Washington State Department of
Enterprise Services

Master Contract Number 01313

for

Digital Communication Solutions

between

Washington State Department of Enterprise Services

and

GovDelivery, Inc.

Effective Date: March 26, 2014

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1. PARTIES

This Master Contract ("Master Contract" or "Contract") is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES) an agency of Washington state government located at 1500 Jefferson Street SE Olympia WA, 98504-2445, and *GovDelivery, Inc.* (Contractor), a *Corporation* located at *408 St. Peter Street, Suite 600 St. Paul, MN 55102* licensed to conduct business in the state of Washington, for the purpose of providing Digital Notification System services as described and identified herein.

2. RECITALS

The state of Washington, acting by and through DES issued Request for Qualifications (RFQQ) number 0AA13 dated August, 2013, (Exhibit A) for the purpose of purchasing Digital Notification System in accordance with its authority under Chapter 39.26 RCW.

Contractor submitted a timely Solicitation Response (Exhibit B).

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

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

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

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

3. OVERVIEW

3.1 Term

3.1.1 Master Contract Term

The initial term of this Contract shall be from date of last signature, through November 15, 2015.

The total term, including the initial term and all subsequent extensions, shall not go beyond November 15, 2019 unless an emergency exists and/or special circumstances require a partial term extension. DES reserves the right to extend with all or some of the Contractors, solely determined by DES.

3.1.2 Master Contract Extensions

Extensions for additional terms shall be offered at the sole discretion of DES and will be completed through documentation which confirms that a Contractor continues to meet original RFQQ requirements.

Contractors that do not respond to extension offers from DES by the Contract expiration date may be suspended for up to one year and then terminated until such time that Contractor is deemed to be responsive by DES. During this period, any additional Contract activity will be suspended until extension offers are completed, returned and approved by DES.

3.2 Program Management
Except as prohibited by law, DES reserves the right to review the program's prequalified pools/usage rate and use its sole discretion in determining which Contractors receive extension offers.

3.3 Purchasers
With respect to use of this Contract, Washington state agencies, including but not limited to DES, institutions of higher education, boards, commissions and political subdivisions (e.g., counties, cities, school districts, or public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW, and public-benefit nonprofit corporations that are eligible to receive services from DES under chapter 39.26 RCW.

3.4 Ordering/Setup Process
Purchasers may contact the Contractor directly. A list of contact persons is listed in Exhibit A.

4. CONTRACT ADMINISTRATION

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

4.2 Administration of Contract
DES will maintain Contract information and pricing, and reserves the right to make it available at des.wa.gov.

4.3 Contractor Supervision and Coordination
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 Contract Administrator concerning Contractor's performance under this Contract. The Contractor Account Manager will be the principal point of contact for DES for the duration of this Contract and will provide oversight of Contractor activities conducted hereunder. Contractor account manager will serve as the focal point for business matters, performance matters, and administrative activities under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's account manager assigned to this Contract; and
4. Be bound by all written communications given to or received from the Contractor's Representative.

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

4.4 Contract Management
Upon award of this Contract, the Contractor shall:

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

4.5 Changes

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

DES reserves the right to add services as market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

4.6 Statewide Payee Desk

In order to receive payment, Contractors are required to be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington state agencies cannot make payments to Contractor until Contractor is registered. Registration materials are available here: Receiving Payment from the State.

4.7 Fees and Reporting

4.7.1 Fees

This 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 is 0.74 percent of the purchase price for Work Orders. The purchase price is defined as total invoice price less sales tax. No taxes will be assessed against the management fee. The management fee is to be included in Contractor's hourly rate and not as a separate line item to Purchasers. Contractor will collect and distribute the fee to DES. The management fee will be reviewed to ensure that the ITPS program is self-supporting.

