Washington State Department of
Enterprise Services

Master Contract Number 07814-002

for

Enterprise Content Management (ECM) between

Washington State Department of Enterprise Services

and

OPENTEXT INC.

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PARTIES

This Master Contract (Master Contract) is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES) an Agency of Washington State government located at 1500 Jefferson Street SE, Olympia WA, 98501, and OpenText Inc. (Contractor), a Corporation located at 951 Mariners Island Boulevard, San Mateo, CA 94404 licensed to conduct business in the state of Washington under Washington State Universal Business Identifier 603022934. The purpose of this Master Contract is to provide Commercial-Off-The-Shelf (COTS) Enterprise Content Management (ECM) solution(s) products and related Services as described and identified herein.

RECITALS

The state of Washington, acting by and through DES issued Request for Proposal (RFP) Number 07814 dated December 19, 2014, for the purpose of entering into Master Contracts with multiple contractors for ECM solution(s) in accordance with its authority under Revised Code of Washington (RCW) 39.26.

Contractor submitted a timely Response to the RFP.

DES evaluated all properly submitted Responses to the above-referenced RFP and identified the Contractor as one of the Apparent Successful Bidders.

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

NOW THEREFORE, DES Awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's provisioning of On-Premise ECM solution(s) which may be offered as Software as a Service (SaaS) or as a perpetual license as described herein. This Master Contract is not for personal use.

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

1 OVERVIEW

1.1 Term

1.1.1 Master Contract Initial Term

The initial term of this Master Contract shall be for five (5) years from date of last execution signature.

If the master contract expires or terminates, individual Purchaser's license or SaaS agreement(s) shall survive the Master Contract, including provision of maintenance and support Services or subscriptions, subject to the term of the individual license conferred to the Purchaser. In the event the Purchasers' agreement(s) survive the Master Contract, Contractor shall not provide additional Products or Services which are outside of the original scope of the Master Contract. Contractor shall not provide Products or Services to new Purchasers under the authority of this Master Contract after the expiration or termination date of the Master Contract.

1.1.2 Master Contract Extensions

Extensions for additional terms may be offered at the sole discretion of DES for up to three (3) additional two (2) year terms. In the event extensions are offered, Contractor may be required to submit documentation which confirms that Contractor continues to meet original RFP

requirements; specifically Department of Defense 5015.02 V3 certification or the most current version thereof.

1.2 Purpose

The purpose of this Master Contract is to provide Purchasers with multiple options for ECM products and services based on the complexity of the Purchaser's needs and budget. The variety of products and services offered by the Contractors' Awarded a Master Contract for ECM solutions shall be the Core Offering of the ECM products and services which shall be purchased directly through the Contractor. Contractor is the Prime Contractor and responsible for any ECM solution and/or products sold hereunder, including but not limited to professional delivery services of Contractor's Subcontractors and/or third-party software purchased under this Master Contract.

Under the authority of the Revised Code of Washington (RCW) 39.24.055 and 43.19.005, this Master Contract is available to all state Agencies, any other Washington governmental entities or municipalities in Washington State, or public benefit non-profit organizations.

1.3 Limitations

In Contractor's RFP Response, Contractor may have proposed additional products and/or services which provided additional advanced functionality from third-party vendors which shall be referred to as "Extended Functionality." The Contractor may not have reseller agreements to sell the Extended Functionality within the boundary of this Master Contract.

Purchaser may acquire Extended Functionality by various procurement methods outside of this Master Contract. Methods of procurement may include acquisitions: a) directly from an Original Equipment Manufacturer (OEM); b) by a formal solicitation from partners or software resellers; or, c) under the authority of a Sole Source Acquisition.

DES reserves the right to add functionality for additional products offered in this Master Contract.

1.4 Definitions

Agency or Agencies shall mean the separate legal entities operating as part of the state of Washington government which includes other Washington governmental entities, Washington State municipalities, or public benefit non-profit organizations. The term also refers generically to any organization authorized under RCW 39.26.010 to acquire Products and/or Services from Master Contracts as a Purchaser.

Aggrieved Party shall mean the party whose rights or interests are damaged as a result of another party's action(s).

Amendment shall mean a change to the Master Contract.

Audit Trail shall mean a chronological account of the lifecycle of a Record.

Award shall mean DES' acceptance and subsequent Award of this Master Contract to a Bidder from RFP No. 07814.

Bidder shall mean the vendor whom responded to the RFP and is Awarded this Master Contract.

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

Commercial-Off-The Shelf shall mean Software products that are ready-made and available for sale to the general public.

Confidential Information shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state or federal statutes. Confidential Information may include, 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 Technology Solution Contract. Confidential information also includes any personal information under the provisions of RCW 19.255.010 and RCW 42.56.590.

Contract - See Master Contract

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

Core Offering shall mean the software products and professional consulting services available through the Contractor and listed in the Contractor's ECM Price Schedule, Exhibit A.

Data shall mean any and all data within the Purchaser's possession, custody, or control, and any and all data that Purchaser has disclosed to Contractor. For purposes of the Master Contract and the Technology Solution Contract, Purchaser's Data does not cease to be Purchaser's Data solely because it is transferred or transmitted beyond the Purchaser's immediate possession, custody, or control.

Deliverable shall mean any tangible or intangible thing to be provided as described in a Statement of Work and/or Technology Solution Contract.

Destruction shall mean the permanent disposal of a record as prescribed in the records retention schedule. An Audit Trail document the Destruction must remain as proof of actions taken. See Audit Trail.

Documentation shall mean the then current written user manuals or product guide specifications provided by Contractor for Products or proposed functionality offered in the Contractor's RFP Response, Exhibit E.

ECM Price Schedule shall mean the rate(s) quoted for products and/or Services by Bidder in Response to the RFP and attached to this Master Contract.

End User License Agreement ("EULA") shall mean any software license agreement or other commercial use agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Master Contract, and including without limitation any such agreement that either is affixed to (e.g., shrinkwrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement.

Extended Functionality shall mean additional products purchased from third-parties outside of this Master Contract to include but not limited to services, components, software/modules, open-source code, or interfaces which may be needed to provide Purchaser with additional functionality beyond the Contractor's Core Offering in this Master Contract.

Interoperability shall mean the ability to interface with Microsoft products (Outlook, SharePoint, Word, etc.) as well as connect to and run from existing systems.

Management Fee shall mean a cost recovery fee associated with DES' administration of the Contract.

