

Contract Number T11-MST-579

for

**Microsoft Products and Associated
Services**

between the

Department of Information Services

and

CompuCom Systems, Inc.

Effective Date: May 1, 2011



Table of Contents

| | | |
|-----|---|----|
| 1. | Definition of Terms..... | 1 |
| 2. | Term of Contract..... | 3 |
| 3. | Survivorship..... | 4 |
| 4. | Pricing..... | 4 |
| 5. | Advance Payment Prohibited..... | 4 |
| 6. | Taxes..... | 4 |
| 7. | Invoice and Payment..... | 5 |
| 8. | Overpayments to Vendor..... | 6 |
| 9. | Products and Services..... | 6 |
| 10. | Ordering..... | 7 |
| 11. | Enrollments..... | 7 |
| 12. | Shipping..... | 8 |
| 13. | Product Delivery..... | 8 |
| 14. | Product Replacement/ Return..... | 9 |
| 15. | Four Hour Response..... | 9 |
| 16. | Ownership/Rights in Data..... | 9 |
| 17. | Site Security..... | 9 |
| 18. | Vendor Commitments, Warranties and Representations..... | 9 |
| 19. | Protection of Purchaser's Confidential Information..... | 9 |
| 20. | Legal Notices..... | 10 |
| 21. | DIS Business Manager..... | 11 |
| 22. | Vendor Account Manager..... | 11 |
| 23. | Section Headings, Incorporated Documents and Order of Precedence..... | 11 |
| 24. | Entire Agreement..... | 12 |
| 25. | Authority for Modifications and Amendments..... | 12 |
| 26. | Independent Status of Vendor..... | 12 |
| 27. | Governing Law..... | 12 |
| 28. | Subcontractors..... | 12 |
| 29. | Assignment..... | 13 |
| 30. | Publicity..... | 13 |
| 31. | Review of Vendor's Records..... | 13 |
| 32. | Right of Inspection..... | 14 |
| 33. | Patent and Copyright Indemnification..... | 14 |
| 34. | Save Harmless..... | 15 |
| 35. | Insurance..... | 15 |
| 36. | Industrial Insurance Coverage..... | 16 |
| 37. | Licensing Standards..... | 16 |
| 38. | Antitrust Violations..... | 16 |
| 39. | Compliance with Civil Rights Laws..... | 16 |
| 40. | Severability..... | 17 |
| 41. | Waiver..... | 17 |
| 42. | Treatment of Assets..... | 17 |
| 43. | Vendor's Proprietary Information..... | 17 |
| 44. | Standard Terms of Vendor..... | 18 |
| 45. | Spoilation- Notice of Potential Claims..... | 18 |
| 46. | Disputes..... | 18 |



| | |
|---|----|
| 47. Non-Exclusive Remedies | 19 |
| 48. Liquidated Damages..... | 19 |
| 49. Failure to Perform | 20 |
| 50. Limitation of Liability..... | 20 |
| 51. Termination for Default | 21 |
| 52. Termination for Convenience | 21 |
| 53. Termination for Withdrawal of Authority..... | 21 |
| 54. Termination for Non-Allocation of Funds | 22 |
| 55. Termination for Conflict of Interest..... | 22 |
| 56. Termination Procedure..... | 22 |
| 57. Authority to Bind | 23 |
| 58. Counterparts | 23 |

Schedule A – *Microsoft Enterprise Agreement*

Schedule B – *Microsoft Select Agreement*

Exhibit A – *DIS's RFQQ T11-RFQQ-021*

Exhibit B – *CompuCom's Response to T11-RFQQ-021*



CONTRACT NUMBER T11-MST-579

for

Microsoft Products and Associated Services

PARTIES

This Contract ("**Contract**") is entered into between the state of Washington, acting by and through the Department of Information Services, an agency of Washington State government ("**State**" or "**Purchaser**" or "**DIS**") located at 1110 Jefferson St. SE Olympia, WA 98501, and CompuCom Systems, Inc., a Delaware corporation licensed to conduct business in the state of Washington ("**Vendor**"), located at 7171 Forest Lane, Dallas, TX 75230, for the purpose of providing DIS' Customers with Microsoft Products and Associated Services through DIS' statewide contracts with Microsoft Licensing, GP.