4.7.2 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 30th, July 31st, October 31st and January 31st. All Apparent Successful Bidders must agree to submit to DES a quarterly report of all purchases made from any resulting Contract. The report must identify: (1) the Contract number; (2) each Purchaser making

purchases during the reporting quarter; (3) the total 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, excluding sales tax and excluding the DES management fees, for all Purchasers; and (6) the amount of the DES management fees. The report and management fee must be received by the 15th 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 activity in a quarter, a quarterly report will not be required and accordingly, no management fee will be required. DES shall have the right to examine Contractor's records associated with purchases under this Contract in order to ensure compliance with all Contract requirements. Contractor will identify a primary contact person(s) responsible for submitting the quarterly sales report.

4.7.3 Additional Reporting

Contractor will provide details regarding this contract within 30 days of DES request. Examples of information that may be requested would be; all account, subscribers by account, number of users, number of messages sent, etc.

4.8 Washington's Electronic Business Solution (WEBS)

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

5. PRICING

5.1 Price Protection

For the complete term of the Contract, Contractor must guarantee to provide services at no higher than the rates set forth in the (Exhibit B Pricing). Prices are considered maximum or "ceiling" prices only. On a project by project basis, Contractor may elect to provide services to Purchasers for performance of Work Orders at lower rates than those originally-established in this Contract.

5.2 No Additional Charges

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

6. CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

6.1 Contractor Requirements

The Contractor is required to provide services under this Master Contract shall meet or exceed all the mandatory requirements of the RFQQ.

6.2 Contractor Certifications

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

6.3 Use of Subcontractors

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

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, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

DES reserves the right to approve or reject any and all Subcontractors that are identified by Contractor.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

6.4 Subcontracts and Assignments

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

6.5 Contractor Authority and Infringement

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

7. SITE SECURITY AND SAFETY

7.1 Site Security

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

7.2 Remote Access to Network

Contractor understands that in order to obtain remote access to Purchaser's Local Area Network (LAN), email, or supported computing environments through a remote access connection

("Remote Access"), Contractor must comply with Purchaser's Remote Access policy and any other applicable policies or procedures. Contractor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.

7.3 System Security

Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in performing work under this Contract and that in providing such access to Contractor, Purchaser places special confidence and trust in Contractor. Contractor acknowledges and understands that any access granted by Purchaser to its computer networks shall be limited, restricted and conditioned upon Contractor's compliance with certain DES policies and practices. Contractor warrants that it will perform all work for or on behalf of Purchasers in full compliance with Information Services Board Security Policy, Standards and Guidelines, the Use of DES Networks Policy, and any other security documents and best practices provided by DES ("Security Policies"). Contractor agrees that DES's Security Policies shall serve as the standard for network security and warrants that it shall exercise its best efforts to comply with the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, Self Help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of DES's network, system or data. Vendor staff may be required by Purchaser to complete a certain minimum level of Security Awareness Training coursework depending on the skill and experience levels required by Purchaser. Minimum expectations and recommended coursework are set forth here: OCIO Policy #141 - Securing Information Technology Assets.

8. PAYMENT

8.1 Payment, Invoicing and Discounts

Payment is the sole responsibility of, and will be made by, the Purchaser. Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract number; the Contractor's Statewide Payee Desk registration number assigned by DES, the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s).

Invoices for payment will accurately reflect all discounts due the Purchaser. 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 until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. 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.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1 percent per month on the amount overdue or a minimum of $1.00. Payment will not be

considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.
Payment for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

8.1 Taxes, Fees, and Licenses

Taxes

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

Collection of Retail Sales and Use Taxes

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

8.2 Department of Revenue Registration for Out-of-State Contractors

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

Fees/Licenses.

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

Taxes on Invoice

Contractor shall calculate and enter the appropriate Washington state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

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

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

8.4 Overpayments to Contractor

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

8.5 Contractor Expenses

Purchaser shall reimburse Contractor for travel and other expenses only as approved in advance as identified in a Purchase Order, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in the Washington State Administrative and Accounting Manual. 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 Contract.

8.6 Audits

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

9. QUALITY ASSURANCE

9.1 Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this

section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

9.2 Warranties

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

9.3 Cost of Remedy

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

10. INFORMATION AND COMMUNICATIONS

10.1 Advertising

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

10.2 Retention of Records

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

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

10.3 Proprietary or Confidential Information

Contractor acknowledges that DES and Purchaser are subject to chapter 42.56 RCW and that this Contract and any work shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor.