Master Contract shall mean the document formalizing the agreement between the parties pursuant to the Solicitation, together with all incorporated schedules and exhibits, including the Solicitation, the Response, all Amendments, addendums, and exhibits.

Master Contract Administrator shall mean the DES representative that manages the overarching agreement between the parties (Master Contract) pursuant to this Solicitation.

Mobile Standards shall mean any laws, guidance, recommendations, guidelines or reports published by the Federal Trade Commission (FTC), Federal Drug Administration (FDA), U.S. and state Attorney General Offices, and other regulatory or governmental bodies setting forth practices, policies and procedures to govern the use of mobile devices, including the following FTC Staff Report, issued February 1, 2013, and the State of California Attorney General report on Privacy on the Go, Recommendations for the Mobile Ecosystem, issued January 2013.

On-Premise Software shall mean a Software solution which runs in an infrastructure on the premises of the Purchaser's network environment rather than at a remote facility such as at a server farm, cloud, or remotely hosted infrastructure or platform.

Prime Contractor shall mean the Contractor awarded this Master Contract and subsequent Technology Solution Contract(s) between Contractor and Purchaser(s).

Product shall mean the Enterprise Content Management solution or any component thereof, offered in a Bidder's Response to the RFP and made available under this Master Contract. Product shall also mean hardware and/or Software delivered to Purchaser regardless of method of software delivery (On-Premise or SaaS).

Product Notice shall mean the notice received upon initial purchase or in the future that pertains to Software or hardware use rights, upgrades, warranty periods, maintenance, restrictions, or other modifications

Public Disclosure Request shall mean a request for inspection or copying of a public record under RCW 42.56.

Public Record shall mean any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, email, facsimile, machine-readable material, compact disc, or other document, regardless of its physical form or characteristics (including copies of such records), that are made by or received by any agency of the state of Washington in connection with the transaction of public business. See RCW 40.14.010.

Purchaser shall mean any Washington State Agency, other Washington governmental entities or municipalities, public benefit non-profit organizations or any organization authorized by statute to acquire Products and Services from this Master Contract inclusive of, but not limited to RCW 43.19, 39.26, and 39.34.

Record shall mean all records created, received, or edited by an individual within Washington State government and includes all Data.

Request for Proposals (RFP) shall mean the Solicitation to procure the Products and Services which are the subject of this Master Contract.

Response shall mean a Bidder's response to the RFP.

Revised Code of Washington or RCW shall mean the permanent laws in force, enacted by legislation, and signed by Washington State Governor, or enacted by the initiative process.

Services shall mean professional service related activities provided by Contractor relating to a Technology Solution Contract and Statement of Work. Such contract for Services may include but are not limited to, project management, planning, configuration, customization, interfacing, integration, testing, training, implementation, and/or the ongoing support and maintenance of the Solution.

Software shall mean any programming code provided by Contractor to Purchaser, third party software, application interfaces, or open-source code including micro-code, firmware, support tools, and operating system software.

Software as a Service (SaaS) shall mean a subscription to access Software through the internet.

Sole Source Acquisition shall mean the process by which additional Products or Services are purchased for Extended Functionality of the ECM Solution. Sole Source Acquisitions are defined in RCW 39.26.140.

Solicitation shall mean the RFP, and any Amendments or revisions thereto, of which is associated with this Master Contract.

Solution shall mean Software offered as Software as a Service (SaaS) or as a perpetual license, and the related Services and/or support.

Specifications shall mean the explicit requirements specified in the RFP and proposed in the Contractor's RFP Response to this ECM solution.

State shall mean the state of Washington acting by and through DES or the Purchaser.

Statement of Work or SOW shall mean the exhibit to a Technology Solution Contract that defines the body of work to be performed and delivered as Services for a specific project or outcome. A Statement of Work shall contain tasks, deliverables, acceptance criteria, timelines, and consideration.

Subcontractor shall mean one not in the employment of a Contractor, who is performing all or part of the business activities and/or Services under a Purchaser's Technology Solution Contract.

Technology Solution Contract shall mean the agreement a Purchaser and an Awarded vendor enter into under the authority of this Master Contract to purchase an ECM Solution.

Usage Report (Usage) shall mean the quarterly report required by DES detailing all net collected sales amounts for the preceding quarter in accordance with the Sales and Subcontractors Report section of the Contract.

Washington Administrative Code or WAC shall mean the regulations of the executive branch agencies issued by the authority of statute.

2 MASTER CONTRACT ADMINISTRATION

2.1 Master Contract Administrator

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

2.2 Administration of Master Contract by DES

DES will maintain contract information and pricing, and reserves the right to make it available on DES' external website at http://des.wa.gov except as provided in item #5 below.

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all contract requirements specified herein;
2. Identify the Contractor's account manager, who will be the principal point of contact for the DES Master Contract Administrator concerning Contractor's performance under this Master Contract;
3. Immediately notify the Master Contract Administrator in writing of any change of the designated Contractor's account manager assigned to this Master Contract; and
4. Be bound by all written communications given to or received from the Contractor's designated account manager.
5. At its option the Contractor will create a pricing website which is not public facing and provide DES with a URL which DES will post to its website. Contractor shall maintain and manage access.

2.3 Master Contract Management by the Contractor

Upon Award of this Master Contract, the Contractor shall:

1. Review the impact of the Award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Ensure that those who endeavor to utilize this Master Contract are authorized Purchasers under this Master Contract.
3. Designate a product/service representative (may be the same as the account manager) who will be responsible for addressing any Master Contract or Purchaser issues.

2.4 Changes

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

DES reserves the right to add products and/or Services within the original scope of this Master Contract as market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written and executed Amendment which shall be negotiated and mutually agreed upon by the parties.

2.5 Statewide Payee Desk

Washington State requires the utilization of electronic payment in its transactions. Contractor shall be required to register in the Statewide Vendor Payment system prior to submitting a request for payment or invoice. The site may be found at:

http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx

2.6 Fees and Reporting

2.6.1 Fees

The DES Master Contract program is required to be cost recoverable. Therefore, this Master Contract is subject to a Management Fee. Collection and remittance of this fee shall be conducted in accordance with the provisions set forth herein.

The Management Fee will be reviewed periodically to ensure that the program is self-supporting and may be adjusted accordingly by DES. DES may, at its sole discretion, increase, decrease, or eliminate the Management Fee upon thirty (30) days written notice to Contractor. For purposes of the Management Fee, the parties agree that the initial Management Fee was included in the pricing. Therefore, any increase or decrease of the Management Fee shall be reflected in contract pricing commensurate with the adjustment.