RECITALS

The state of Washington, acting by and through the Department of Information Services, issued a Request for Proposal T11-RFQQ-021 (RFQQ) dated March 3, 2011 (Exhibit A) for the purpose of purchasing Microsoft Products and Associated Services in accordance with its authority under chapter 43.105 RCW.

CompuCom Systems, Inc. submitted a timely Response to DIS' RFP (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFP and has identified CompuCom Systems, Inc. as the apparently successful Vendor.

DIS has determined that entering into a Contract with CompuCom Systems, Inc. will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to CompuCom Systems, Inc. this Contract, the terms and conditions of which shall govern Vendor's furnishing to DIS, and through DIS to its Customers, the Microsoft Products and Associated Services. This Contract is not for personal use.

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

1. Definition of Terms

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

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

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

"**Contract**" shall mean this document, all schedules and exhibits and all amendments hereto.



“Customer(s)” shall mean agencies, institutions, school districts and political subdivisions of the state of Washington (e.g., counties, cities, public utility districts), as defined in the Interlocal Cooperation Act, chapter 39.34 RCW, and public benefit nonprofit corporations who are DIS customers.

“DIS” shall mean the Department of Information Services, an agency of Washington State government.

“DIS Business Manager” shall mean the person designated by DIS who is assigned as the primary contact person whom Vendor’s Account Manager shall work with for the duration of this Contract and as further defined in the section titled **DIS Business Manager**.

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

“DIS Contracting Officer” shall mean the Director of DIS or the person to whom signature authority has been delegated in writing.

“DIS Purchasing Administrator” shall mean the person designated by DIS as responsible for the maintenance and administration of the Contract, notices, reports and any other pertinent documentation or information, as well as purchasing the Products and Services.

“Discount” shall mean Vendor’s discount off Microsoft’s pricing as set forth in Section 4, titled **Pricing**.

“Effective Date” shall mean the first date this Contract is in full force and effect and shall be May 1, 2011.

“Enrollment Form” means the Microsoft Enrollment Forms as negotiated between DIS and Microsoft. Under no circumstances shall it include a Microsoft Direct Enrollment Form.

“Exhibit A” shall mean the RFP.

“Exhibit B” shall mean CompuCom Systems, Inc. Response dated March 31, 2011.

“Licensed Products” refer to the entire range of Microsoft Volume Licensing Program (MVLP) and MVLP for software maintenance Products as defined by the then current Microsoft Select Retail Price List.

“Non-Licensed Products” refers to those tangible, non-software products contained on the then current Microsoft Select Retail Price List, as well as other tangible goods to be made available by the Vendor. These products include, but are not limited to Microsoft CD ROM’s, Microsoft documentation and program diskettes produced by the Vendor.

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

“Product(s)” shall mean the entire Microsoft product line as defined by Microsoft’s Select Retail Price Schedule and offered through the Microsoft Select and/or Enterprise programs.

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



"Purchased Services" or **"Services"** shall mean those administrative Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract. For avoidance of doubt, any services required to carry out the obligations of this contract shall be deemed Purchased Services as specified in RCW 43.105.020. Services exclude all Personal Services as defined in RCW 39.29.

"Purchaser" shall mean the Washington State Department of Information Services (DIS).

"RCW" shall mean the Revised Code of Washington.

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

"Response" shall mean Vendor's Response to the RFP for Microsoft Products and Associated Services, Exhibit B hereto.

"Specifications" shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B.

"Subcontractor" shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term **"Subcontractor"** means Subcontractor(s) of any tier; provided however does not include third party manufacturers of Products like Microsoft.

