CONTRACT/MASTER AGREEMENT

State of Washington, Department of Enterprise Services (DES)
on behalf of the NASPO ValuePoint Cooperative Purchasing Program

Contract/Master Agreement #06913
For Public Safety Communication Equipment

between
The State of Washington
and
Radio Frequency Systems, Inc.

Under the Authority of
State of Washington, Chapter 39.26 RCW

Radio Frequency Systems, Inc. has been awarded the following categories:

RF Transmission Lines

1.0 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this Contract is to enable authorized purchasers to purchase public safety communication equipment from one or more awarded contractors from one or more of the following product categories:

1. Radios – LMR (Land Mobile Radios)
    - Portable
        - Dual-band
        - Single-band
            - Tier I
            - Tier II
            - Tier III
    - Mobile
        - Dual-band
        - Single-band
            - Tier I
            - Tier II
            - Tier III
    - Desktop
        - Dual-band
        - Single-band
            - Tier I
            - Tier II
    - Base Station/Repeater
        - Single-band
            - Tier I
            - Tier II
    - In-vehicle Repeater
2. Gateway Devices
3. Microwave Radios
4. Dispatch Consoles
5. Microwave Antennas
6. Mobile Radio Antennas
7. Base Station/Repeater Radio Antennas
8. RF Transmission Lines
9. RF Filtering Equipment

New contracts may be established with other vendors as new equipment and additional product categories or subcategories are identified. This strategy will accommodate new technology introduced into the marketplace and made available to public safety customers.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The DES reserves the right to modify this Contract by mutual agreement between the DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The Department of Enterprise Services, on behalf of the state of Washington (acting as the Lead State for WSCA-NASPO), issued a Request for Proposal (RFP) for the purpose of purchasing equipment and services for public safety communication equipment in accordance with its authority under Chapter 39.26 RCW.

Radio Frequency Systems, Inc. submitted a timely response to the DES's solicitation (incorporated by reference).

The DES evaluated all properly submitted responses to the above-referenced RFP and has identified ***Radio Frequency Systems, Inc.*** as one of the apparently successful Contractors.

The DES has determined that entering into a contract/master agreement with ***Radio Frequency Systems, Inc.*** will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DES awards to ***Radio Frequency Systems, Inc.*** this Contract/Master Agreement, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the equipment and services identified herein. This Contract is not for personal use.

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

1.4 ESTIMATED USAGE

Based on past and/or projected future usage, it is estimated that purchases over the initial two (2) year term of the contract may approximate an aggregate total of $250,000,000 for contract products and services. This estimate was provided solely for the purpose of assisting bidders in preparing their response. Orders will be placed by Purchasers (Purchasing Entities) only on an as needed basis.

The State of Washington/WSCA-NASPO does not represent or guarantee any minimum level of purchase.

1.5 CONTRACT TERM

The initial term of this Contract is for approximately two (2) years from the effective date of the Contract through June 30, 2016 with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the DES and are subject to written mutual agreement. The total Contract term, including the initial term and all subsequent extensions, shall not exceed eight (8) years unless an emergency exists and/or special circumstances require a partial term extension. The DES reserves the right to extend with all or some of the Contractors, solely determined by the DES.

1.6 PURCHASERS/PURCHASING ENTITIES

Purchasers/Purchasing Entities include members of the WCSA-NASPO Cooperative Purchasing Program, a unified, nationally-focused cooperative purchasing program that potentially can leverage the collective expertise, experience, and demand of 50 states and their political subdivisions, and help spur innovation and competition in the marketplace.

WSCA- NASPO Cooperative Purchasing Program is a cooperative group-contracting consortium for state governments, serving their departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.). All 50 states, the District of Columbia, US Territories and other public entities may participate in the use of WSCA-NASPO contracts.

The following Participating Entities have signified their intent to participate in this Contract/Master Agreement and have listed their estimated annual spend (including participating political subdivisions): Alaska - $6,210,000/year; Arkansas - $3,250,000/year; Delaware - $4,030,000/year; Iowa - $2,000,000/year; Nevada - $4,000,000/year; New Hampshire - $2,000,000/year; Oregon - $13,000,000/year; South Dakota - $100,000/year; Utah - $495,000/year; Washington - $12,000,000/year; California - $8,000,000/year. (See also *Appendix J Intent to Participate* and *Appendix K Individual States' Terms and Conditions*)

However, Intent to Participate documents are not binding. During the term of the Contract, states and public entities may use this Contract by executing a Participating Addendum between themselves and the Contractor.

