



MASTER CONTRACT NUMBER CW2229796

FOR

TELECOMMUNICATIONS CABLING MATERIALS, PATHWAY
MATERIALS AND SERVICES

BETWEEN

THE UNIVERSITY OF WASHINGTON

AND

NELSON ELECTRIC INC.

EFFECTIVE DATE: JANUARY 15, 2017

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Exhibits

- Exhibit A: *RFQQ ref UW16-0902JG*
- Exhibit B: *Supplier response to RFQQ*
- Exhibit B - 1 *Supplier Pricing Matrix*

Master Contract Number TBD
for
Telecommunications Cabling Materials and Services

PARTIES

This Master Contract ("Contract") is entered into by and between the University of Washington (hereinafter "University of Washington" or "UW"), and Nelson Electric Inc. licensed to conduct business in the state of Washington, (hereinafter "Supplier") for the provisioning of Cabling Materials and Services to the UW.

RECITALS

The University of Washington issued a Request for Quotations and Qualifications (RFQQ) UW16-0902JG dated October 12, 2016 (Exhibit A) for the purpose of establishing Master Contracts for Cabling Materials and Services.

Supplier submitted a timely Response to UW's RFQQ (Exhibit B).

UW evaluated all properly submitted Responses to the above-referenced RFQQ and has identified Supplier as an apparently successful Supplier.

UW has determined that entering into a Master Contract with Supplier will meet the UW's needs and will be in the UW's best interest.

NOW THEREFORE, UW awards to Supplier this Master Contract, the terms and conditions of which shall govern Supplier's furnishing to UW the Materials and Services specified under this Contract. This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the UW nor otherwise obligates the UW to purchase any Materials or Services hereunder. Nor does the Master Contract prevent the UW from purchasing the same or similar Materials or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

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

1. DEFINITION OF TERMS

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

"Acceptance" shall mean that the Materials/Services passed Acceptance Testing and shall be formalized in a written notice from Purchaser to Supplier; or, if there is no Acceptance Testing, Acceptance shall occur when the Materials/Services are delivered.

"Acceptance Date" for Supplier-installed Materials shall mean the date upon which Purchaser Accepts the Materials/Services as provided in the section titled **Standard of Performance and Acceptance**; and for Purchaser-installed Materials, shall mean the date of delivery of the Materials, or, if delivery of partial Orders has been agreed to between Purchaser and Supplier, the last date of delivery of the components of a Work Order.

"Acceptance Testing" shall mean the process for ascertaining that the Materials meets the standards set forth in the section titled **Standard of Performance and Acceptance**, prior to Acceptance by Purchaser.

"Administration" shall mean the method for labeling, identification, documentation and usage needed to implement moves, adds and changes of the communications infrastructure.

"American Wire Gage" (AWG) shall mean a wire diameter specification.

"Ancillary Equipment" shall mean support products that are added or connected to cabling in a subordinate or auxiliary capacity, such as protectors, ties and wraps. Ancillary Equipment does not include any Control Equipment, such as CPUs, televisions or telephones.

"Attenuation" shall mean the decrease in magnitude of transmission signal strength between points, expressed in dB as the ration of output signal level.

"Backbone" shall mean a cable connection between telecommunication or wiring closets, floor distribution terminals, entrance facilities, and equipment rooms either within or between buildings.

"Building Industry Consulting Service International (BISCI)" is an international non-profit association for telecommunication education.

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

"Cable/Cabling" shall mean a group of wire strands bundled or twisted together or optical fiber(s), within an enveloping sheath, that meets the requirements specified in the RFQQ, this Master Contract and/or Work Order Document/SOWs. The term includes any combination of cables, jumpers, tie wraps, and support equipment necessary to meet the requirements of the RFQQ, Master Contract, and Work Order Documents/SOWs.

"Certified Warranty Manufacturer" shall mean the firm that warrants the designated structured cabling system, including all cabling and connectivity components that comprise the telecommunications signal transmission infrastructure for twenty (20) years or more. The component parts may be different manufacturers, but have been "certified" to be compatible with the Certified Warranty Manufacturer's Material/Equipment.

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

"Contract" or Master Contract shall mean the RFQQ, the Response, the Contract document, all schedules and exhibits and all amendments.

"Control Equipment" shall mean the equipment that controls the signaling through the cable, such as a telephone, CPU or television. Control Equipment is specifically excluded from the scope of the Master Contract.

"Delivery Date" shall mean the date by which the Materials/Services ordered hereunder shall be delivered.

"UW Contract Administrator" shall mean the Contract Administrator, designated by UW as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation

or information. The UW Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

"EIA" is the Electronic Industries Association.

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

"Effectiveness Level" shall mean the percentage of time in a month that Cabling is functioning properly in accordance with its Specifications.

"Exhibit A" shall mean the RFQQ.

"Exhibit B" shall mean Supplier's Response.

"Heavy Duty Equipment" shall mean Pickup Truck/Vehicle or Cable Van/Fiber Van.

"Help Desk" shall mean a service provided by Supplier for the support of Supplier's Materials/Services. Purchaser shall report warranty or maintenance problems to Supplier's Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

"Installation" shall mean the placement of communications cabling and optical fiber from the nearest distribution point, including all necessary internal wiring and associated Materials to support the integrity of the facility.

"Installation Date" shall mean the date by which all Materials ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

"Maintenance" shall mean any activity, such as test, measurements, replacement, adjustments or repairs, intended to eliminate faults or to keep Cabling functioning in compliance with the Specifications.

"Manufacturer" shall mean the original equipment manufacturer.

"Master Contract" or **"Contract"** shall mean this document, all schedules and exhibits, all amendments hereto and all Work Order Documents/SOWs hereunder.

"Materials" shall mean the items needed to perform the requirements specified in the Master Contract and the Work Order Document/SOW, such as copper wiring and optical fiber voice and data cabling, ancillary, support and component parts within the scope of the contract. This includes blocks, brackets, terminations, jumpers, bonding, surge protection devices, grounding, cabling, conduit, wiremold, outlet boxes, outlets and faceplates, and miscellaneous support products, as set forth in this Contract.

"OSHA" is the Occupational Safety and Health Act.

"Outside Plant" (OSP) shall mean communications infrastructure designed for installation exterior to buildings.