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

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

Contract Term

2. Term of Contract

- 2.1. This Contract's initial term shall be approximately three (3) years, in parallel with DIS' statewide Microsoft agreements, commencing on the Effective Date, May 1, 2011 and expiring on April 30, 2014.
- 2.2. This Contract's term may be extended by an additional three (3) years, provided that the extensions shall be at Purchaser's option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.3. Regardless of the expiration, or non-renewal of this Contract, Vendor shall continue to provide services for any enrollments entered into prior to the expiration date of the Contract. Service of enrollments entered into prior to the expiration date of the contract shall continue for the term stated in the enrollment documents, and such enrollments shall continue to be governed by the terms of this Contract.



3. Survivorship

All Products /Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of Sections: **Overpayments to Vendor; Vendor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

Vendor agrees to provide the following Microsoft Enterprise and Select Agreement Products and Services at the discount in the table below:

| Enterprise and Select | |
|--|-----------------------|
| License | Discount from Level D |
| License Pool (all product licensing available under Microsoft EA and Select (includes SA)) and All Media | 19.550% |

No other Prices shall be charged by Vendor for implementation of Vendor's Response.

- 4.1. Vendor's Discount(s) may not be decreased during the initial term of the Contract.
- 4.2. If Vendor receives any special pricing for any of the Products and/or Services during the term of this Contract, Vendor agrees to pass such savings on to Purchaser. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within five (5) Business Days of the reduction taking effect.
- 4.3. All of Vendor's cost components (e.g., labor, travel, overhead, profit, etc.) shall be included in the Prices because no additional charges shall be allowed. Purchaser shall not reimburse Vendor for travel and other expenses.

5. Advance Payment Prohibited

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

6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Products and/or Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or



gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.

- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

7. Invoice and Payment.

- 7.1. Vendor will submit properly itemized invoices to Department of Information Services, Accounts Payable, P.O. Box 42439, Olympia, WA 98504-2439. Vendor may not charge Customers directly for any Vendor-provided Products and/or Services.
- 7.2. Invoices shall provide and itemize, as applicable:
 - a) Purchaser Contract number T11-MST-579;
 - b) Vendor name, address, phone number, and Federal Tax Identification Number;
 - c) Description of Products and/or Services, including quantity ordered, model and serial numbers;
 - d) Date of Shipment;
 - e) Net invoice Price per item;
 - f) Sales tax;
 - g) Other applicable charges;
 - h) Total invoice Price; and
 - i) Payment terms.
- 7.3. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Products and/or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.4. Vendor shall accept credit and charge cards for payment of invoices.
- 7.5. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.6. The Purchaser Contract number T11-MST-579 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.7. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.8. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the



Products and/or Services or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

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

Vendor's Responsibilities

9. Products and Services

- 9.1. All Products supplied by Vendor for delivery shall be of new and original manufacture, with the exception of Vendor-supplied application program media, if applicable.
- 9.2. Vendor shall provide, at no charge, pre-release and evaluation media of product versions to DIS/TAS consultants for distribution to Customers as permitted by the publishers.
- 9.3. Vendor shall automatically distribute, at no charge, to DIS' Purchasing Administrator an electronic version of Microsoft's Licensing Briefs in *Word* format.
- 9.4. Vendor shall, at no charge, send to DIS an electronic newsletter at an interval determined in the RFP, in *Word* format announcing only Microsoft Product and Services updates, industry information and current changes to the Select and Enterprise programs or product lists.
- 9.5. Vendor shall provide the DIS Purchasing Administrator at least thirty (30) day advance notice of any changes to the Microsoft Product List.
- 9.6. Vendor shall report Customer purchase data received from DIS, which Vendor will receive from DIS with the purchase order(s), to Microsoft, in the manner specified by Microsoft Corporation.
- 9.7. Vendor shall provide a yearly account review commencing no later than a month prior to the anniversary date of this contract. The review will measure performance relative to established metrics as set forth in Vendor's RFP Response.
- 9.8. Vendor's shall provide a toll-free customer service telephone number, which will be available to DIS and Customers for product information and problem resolution.
- 9.9. Vendor shall provide DIS an annual payments report thirty (30) days prior to the due date for those payments.
- 9.10. All Vendor communication with Customers shall be submitted to DIS for review and approval prior to submission to Customers. Communications related to day-to-day operational issues such as licensing, Software Assurance benefits, help with the Microsoft Volume Licensing site are excluded from this requirement.