2.0 CONTRACT ADMINISTRATION

2.1 DES CONTRACT ADMINISTRATOR

The 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. The DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

2.2 ADMINISTRATION OF CONTRACT

DES will maintain Contract information and the level of price discount(s) and will make this information available on the DES web site.

2.3 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 representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's representative assigned to this Contract; and

4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
5. Be bound by all written communications given to or received from the Contractor's representative.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following Contract award.

2.5 CONTRACTOR'S CONTRACT MANAGEMENT

Upon award of this Contract/Master Agreement, the Contractor shall:

1. Designate a single point of contract and alternate point of contract for the administration of this contract.
2. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
3. Promote and market the use of this Contract to all authorized Contract Purchasers/Purchasing Entities.
4. Ensure that those who endeavor to utilize this Contract are authorized Purchasers/Purchasing Entities under the terms and conditions of this contract.
5. At no additional charge, assist Purchasers/Purchasing Entities in the following manner to make the most cost effective, value based, Purchases including, but not limited to:
    a) Visiting the Purchaser/Purchasing Entities site and providing them with materials/supplies/equipment recommendations.
    b) Providing Purchaser/Purchasing Entities with a detailed list of contract products and services including current Contract pricing.
6. Provide contract customers with product and service information and assistance with order development, placement, and tracking. Provide Help Desk services for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.
7. The Contractor shall designate a customer service representative who will be responsible for addressing Purchaser/Purchasing Entities issues including, but not limited to:
    a) Logging requests for service, ensuring equipment repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
    b) Providing Purchaser/Purchasing Entities with regular and timely status updates in the event of an order or repair fulfillment delay.
8. Acting as the lead and liaison between the Contractor and Purchaser/Purchasing Entities in resolving warranty claims for contract items purchased.

2.6 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 by the Contract Administrator, unless otherwise authorized within the Contract. However, changes to point of contact information or other administrative changes may be updated without the issuance of a mutually agreed contract amendment.

2.7 WSCA-NASPO eMARKET CENTER

Contractor will cooperate with WSCA-NASPO and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading a hosted catalog or integrating a punchout site. (Reference Appendix C WSCA-NASPO MASTER AGREEMENT TERMS AND CONDITIONS, Section 36, for the details of this requirement.)

2.8 WSCA-NASPO CONTRACT ADMINISTRATION FEE

The Contract is subject to a WSCA-NASPO Administration Fee. Contractor has included this fee in Contract pricing and will not list it as a separate line item on its invoices to Purchasers/Purchasing Entities. The Contractor will collect the fees and distribute the fees to WSCA-NASPO Cooperative Purchasing Organization (or its assignee), as outlined below.

The WSCA-NASPO Administration Fee will be one-quarter of one percent (0.25% or 0.0025) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less any applicable sales tax. No taxes will be assessed against this WSCA-NASPO Administration Fee.

The WSCA-NASPO Administrative Fee shall be paid within sixty (60) days after the end of the calendar quarter. It is the Contractor's responsibility to calculate and remit the administrative fee since WSCA-NASPO does not issue an invoice for this fee. Contractor shall indicate the Contract number 06913 and include with the remittance, a quarterly sales report by WSCA-NASPO Contract participant. The administrative fee shall be paid to:

WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
PROGRAM MANAGER
201 EAST MAIN STREET, SUITE 1450
LEXINGTON, KY 40507

In addition to the WSCA-NASPO Administration Fee as stated above, some states may require an additional fee be paid directly to the state on purchases made by purchasing entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Contract/Master Agreement. The Contractor may adjust the Contract/Master Agreement pricing accordingly for purchases made by Purchasers within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the purchasers outside the jurisdiction of the state requesting the additional fee.