"Pathways" shall mean materials that carry and support cable to include but not limited to Conduit, cable tray, and surface mounted race way (SMR).

"Personal Services" (Services) shall mean professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, pursuant to chapter 39.29 RCW.

"Prevailing Wage" shall mean the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. Prevailing wages are established by the Department of Labor and Industries for each trade and occupation employed in the performance of Public Works. They are established separately for each county and are reflective of local wage conditions. (See 39.12.010 RCW and 39.12.020 RCW.)

"Price" shall mean charges, costs, rates, and/or fees charged for the Materials and Services under this Contract and shall be paid in United States dollars.

"Products" shall mean any Supplier-supplied Materials, software and documentation.

"Project" shall mean a specific defined task as described in the Work Order Document/Statement of Work. A Project usually has a specific begin date and end date, specific objectives and specific resources assigned to perform the work.

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

"Public Work" shall mean work, construction, alteration, repair, or improvement that is executed at Purchaser's cost and declared a "Public Work" by the Purchaser in the Work Order Document or Statement of Work. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, and utilities construction. (See 39.04.010 RCW.)

"Purchased Services" (Services) shall mean those Services and activities provided by Supplier to accomplish routine, continuing, and necessary functions as set forth in this Master Contract or Statement of Work.

"Purchaser" shall mean authorized Purchasers within various Departments as the UW.

"Purchaser Bid/Quote Request Document" shall mean the document used by Purchaser to obtain pricing from Supplier as part of the Second-Tier acquisition process.

"RCW" shall mean the Revised Code of Washington.

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

"Response" shall mean Supplier's Response to the RFQQ for Cabling Materials and Services, Exhibit B hereto.

"Schedule A: *Authorized Price List*" shall mean the attachment to this Contract that identifies the authorized Prices to be charged under this Contract.

"Schedule B: *Statement of Work Template*" shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

"Schedule C: *Business Associate Agreement*" shall mean the attachment to this Contract that identifies the proper handling of PHI.

"Schedule D: *MWBE Certification*" (if applicable) shall mean the attached certificate(s) indicating Supplier's, and/or one or more of Supplier's Sub Contractor's status as a minority or women's business enterprise.

"Services" may include both Personal Services and Purchased Services and shall mean those services provided under this Contract and related to the Materials being acquired, that are appropriate to the scope of this Contract and includes such things as cabling installation services, administration and maintenance/repair and engineering support.

"Specifications" shall mean the technical and other specifications set forth in the RFQQ, Exhibit A, and any additional specifications set forth in Supplier's Response, Exhibit B, and the specifications set forth in a Work Order Document/Statement of Work.

"Standard of Performance" shall mean the criteria that shall be met before Acceptance, as set forth in the section titled **Standard of Performance and Acceptance**. The Standard of Performance also applies to all additional, replacement or substitute Materials and Materials that are modified by or with the written approval of Supplier after having been accepted.

"State" shall mean the state of Washington.

"Statement of Work" or **"SOW"** shall mean a separate description of the work to be accomplished by Supplier under the terms and conditions of this Contract. An example SOW is attached as Schedule B.

"Subcontractor" shall mean one not in the employment of Supplier, who is performing part of the business activities under this Contract under a separate contract with Supplier. The term **"Subcontractor"** means Subcontractor(s) of any tier.

"Telecommunications" shall mean any transmission, emission, switching and reception of signs, signals, writings, images, and sounds, that is information of any nature by cable, radio, optical, or other electromagnetic systems.

"TIA" is the Telecommunication Industries Association.

"UL" shall mean Underwriters Laboratories.

"UW" Shall mean The University of Washington.

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

"Supplier Account Manager" shall mean a representative of Supplier who is assigned as the primary contact person with whom the UW Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the UW Contract Administrator, and as further defined in the section titled **Supplier Account Manager**.

"Supplier Project Manager" shall mean a representative of Supplier who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled **Supplier Project Manager**.

"Warranty Period" shall mean the period of time as set forth in the section titled **Cabling Warranty** wherein Supplier warrants that the Materials shall be in good operating condition and shall conform to the Specifications.

"Work Order" or "Work Order Document" shall mean any official document and attachments thereto specifying the Materials and/or Services to be purchased from Supplier under this Contract.

"Work Product" shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

2. TERM

- 2.1. This Master Contract's initial term shall be one (1) year, commencing upon the effective date.
- 2.2. This Master Contract's term will auto renew for additional one (1) year terms, unless written notice is provided not less than thirty (30) calendar days prior to the Contract term expiration by either Party indicating the Parties intent to terminate the Contract.
- 2.3. At the end of the initial term and each one (1) year term there after Supplier has the option to submit new pricing provided pricing is submitted not less than thirty (30) days prior to the end of the then current terms.
- 2.4. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. At purchaser's option, the Work Order Document/SOW or renewal SOWs entered into prior to the expiration or other termination of the Master Contract (except termination for default) may be completed subject to all the other terms and conditions of the Master Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as agreed between the Supplier and Purchaser.

3. SURVIVORSHIP

All purchase transactions executed pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this 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 Supplier; Ownership/Rights in Data; Supplier Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Cabling Warranty, Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Supplier's Records; Patent and Copyright Indemnification; Supplier's Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. PRICING

- 4.1. Supplier agrees to provide the Cabling Equipment, Pathway Materials and Services to Purchasers at the rates set forth in Exhibit B. Such rates may not be increased during the initial term of this Master Contract. Supplier may reduce rates at any time.

4.2. Pricing may only be increase per 2.3 above.

4.3. Material Prices will be submitted to Purchasers via Supplier response to Purchaser Bid/Quote Request Documents shall be per unit prices established by this contract. All items are to be quoted F.O.B. destination. All anticipated shipping costs necessary to meet the delivery schedule must be included in the line item price quote of each item. No additional charges for shipping or handling will be allowed.

4.4. Supplier agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements.

4.5. Supplier shall include all travel, parking or other expenses as identified in this Contract or the Work Order Document/SOW as part of the unit prices in this contract. Any cost identified as outside of the unit prices in this contract must be authorized in writing in advance by Purchaser, in accordance with the then-current rules and regulations set forth in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/default.asp>). Supplier shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

5. ECONOMIC PRICE ADJUSTMENT

5.1. Contract price for the additional one year shall not increase/decrease by more than the percentage increase/decrease of the U.S. Department of Labor "Consumer Price Index, US City Average, All Items, Not Seasonally Adjusted" (CPI-U). At least sixty (60) calendar days before the end of the initial term of the Master Contract, the Supplier may propose, in writing, a price increase not to exceed the increases reflected in the CPI-U. This information can be accessed at the following websites: <http://www.bls.gov> or <http://www.bls.gov/cpi/>

5.2. Contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage of the CPI-U. Supplier must propose the price increase in writing at least 60 days prior to renewal date.