10. (M) Estimated Retail Price (ERP) List

- a) For special case-by-case situations where there is not a published price, Microsoft will construct and deliver a non-editable ERP Channel Price Sheet (CPS) to the reseller along with a Net price sheet. Microsoft will notify DIS when these 2 CPS's are sent to Vendor. Vendor will notify DIS upon receipt of the CPS's and Vendor will commit its best faith efforts to provide DIS a copy of the ERP CPS within 2 business days from Vendor's receipt from Microsoft of both the ERP CPS and the Net CPS.
- b) Vendor will have the opportunity to review the ERP pricing for accuracy. If any discrepancies are found, Vendor will have the opportunity to communicate back to Microsoft and obtain corrections. In the event discrepancies are found, Vendor will notify DIS that the CPS was returned to Microsoft. Microsoft will notify DIS upon receipt of the CPS from Vendor, and when the corrected CPS was sent to Vendor. Vendor will notify DIS upon receipt of the corrected CPS and Vendor will commit its best faith efforts to provide DIS a copy of the CPS within 2 business days from Vendor's receipt from Microsoft.

11. Ordering

- 11.1. Vendor shall accept DIS purchase orders as order documents. Properly completed purchase orders must be processed by the Vendor and submitted using Vendor's reporting method to Microsoft within two (2) business days of receipt of purchase order.
- 11.2. For order documents that are not properly completed, Vendor must notify DIS of those errors within one (1) business day. Once DIS corrects order document errors and submits corrected order documents to Vendor, Vendor must use corrected orders in conjunction with Vendor's reporting method to submit orders to Microsoft within two (2) business days of receipt of the corrected order.
- 11.3. Vendor shall accept only purchase orders originating from DIS, not those originating directly from Customer(s).
- 11.4. Vendor shall accept purchase orders up until and including the fourth (4th) Business Day of the month following the month in which those copies are first run. However, orders for special promotions and product discontinuations will be submitted by Purchaser by the end date of that offer.
- 11.5. Vendor shall provide DIS, at no charge, remote access to an on-line order tracking system for the purpose of tracking all DIS orders placed with Vendor.
- 11.6. Damages resulting from Vendor gross negligence and intentional acts or omissions in the course of processing orders or failure to process orders with Microsoft shall be Vendor's sole responsibility. Application of liquidated damages in lieu of other damage calculations shall be at Purchaser's sole discretion.

12. Enrollments

- 12.1. Vendor shall complete the Enrollment Forms received from DIS and submit them to Microsoft within two (2) Business Days from Vendor's receipt thereof.
- 12.2. If Vendor receives improperly completed Enrollment Forms from DIS, Vendor must notify DIS of those errors by the next business day after receipt of enrollment forms. Once DIS corrects Enrollment Form errors and submits corrected Enrollment Forms to



Vendor, Vendor must send the corrected Enrollment Forms to Microsoft within two (2) Business Days from Vendor's receipt thereof.

- 12.3. Vendor shall print the then-current Microsoft Product Use Rights at the time of Customer's enrollment, attach to Customer's Enrollment Form, and return to DIS a fully executed copy.
- 12.4. Vendor shall not process any Microsoft Direct Enrollment Form(s) under the Contract resulting from RFQQ T11-RFQQ-021. .
- 12.5. Vendor shall accept only Enrollment Forms originating from DIS, not those originating directly from Customer(s).