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES or Purchaser shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES or Purchaser will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES or Purchaser will release the requested information on the date specified.

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

10.4 Non-Endorsement and Publicity

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

10.5 Ownership/Rights in Work Product and Data

Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product.

Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

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

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

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

10.6 Protection of Purchaser's Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with or in performance of this Contract or 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 Contract or any work, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this 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. Contractors that may come into contact with medical data or Protected Health Information will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

Immediately upon expiration or termination of this Contract or any work, Contractor shall, at DES's or Purchaser's option: (i) certify to DES or Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to DES or Purchaser; or (iii)

take whatever other steps DES or Purchaser requires of Contractor to protect DES's or Purchaser's Confidential Information.

DES and Purchasers reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract or any 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 acts or omissions, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by DES or Purchaser in responding to or recovering from the Data Breach.

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

11. GENERAL PROVISIONS

11.1 Governing Law / Venue

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

11.2 Severability

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

11.3 Survivorship

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

11.4 Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for

any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

11.5Gifts and Gratuities

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

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

11.6Immunity and Hold Harmless

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

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

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

11.7Personal Liability

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

11.8Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its Appendices.

a. **General requirements**

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

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.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

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. The State of Washington 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 contract.

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.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	$2,000,000
products-Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury Aggregate	$1,000,000
Each Occurrence (applies to all of the above)	$1,000,000
Fire Damage Limit (per occurrence)	$50,000
Medical Expense Limit (any one person)	$5,000

c. **Business Auto Policy (BAP)**

In the event that services delivered pursuant to this contract involve the use of 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 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.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

d. **Additional insurance provisions**

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

Additional Insured:

The State of Washington and all authorized purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

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

For insurers subject to Chapter 48.18 RCW (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract. Written notice shall include the affected contract reference number.

e. **Surplus Lines**

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee 20 calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract. Written notice shall include the affected contract reference number.

Cancellation for non-payment of premium:

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

Identification:

Policy(ies) and certificates of insurance shall include the affected contract reference number.

f. **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 contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

g. **Excess coverage**

The limits of all insurance required to be provided by the contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the contractor from liability in excess of such limits.

h. **Limit adjustments**

The state reserves the right to increase or decrease limits as appropriate.

i. **Industrial Insurance Coverage**

The contractor shall comply with the provisions of Title 51 RCW 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

11.9Nondiscrimination

During the performance of this 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.

11.10 Antitrust

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

11.11 Waiver

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

11.12 Treatment of Assets

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

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

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

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

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

11.13 Patent and Copyright Indemnification

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

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

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

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

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

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

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

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

12. DISPUTES AND REMEDIES

12.1 Problem Resolution and Disputes

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

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

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

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

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

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

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

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

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

12.2Administrative Suspension

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

12.3Force Majeure

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

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

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

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

12.4Alternative Dispute Resolution Fees and Costs

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

12.5Non-Exclusive Remedies

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

12.6Liquidated Damages

Liquidated Damages may be applicable under Purchase Orders. Purchaser shall include any Liquidated Damages clause in its Purchase Order.

12.7Limitation of Liability

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

damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.
Contractor, DES and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the respective fault or negligence of Contractor, DES or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DES or Purchaser acting in either a sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DES, or Purchaser, or their respective Subcontractors.
If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
Contractor, DES and Purchaser shall not be liable for personal injury to another party or damage to another party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

12.8Federal Funding
In the event that federally funded acquisitions result from this Contract, the Contractor may be required to provide additional information (free of charge) at the request of DES or Purchaser and additional restrictions may apply.

12.9Federal 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.

12.10 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.
As new laws, rules, and policies are implemented, they will apply to this Contract.