2.9 WSCA-NASPO CONTRACT SALES REPORTS

The Contractor shall submit summary sales data reports required by section 27 of Appendix C WSCA-NASPO Master Agreement Terms and Conditions directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at http://www.naspo.org/WNCPO/Calculator.aspx. Any/all sales made under the Contract shall be

reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

2.10 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate contractor profile in WEBS.

3.0 PRICING

3.1 NO ADDITIONAL CHARGES

Unless otherwise specified herein, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. 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.

3.2 CONTRACT PRICING

During the term of the Contract, Contractor must have and maintain the national published and/or web-posted product price list for all public safety communication equipment products and services available through the Contract, including those identified in Appendix H Price Worksheets. A copy must be made available to Purchasers upon request and at no additional charge. The price list in effect at the time of order placement shall be used when applying price discounts specified in Appendix H Price Worksheets. However, if the Contractor has provided a specific price quote to the Purchaser than the prices quoted must be held firm for a minimum period of sixty (60) days after the date of the quote.

3.3 VOLUME/PROMOTIONAL DISCOUNTS

Contract prices, including the applicable price discount, shall be the maximum or ceiling price Contractor can charge Purchasers. However, the Contractor may offer a Purchaser a greater price discount for a volume order or for promotional purposes which would result in even lower purchase prices.

3.4 PRICE ADJUSTMENTS

Contractor may update or change its reference national published/posted product price list during the term of the Contract as necessary to delete discontinued products/services, add newly introduced products/services, or to pass-through price changes applied to all customers purchasing from the price list. Contractor shall provide the Contract Administrator notification of price list changes. This notification shall be handled as an administrative change and shall not require the execution of a Contract amendment as called for in section 2.6 Changes. Percentage discounts identified in Appendix H Price Worksheets shall remain unchanged.

A decrease in the level of price discount shall not be considered during the initial term of the Contract nor for any subsequent Contract extension. However, an increase in the level of price discount may be considered at any time during the initial term of the Contract and during each subsequent Contract extension.

For services available through this Contract, if pricing is listed at a per hour price (rather than as a percentage discount off list price) prices may be increased after initial term of the contract. A minimum of 60 calendar days advance written notice is required with accompanying sufficient documentation to justify the requested increase. Acceptance of the price increase will be at the discretion of the Contract Administrator and the adjusted price must not produce a higher profit margin that that established on the original contract pricing. Approved price increases must remain unchanged at least through the current extension term.

4.0 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this Contract.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS

In accordance with RFP requirements, Contractor agrees to take complete responsibility for all actions of its subcontractors/dealers/distributors involved in the Contract performance.

During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

The Contract Administrator reserves the right to request the Contractor remove any subcontractor, dealer or distributor participating in the Contract. During the Contract Contractor may add or remove subcontractors, dealers or distributors participating in this Contract. Reference Appendix F National Network of Subcontractors/Dealers/Distributors for additional information.

Specific restrictions apply to contracting with current or former Washington state employees pursuant to Chapter 42.52 RCW and such restrictions may apply to contracting with current or former employees of other states.

4.3 ASSIGNMENT AND SUBCONTRACT/DEALER/DISTRIBUTOR INVOLVEMENT

Contractor shall not assign or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty

(30) calendar days advance notification of intent to 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 Contract requirements are met whether performance is done by themselves or through designated and authorized subcontractors, dealers, or distributors also involved in the performance of this Contract. In no event shall the involvement of a subcontractor, dealer, or distributor release or reduce the liability of Contractor to the Purchaser for any breach in the performance of the Contractor's duties.

If during the performance of the contract or a purchase order, any named individual specifically identified in the response to work on this engagement is not available, the Purchaser reserves the right to approve or reject any personnel substitutions.

4.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Contract Purchaser/Purchasing Entity that they have the Contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other contracts established by Washington State or Participating Entities.

4.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4.6 MERCURY CONTENT AND PREFERENCE

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

5.0 DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

Authorized Purchasers/Purchasing Entities may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies applicable Contract prices to be applied to the order.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 SHIPPING AND RISK OF LOSS

Contractor shall ship all products purchased pursuant to this Contract, freight charges prepaid by the Contractor, F.O.B. Purchaser's specified destination with all transportation and handling charges included. However, for the category Microwave Antennas only, additional freight charges may be prepaid and added to the invoice to cover the additional cost of shipment from the nearest port city to the Purchaser's receiving facility located outside the contiguous United States, provided the Purchaser approves the additional freight charge at the time of order placement.