13. Shipping

- 13.1. Vendor shall pay all shipping and handling charges associated with delivery of Products to DIS, Olympia, Washington. The method of shipment and delivery must be consistent with the nature of the Product and the hazards of transportation. Vendor will be responsible to ship by whatever means necessary to meet the delivery requirements set forth in the RFQQ. The exception is for overnight or rush deliveries for which DIS shall be responsible.
- 13.2. Vendor shall pay all shipping and handling charges associated with delivery of Products to alternate destinations (other than to DIS, Olympia, Washington) anywhere within the State of Washington. Alternate destination will be specified by the DIS at time of order. The exception is for overnight or rush deliveries for which DIS shall be responsible.

14. Product Delivery

- 14.1. Delivery of Non-Licensed Products shall be within four (4) Business Days of Vendor's receipt of order, unless the Non-Licensed Products are shipped directly from Microsoft and thus out of Vendor's control.
- 14.2. If delivery exceeds four (4) Business Days, Vendor shall have Microsoft certify in writing that there is no Product available through any channel source because of Product constraints; otherwise liquidated damages may apply, unless the Non-Licensed Products are shipped directly from Microsoft and thus out of Vendor's control..
- 14.3. Elapsed delivery time shall measured from the time an order is accepted, either verbally or in writing by Vendor, to the time product is delivered to DIS, Olympia, Washington, or alternate delivery Customer site, at DIS' discretion.
- 14.4. At DIS's request, Vendor shall copy DIS on all communications regarding Customer subscriptions for Products offered pursuant to this RFP.
- 14.5. Vendor shall ensure that each box is individually identified by the appropriate DIS purchase order number, and that all packages are accompanied by a packing slip, which shows the DIS purchase order number and identifies all items included in the shipment.
- 14.6. DIS will accept partial orders to expedite delivery.



15. Product Replacement/ Return

- 15.1. Vendor shall use commercially reasonable efforts to replace Product shipments found to be defective by Customer within seven (7) Business Days' notification by DIS.
- 15.2. Vendor shall be responsive to the return of defective shipments and mis-shipped or incorrectly ordered Non-Licensed Products purchased under the resulting Contract in accordance with Microsoft's then-current return policy.
- 15.3. Vendor must provide DIS with a Return Merchandise Authorization (RMA) within eight (8) Business Hours for Non-licensed Products, and five (5) business days for Licensed Products from the time a product return request is initiated by DIS.

16. Four Hour Response

Vendor shall provide guaranteed four (4) hour phone or email response to all phone calls placed with an authorized Vendor representative regarding pricing information, placing of orders, order status, return merchandise authorization or other related business matters for calls that are not immediately answered by an authorized customer representative. Vendor must provide a problem resolution plan within (5) business days from the date of Vendor's response to DIS.

17. Site Security

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

18. Vendor Commitments, Warranties and Representations

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

19. Protection of Purchaser's Confidential Information

- 19.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously



approved by Purchaser. To the extent Vendor has access to Confidential Information, Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 19.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 19.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.
- 19.4. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 19.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contract Administration

20. Legal Notices

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

To Vendor at:

CompuCom Systems, Inc.
Attn: Legal Department
7171 Forest Lane
Dallas, TX 75230

Phone: 972.856.3600
Fax: 972.856.7438
E-mail:

To Purchaser at:

State of Washington
Department of Information Services
Attn: DIS Contract Administrator
Street: 1110 Jefferson St. SE
Olympia, WA 98501
Mail: PO Box 42445
Olympia, WA 98504-2445
Phone: (360) 902-3492
Fax: (360) 586-1414
E-mail: mcaadmin@dis.wa.gov



- 20.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 20.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products and/or Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

21. DIS Business Manager

Scott Smith will be the DIS Business Manager for this Contract and will provide oversight of the activities conducted hereunder. The DIS Business Manager will be the principal contact for Vendor concerning business activities under this Contract. DIS shall notify Vendor, in writing, when there is a new DIS Business Manager assigned to this Contract.