Contractor will pay the current Management Fee of 0.74 percent to DES on all State contract sales. The Management Fee must be rolled into the Contractor's current pricing, and not shown as a separate line item on an invoice.

Contractor will provide DES with a Usage Report detailing all net collected amounts for the preceding quarter according to the table listed below, in accordance with the Sales and Subcontractors Report section of the contract. DES will send an invoice each quarter, based on such report within thirty (30) days after receipt. Payment of the DES Management Fee is due one (1) month following Contractor's receipt of the invoice from DES. See Usage, Invoice, and Remittance Table below.

Taxability (if applicable): In 2013, the Washington Department of Revenue announced that if the underlying transaction requires sales tax then the DES Management Fee portion of the transaction is also subject to a sales tax. However, when the DES Management Fee that is held in trust by the Contractor is remitted to DES, it is not taxed a second time.

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all DES Management Fees have been paid. Failure to accurately report Usage, to submit a timely Usage report, or remit timely payment of the DES Management Fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

DES Management Fee payment from the Contractor to DES must reference the Contract number, work request number (if applicable), the name of the Contractor as known to DES, the year and quarter for which the DES Management Fee is being remitted, and the DES invoice number.

All payments must be sent to:

Washington State Dept. Enterprise Services
Finance Department
1500 Jefferson Street SE
P. O. Box 41460 Olympia, WA 98501

Usage, Invoice, and Remittance Table			
Quarter Ends	Usage Report due from Contractor within one month following the end of	DES invoices the Contractor within one month following Usage	Contractor remits the Management Fee to DES within one month following

	the quarter	reporting	DES invoice.
March 31	April 30	May 31	June 30
June 30	July 31	August31	September 30
September 30	October 31	November 30	December 31
December 31	January 31	February 28	March 31

2.6.2 Reporting

Contractor shall provide a sales report to DES on a quarterly basis in the electronic format provided here: Contract Usage Reporting System Login.

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

Contractor must submit to DES a quarterly sales report of all purchases made by Purchasers under the authority of this Master Contract. The report must identify: (1) the Master Contract number; (2) each Purchaser making purchases during the reporting quarter; (3) the total items purchases by each Purchaser; (4) the total invoice price, excluding sales tax and excluding the DES Management Fee, for each Purchaser; (5) the sum of all invoice prices for all Purchasers, excluding sales tax and excluding the DES Management Fees; and (6) the total amount of the DES Management Fees due for the quarter.

The report and Management Fee must be received by the fifteenth calendar day of the quarter following the month in which Contractor invoiced Purchaser. Reports are required to be submitted electronically, in the format provided by DES.

Should the Contractor have no sales activity in a quarter, no Management Fee will be required; however, Contractor shall be required to report zero (0) sales.

3 PRICING

3.1 Price Protection

For the initial first year term of this Master Contract, Contractor must guarantee to provide Products and Services at no higher than the rates set forth in the ECM Price Schedule document submitted in accordance with the RFP and attached as Exhibit A to this Master Contract. Such prices shall not be increased during the initial first year 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 or Services to Purchasers at lower rates than those originally-established in this Master Contract.

DES acknowledges that pricing may vary for Services outlined in a SOW created under a Purchaser's Technology Solution Contract. Contractor acknowledges that SOW pricing based on fixed price deliverables (preferred method) shall substantially align with the hourly rates provided by Contractor's RFP Response, Appendix E subject to Contractor's risk adjustment in converting from an hourly to a fixed price billing model.

Contractor may provide additional Products and Services which substantially conform to the original RFP, by submitting said Product and Services to DES for approval.

3.2 No Additional Charges

Unless otherwise specified in this Master Contract, no additional charges by the Contractor will be allowed except when Contractor has a mutually agreed upon Technology Solution Contract and/or

a SOW for the delivery of professional Services. The rates for professional Services shall be in accordance with hourly rates set forth in the Contractor's RFP Response (Appendix E); however, DES, Purchaser, and Contractor acknowledge that a mutually agreed upon SOW for integration and other delivery Services may be converted to fixed price delivery and the fixed price deliverables shall substantially conform to the hourly rates offered in the Contractor's Response to the RFP (Appendix E) subject to Contractor's risk adjustment in converting from an hourly to a fixed price billing model.

Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Master Contract Administrator's sole discretion, additional charges may be allowed.

3.3 Price Adjustments

Contractor requests for adjustments in pricing shall be submitted to the Master Contract Administration, in writing, at least sixty (60) days prior to the start of the second, third, fourth, or fifth year term of this master contract. Master Contract extensions shall not be contingent upon Contractor price increases.

Price adjustments will not be considered without supporting documentation sufficient to justify the requested adjustment. Documentation must be based on published indices of the U.S. Department of Labor's Consumer Price Index. The grant of any price adjustment will be at the sole discretion of DES. Price Adjustments and no greater than three-percent (3%) per term. Price increases are on a pass-through basis only and shall not increase the Contractor's profit margin. The Contractor shall be notified in writing by the Master Contract Administrator of any price adjustment granted and such price adjustment shall be set forth in a written Amendment to the Master Contract. Price adjustments granted by DES shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 RFP Requirements

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

4.2 Established Business

Prior to commencing performance, or prior to that time if required by DES, Purchaser, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding and/or insurance, facilities, equipment and trained personnel necessary to meet all requirements and provide the Products or to perform the Services contemplated by the parties under this Master Contract. Contractor shall maintain compliance with these requirements throughout the life of this Master Contract or any ongoing requirement necessitated by any transaction with a Purchaser that is originally subject to this Master Contract.

4.3 Contractor Certifications

Contractor shall maintain any required certification status for the initial term and any renewals of this Master Contract.

4.4 Use of Subcontractors

In accordance with RFP requirements, Contractor agrees to take complete responsibility for all actions of any Subcontractors allowed under this Master Contract.

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

4.5 Subcontracts and Assignments

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

4.6 Contractor Authority and Infringement

Contractor is authorized to sell under this Master Contract, only those Products and Services as stated herein and allowed for by the provisions of this Master Contract. Contractor shall not represent to Purchasers that they have the contract authority to sell other products and/or Services using this Master Contract which are outside of the scope or third-party products requiring Purchasers to conduct another competition.

4.7 Extended Functionality

If a Purchaser wishes to have Extended Functionality for their solution outside the scope of this Master Contract, such as hosting; Purchaser and the applicable third party will need to enter into an ancillary contract.

