the third panel member.

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- 48.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has been invoked and issued its decision on the matter in dispute.
- 48.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Master Contract that are not affected by the dispute.
- 48.5. If the subject of the dispute is the amount due and payable by Purchaser for Products or Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

49. Non-Exclusive Remedies

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

50. Failure to Perform

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

51. Limitation of Liability

51.1. EXCEPT AS SET FORTH IN SECTION 52.2:

- a) WITH RESPECT TO CONTRACTOR'S LIABILITY TO DES OR PURCHASER, CONTRACTOR'S CUMULATIVE LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS MASTER CONTRACT OR ANY SOW, WITH ALL TYPES OF DAMAGES ALLOWABLE, SHALL NOT EXCEED TWO (2) TIMES THE FEES PAID OR TO BE PAID UNDER THIS MASTER CONTRACT OR THE SOW, AS APPLICABLE (INCLUDING OF ALL AMENDMENTS, PROJECT AGREEMENTS, AND SUPPLEMENTS); AND
- b) WITH RESPECT TO PURCHASER'S LIABILITY TO CONTRACTOR, PURCHASER SHALL BE LIABLE TO CONTRACTOR ONLY FOR UNPAID AND UNDISPUTED INVOICES FOR PRODUCTS AND SERVICES AND EXPENSES AND FEES (INCLUDING ANY INVOICES LATER DETERMINED TO BE VALID).

51.2. Notwithstanding anything contained herein to the contrary, the limitations on liability set forth in Section 52.1 shall not apply to: (a) claims arising as a result of personal injury, including death, caused by a party or its employees, agents and/or subcontractors; (b) claims arising as a result of damage to real property or tangible personal property (including loss of data) caused by a party or its employees, agents and/or subcontractors; (c) breaches of Confidential Information; (d) Contractor's failure to comply with its obligations under Audits & Review of Contractor's Records;

Data Storage, Transmission and Archive; Patent and Copyright Indemnification, and Disputes; (e) any amounts owed by Contractor to DES as an Administration Fee, and (f) any negligence or willful misconduct on the part of Contractor.

- 51.3. If, at any time: (a) (i) the total aggregate liability of Contractor for claims asserted by DES or Purchaser under or in connection with this Master Contract or an SOW, as applicable, exceeds seventy percent (70%) of the limitation of liability amount set forth above; and (ii) Contractor does not agree in writing to increase such amount by the amount required to restore the full original value of the limitation of liability amount within thirty (30) days following its receipt of a written request that it do so; or (b) the total aggregate liability of Contractor equals or exceeds the limitation of liability amount, then DES or Purchaser shall have the respective right to terminate this Master Contract and the applicable Statement of Work (in whole or in part) by delivering a written notice of termination to Contractor. Any termination pursuant to this Section shall not constitute a termination under any other provision of this Master Contract or any SOW.
- 51.4. To the extent a party elects to cure any failure by it to comply with its obligations under this Master Contract or any SOW, all costs and expenses associated with such cure shall be borne solely by the curing party and shall in no event count toward satisfaction of the cap on damages described in Section 52.1.
- 51.5. Neither Contractor, DES nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the respective fault or negligence of Contractor, DES or Purchaser. Such causes may include, but are not restricted to, acts of God, acts of a governmental body other than DES or Purchaser acting in either a sovereign or contractual capacity, acts of war or terrorism (other than cyberwarfare), explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DES, or Purchaser, or their respective Subcontractors.
- 51.6. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Products to be delivered or Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 51.7. Neither Contractor, DES nor Purchaser shall be liable for personal injury to another party or damage to another party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Master Contract Termination

52. Termination for Default

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

Contractor, or a Statement of Work may be terminated by written notice to Contractor from Purchaser.

- 52.2. In the event of termination of an SOW by Purchaser or this Master Contract by DES, Purchaser or DES shall have the right to procure the Products or Services that are the subject of such agreements on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Products or Services and the replacement costs of those acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of a Statement of Work or this Master Contract (such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs); and, (iii) any other direct costs to Purchaser or DES resulting from Contractor's breach. DES and Purchaser shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DES or Purchaser for Contractor's default.
- 52.3. If either DES or Purchaser violates any material term or condition of this Master Contract or any SOW, as applicable, or fails to fulfill in a timely and proper manner its obligations under this Master Contract or an SOW, as applicable, then Contractor shall give DES or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DES or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Statement of Work may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DES.
- 52.4. If the failure to perform is without Contractor's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 52.5. This section shall not apply to any failure(s) to perform that results from the willful, reckless or negligent acts or omissions of the aggrieved party.

53. Termination for Convenience

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

54. Termination for Withdrawal of Authority

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

55. Termination for Non-Allocation of Funds

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

56. Termination for Conflict of Interest

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

57. Termination Procedure

- 57.1. In addition to the procedures set forth below, if Purchaser terminates a Statement of Work, Contractor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 57.2. In the event of termination of any SOW, within ninety (90) days of the effective date of such termination, all electronic State data must be returned to Purchaser in a suitable standard format and deleted from Contractor's systems in compliance with procedures established by the National Institute of Standards and Technology. This will also include the removal of backup data from tapes if the retention period is too long for aging to occur naturally.

Contractor will assist Purchaser in the extraction and return of all of State's electronic data to ensure no data is inadvertently deleted.

Within the same time period, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all other State data disclosed to it; or (ii) return all other data to Purchaser.