22. Vendor Account Manager

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

Vendor Account Manager: Wayne Dohnt
Address: 7171 Forest Lane, Dallas, TX 75230
Phone: (916) 987-0680 **Fax:** (916) 852-9538 **E-mail:** wayne.dohnt@compucom.com

23. Section Headings, Incorporated Documents and Order of Precedence

- 23.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 23.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) DIS' RFQQ dated March 3, 2011;
 - b) Vendor's Response to DIS' RFQQ;
 - c) The terms and conditions contained on DIS' purchase documents, if used; provided however will not modify the terms of the Contract;
 - d) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Products and/or Services to Purchaser.
- 23.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:



- a) Sections of this Contract;
- b) DIS' RFQQ dated March 1, 2011;
- c) Vendor's Response to DIS' RFQQ;
- d) The terms and conditions contained on DIS' purchase documents; and
- e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Products and/or Services to Purchaser.

24. Entire Agreement

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

25. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by DIS and Vendor. Only the DIS Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Purchaser.

26. Independent Status of Vendor

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

27. Governing Law

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

28. Subcontractors

Vendor may, with prior written permission from DIS, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce

the liability of Vendor to DIS for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

29. Assignment

- 29.1. With the prior written consent of DIS, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DIS that may arise from any breach of the sections of this Contract, or warranties made by Vendor herein including but not limited to, rights of setoff.
- 29.2. DIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve DIS of any of its duties and obligations hereunder.

30. Publicity

- 30.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Products and/or Services by the State and shall not be so construed by Vendor in any advertising or other publicity materials.
- 30.2. Vendor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract and Products and/or Services furnished by Vendor wherein the State's name is mentioned, language is used, or Internet links are provided from which the connection of the State's name therewith may, in DIS' judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

31. Review of Vendor's Records

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



- 31.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 31.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 31.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

32. Right of Inspection

Vendor shall provide right of access to its facilities to Purchaser, or any of Purchaser's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times with prior written notice, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

33. Patent and Copyright Indemnification

- 33.1. Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
 - a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 33.2. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those



charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of three (3) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

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

- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
- c) Use of the Product in a way not specified by Vendor;

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

34. Save Harmless

Vendor shall defend, indemnify, and save the State harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to real or tangible personal property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

35. Insurance

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

35.2. The minimum acceptable limits shall be as indicated below, for each of the following categories:

- a) Property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;



- e) Professional Liability Errors and Omissions and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.
- 35.3. Vendor shall pay premiums on all insurance policies. Such insurance policies shall endorsed DIS as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number T11-MST-579 and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 35.4. All insurance provided by Vendor shall be separate from any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 35.5. Vendor shall include all Subcontractors, if any, as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 35.6. Vendor shall furnish to DIS copies of certificates and additional insured endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS' sole option, result in this Contract's termination.
- 35.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to DIS in this Contract.

36. Industrial Insurance Coverage

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

37. Antitrust Violations

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

38. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42



U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

39. Severability

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

40. Waiver

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

41. Treatment of Assets

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

42. Vendor's Proprietary Information

Vendor acknowledges that Purchaser is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, Purchaser shall maintain the confidentiality of all such



information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

43. Standard Terms of Vendor

No terms, provisions, or conditions of any business form that Vendor may use will have any affect on the rights, duties, or obligations of the parties under, or otherwise modify, this Contract.

44. Spoliation- Notice of Potential Claims

Each party shall promptly notify the other party of all potential claims that arise or result from this Contract. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence.

Disputes and Remedies

45. Disputes

- 45.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 45.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 45.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 45.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.



- 45.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 45.6. If the subject of the dispute is the amount due and payable by Purchaser for Products and/or Services being provided by Vendor, Vendor shall continue providing Products and/or Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

46. Non-Exclusive Remedies

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

47. Liquidated Damages

47.1. Liquidated Damages – General

- a) Any delay by Vendor not a result of a Force Majeure Event which includes lack of availability from the manufacturer, in meeting the ordering, enrollment, error notification, response, or delivery time frames set forth in this Contract may interfere with the proper implementation of Purchaser's programs and may result in loss and damage to Purchaser.
- b) As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.
- c) Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled **Limitation of Liability**.