5 SITE SECURITY AND SAFETY

5.1 Site Security

While on DES or any Purchaser's premises, Contractor, its agents, employees, and Subcontractors shall comply in all respects with any and all of Purchaser's physical, fire, safety, and other security regulations of which the Contractor has been previously informed.

5.2 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 an executed Purchaser's Technology Solution Contract.

5.3 System Security

Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in delivering Products to or performing Services for the Purchaser under the authority of this Master Contract and that in providing such access to Contractor, Purchaser places special confidence and trust in Contractor. Contractor acknowledges and understands that any access granted by Purchaser to its computer networks shall be limited, restricted and conditioned upon Contractor's compliance with Purchaser's security policies and practices related to such access. Contractor warrants that in connection with any such access, it will provide all Products and/or perform all Services for or on behalf of Purchasers in full compliance with its security policies and practices. For Washington State agencies, the Security Policy 141 - *Securing Information Technology Assets* is set forth by and through the Office of the Chief Information Officer (OCIO) and is located on the OCIO website at: https://ocio.wa.gov//policies/141-securing-information-technology-assets Contractor understands and agrees that the OCIO 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; 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 any state Agency 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. Non-state Purchasers may have differing security policies and the Contractor shall endeavor in good faith to meet those policies when providing Products and/or Services to such Purchasers.

5.4 Data Storage, Transmission, and Archive

Any and all Data must be stored and transmitted within the contiguous United States of America only. No offshore storage or 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.

6 PAYMENT

6.1 Payment, Invoicing and Discounts

Payment is the sole responsibility of the Purchaser.

Contractor shall provide properly completed invoices to Purchaser. All invoices are to be delivered to the address indicated in the Purchaser's Technology Solution Contract.

Each invoice shall, at a minimum identify:

1. the associated Master Contract number;
2. the Contractor's Statewide Payee Desk registration number assigned by DES,
3. the applicable Purchaser's Technology Solution Contract number, and,
4. the Product(s) and/or Services provided.

Invoices shall be prominently annotated by the Contractor with all applicable prompt payment or volume discounts, if any.

Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and, to the extent specified and required in an applicable SOW, which may include applicable acceptance criteria and payment milestones.

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

Notwithstanding the above, payments for SaaS subscriptions and annual support and maintenance shall be invoiced and paid in advance.

If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Payments shall be due and payable within thirty (30) calendar days after Product and/or Software delivery, and/or payment milestones in the case of Services, but in no event shall payments be due earlier than thirty (30) calendars days after receipt of a properly prepared invoice. If the Purchaser fails to make timely payment(s) or issuance of credit memos, the Contractor may impose and Purchaser shall pay a 1% per month interest charge on the amount overdue, RCW 39.76.

6.2 Taxes, Fees, and Licenses

Taxes

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

Collection of Retail Sales and Use Taxes

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

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

Department of Revenue Registration for Out-of-State Contractors

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and contact the Department of

Revenue for additional information (see WA State Dept. of Revenue Registration Requirements). When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the state of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

Fees/Licenses

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

Taxes on Invoice

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Purchaser shall be responsible for sales tax and use taxes, if any, imposed on the Products and/or Services.

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

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

6.4 Overpayments to Contractor

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

6.5 Contractor Expenses

Purchaser may reimburse Contractor for travel and other expenses only as defined and approved in advance in a Purchaser's Technology Solution Contract, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations attributable to such Purchaser. Contractor's expense reimbursement shall follow the Washington State per diem rules and regulations as set forth in the Washington State Administrative and Accounting Manual. Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of $50 or more when requesting reimbursement. The amount reimbursed to Contractor is included in calculating the total amount spent under this Master Contract.

6.6 Audits

Contractor shall provide the right of access to its records which are applicable to this Master Contract to DES, or any of DES' officers, or to any other authorized agent or official of the state of Washington or the federal government, with 30 (thirty) days' prior written notice, to the extent

reasonably necessary in order to monitor and evaluate performance, compliance, and/or quality assurance under this Master Contract to inspect and review. Any such notice shall specify the nature and scope of the requested audit, and the records sought. Any such audit shall be planned and conducted so as to minimize disruption to Contractor's business operations. Contractor will be provided with the audit findings contemporaneous with their creation. In the event the parties are not in agreement as to the audit findings, the parties shall use the dispute resolution process set forth in the Master Contract. The parties shall make a good faith effort to resolve their dispute prior to any action at law. In addition Contractor is subject to Retention of Records, Section 9.1.

7 QUALITY ASSURANCE

7.1 Contractor Commitments, Warranties and Representations

Any written commitment by a party within this Master Contract or Technology Solution Contract shall be binding upon that party. Failure to fulfill such a commitment may constitute breach and may render the breaching party liable for damages under the terms of this Master Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response to the RFP or contained in any Contractor Documentation or Release Notes.

Contractor warrants that its Services, including Deliverables, will be performed by Contractor or its Subcontractor(s) using reasonable skill and care consistent with generally accepted computer software industry practices (the 'Services Warranty"). Contractor warrants that its Services/Deliverables which are original content will materially conform to their applicable specifications for a period of sixty (60) days from delivery to Purchaser as set forth in the Technology Solution Contract.

Contractor acknowledges that if at any time Purchaser is dissatisfied with the performance of an individual working on a Purchaser's project, Purchaser may report its dissatisfaction to Contractor in writing and may ask Contractor to replace the individual. Contractor shall work with Purchaser to provide staff which is acceptable to Purchaser.

7.2 Software Warranty

The warranties provided in this section are in addition to any other warranties provided in this Master Contract or the Contractor's End User License Agreement (EULA) or any other software license agreements as applicable. Contractor warrants that the Software, without unauthorized modification, will perform substantially in accordance with the Documentation applicable to the Software for a period of sixty (60) days from the date the item of Software is delivered ("Software Warranty"). Contractor agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Purchaser.

7.3 Service Level Commitments

The basic objectives for Service Level Agreements (SLA) shall be documented in this Master Contract. The service levels stated herein shall be the minimum standards required of the Contractor's core ECM Solution. Service levels shall be further defined and negotiated in a SLA which corresponds to the Solution agreed upon by Purchaser and Contractor at the time the Technology Solution Contract is executed.