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

13. CONTRACT TERMINATION

13.1Material Breach

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

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

13.2Opportunity to Cure

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

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

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

13.3Termination for Cause

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

investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

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

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

13.4Termination for Default

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

In the event of termination of a Purchase Order by Purchaser or this Contract by DES, Purchaser or DES shall have the right to procure the services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the services and the replacement costs of such services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Purchase Order or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DES resulting from Contractor's breach. DES and Purchaser shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DES or Purchaser for Contractor's default.

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

If the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

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

13.5Termination for Convenience

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

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

13.6Termination for Withdrawal of Authority

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

13.7Termination for Non-Appropriation of Funds

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

13.8Termination for Conflict of Interest

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

13.9Termination by Mutual Agreement

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

13.10 Termination Procedure

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

Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or Purchase Order had not been terminated. Failure to agree on such determination shall be a dispute within the meaning of the section of this Master Contract entitled Disputes. Purchaser may withhold from any amounts due

Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

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

In the event of termination of any services or agreement in entirety, the Service Provider will not take any action to intentionally erase any State of Washington Data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Washington Data and shall thereafter, unless legally prohibited, delete all State of Washington Data in its systems or otherwise in its possession or under its control.

13.11 Post-Termination Assistance

The State of Washington shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.

14. CONTRACT EXECUTION

14.1Entire Agreement

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

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

14.2Order of Precedence, Incorporated Documents, Conflict and Conformity

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

14.20.1 Incorporated Documents

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

1. The RFQQ with all attachments and exhibits, and all amendments thereto;
2. Contractor's Response to the RFQQ;
3. The terms and conditions contained on Purchaser's Order Documents, if used; and
4. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect the sale of Services to Purchaser.

14.20.2 Order of Precedence

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

1. Applicable federal and state statutes, laws, and regulations;

2. Mutually agreed written Amendments to this Contract
3. This Contract and all Schedules thereto;
4. The RFQQ with all attachments and exhibits, and all Amendments thereto;
5. Contractor's Response to the RFQQ (Exhibit D);
6. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to DES or Purchaser and used to affect the sale of Services to Purchaser.

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

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

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

To Contractor at:
GovDelivery, Inc.
Attn: Michael Pearson, Account Manager
408 St. Peter Street, Suite 600
St. Paul, MN 55012

Phone: (651) 726-7302
Fax: N/A
E-mail: mike.pearson@govdelivery.com

To DES at:
Washington state Department of Enterprise Services
Attn: Neva Peckham, Contract Administrator

If by US Postal Service	**If by Courier**
PO Box 41411	1500 Jefferson St SE
Olympia, WA 98504-1411	Olympia WA 98504

Phone: 360.407.9411
Fax: 360.586.2426
Email: neva.peckham@des.wa.gov

or to Purchasers at the address listed on their Purchase Order.
Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

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

14.23 Authority to Bind

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

14.24 Counterparts

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

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

APPROVED (DES)	APPROVED (CONTRACTOR)
WA state Department of Enterprise Services (See the Legal Notices subsection for address)	GovDelivery, Inc. (See the Legal Notices subsection for address)
Signature	Signature
Neva Peckham 3/20/14 Print or Type Name Date	Mike Pearson 3/19/14 Print or Type Name Date
Contracts Specialist Contracts & Legal, MCC Title	Vice President Government Solutions Title

MANAGEMENT APPROVAL (DES)
WA state Department of Enterprise Services (See the Legal Notices subsection for address)
Signature
Dale Colbert, 3-28-14 Print or Type Name Date
Unit Manager Contracts & Legal, MCC Title

Exhibit A - GOVDELIVERY CONTACTS

PRIMARY CONTACT:	Deb Castle, Account Executive	**IMPLEMENTATION/SETUP:**	Cindy Hoops, Implementation Manager
CONTACT PHONE:	(651) 379-6224	**CONTACT PHONE:**	(651) 757-4125
CONTACT EMAIL:	deb.castle@govdelivery.com	**CONTACT EMAIL:**	cindy.hoops@govdelivery.com
CONTRACT ESCALATION ISSUES:	Michael Pearson, VP Government Solutions		
CONTACT PHONE:	(651) 726-7302		
CONTACT EMAIL:	mike.pearson@govdelivery.com		