47.2. Liquidated Damages – Specific

- a) If Vendor does not provide the Product(s) or process orders or enrollments by delivery dates or within the timeframes agreed upon between Purchaser and Vendor, then Vendor must have Microsoft certify in writing that there is no Product available through any channel source because of Product constraints; or that a failure to process orders or enrollments in the specified timeframes was a result of delay caused by Microsoft, otherwise liquidated damages may apply. If Vendor does not provide error notification within the prescribed timeframe, such delay in error notification will cause a delay in the processing of orders or enrollments, and liquidated damages may apply.
- b) For Product deliveries, if Vendor cannot provide such certification from Microsoft, Vendor shall provide a revised delivery date and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified delivery date and the date that Vendor actually provides the Product(s) an amount of seventy-five (\$75.00) dollars per day.



- c) For processing orders or enrollments, if Vendor cannot provide such certification from Microsoft, Vendor shall provide a timeframe within which those orders and enrollments will be completed and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the required date of processing and the date that the Vendor actually processes the order or enrollment an amount of seventy-five (\$75.00) dollars per day.
- d) For failure to provide error notification in the prescribed timeframe, Vendor shall pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the required date of error notification and the date that the Vendor actually notifies Purchaser of the error(s) an amount of seventy-five (\$75.00) dollars per day.
- e) Liquidated damages shall be subtracted from any outstanding funds due to the Vendor for orders previously received. In the event that there are no outstanding charges owed to the Vendor, the Vendor shall pay liquidated damages within twenty (20) Business Days of notification of assessment.

48. Failure to Perform

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

49. Limitation of Liability

- 49.1. The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default and Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 49.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser ("Force Majeure Event"). Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.
- 49.3. Neither party shall be liable for personal injury to the other party or damage to the other party's real or tangible personal property except personal injury or damage to real or tangible personal property proximately caused by such party's respective fault or negligence.



Contract Termination

50. Termination for Default

- 50.1. If either Purchaser or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.
- 50.2. In the event of termination of this Contract by Purchaser for Vendor's Default, Purchaser shall have the right to procure the Products and/or Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and/or Services and the replacement costs of such Products and/or Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Vendor's breach. Purchaser shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser for Vendor's default.
- 50.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 50.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

51. Termination for Convenience

When, at the sole discretion of DIS, it is in the best interest of the State, DIS may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Vendor. If this Contract is so terminated, DIS is liable only for payments required by the terms of this Contract for Products and/or Services received and accepted by DIS prior to the effective date of termination.

52. Termination for Withdrawal of Authority

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor. 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 this Contract in order to acquire similar Products and/or Services from a third party.



53. Termination for Non-Allocation of Funds

If funds are not allocated to Purchaser to continue this Contract in any future period, Purchaser may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for Products and/or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchaser agrees to notify Vendor in writing of such non-allocation 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 this Contract in order to acquire similar Products and/or Services from a third party.

54. Termination for Conflict of Interest

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

55. Termination Procedure

- 55.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Vendor shall follow any procedures Purchaser reasonably specifies in Purchaser's Notice of Termination.
- 55.2. Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Vendor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 55.3. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Products and/or Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 55.4. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.



Contract Execution

56. Authority to Bind

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

57. Counterparts

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

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

Approved
State of Washington
Department of Information Services


Signature

Scott Smith
Print or Type Name
4/26/11
Date

Program Coordinator
Title

Approved
CompuCom Systems, Inc.


Signature

Richard A. McDonough
Print or Type Name
08/25/11
Date

VP & Secretary
Title

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title Date

Vendor Information

Vendor's UBI Number:

Minority or Woman Owned Business Enterprise

Yes _____ No _____
(Certification Number)