Support Request Classification

Priority	Criteria	Contract Response Time Target*	Purchaser Resolution Communication Time Target**
Critical	Software is functionally inoperable and cannot be used. No workarounds available, is mission critical, and cause a work stoppage	1 hour	1 business day
Serious	Software performance is significantly degraded and use is restricted	2 hours	2 business days
Normal	End-user, configuration, or minor defects which does not restrict use	4 hours	5 business days

Support Issue Severity and Response Times. Each issue shall be logged as a Support Request. The SR shall be classified by the Contractor support team as follows below:

* Contractor Initial Response Time Target is defined as the time between when the Purchaser initiates contact with the Contractor and Contractor acknowledges the issue.
** Purchaser Resolution Communication Plan Time Target is defined as the time between when the Contractor acknowledges the issue and the Contractor communicates a problem resolution plan. This includes updating Purchaser on notifications/escalations, workarounds and anticipated resolution date/time, if available.

7.4 Warranty Claims

In order to receive warranty remedies under the Services Warranty or Software Warrant, warranty claims must be reported by the Purchaser to Contractor in writing within thirty (30) days after the last day of the Software Warranty or Service Warranty period, whichever is applicable.

Contractor, at its expense, will (a) correct any Deliverables that do not substantially comply with Contractor's Software Warranty or Service Warranty; and assist Purchaser in restoring and recovering lost data that resulted directly from such breach by Contractor and which was not due to any acts or omissions of Purchaser or third-parties over whom Contractor had no control, management or contractual responsibility; (b) replace with like product ; or (c) refund subject to the Limitation of Liability section.

8 GENERAL LICENSE AND SUBSCRIPTION CLAUSES

8.1 License Grant

For purchases of an On-Premise Solution with a perpetual license, Contractor grants to Purchaser a non-exclusive, non-transferable, non-sublicensable and perpetual license to use, in object format, Contractor's software solution identified in Purchaser's Technology Solution Contract executed by the parties ("Software"), subject to terms, conditions and restrictions set forth herein and in the EULA included therein. Purchaser may combine other programs, open-source, interfaces or materials by using application protocol interfaces of the Software. License rights granted herein shall apply to any such combinations.

Unless otherwise agreed between the Contractor and Purchaser, Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all

legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), as set forth in a Technology Solution Contract. Purchaser may make any such backup or archival copies available to the disaster recovery site(s)' employees who require use of the Software in order to assist Purchaser with disaster recovery exercises to the extent set forth in the Purchaser's Technology Solution Contract.

8.2 Software Subscription Services

For purchases of a SaaS subscription where data will be maintained at the Purchasers location, Contractor shall provide the Solution to Purchaser as set forth in the Purchaser's Technology Solution Contract. The Solution may be accessed and used by Purchaser and their authorized users as set forth in the Technology Solution Contract and in compliance with Contractor's SaaS subscription agreement(s).

The initial and subsequent terms of the SaaS services shall be based on the agreements in the Purchaser's Technology Solution Contract. At the end of Purchaser's Technology Solution Contract term, Purchaser agrees to either: (i) renew the service with the Contractor; or (ii) elect non-renewal and no longer access/use the system.

At the sole discretion of the Purchaser, Purchaser shall have the right to renew existing SaaS services beyond the expiration of the Master Contract.

Contractor agrees to provide service based upon the Service Level Agreement as documented in the Purchaser's Technology Solution Contract at no additional cost.

8.3 General Terms

Purchaser shall not make the software available to unauthorized third parties, Purchaser may not relicense, rent or lease the software for third party training or commercial time-sharing except as stated in Freedom of Use hereunder, Purchaser shall not distribute sell, sublicense or otherwise transfer copies of the software or any portion thereof, and shall not use the software except as expressly permitted hereunder and in the EULA. No third-party software that is provided with the software may be used independently from the ECM Solution. Purchaser shall not translate, reverse engineer, decompile or otherwise derive the source code for the software or allow third parties to do so.

Except for perpetual license, upon termination of the Technology Solution Contract, Purchaser shall immediately discontinue use of subject products and, (ii) within fifteen (15) days remove any downloaded software from its server/platforms/storage, and may, at Purchaser's sole option, destroy or return the software to Contractor; and (iii) provide the Contractor with written certification signed by the authorized officer stating compliance with all of the obligations under this section. Upon any termination of a perpetual license, all terms and conditions governing use of the Software will apply.

Freedom of Use. Contractor acknowledges and understands that to the extent agreed in a Technology Solution Contract, Purchaser may provide information processing Services to other users that are Agencies of state government and other tax-supported entities, and not for profit organizations. Contractor acknowledges and understands that certain type of information is provided to the public. Contractor acknowledges and understands that Purchaser may charge a

fee for cost recovery purposes from Agencies or other tax-supported entities. Software delivered hereunder may be used in the delivery of these Services to the extent agreed in a Technology Solution Contract. Purchaser shall disclose intent to use the Solution in this manner and details shall be included in the Technology Solution Contract.

Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

8.4 License and Bankruptcy Provision

Purchaser shall have a present license right in and to the software that is used to provide an ECM Solution. The rights to the Solution provided by Contractor to Purchaser under the Technology Solution Contract constitutes "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended, and the Technology Solution Contract shall be governed by Section 365(n) of the Bankruptcy Code, as applicable, in the event Technology Solution Contractor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Contractor or the trustee in bankruptcy rejects the Technology Solution Contract. 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 Technology Solution Contract under Section 365 of the Bankruptcy Code, Purchaser shall have the right to: (a) treat the Technology Solution Contract as terminated; or (b) retain Purchaser's rights under the Technology Solution Contract, 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 contract by Purchaser under Section 365(n)(1)(A) of the Bankruptcy Code. Any attempted assignment of the Technology Solution Contract 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 the Technology Solution Contract.

8.5 Mobile Standards

To the extent the Solution has mobile features and/or using a mobile platform, the mobile component of the Software complies with Mobile Standards. The terms of this section are effective upon Technology Solution Contract execution and shall remain in effect with respect to particular Solution for as long as Purchaser is receiving these Services.

9 INFORMATION AND COMMUNICATIONS

9.1 Retention of Records

Contractor shall maintain all books, records, documents, data and other evidence relating to this Master Contract and the provision of Products and/or Services described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Master Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Master Contract, shall be subject at all reasonable times to inspection, review, or audit by DES, personnel duly authorized by the DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement. Any audit of an Agency is at the discretion of the Washington State Auditor's Office.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records plus one (1) additional year.

9.2 Proprietary or Confidential Information

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

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

9.3 Non-Endorsement and Publicity

The Award of this Master Contract is not in any way an endorsement of the Contractor's Products or Services, nor suggesting that they are the best or only solution to meet the Purchaser's needs. Contractor agrees to make no reference to DES, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES.