The method of shipment shall be consistent with the nature of the products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the products ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.3 DELIVERY

Delivery of products must be made during Purchaser's normal work hours and within time frames mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery times may subject Contractor to damages. The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the DES or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the order document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

5.4 SITE SECURITY

While on Purchaser's premises, Contractor, its agents, employees, subcontractors, dealers or distributors shall conform in all respects with physical, fire, or other security regulations.

5.5 INSPECTION, ACCEPTANCE AND REJECTION

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

5.6 INSTALLATION

When applicable, installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The Purchaser reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by the Purchaser.

5.7 TITLE TO PRODUCT

Upon Delivery or Acceptance, whichever is applicable, Contractor shall convey to purchaser good title to the goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5.8 TREATMENT OF ASSETS

1. Title to all property furnished by the Purchaser shall remain with the Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vests in the Purchaser upon delivery of such property by the Contractor and acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

4. If any Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents, subcontractors, dealers or distributors.

5.9 LABELING

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, Contract number, Contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

5.10 SOFTWARE LICENSE AGREEMENT (If applicable)

If the communication equipment ordered and delivered under the term and conditions of this Contract requires software or firmware to operate, the Contractor may require the Purchaser/Purchasing Entity to sign a software license agreement prior to shipment of the equipment. A software license agreement approved by the Contractor has been provided as Appendix M Software License Agreement."

6.0 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the products and services furnished by Contractor pursuant to this Contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

6.3 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 WSCA-NASPO Contract/Master Agreement number or the Participating Addendum number, and the Purchaser's Contract/Purchase Order number (as applicable), and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume or promotional discount(s). Hard copy credit memos are to be issued when the Purchaser has been overcharged.

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.

If Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of $1.00. (In Washington State reference Chapter 39.76 RCW.) 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.

Payment for materials, supplies and/or equipment received and 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.

6.4 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, Washington purchasers agree to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. Purchasers located in other states may be required to pay their own state and local taxes on the purchase as required by local state laws and regulations. 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, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. 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
5. Other factors are identified applicable to Washington Purchasers are found in WAC 458-20 .

Washington State 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 Washington State Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. 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.

Customs/Brokerage Fees:
Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or contract. Neither the DES nor the purchaser will incur additional costs related to Contractor's payment of such fees.

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.

6.5 OVERPAYMENTS TO CONTRACTOR

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

6.6 AUDITS

The DES Contract Administrator and/or the Purchaser reserves the right to audit, or have a designated third party audit, applicable records to ensure that the Purchaser 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.

7.0 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the state of Washington or other Participating or Purchasing Entity, or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 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.

7.3 PRODUCT WARRANTY

Warranty(ies): Unless otherwise specified, full parts and labor warranty period shall be for a minimum period of one (1) year after receipt of materials or equipment by the Purchaser. All materials or equipment provided shall be new and unused (or like new with no blemishes or defects), of the latest model or design and of recent manufacture. A copy of the equipment warranty shall be provided with the equipment at the time of equipment delivery.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the Purchaser maximum benefits, the Purchaser may avail itself of the Contractor's warranty if deemed more beneficial to the Purchaser.

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment 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 materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

The Contractor warrants for a period of one year(s) from the date of acceptance that: (a) the product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the product is suitable for the ordinary purposes for which such product is used, (c) the product is suitable for any special purposes identified in the solicitation or for which the Purchaser has relied on the Contractor's skill or judgment, (d) the product is designed and manufactured in a commercially reasonable manner, and (e) the product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchaser) the product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced product fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED.

7.5 DATE WARRANTY

Contractor warrants that all products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the products, or interact with date records of the products ("date warranty"). In the event a date warranty problem is reported to Contractor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Contractor shall send, at Contractor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This date warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

7.6 COST OF REMEDYING DEFECTS

All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor. Contractor will not be held responsible for any indirect, consequential or punitive damages, including but not limited to lost profits, lost business opportunities, lost savings, lost goodwill.