5.3. The baseline index shall be the index announced for the month of April 2013. The allowable percent change shall be calculated by subtracting the baseline index from the index announced for the April in which the renewal option is exercised, and dividing the result by the baseline index. The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum price adjustment increase permitted. The Supplier may offer price decreases in excess of the allowable CPI-U percent change at any time.

5.4. If no request for a price increase is received within the specified time period per section 2.3, the Supplier waives its right to a price increase for that extension period.

5.5. Proposed price adjustments will be taken into consideration when determining whether to extend any Master Contract.

5.6. If the CPI-U decreases after the initial term of the Master Contract, or prior to any subsequent renewal period, UW may seek pricing concessions from the Contract in an amount not to exceed the decrease of the CPI-U.

6. ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the Materials and Services furnished by Supplier pursuant to this Contract.

7. TAXES

- 7.1. Purchaser will pay sales and use taxes, if any, imposed on the Materials and Services acquired hereunder. Supplier shall pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Supplier's income or gross receipts, or personal property taxes levied or assessed on Supplier's personal property.
- 7.2. Supplier shall complete registration with the Washington State Department of Revenue within 30 days of notification of contract award, and be responsible for payment of all taxes due on payments made under this Master Contract.
- 7.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Supplier or Supplier's staff shall be Supplier's sole responsibility.

8. Invoice and Payment

- 8.1. Purchaser manages all purchase order and invoicing via Ariba. Supplier agrees to register with Purchaser as a Fully Integrated Ariba Network Supplier and obtain a Supplier number.
- 8.2. Supplier agrees to receive all purchase orders issued by Purchaser electronically via Ariba Network.
- 8.3. Supplier agrees to submit all invoices to Purchaser electronically via Ariba Network Invoice Submittal Portal.
- 8.4. Supplier will submit properly itemized invoices, as attachments to the electronic invoices defined in 8.3. Invoices shall provide and itemize, as applicable:

- a) Master Contract number CW2229796;
- b) Purchase Order number;
- c) Purchaser's name and address and the Purchaser's Work Order Number;
- d) Supplier name, address, phone number, and Federal Tax Identification Number;
- e) Description of Equipment, including quantity ordered, model, and serial numbers;
- f) Description of Services provided, including hourly rate and total hours for each labor category employed;
- g) Date(s) of delivery of Equipment or Services and/or date(s) of Equipment installation and set up;
- h) Price for each item from contract established pricing;
- i) Price for each non-prepriced item with contractual % markup applied;
- j) Total purchase Price;
- k) Discount for E-rate, if applicable
- l) Applicable taxes, including permits and bonds;
- m) Other applicable charges;
- n) Total invoice amount; and

o) Payment terms including any available prompt payment discounts.

- 8.5. If expenses are invoiced, Supplier shall provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more shall be accompanied by a receipt in order to receive reimbursement. (see subsection 4.5 above)
- 8.6. Supplier shall, in addition to the electronic copy of the invoice, described in 8.3, AND the PDF copy of the invoice detail, described in section 8.4, attach a copy of the fully executed copy of the Certificate of Performance Acceptance (see Appendix F) along with the invoice.
- 8.7. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Materials or Services or thirty (30) calendar days after the submittal of the properly prepared invoices, as described in section 8.3 and 8.4, whichever is later.
- 8.8. With each invoice Supplier shall provide an Affidavit of Amounts Paid specifying the amounts paid to each certified MWBE under the Contract, as set forth in Section **Error! Reference source not found.**
- 8.9. Incorrect or incomplete invoices will be rejected via the ARIBA Network Invoice Rejection Process by Purchaser. Supplier shall be responsible re-submitting amended invoice as described in section 8.3, 8.4.
- 8.10. The UW Contract number UW-16-0902JG and Purchaser Work Order Document/SOW number shall appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.11. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 8.12. If Purchaser fails to make timely payment, Supplier may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Supplier's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Cabling Materials and/or Services or receipt of Supplier's properly prepared invoice, whichever is later.

9. Overpayments to Supplier

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

Supplier's Responsibilities

10. In-State Presence and Statewide Coverage

Supplier shall have a place of business staffed by Supplier-employees within Washington State west of the Cascade Mountains and within 80 miles of the University of Washington Seattle Campus at the time of RFQ submittal. and shall maintain such place of business for the duration of the Master Contract. All Purchaser Work Order Documents/SOWs and communications and all sales and Services provided to Purchasers will be through this in-state location.

11. RFQQ Mandatory Requirements

The RFQQ mandatory requirements are essential substantive terms of this Master Contract. Cabling Materials, Pathway Materials and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQQ.

12. Mandatory Compliance with Codes and Standards

All Materials and Services covered by this Master Contract shall be performed in compliance with the technical specifications of the RFQQ, the Master Contract, and the Work Order Document/SOW. The Supplier is responsible to determine and adhere to the most recent release/version/update to all applicable codes and standards.

12.1 All The Vendor's employees working on the University of Washington campuses or leased space must have current Labor and Industry compliant certification for working in environments with lead paint and less than 1% asbestos containing materials.

13. Statement of Work/Work Order Document

- 13.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW or Work Order Document established between Purchaser and Supplier.
- 13.2. The terms and conditions of any SOW or Work Order Document cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.
- 13.3. No work shall be performed by Supplier until an SOW or Work Order Document is executed by Supplier and Purchaser and is received by Supplier.
- 13.4. The SOW or Work Order Document shall reference the Master Contract by number, describe the scope of work to be performed, the estimated total cost of the Work Order, Supplier bonding requirements, and certify whether the work is a public work in accordance with chapter 39.04 RCW.
- 13.5. Supplier shall keep a record of every Work Order Document/SOW established under this Master Contract in accordance with the records retention provisions, **Review of Supplier's Records**, herein. Supplier shall provide a copy of any Work Order Document/SOW to UW upon request.