9.4 Ownership Rights

Contractor shall maintain all title, copyright, patents, trademarks, trade secrets, and other proprietary rights in the Software, Documentation and Deliverables, including but not limited to bug patches, fixes, updates, upgrades, enhancements, modifications and all derivatives and all other manifestations of Contractor's intellectual property. Aside from the license granted hereunder, DES and/or Purchaser do not, nor does any third party acquire any right, express or implied, in any Contractor's intellectual property.

With respect to Contractor owned intellectual property included in a Deliverable under a SOW, Contractor grants the Purchaser a non-exclusive, non-transferable, irrevocable, perpetual license for the sole purpose of allowing the Purchaser to make use of thereof for its own internal purposes in the manner contemplated in the applicable SOW. Such license is subject to the Purchaser's payment of all fees and expenses under the related SOW.

DES, Purchaser, and Contractor agree that all data and custom software developed for Purchaser (if any), (collectively called "Purchaser Product") produced pursuant to Purchaser's Technology Solution Contract under this Master Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq.

If for any reason Purchasers Product would not be considered a work made for hire under applicable law, Contractor shall assign and transfer to Purchaser its entire right, title and interest in and to all its rights in the Purchaser Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as Purchaser may reasonably deem necessary to secure for Purchaser the rights to Purchaser Product pursuant to this section.

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

Material that is delivered under this Master Contract or Purchaser's Technology Solution Contract, but that does not originate therefrom ("Preexisting Material"), shall be owned by the party delivering such material.

Purchaser shall not provide access to Purchaser's Data except to the extent set forth in a Technology Services Contract. Contractor shall use Data only to provide and maintain the Services provided under such Contract. Contractor shall not capture, maintain, scan, index, share or use Data stored or transmitted by such Services, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Contractor shall not use Data stored or transmitted to it for any advertising or other commercial purpose of Contractor or any third party.

Each party is and shall remain the owner of all right, title and interest in and to any data that it owned prior to the Effective Date, and in and to any data to which it may hereafter acquire ownership. Without limiting the generality of the foregoing, Purchaser shall own all right, title and interest in and to Purchaser's Data. Except as otherwise provided in the Master Contract, no party shall be obligated to convey any right, title and/or interest in any data to the other. Subject to the terms of the Master Contract, including the license rights granted to Purchaser hereunder, each party, upon request of the other, promptly shall return to the other any data owned by the other that may have been disclosed hereunder (including state Records).

9.5 Protection of Purchaser's Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with or in performance of this Master Contract or work 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 any work, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Master Contract or any work, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards, including but not limited to those prescribed by the Purchaser, to prevent unauthorized access to Confidential Information.

In the event that Contractors may come into contact with medical data or Protected Health Information, Contractors will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

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 any work. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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

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

10 GENERAL PROVISIONS

10.1 Governing Law / Venue

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

10.2 Severability

If any terms and conditions of this Master Contract or any terms or conditions of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other terms and conditions of this Master Contract or such other document incorporated by reference that can be given effect without the invalid term/condition, to this end the terms and conditions of this Master Contract are declared to be severable.

10.3 Survivorship

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

10.4 Independent Status of Contractor

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

10.5 Gifts and Gratuities

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

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

10.6 Indemnification

Contractor shall defend, and indemnify DES and/or Purchaser against any claims by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor shall be required to indemnify, and defend the DES and/or Purchaser only in proportion to its fault to the extent the claim is based in whole or in part on negligent acts or omissions of Contractor. Contractor agrees to cooperate with the Washington State Attorney General in the defense of such claim. In the event of any such claim, DES will promptly notify Contractor within ten (10) days of any such event set forth above.

10.7 Personal Liability

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

10.8 Insurance

The following are general insurance provisions for the term of the Master Contract with DES. Contractor shall maintain the minimum insurance coverages in the table below. The "Department of Enterprise Services" shall be named as the "additional insureds" on the Commercial General Liability Policy, relating to products or service under this agreement:

INSURANCE TYPE	MINIMUM PER OCCURRENCE / AGGREGATE

Commercial General Liability (occurrence/aggregate)	$1,000,000/ $2,000,000
Personal Injury Aggregate	$1,000,000
Professional Liability Technology (including Cyber Liability Insurance)	$1,000,000/ $5,000,000

The Contractor shall provide DES with a copy of the Certificate of Insurance for all policies within fifteen (15) calendar days of the Master Contract execution. The Certificate must include the Master Contract reference number.

Commercial General Liability shall include coverage for the Products and/or Services sold to Purchasers. The Agency name, the Purchaser, shall be listed as the "additional insureds" on the Commercial General Liability Policy solely with respect to the Contractors delivery of products or services under this agreement. The limits of liability insurance shall not be less than table above and may be increased based on the scope, complexity, and risk of the Solution purchased as mutually agreed by the parties. Contractors shall provide the Purchaser with a copy of the Certificate of Insurance for all policies within fifteen (15) calendar days of Technology Solution Contract execution. The Certificate must include the affected Technology Solution Contract reference number.

a. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance coverage as follows until expiration of the Master Contract and/or Technology Solution Contract(s). Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to DES and/or Purchaser that insurance, in the following kinds and minimum amounts, have been secured. Failure to provide proof of insurance, as required, may result in Master Contract and/or Technology Solution Contract cancellation or DES' demand that Contractor furnish evidence of policies and/or endorsements to DES .

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

b. Specific requirements

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

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of

Services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

Professional Liability Technology Errors and Omissions (including Cyber Liability): This insurance shall provide coverage for professional Services delivery and include protections for cyber liability disclosures and crimes.

c. Business Auto Policy

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

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

d. Additional insurance provisions

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

Additional insureds:

The "Department of Enterprise Services" and all authorized Purchasers shall be named as an additional insured with appropriate coverages on all general liability, professional liability umbrella, and excess insurance policies as applicable.