- 57.3. Upon termination of this Master Contract or any SOW, DES or Purchaser, in addition to any other rights provided in this Master Contract and applicable SOW, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Statement of Work as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 57.4. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Products or Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or SOW had not been

terminated. Failure to agree on such determination shall be a dispute within the meaning of the section of this Master Contract entitled **Disputes**. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

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

58. Transition and Transition Period

Upon an expiration or a complete or partial termination of an SOW for SaaS Services for any reason, Purchaser shall have the right, at its option, for up to thirty six (36) months (the "Transition Period") following the effective date of the termination, to all or any combination of the following: (a) continue to receive from Contractor all SaaS Services (at the applicable rates under the SOW); (b) if Purchaser will be transitioning to a new system or software solution (irrespective of whether any SaaS Services have been terminated), receive from Contractor all services reasonably necessary to effectuate an orderly transition to such new solution, including providing assistance in transferring data files to an industry-standard format designated by Purchaser; and (c) obtain from Contractor the transfer of knowledge. All Services provided by Contractor during the Transition Period shall be provided at the SaaS Services rates or other applicable rates set forth in Schedule A.

59. Covenant Against Contingent Fees

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

Activity Reporting & Administration Fee

60. DES Administration Fee and Collection

- 60.1. Contractor shall pay a Master Contract administration fee of 0.74% to DES on all sales under this Master Contract ("Administration Fee").
- 60.2. DES may increase, decrease, or eliminate the Administration Fee and the Administration Fee must be rolled into the Contractor's current pricing, not as a separate line item on the invoice, by way of written notification to the Contractor. Any adjustments to the Administration Fee shall be reflected in contract pricing commensurate with the adjustment. DES reserves the right to negotiate Master Contract Prices with the Contractor when the Administration Fee results in a Price increase. Administration Fee written notifications shall become effective for new Statements of Work or amendments to existing SOWs thirty (30) calendar days after notification, unless DES grants additional time.

- 60.3. The Administration Fee shall be paid quarterly. DES will send an invoice each quarter, based on usage reported (money received, less any taxes, returns, credits, or adjustments) in an Activity Report thirty (30) days after the close of each calendar quarter. Payment must reference this Master Contract number 06213, the Statement of Work number (if any) and the year and quarter for which the Administration Fee is being remitted, and be sent to:

Name:	State of Washington, Dept. of Enterprise Services Finance Dept
Address:	1500 Jefferson Street Mail Stop 41460 Olympia WA 98501
Additional:	Contract #: 06213, Quarter/Year: _____

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

61. Activity Reporting

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

62. Electronic Funds Transfer

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

63. Failure to Remit Reports/Fees

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

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

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

Master Contract Execution

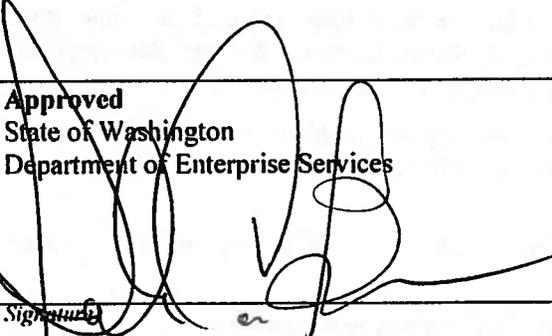
64. Authority to Bind

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

65. Counterparts

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

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

Approved State of Washington Department of Enterprise Services	
	
Signature	
Print or Type Name	9-6-13
	Date
Procurement Unit Mgr	
Title	

Approved Contractor	
	
Signature	
Print or Type Name	Ellen Lord
	8/28/13
	Date
Director of Contracts	
Title	

Contractor Information

Contractor's UBI Number: <i>603056551</i>
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Schedule A Price List

As of Effective Date

for
Master Contract Number 06213
with
Contractor

Contractor is authorized to provide only the Products and Services identified in this Schedule A at or below the Prices set forth in this Schedule A under this Master Contract.

Item	Description	Qty	Unit	Unit Price
1.	Remedyforce UE (Standard User)	1	Per user per month	\$56.00
2.	Force.com	1	Per user per month	\$25.50
3.	Force.com Admin	1	Per App Per month	\$42.50
4.	FootPrints Inventory Manager***	1	Per node per month	\$8.91
5.	FootPrints Deployment Manager	1	Per node per month	\$8.91
6.	FootPrints Remote Manager	1	Per node per month	\$4.45
7.	FootPrints Patch Manager	1	Per node per month	\$8.90
8.	FootPrints Compliance Manager	1	Per node per month	\$8.90
9.	FootPrints Master Server On	1	Per month	\$44.50

10.	Mobility Force.com	1	Per user per month	\$26.00
11.	Mobility for Remedy	1	Per user per month	\$12.00
12.	Sandbox Full Copy	1	Per user per month	\$8.10
13.	Sandbox Configuration	1	Per user per month	\$2.70
14.	Storage	1	500 MB Per user Per Month	\$79.00
15.	Project Manager	1	Per Hour	\$150.00
16.	Remedyforce Engineer	1	Per Hour	\$155.00
17.	AssetCore Engineer**	1	Per Hour	\$155.00
18.	Trainer	1	Per Hour	\$139.00
19.	Optional Administration Essentials Training for System Administrators – 4 days	1	Per User	\$3,370.00
20.	Optional End User Training - Staff Product Mentoring Engagement – 3 Days (Remote Training)	1	Per Attendee	\$3,050.00

Schedule B
Statement of Work

Schedule C
Salesforce (GSA 01.30.2012 Carahsoft Final) Service Terms

Schedule D
BMC Master Subscription Services Agreement