14. Ownership/Rights in Data

- 14.1. Purchaser and Supplier 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. Supplier 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.
- 14.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Supplier 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.

- 14.3. Supplier 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.
- 14.4. Supplier shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Supplier ownership in any Work Product, without the prior written permission of Purchaser. Supplier 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.
- 14.5. Material that is delivered under this Contract, but that does not originate therefrom ("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 Supplier has a right to grant such a license. Supplier 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. Supplier 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 Supplier 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 Supplier.

15. Title to Materials

Upon successful completion of Acceptance Testing and receipt of Purchaser's letter of Acceptance, Supplier shall convey to Purchaser good title to the Materials, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. If Acceptance Testing is not required by the Work Order Document/SOW, the Supplier shall convey to Purchaser good title to the Materials upon receipt of payment.

16. Shipping and Risk of Loss

Supplier shall ship all Materials purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Materials and hazards of transportation. Regardless of FOB point, Supplier agrees to bear all risks of loss, damage, or destruction of the Materials ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Supplier from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Supplier's fault or negligence.

17. Delivery

- 17.1. Supplier shall be responsible for making the arrangement for delivery, unloading, and storage of materials for each Work Order. Purchaser will assume no responsibility for receiving any materials shipped to Purchaser's facility by or on behalf of the Supplier.
- 17.2. No storage area will be available at Purchaser's facility for long-term storage of Supplier's materials or supplies unless so stated in the Purchaser's SOW.
- 17.3. If providing for any storage for the convenience of the Supplier, the Purchaser assumes no responsibility for any items that may be lost, stolen, damaged, or destroyed, and will not take possessions of or title to any items prior to installation and Acceptance.

- 17.4. All Materials purchased under this Contract shall be completely installed and ready to begin Acceptance Testing within the time period specified in the Work Order Document or SOW after Supplier's receipt of a Work Order. Extensions will be granted at the sole option of the Purchaser. Time is of the essence with respect to delivery and Supplier may be subject to liquidated damages or termination of a Work Order/SOW or of this Contract and/or other damages available under law for failure to deliver on time.
- 17.5. All deliveries made pursuant to this Contract shall be complete. Unless Supplier has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages shall be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Work Order Document/SOW number. Supplier's delivery receipt shall be signed by an authorized representative of Purchaser for all deliveries made hereunder.

18. Site Security

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

18.1. Facility Access

Supplier understands that all Purchaser's building entrances are controlled for access. Supplier agrees to become familiar with Purchaser's building and security policies, and further agrees to observe and comply with all Purchaser's building and security policies or procedures.

Supplier understands that in order to obtain access to Purchaser's premises, Supplier may be issued a security badge by Purchaser. Supplier shall provide certain personal information, including valid government issued photo identification, prior to obtaining a security badge. Supplier further understands that Purchaser will collect and retain such personal information for so long as the contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to deny an application for a security badge. Failure of Supplier to comply with Purchaser's security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser's facilities.

Supplier is responsible for coordinating with Purchaser for facility access. Supplier shall coordinate with Purchaser to schedule Work Order work to allow maximum access to the Supplier while minimizing disruption of Purchaser's business. Supplier will frequently be required to work after normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and on weekends.

Upon the earlier of termination of the Contract, or suspension or termination of access to Purchaser's facilities, Supplier shall return all security badges.

18.2. Safety

Supplier shall observe and comply with OSHA/WISHA regulations, all applicable safety and environmental laws and regulations, and all Purchaser's rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

It is the Supplier's responsibility to meet all state/federal rules and regulations pertaining to the presence of asbestos or other hazardous materials. Purchaser does not contemplate work in any area that contains hazardous

materials, unless specified in writing in the SOW. Supplier shall cease all work in any area where hazardous materials are discovered and shall immediately notify Purchaser and follow up in writing in a timely manner. The Purchaser shall be responsible for determining the disposition of hazardous materials identified by the Supplier.

19. Material Compatibility, Specifications and Configurations

- 19.1. Supplier shall be responsible to notify Purchaser of the existence of any compatibility issues between Supplier's Materials and Purchaser's already existing or planned for hardware, software or cabling. Purchaser will provide Supplier access in a timely fashion to necessary areas and equipment sites and shall provide Supplier with a list of any existing or planned for hardware, software and cabling, as necessary.
- 19.2. Materials delivered hereunder will conform to that item's detailed Specifications in all respects including, but not limited to; physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.
- 19.3. If requested by Purchaser, Supplier agrees to identify on all Materials supplied under this Master Contract, all appropriate test points for connecting commercially available equipment monitors designed to measure system capacity, performance, or activity.

20. Installation and Set-up

- 20.1. Supplier shall separately itemize all installation and physical requirements for Materials as listed below:

- a) Ventilation or Air conditioning
- b) Electrical requirement
- c) Special grounding
- d) Cabling requirement
- e) Weight (floor loading)
- f) Space requirements
- g) Humidity and temperature limits
- h) Noise level

- 20.2. When installing Materials, Supplier will provide, at no additional charge:

- a) A written installation support plan and schedule addressing staffing, site preparation requirements, resource allocation, testing procedures;
- b) Site surveys;
- c) Station reviews to identify user requirements; and
- d) An on-site Manufacturer certified technician during and after the Work Order until the Materials operate properly;