Notice of policy(ies) cancellation/Non-renewal:

A written notice shall be given to the Master Contract Administrator thirty (30) calendar days prior to cancellation or non-renewal of the policy(ies) as it relates to this Master Contract and/or Technology Solution Contract.

e. Surplus Lines

For insurers subject to RCW 48.15 (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to cancellation or non-renewal of the policy(ies) as it relates to this Master Contract and/or Technology Solution Contract. Written notice shall include the affected contract reference number(s).

f. Cancellation for non-payment of premium:

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

g. Identification:

Certificates of insurance shall include the affected contract reference number(s) and associated insurance policy numbers.

h. Insurance carrier rating

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

i. Excess coverage

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. By requiring insurance herein, DES and/or Purchaser do not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursement granted to DES and/or Purchaser under this Master Contract.

j. Limit adjustments

The insurance coverage requirements as set forth herein this Master Contract are minimum insurance requirements. The Purchaser reserves the right to request an increase to the above stated policy limits based on the scope, complexity, and risk of each purchased solution. Any changes shall be negotiated at the time of purchase.

k. Industrial Insurance Coverage

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

10.9 Nondiscrimination

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

10.10 Antitrust

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

10.11 Waiver

Failure or delay of DES and/or Purchaser to insist upon the strict performance of any term or condition of the Master Contract or to exercise any right or remedy provided in the Master Contract or by law; or DES' or Purchaser's acceptance of or payment for materials, supplies, Services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Master Contract or by law, and shall not be deemed a waiver of any right of DES and/or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

10.12 Treatment of Assets

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 work.

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

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

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

10.13 Patent and Copyright Indemnification

10.13.1 Contractor, at its expense, shall defend, indemnify, and save DES and/or Purchaser harmless from and against any third party actions, suits or proceedings brought against DES and/or Purchaser (each, a "Claim") to the extent it is based on a claim that the Services or Product, used in accordance with the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, or trademark of a third party (other than DES or any Purchaser) worldwide. Contractor's indemnification obligations apply only if Purchaser:

a) Promptly notifies Contractor in writing of the claim, but 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.

10.13.2 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 Services or Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Services or Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor may terminate the Contract and/or any applicable Order or SOW and refund to Purchaser any prepaid, unused fees paid to Contractor for the affected Services or Product.

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

a) DES and/or Purchaser's Data or DES Applications;

b) DES and/or Purchaser's breach of this Contract;

c) Contractor's compliance with any designs, specifications or instructions of DES and/or Purchaser;

d) Use of the Services or Product in a way not specified by Contractor;

e) Modification of the Services or Product by DES, Purchaser or a third party without the prior knowledge and written approval of Contractor;

f) The combination of the Services or Products with other products, services, equipment, devices, software, systems or data not supplied by Contractor to the extent such Claim is caused by such combination;

g) Use by DES and/or Purchaser after notice by Contractor to discontinue use of all or a portion of the Services or Products;

h) Any use of any software made available by Contractor, that is the subject of an open source license; or

i) Any use by DES and/or Purchaser of any third-party services or software unless the claim arose against Contractor's Services or Products independently of any of these specified actions.

10.13.4 DES and/or Purchaser will, at DES Purchaser's expense, defend and/or settle any claim, suit or proceeding brought about by a third-party against the Contractor or Contractor's officers, directors, employees, agents and Affiliates and arising out of or related to DES and/or Purchaser's Data, DES and/or Purchaser's Applications, content, or other material breaches of General Terms, Section 8.3. In addition, DES and/or Purchaser will pay any judgment awarded against Contractor or any settle amount agreed to by DES and/or Purchaser.

10.13.5 The indemnifying party shall not enter into any settlement that imposes liability or obligations on the indemnified party without obtaining the indemnified party's prior written consent of the settlement.

10.13.6 The foregoing remedies are the exclusive remedies for any indemnification claim.

11 DISPUTES AND REMEDIES

11.1 Problem Resolution and Disputes

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

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

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall have five (5) Business Days to review the Response. If after this review a

resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two (2) panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

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

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

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

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

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

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

11.2 Force Majeure

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

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

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

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

11.3 Non-Exclusive Remedies

Except as otherwise provided herein or in the Technology Solution Contract, the remedies provided for in this Master Contract shall not be exclusive but are in addition to all other remedies available under law, provided that any remedy or remedies are subject to the limitation of liability set forth in Section 11.5.

11.4 Liquidated Damages

Liquidated Damages may be applicable under Purchaser's Technology Solution Contracts. Contractor and Purchaser shall negotiate and include any Liquidated Damages clause in its Technology Solution Contracts at time of purchase.

11.5 Limitation of Liability

11.5.1 CAP ON DAMAGES EXCEPT AS SET FORTH IN SECTION 11.5.2 BELOW.

A. WITH RESPECT TO CONTRACTOR'S LIABILITY TO PURCHASER, CONTRACTOR'S CUMULATIVE LIABITY TO PURCHASER FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER CONTRACT OR PURCHASER'S TECHNOLOGY SOLUTION CONTRACT, WITH ALL TYPE OF DAMAGES ALLOWABLE, SHALL NOT EXCEED TWO (2) TIMES THE FEES PAID OR TO BE PAID UNDER THE PURCHASER'S TECHNOLOGY SOLUTION CONTRACT (INCLUDING ALL APPLICABLE AMENDMENTS, PROJECT AGREEMENTS, STATEMENT OF WORK(S), AND SUPPLEMENTS UNDER THE TECHNOLOGY SOLUTION CONTRACT); AND,

B. WITH RESPECT TO PURCHASER'S LIABILITY TO CONTRACTOR, PURCHASER SHALL BE LIABLE TO CONTRACTOR FOR ONLY UNPAID AND UNDISPUTED INVOICES FOR SERVICES AND EXPENSES AND FEES (INCLUDING ANY INVOICES LATER DETERMINED TO BE VALID.)

11.5.2 EXCLUSIONS FROM LIMITATION OF LIABILITY

The foregoing limitations shall not apply to: (a) liability for infringement of a third party's intellectual property rights; (b) claims regarding personal injury or damage to tangible property; (c) claims arising from gross negligence or from willful or intentional misconduct; (d) amounts due or obligations under any provision herein providing for liquidated damages or agreement providing for liquidated damages negotiated within a Purchaser's Technology Solution Contract; or (e) any misuse or breach of the use restrictions relating to the Software.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR OR DES BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY TECHNOLOGY SOLUTION CONTRACT.

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

11.6 Federal Funding

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

11.7 Federal Restrictions on Lobbying

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

11.8 Debarment and Suspension

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

Contractor acknowledges, it and its "principals", shall notify the Master Contracts Administrator of new or pending debarment procedures against Contractor.

11.9 Failure to Perform

If Contractor fails to perform any substantial obligation under this Master Contract or any Purchaser Technology Solution Contract, 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 and/or Purchaser may withhold all monies due and payable to Contractor for such product or service subject to notice of failure, without penalty to DES and/or Purchaser, until such failure to perform is cured or otherwise resolved. If the Contractor is making good faith progress in performing, Purchaser may allow an extension of a reasonable amount of time to cure and perform the obligation.