Exhibit B – PRICING

STATE AGENCIES

Pricing Per Agency					
Users		Annual Commercial Fee	Percent Discount	Dollar Discount	Annual Agency Fee
From	To				
2,000,000	>	$90,000	25%	$22,500	$67,5000
1,000,000	1,999,999	$75,600	25%	$18,900	$56,700
500,000	999,999	$51,600	15%	$7,740	$43,860
250,000	499,999	$35,088	15%	$5,263	$29,825
100,000	249,999	$23,856	15%	$3,578	$20,278
50,000	99,999	$16,224	5%	$811	$15,413
<	50,000	$12,500	0%	$ -	$12,500

One-time setup fee is 15% of the Annual Fee and includes the following services:

- Setup of an unlimited number of administrators
- Site analysis and recommendations of where to add GovDelivery functionality
- Subscription functionality based on web publishing process
- Technical assistance with placement of HTML links to subscription functionality
- Unlimited online administration tools and training for staff
- Setup coordination from client services

Tier pricing is based on the number of Users for a specific state agency and is measured prior to implementation. Users are defined by the number of unique visits to the website on a quarterly basis. The number of unique visits is reported by a commercially validated tool. Once the price is set it remains the fixed annual price for the term of the agreement.

The above is fixed and guaranteed pricing that will last for the term of the contract.

NON-STATE AGENCIES

A MASTER CONTRACTS USE AGREEMENT (MCUA) MUST BE IN PLACE PRIOR TO UTILIZING THIS CONTRACT.

Pricing Per Political Subdivision					
Up to Population	Annual Commercial Fee	Percent Discount	Dollar Discount	Annual Fee	One-Time Setup Fee*
2,000,000	$240,000	25%	$60,000	$180,000	$21,600
1,750,000	$210,000	25%	$52,500	$157,500	$18,900
1,500,000	$180,000	25%	$45,000	$135,000	$16,200
1,250,000	$150,000	25%	$37,500	$112,500	$13,500
1,000,000	$120,000	25%	$30,000	$90,000	$12,600
900,000	$95,295	15%	$14,295	$81,000	$11,340
800,000	$84,706	15%	$12,706	$72,000	$10,080
700,000	$74,118	15%	$11,118	$63,000	$8,820
600,000	$63,529	15%	$9,529	$54,000	$7,560
500,000	$52,941	15%	$7,941	$45,000	$6,300
400,000	$42,353	15%	$6,353	$36,000	$5,040
300,000	$31,764	15%	$4,764	$27,000	$4,050
250,000	$25,263	5%	$1,263	$24,000	$3,600
200,000	$24,211	5%	$1,211	$23,000	$3,450
175,000	$23,947	5%	$1,197	$22,750	$3,413
150,000	$22,105	5%	$1,105	$21,000	$3,150
125,000	$19,079	5%	$954	$18,125	$2,719
100,000	$17,368	5%	$868	$16,500	$2,475
90,000	$16,389	5%	$819	$15,570	$2,336
80,000	$16,253	5%	$813	$15,440	$2,316
70,000	$15,474	5%	$774	$14,700	$2,205
60,000	$14,842	5%	$742	$14,100	$2,115
50,000	$14,053	5%	$703	$13,350	$2,003
40,000	$12,800	0%	$ -	$12,800	$1,920
30,000	$12,000	0%	$ -	$12,000	$1,800
20,000	$10,000	0%	$ -	$10,000	$1,500

*One-time setup fee includes the following services:

- Setup of an unlimited number of administrators
- Site analysis and recommendations of where to add GovDelivery functionality
- Subscription functionality based on web publishing process
- Technical assistance with placement of HTML links to subscription functionality
- Unlimited online administration tools and training for staff
- Setup coordination from client services

The above is fixed and guaranteed pricing that will last for the term of the contract.

Exhibit C – SOLICITATION AND AMENDMENTS

01313b.doc

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Exhibit D - CONTRACTOR'S RESPONSE

GovDelivery Bid Response

Certification & Assurances