- 20.3. Supplier personnel shall be Manufacturer certified in accordance with Manufacturer requirements. Upon request Supplier will furnish a copy of such certification to Purchaser or UW.
- 20.4. Purchaser shall have access to the work site at all times during installation.
- 20.5. Purchaser shall prepare the environment to house the Materials based upon written requirements provided by Supplier in its Installation plan, as modified in writing and agreed to by the parties. Supplier's specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Supplier's Response. Any requirements for the environment not disclosed in Supplier's installation plan will be completed by Supplier at no additional cost to Purchaser. Purchaser will provide standard commercial power. Supplier shall install an external, Manufacturer recommended surge protector between the power source and each major system.
- 20.6. Supplier shall be responsible for acquiring any required permits.
- 20.7. Supplier shall replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Supplier personnel to their original condition at no additional cost to Purchaser.
- 20.8. All debris generated by Supplier shall be picked up and lawfully disposed of at the conclusion of each work day. Hallways shall be kept free of debris, scaffolds, etc., during peak use. Traffic control devices, safety barricades, and other such devices shall be utilized where necessary.
- 20.9. Supplier is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called "cabling") may be located within or on Purchaser's grounds and facilities.
- 20.10. Before beginning work on or about Purchaser's premises, Supplier shall contact Purchaser's communications network control center to determine if Purchaser's cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any work that may impact underground utilities not owned by Purchaser, Supplier agrees to notify affected owners under the requirements of chapter 19.122 RCW, Underground Utilities.
- 20.11. Purchaser hereby permits Supplier to interface with such cabling and design engineering systems in support of the delivery of the Materials and Services ordered under this Master Contract.
- 20.12. Supplier shall install the Materials, with all features, options, parts and wiring ordered by Purchaser, ready for Acceptance Testing, on or before the Installation Date(s) specified in the Work Order Document/SOW. Failure to meet the Installation Date(s) may subject Supplier to liquidated damages or termination of a Work Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.
- 20.13. After installing the Materials, Supplier shall provide Purchaser with documentation of a successful system audit using Supplier's diagnostic routines, as approved by Purchaser, demonstrating that the Materials meet or exceed the Specifications. Supplier shall certify to Purchaser in writing that the Materials are ready for Acceptance Testing. If after reviewing such documentation Purchaser agrees that the Materials are ready for Acceptance Testing, Purchaser shall begin Acceptance Testing, as set forth in the section titled **Standard of Performance and Acceptance**.

21. Standard of Performance and Acceptance

- 21.1. This section establishes a Standard of Performance that shall be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute Materials and any Materials that are modified by or with the written approval of Supplier after having been Accepted.
- 21.2. All installation, wiring, cabling and pathway requirements identified in the Work Order Document/ SOW must be satisfied. All Materials must be tested, functional and certified, based on ANSI/TIA/EIA installation requirements and approved by the Purchaser and/or Purchaser's on-site coordinator prior to acceptance for payment. Minimum testing of copper cable is to include Wire Map, continuity, NEXT and attenuation in accordance with ANSI/TIA/EIA-568. Minimum testing for fiber cable is to include testing the attenuation and polarity of the installed cable with an optical loss test set (OLTS) and the installed condition of the fiber cabling with an optical time domain reflectometer (OTDR). Multimode backbone links shall be tested at 850 nm and 1300 nm in accordance with ANSI/EIA/TIA-526-14A. Singlemode backbone links shall be tested at 1310 nm and 1550 nm in accordance with ANSI/TIA/EIA-526-7.
- 21.3. Inspections, tests, measurements or other acts or functions performed by State personnel shall in no manner be construed as relieving the Supplier from full compliance with requirements. Upon Purchaser notification of defective or unauthorized equipment or materials, and unacceptable installation/repair practices, the Supplier will immediately replace or modify affected practices or parts at no additional cost to the Purchaser.
- 21.4. Acceptance of Materials and Services will be based as follows or as detailed in Purchaser Work Order Document/SOW. Fifteen (15) consecutive days of one-hundred percent (100%) trouble-free performance where:
- a) 100% of all terminations are operational and the Effectiveness Level is 100%;
 - b) 100% of all ancillary equipment is operational and the Effectiveness Level is 100%;
 - c) Labeling and as-built drawings have been completed according to Purchaser's specifications and provided to the Purchaser.
- 21.5. The Effectiveness Level is the percentage of time in a month that the Materials are functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Materials by the sum of the Operational Use Time plus the Materials Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for Materials is defined as the total time the Materials would normally be used. Materials Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of Materials Failure. Materials Failure is defined as a malfunction that prevents the accomplishment of the intended function(s) of the Materials.
- 21.6. Downtime for each incident shall start from the time that Supplier knew or reasonably should have known of the Materials Failure, or Purchaser makes a bona fide attempt to contact Supplier's designated representative at the prearranged contact point, whichever occurs earlier, until the Materials are returned to fully operational status in conformance with its Specifications. During periods of Materials Failure downtime, Purchaser may use operable portions of the Materials when such action does not interfere with repair of the inoperable portions.

- 21.7. If the Materials and/or Services does not meet the Standard of Performance during the first period of Acceptance Testing, Purchaser at its sole option may continue on a day-to-day basis until the Standard of Performance has been met, or terminate the Work Order/SOW without penalty, or demand replacement Materials or Services and/or corrections from the Supplier at no additional cost and continue the Acceptance Testing for an additional fifteen (15) consecutive calendar days after receipt of replacement Materials. Purchaser's option to terminate the Work Order/SOW shall remain in effect until exercised or until such time as the Acceptance Testing is successfully completed. Supplier shall pay all costs related to the preparation and shipping of Materials returned pursuant to this section. Purchaser's option to declare Supplier in breach and terminate this Work Order shall not be waived by Purchaser's decision to continue Acceptance Testing beyond the delineated testing period.
- 21.8. Purchaser, at its sole discretion, will determine whether the Materials and/or Services have successfully completed Acceptance Testing. Supplier shall not bill Purchaser until this Standard of Performance is met. Upon successful completion of the Acceptance Testing, Purchaser will provide a written notice of a successful Acceptance Testing to the Supplier's Project Manager.
- 21.9. Supplier must provide support for the period up to the issuance of Acceptance by Purchaser. This support must include troubleshooting, the correction of any bugs or deficiencies, and the resolution of any operating problems. During this period, Supplier will provide, at no additional cost, unlimited technical support by telephone. If a problem cannot be resolved within forty-eight (48) hours of Purchaser's initial notification, Supplier shall provide at no additional cost onsite service and support to resolve the problem.

22. Materials Warranty

- 22.1. Supplier warrants that the Materials shall be in new, of the latest design, of good quality, free of defects, and in conformance with the RFQQ, Master Contract and Work Order Document/SOW (including EIA/TIA Category Certifications for cables and termination components). All materials and work not in conformance with the RFQQ, Master Contract, and Work Order Document/SOW and EIA/TIA Category Certifications for cables and termination components shall be replaced free-of-charge to Purchaser during the base-offer warranty period, commencing upon the first day after the Acceptance Date.
- 22.2. During the Warranty Period, Supplier shall adjust, repair, or replace all Materials that are defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Supplier's expense. Any defective Materials shall be repaired or replaced for Purchaser so that it conforms to the Specifications.
- 22.3. Supplier agrees that all warranty service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Supplier further agrees to act as the sole point of contact for warranty service. Supplier warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Materials warranties.
- 22.4. Supplier's Warranty Period

The base-offer warranty period for the building wiring system shall be a minimum of one year, and can be increased by the Work Order Document/SOW which shall start on the "Acceptance Date."