7.7 TRAINING

Contractor shall provide Purchasers training as requested following equipment delivery on basic operations and at no additional cost. Specialized training is available at an additional charge as scheduled between Purchaser and Contractor as described in Appendix E Contract Management and Performance.

7.8 OPERATOR MANUAL

Instruction and maintenance manuals shall be furnished for all delivered Contract equipment. The most current manual must be provided at no cost upon customer request. Manuals shall contain, but not be limited to the following:

- A section describing the capability of the equipment.
- A section on equipment specifications.
- A section describing operating instructions.
- A section describing the use of the equipment.
- A section describing general maintenance instructions.
- A section describing software installation and user guides (if applicable).

8.0 INFORMATION AND COMMUNICATIONS

8.1 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 the DES Contract Administrator.

8.2 RETENTION OF RECORDS

The 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 seven (7) 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 the DES, personnel duly authorized by the DES, personnel duly authorized by the Purchaser, 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 seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 NON-ENDORSEMENT AND PUBLICITY

Neither the 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 the state of Washington, DES, and Purchaser 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 and/or the impacted Participating Entity.

8.4 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION

Contractor 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"). 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, or information identifiable to an individual that relates to any of these types of 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, 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. 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 to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor 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. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

9.0 GENERAL PROVISIONS

9.1 WSCA-NASPO MASTER AGREEMENT TERMS AND CONDITIONS

Appendix C WSCA-NASPO Master Agreement Terms and Conditions shall supplement the terms and conditions of this Contract. To the extent there is any inconsistent or conflicting term between the two, the conflict or inconsistency shall be resolved in a manner most favorable to a Purchaser or Purchasing Entity.

9.2 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.

9.3 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.

9.4 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; Contractor's Commitments, Warranties and Representations; Protection of Confidential and Personal Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Proprietary or Confidential Information; Disputes and Remedies; and Limitation of Liability shall survive the termination of this Contract.

9.5 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 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. 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.

9.6 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26 , 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 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.

9.7 PERSONAL LIABILITY

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

9.8 NONDISCRIMINATION

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.

9.9 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.10 ANTITRUST

The 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/or Purchasing Entity 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.

9.11 WAIVER

Failure or delay of the 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 the DES's 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 the 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 the DES or Purchaser of any existing or future right and/or remedy available by law.

10.0 DISPUTES AND REMEDIES

10.1 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 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.

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.

Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute.

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 materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment 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. Notwithstanding, Contractor may decline to continue providing materials to that particular Purchaser if it is clear resolution is not imminent and that continuing to provide additional materials will only inflate the amount of the dispute. Contractor will have the opportunity to cure, see section 11.2.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state of Washington, the DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (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.

10.3 FORCE MAJEURE

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

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this 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 forty-eight (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: The 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 Purchaser/Purchasing Entity.

10.4 ALTERNATIVE 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.

10.5 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.

10.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, DES 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. Contractor will not be held responsible for any indirect, consequential or punitive damages, including but not limited to, lost profits, lost business opportunities, lost savings, lost goodwill.

Neither the Contractor, the DES nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the 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 the DES or the 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 the Contractor, the DES or the 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.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Except for breach of confidentiality, personal injury, or death, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, will be limited to the value of the prior year's Contract sales.

10.7 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of the DES or Purchaser. Further, the Contractor may be subject to those federal requirements specific to the commodity.

10.8 FEDERAL RESTRICTIONS ON LOBBYING

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

10.9 FEDERAL DEBARMENT AND SUSPENSION

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11.0 CONTRACT TERMINATION

The following sections (11.1 – 11.9) may also apply to an executed Participating Addendum. The Participating State/Entity may exercise the following actions regarding the management and administration of its Participating Addendum between themselves and the Contractor and/or those specified in Appendix C WSCA-NASPO Master Agreement Terms and Conditions.