12 CONTRACT TERMINATION

12.1 Material Breach

Subject to sections 12.2 and 12.3, Contractor may be terminated for cause by DES, at the sole discretion of the Master Contract Administrator, for failing to perform a material contractual requirement constituting a material breach of Contract. Material breach of a term or condition of the Master Contract may include but is not limited to:

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

If Contractor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Purchaser or Purchaser's agents, subcontractors, consultants or employees; Contractor shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Purchaser.

12.2 Opportunity to Cure

In the event that Contractor fails to perform a material contractual requirement of the Master Contract or materially breaches any term or condition, the Master Contract Administrator shall issue a written cure notice. The Contractor shall have five (5) business days in which to respond with a plan to cure the breach. The Master Contract Administrator reserves the right to suspend, in part or in whole, the Master Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Master Contract Administrator to terminate the Master Contract.

In the event that Contractor fails to perform a material contractual requirement of the Purchaser's Technology Agreement or materially breaches any term or condition, the Purchaser shall issue a written cure notice. The Contractor shall have five (5) business days in which to respond with a plan to cure the breach. Purchaser reserves the right to suspend, in part or in whole, the Technology Solution Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Purchaser to terminate the Technology Solution Contract, in part or whole.

Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated damages set forth in the relevant Technology Solution Contract (if any) or other damages that may accrue, or otherwise affects any other remedies available against Contractor.

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

1. Exercise remedies under this Master Contract and/or Technology Solution Contract(s);

2. Terminate this Master Contract and any related Technology Solution Contracts or portions thereof;
3. Pursue remedies as set forth herein or liquidated damages as set forth in the relevant Technology Solution Contract or initiate dispute resolution, alternative dispute resolution, or legal action against Contractor;
4. Suspend or initiate debarment proceeding against Contractor;

12.3 Termination for Default

If any party violates any material term or condition of this Master Contract, Technology Solution Contract, or SOW, as applicable, or fails to fulfill its material obligations under this Master Contract, or Technology Solution Contract, as applicable, then the aggrieved party shall give the other party 30 (thirty) days written notice of failure to cure and notice of termination.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence; or (3) Contractor or its principals are debarred as defined in 49 CFR. 29.105 (p), the termination shall be deemed to be a "Termination for Convenience".

If the failure to perform is outside the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

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

12.4 Termination for Convenience

When, at the sole discretion of DES, it is in the best interest of DES, DES may terminate this Master Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.

Purchaser may terminate a Technology Solution Contract upon thirty (30) calendar days written notice to Contractor. For fixed fee professional Services, Purchaser is liable for (a) milestones completed and, if applicable accepted; and, (b) for any then in-progress milestone(s), the parties shall come to mutual agreement as to the percent complete and the associated fees prior to the effective date of termination.

No refunds will be provided by Contractor in connection with Terminations for Convenience.

12.5 Termination for Withdrawal of Authority

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

12.6 Termination for Non-Appropriation of Funds

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

12.7 Termination for Conflict of Interest

DES may terminate this Master Contract, or Purchaser may terminate any Purchaser Technology Solution Contract, by written notice to Contractor if DES and/or Purchaser determines, after due notice and examination, that any party has violated RCW 42.52, 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 Purchaser Technology Solution Contract is so terminated, DES and/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 Purchaser Technology Solution Contract, as applicable.

12.8 Termination by Mutual Agreement

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

12.9 Termination Procedure

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

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

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

In the event of termination of any Services or agreement in entirety, the Contractor will not take any action to intentionally erase any Purchaser Data that it may have in its possession for a period of 90 days after the effective date of the termination. After such 90 day period, the Contractor shall

have no obligation unless otherwise agreed between the parties to maintain or provide any Purchaser Data and shall thereafter, unless legally prohibited, delete all Purchaser Data in its systems or otherwise in its possession or under its control.

12.10 Post-Termination Assistance

The Purchaser shall be entitled to any post-termination assistance generally made available with respect to the Products and/or Services unless a unique data retrieval arrangement has been established.

13 CONTRACT EXECUTION

13.1 Entire Agreement

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

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

13.2 Order of Precedence, Incorporated Documents, Conflict and Conformity

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

13.2.1 Incorporated Documents

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

1. The RFP with all attachments and appendices, and all Amendments thereto;
2. Contractor's Response to the RFP; and,
3. 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 and/or Purchaser and used to affect the sale of Products and/or Services to Purchaser.

13.2.2 Order of Precedence

In the event of any inconsistency in this Master Contract, the inconsistency shall be resolved in the following incorporated documents, by this reference, order of precedence:

1. Applicable federal and state of Washington statutes and regulations;
2. Mutually agreed written Amendments to this Master Contract
3. This Master Contract and all Schedules thereto;

4. The terms and conditions contained on Purchaser's Technology Solution Contracts, if used;
5. Contractor's ECM Price Schedule, Exhibit A; and
6. The RFP with all attachments and all Amendments, Exhibit B;
7. Contractor's Response to the RFP, Exhibit C;
8. Contractor's applicable EULA, Exhibit D; and,
9. 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 and/or Purchaser and used to affect the sale of Services to Purchaser.

13.2.3 Conflict

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

13.2.4 Conformity

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

13.3 Legal Notices

Any notice or demand or other communication required or permitted to be given under this 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:	**To DES at:**	
OpenText Inc.	Washington State Department of Enterprise Services	
Attn: Jack Robinson	**Attn: Master Contract Administrator**	
8717 Research Drive, Suite 100	**If by US Postal Service**	**If by Courier**
Irvine, CA 92618	PO Box 41411	1500 Jefferson St SE
	Olympia, WA 98504-1411	Olympia WA 98504
Phone:916-768-8146	Phone: 360-407-8717	
Fax: 949-784-8300		
E-mail: jackr@opentext.com	Email: mike.dombrowsky@des.wa.gov	

Contractor shall also send any applicable notice to Purchasers at the address listed in the Purchaser's Technology Solution Contract.

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.

13.4 Liens, Claims, and Encumbrances

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

13.5 Authority to Bind

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

13.6 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 (DES)	APPROVED (CONTRACTOR)
Washington State Department of Enterprise Services (See the Legal Notices subsection for address)	Contractor: OpenText Inc. (See the Legal Notices subsection for address)
C. Presnell Signature	Christopher C. Sortzi Signature
Farrell Presnell ~~Scott Smith~~ 10/26/2015 Print or Type Name Date	Christopher C. Sortzi Print or Type Name Date
CPRM Assist. Director Washington State ~~IT Procurement Manager~~ Title	VP, US Public Sector Sales Title