22.5. Repaired Cabling/Materials/Equipment Warranty

- 22.6. The Supplier will provide at a minimum a warranty period equal to or greater than the Manufacturer's warranty period for all equipment installed/provided from the time of acceptance by the Purchaser on the installed/repaired equipment including basic common equipment, terminal equipment, and all other necessary ancillary equipment. Supplier shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Supplier's Help Desk Services can be reached at [206 523-4525]. (after hours service monitored).
- 22.7. Supplier shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Materials and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Supplier's employee(s) responding at each level and the elapsed time before the next level of response is invoked. Supplier's escalation procedures are included in Exhibit B.

23. Materials Maintenance

- 23.1. Non-emergency maintenance/repair callback response time during warranty will be within eight (8) Business Hours after notification. On-Site response time to routine maintenance/repair requests such as Moves, Adds, and Changes (MACs) shall be within three (3) Business Days of request, unless otherwise negotiated by Purchaser and Supplier. Routine maintenance/repair will be performed during Business Hours. When on-site, Supplier shall report to Purchaser's designated coordinator prior to and after each service call.
- 23.2. Emergency on-site maintenance/repair response time during warranty will be within two (2) hours, twenty-four (24) hours per day, seven (7) days per week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours after notification. Emergency maintenance applies to: (i) Failure of signaling; (ii) Failure of power supply; and (iii) Failure of any terminals deemed critical by Purchaser to the functioning of Purchaser's business functions.
- 23.3. If Supplier's maintenance personnel fail to meet response times identified above, Supplier shall be assessed liquidated damages, as set forth in the subsection of this Contract titled **Liquidated Damages – Specific**, for each "late" hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival.
- 23.4. Any work or upgrade that may affect service shall be coordinated with Purchaser's coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser's prior written approval.
- 23.5. Purchaser agrees that Supplier will not be liable for any damages caused by Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation.
- 23.6. Supplier personnel responding to maintenance calls, repairing or servicing the system shall be Manufacturer-certified to work on the Materials.
- 23.7. Supplier shall maintain a log on Purchaser's premises that details repairs, maintenance and upgrades to the system. The log shall be available for inspection by Purchaser and/or UW upon request.
- 23.8. Purchaser shall provide Supplier access to the system to perform maintenance service.

23.9. When on-site, Supplier shall report to Purchaser's designated coordinator prior to and after each service call.

23.10. Upon completion of each maintenance call, Supplier shall furnish a maintenance activity report to Purchaser, which shall include, as a minimum, the following:

- a) Date and time notified;
- b) Date and time of arrival;
- c) Type and serial number(s) of machine(s);
- d) Time spent for repair;
- e) Description of malfunction;
- f) List of parts replaced; and
- g) Additional charges, if applicable.

23.11. There shall be no additional maintenance charges for:

- a) Replacement parts;
- b) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
- c) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material.

24. Failure to Respond

In cases where Supplier does not respond within the required time, Purchaser shall have the option of acquiring repair from another Manufacturer certified source and Supplier shall be responsible for full reimbursement of costs incurred by Purchaser. Maintenance by another Manufacturer certified source when Supplier has failed to respond will not constitute grounds to void the warranty.

25. Materials and Maintenance Documentation

Supplier shall prepare and maintain records in accordance with the UW of Washington's documentation requirements. If Purchaser has a cabling management system, Supplier is responsible for working with the Purchaser's cabling management personnel to provide a format compatible with this system. For remodeling Work Orders, Supplier is responsible for updating appropriate records.

26. Spare Parts

Not Applicable

27. Supplier Licensing/Certification and Staffing Requirements

Failure of Supplier to maintain any of the following requirements constitutes a material breach of this Master Contract:

- a) Supplier shall maintain certification from the Manufacturer(s) that provides structured cabling system twenty (20) year or more warranties as identified in Supplier's Response.

- b) Supplier shall have employed staff or subcontractors that meet the certification criteria for installation for each Manufacturer upon which award of this Master Contract is predicated.
- c) Supplier shall maintain one or more Registered Communications Distribution Designers (RCDD) on staff. A subcontractor cannot fulfill this requirement.
- d) Supplier shall have employed staff or subcontractors that meet the Licensed Electricians licensing requirements of chapter 19.28 RCW.
- e) Supplier shall employ an individual who currently possesses a telecommunications administrator certificate that meets the requirements of chapter 19.28.430 RCW.
- f) Supplier for Classification B have on staff one or more employee who is a journeyman master level electrician for each Work Order. This certification as well as level of employees and ration of employee levels shall meet RCW 19.28.161 requirements.

28. Annual Reporting

On an annual basis, within thirty (30) days of the signing anniversary date, Supplier shall submit to UW a manufacturer's verification that the firm continues to hold certification(s) for providing twenty (20) year installation warranty of a structured cabling system, as identified in Exhibit B. Supplier shall also provide updates on current staff certification (industry sponsored and non-manufacturer specific) and verification of current State licensing and insurance requirements.

29. Public Works

This Master Contract is not a "Public Works" contract. Depending on the nature of the work to be performed, the Purchaser may declare any project (or work) performed under the contract to be a "Public Works." If a Work Order is a Public Works, it will be declared in the Work Order Document/Statement of Work. It is the responsibility of the Purchaser to make a determination as to whether work performed under this agreement qualifies as a public work. See RCW 39.04 for more information.

Supplier shall comply with all statutory and administrative requirements concerning public works, including without limitation, prevailing wage.

30. Prevailing Wage

Supplier shall comply with all requirements and procedures pertaining to prevailing wages established by the Washington State Department of Labor and Industries. Whenever a Work Order is subject to the Federal Davis-Bacon Act, Supplier and all Subcontractors shall pay at least the higher rate of the Federal or State prevailing wage.