11.1 MATERIAL BREACH

A Contractor may be terminated for cause by the 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 continual failure to perform services or deliver materials, supplies, or equipment by the date agreed to in Customer's purchase order and Contractor's acknowledgements issued to Purchaser 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.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the 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 the 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, the 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. Impose liquidated damages that were previously disclosed to Contractor in Purchaser's Participating Addendum and/or Purchase Order, or alternatively in the event of no liquidated damages, any actual damages (subject to the limits provided in Section 10.6 above);
4. Suspend or bar Contractor from receiving future solicitations or other opportunities;

11.3 TERMINATION 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 thirty (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, the DES or Purchaser shall have the right to cancel any pending Purchase Orders with Contractor.

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". The rights and remedies of the 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.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the DES, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the DES nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the DES when it is in the best interest of the State of Washington and/or WSCA.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the DES and/or 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, the DES may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.

11.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, DES may terminate this Contract by thirty (30) calendar days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

11.7 TERMINATION FOR CONFLICT OF INTEREST

DES may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract 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, the DES and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.8 TERMINATION BY MUTUAL AGREEMENT

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

11.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the DES terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the DES and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the DES and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;

2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the DES and/or the Purchaser has or may acquire an interest.

12.0 CONTRACT EXECUTION

12.1 PARTIES

This Contract/Master Agreement is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES), Master Contracts & Consulting (MCC), an agency of Washington State government ("DES" or "State") located at 1500 Jefferson Street SE, Olympia WA 98501, and ***Radio Frequency Systems, Inc.,*** a ***corporation*** licensed to conduct business in the state of Washington ("Contractor"), located at ***200 Pondview Drive Meriden, CT 06450*** for the purpose of providing products and services for the public safety communication equipment.

12.2 ENTIRE AGREEMENT

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

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

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

1. The DES's Solicitation document #06913 with all attachments and exhibits, and all amendments thereto
2. Contractor's response to the Solicitation #06913;
3. A Participating Entity's Participating Addendum ("PA");
4. The terms and conditions contained on Purchaser's Order Documents, if used; and
5. 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 Purchaser and used to affect the sale of the Product and /or Service to the Purchaser.

Order of Precedence:

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations.
2. A Participating Entity's Participating Addendum ("PA"), including amendments.
3. Mutually agreed written amendments to this Contract.
4. This Contract Number 06913, including WSCA-NASPO Master Agreement Terms and Conditions.
5. The Purchaser's Statement of Work, Work Order, or Order Documents.
6. The DES's Solicitation document with all attachments and exhibits, and all amendments thereto.
7. Contractor's response to the Solicitation, as revised (if applicable) by mutual agreement.
8. Any other provision, term, or materials incorporated into the Contract by reference.

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

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. The Participating Entity's Participating Addendum shall be considered modified to conform to that state's statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class

mail, (postage prepaid),), via facsimile or by electronic mail, to the parties at the addresses, fax numbers, or e-mail 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:
Radio Frequency Systems, Inc.

Attn:
Contract Manager
200 Pondview Drive
Meriden, CT 65450

Phone: (203) 630-3111 ext. 1220
Fax: N/A
E-mail: terri.doherty@rfsworld.com

To DES at:
State of Washington
Department of Enterprise Services

Attn:
Robert Paulson
Mail: Post Office Box 41411
Olympia, Washington 98504-1411

Street: 1500 Jefferson Street SE
Olympia, WA 98501
Phone: (360) 407-9430
Fax: (360) 586-2426
E-mail: robert.paulson@des.wa.gov

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.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES 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.

12.5 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 the DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

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

12.7 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.

SIGNATURES

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

This Contract is effective this 1st day of September, 2015.

This is a Partial award for: Contract 06913

Approved (Lead State)
State of Washington
Department of Enterprise Services
1500 Jefferson Street, SE
Olympia, WA 98501

for Robert Paulson
Signature 4/27/15 Date

Robert Paulson
Print or Type Name

Contracts Specialist
Title

Signature 4/30/15 Date

Scott Smith
Print or Type Name

Contracts Manager, IT
Title

Signature 6/1/15 Date

Christine Warnock
Print or Type Name

NASPO ValuePoint Director
Title

Approved
Radio Frequency Systems, Inc.
200 Pondview Drive
Meriden, CT 65450

Signature Date

Raymond Bibisi, Executive Sales Director North America April 23 2015
Print or Type Name

VP NA SALES
Title