31. Project Manual

Supplier shall develop and maintain a public Project Manual for all Public Work projects. The manual shall include at a minimum:

- a) A cover sheet that lists Work Order number, date(s) of work, name of Purchaser, and bid number(s), if applicable;
- b) Title sheet, including Supplier's name, Work Order title, date, name, telephone numbers and addresses of all participating entities, and signature of Supplier's Project Manager.

- c) All solicitation documents (Request for Quote, Work Order Document/SOW) correspondence between parties, Delegation of Authority, insurance forms, bid documents (Quotes) drawings, "as-built" documents, minutes of all meetings, all invoices, list of subcontractors, subcontract(s) and their bid documents, etc.

32. Supplier Commitments, Warranties and Representations

Any written commitment by Supplier within the scope of this Contract shall be binding upon Supplier and Subcontractor(s). Failure of Supplier to fulfill such a commitment may constitute breach and shall render Supplier liable for damages under the terms of this Contract. For purposes of this section, a commitment by Supplier 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 Supplier in its Response or contained in any Supplier 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.

33. Protection of Purchaser's Confidential Information

- 33.1. Supplier 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 Confidential Information. Supplier 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. Supplier 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. Supplier agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 33.2. Immediately upon expiration or termination of this Contract, Supplier shall, at Purchaser's option: (i) certify to Purchaser that Supplier has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Supplier to protect Purchaser's Confidential Information.
- 33.3. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Supplier through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 33.4. Violation of this section by Supplier or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Purchaser's Authority and Responsibilities

34. Purchaser Use of Master Contract

- 34.1. This Master Contract is not for personal use. Reference of this Master Contract Number and/or Purchaser's signature on the Work Order Document/SOW signifies agreement to comply with these requirements. Failure to

abide by these requirements may result in the Purchaser forfeiting the right to make future purchases under this or other Master Contracts.

- 34.2. Purchaser shall comply with the terms and conditions of this Master Contract, including but not limited to the notice requirements set forth in the provision titled **Supplier's Proprietary Information**. Reference of this Master Contract Number and/or Purchaser's signature on the Work Order Document/SOW signifies agreement to comply with and protect Supplier's confidential or proprietary information.

35. Master Contract Use

Purchasers must obtain bids/quotes from a minimum of three (3) Cabling Suppliers for all Materials and/or Services with a total cost in excess of one hundred thousand dollars (\$ 100,000). The Purchaser is not restricted from soliciting more than three bids nor is the Purchaser restricted from requesting multiple bids for Work Orders under one hundred thousand (\$ 100,000).

This Master Contract shall not be used for cabling Work Orders with a total estimated cost in excess of \$1 million. Such Work Orders shall be individually competitively bid.

Purchasers may consider criteria other than financial in their selection of a Supplier. Additional criteria may include, but not be limited to, performance bonding, labor resources, and Supplier experience.

Contract Administration

36. Legal Notices

- 36.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except for subpoena or notice of legal process and except notice of malfunctioning Materials) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses 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. Contact information for the Supplier and UW is as follows:

To Supplier at:

Nelson Electric Inc.

Attn: Geoff Newman

9620 Stone Ave N # 201

To UW at:

University of Washington

Procurement Services

Attn: Jarrett Gordon

If by US Postal Service:

4300 Roosevelt Way NE

Box 351110

Seattle WA 98103

Seattle, WA 98195

Phone: 206 523-4525

Phone: 206-616-7973

E-mail: gnewman@nelsonelec.com

E-mail: jgordo@uw.edu

Contact information for Purchasers shall be at the address, email, and phone number listed on their Work Order Document/SOW.

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

37. Supplier Account Manager

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

Supplier Account Manager: Geoff Newman

Address: 9620 Stone Ave N # 201 Seattle WA 98103

Phone: (206) 523-4525 Fax: (206) 527-9539 E-mail: gnewman@nelsonelec.com

38. Supplier Project Manager

Supplier shall assign a Supplier Project Manager for each Purchaser Work Order. Purchaser shall have approval rights over the Supplier Project Manager, or any replacements thereof. The Supplier Project Manager shall be the principal point of contact for Purchaser and shall coordinate Supplier's activities. The Supplier Project Manager shall produce and maintain a complete plan for all Supplier-related activities concerning cable installation, administration and maintenance.

39. Section Headings, Incorporated Documents and Order of Precedence

- 39.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 39.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- a) Schedules A, B, C, and D;
- b) UW's RFQQ (Exhibit A);
- c) Supplier's Response to UW's RFQQ (Exhibit B);
- d) The terms and conditions contained on Purchaser's Work Order Documents/SOW, if used; and
- e) All Supplier or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Supplier made available to Purchaser and used to effect the sale of Materials to Purchaser.

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

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Master Contract;
- c) Schedules A, B, C and D;
- d) UW's RFQQ (Exhibit A);
- e) Supplier's Response to UW's RFQQ (Exhibit B);
- f) The terms and conditions contained on Purchaser's Work Order Documents/SOW, if used; and
- g) All Supplier or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Supplier made available to Purchaser and used to effect the sale of Materials to Purchaser.

40. Entire Agreement

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

41. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by UW and Supplier.

42. Additional Equipment and Services

Supplier may submit new Equipment (such as additional Heavy Duty Equipment) and Services with associated discounts or prices to the UW Contract Administrator. New or changed Equipment and Services submitted by Supplier shall meet all mandatory requirements of the RFQQ. Additional Equipment or Services that are determined by UW to be appropriate to the scope of this Master Contract, may be added to this Master Contract by an instrument in writing, signed by both Supplier and UW. Such writing shall include a specific description of the additional Equipment and/or

Services, pricing, and additional terms and conditions as relevant. If approved by UW, the new offering(s) will be added to the Master Contract by amendment.

43. Independent Status of Supplier

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

44. Governing Law

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

45. Rule of Construction as to Ambiguities

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

46. Subcontractors

Supplier may, with prior written permission from UW Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Supplier's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Supplier to Purchaser for any breach in the performance of Supplier's duties. For purposes of this Contract, Supplier agrees that all Subcontractors shall be held to be agents of Supplier. Supplier shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification** and **Protection of Purchaser's Confidential Information** sections of this Contract occasioned by the acts or omissions of Supplier's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification**, **Protection of Purchaser's Confidential Information**, **Publicity and Review of Supplier's Records** sections of this Contract shall apply to all Subcontractors.

Supplier shall be responsible services provided by a Supplier's subcontractor as if the services were provided directly by the Supplier, including but not limited to all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit contractor's liability or responsibility.

47. Assignment

With the prior written consent of UW Contracting Officer, which consent shall not be unreasonably withheld, Supplier may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Supplier of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to

Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.

48. Publicity

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

49. Review of Supplier's Records

- 49.1. Supplier and its Subcontractors shall maintain books, records, documents and other evidence relating to this Master Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract. Supplier shall retain all such records for six (6) years after the expiration or termination of this Master Contract. Records involving matters in litigation related to this Master Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Master Contract, whichever is later.
- 49.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the UW Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the UW. During this Master Contract's term, Supplier shall provide access to these items within Thurston County or the county where Purchaser is located. Supplier shall be responsible for any audit exceptions or disallowed costs incurred by Supplier or any of its Subcontractors.
- 49.3. Supplier shall incorporate in its subcontracts this section's records retention and review requirements.
- 49.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Supplier's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Master Contract is calculated or derived from these factors.

General Provisions

50. Patent and Copyright Indemnification

- 50.1. Supplier, at its expense, shall defend, indemnify, and save UW and Purchaser harmless from and against any claims against UW or Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, trade secret, trademark, or other similar proprietary

right of a third party worldwide. Supplier shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by UW or Purchaser provided that UW or Purchaser:

- a) Promptly notifies Supplier in writing of the claim, but UW' or Purchaser's failure to provide timely notice shall only relieve Supplier from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Supplier; and
- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Supplier sole control of the defense and all related settlement negotiations.

50.2. If such claim has occurred, or in Supplier's opinion is likely to occur, UW and Purchaser agree to permit Supplier, at its option and expense, either to procure the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Supplier determines that none of these alternatives is reasonably available, Supplier, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Supplier shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of ten (10) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Supplier.

50.3. Supplier has no liability for any claim of infringement arising solely from:

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

unless the claim arose against Supplier's Materials or Services independently of any of these specified actions.

51. Save Harmless

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

52. Insurance

52.1. Supplier shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Supplier shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of

Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Supplier shall provide written notice of such to UW within one (1) Business Day of Supplier's receipt of such notice. Failure to buy and maintain the required insurance may, at UW' sole option, result in this Contract's termination.

52.2. The minimum acceptable limits shall be as indicated below, with no deductibles, unless otherwise indicated, for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with no deductible, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Supplier's employees' bodily injury by accident or disease, with no deductible, with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy, with no deductible, providing excess limits over the primary policies in an amount not less than \$3 million; and
- e) Premiums on all insurance policies shall be paid by Supplier or its Subcontractors. UW shall be named as an additional insured on all general liability, automobile liability, and umbrella policies, and Supplier shall provide a copy of the policy endorsement(s) designating DES as an additional named insured. Such policies shall also reference this Master Contract number UW-13-0027 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to UW by the insurer.

52.3. All insurance provided by Supplier shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the UW and shall include a severability of interests (cross-liability) provision.

52.4. Supplier shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit contractor's liability or responsibility.

52.5. Supplier shall furnish to UW copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates and endorsements of all required insurance within thirty (30) days after the renewal date. These certificates of insurance shall expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at UW sole option, result in this Contract's termination.

52.6. By requiring insurance herein, UW does not represent that coverage and limits will be adequate to protect Supplier. Such coverage and limits shall not limit Supplier's liability under the indemnities and reimbursements granted to UW in this Master Contract.

52.7. Purchasers may require Supplier to obtain additional insurance. Such additional insurance requirements will be identified in the Work Order Document/SOW.

53. Industrial Insurance Coverage

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

54. Licensing Standards

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

55. OSHA/WISHA

Supplier represents and warrants that its Materials, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Supplier agrees to indemnify and hold UW and Purchaser harmless from all damages assessed against UW or Purchaser as a result of the failure of the Materials furnished under this Contract to so comply.

56. Uniform Commercial Code (UCC) Applicability

56.1. Except to the extent the sections of this Contract are clearly inconsistent, this Master Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

56.2. To the extent this Master Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

57. Antitrust Violations

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

58. Compliance with Civil Rights Laws

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

59. Severability

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

60. Waiver

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

61. Treatment of Assets

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

62. Supplier's Proprietary Information

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

Disputes and Remedies

63. Disputes

- 63.1. In the event a bona fide dispute concerning a question of fact arises between Supplier and Purchaser and it cannot be resolved between the parties or by the UW Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 63.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) Business Days. The initiating party shall have five (5) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.
- a) If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next five (5) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 63.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 63.4. Purchaser and Supplier 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.
- 63.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Supplier, Supplier shall continue providing Services pending resolution of the dispute provided Purchaser pays Supplier the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Supplier, in good faith, believes is due and payable.

64. Attorneys' Fees and Costs

- 64.1. If any litigation is brought to enforce any term, condition, or section of this Master Contract, or as a result of this Master Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 64.2. 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.

65. 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.

66. Liquidated Damages

66.1. Liquidated Damages - General

- a) Any delay by Supplier in meeting the installation date, as applicable, will interfere with the proper implementation of Purchaser's programs, causing loss and damage to Purchaser.
- b) As it would be impracticable to fix the actual damage sustained in the event of such failure to perform, Purchaser and Supplier agree that the amount of damage that will be sustained will be the amount set forth in the following sections. The parties agree that Supplier shall pay such amounts as liquidated damages and not as a penalty.
- c) Liquidated damages provided under the terms of the Master Contract are subject to the same limitations as provided in the section titled **Limitation of Liability**.

66.2. Liquidated Damages – Specific

- a) If Supplier does not have the Materials installed by the Installation Date agreed upon between Purchaser and Supplier, then Supplier shall provide a revised Installation Date and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified Installation Date and the date that Supplier actually installs the Materials and Materials are operational in accordance with the **Standard of Performance and Acceptance** section an amount of five hundred dollars (\$500) per day, for each calendar day between the specified Installation Date and the date that Supplier actually installs the Materials.
- b) If the revised Installation Date is more than twenty (20) calendar days from the original Installation Date, then by written notice to Supplier, Purchaser may immediately terminate the right of Supplier to install the Materials and Purchaser may obtain substitute Materials from another Supplier. In this event, Supplier shall be liable for fixed and agreed-upon liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Materials are installed or a maximum of forty-five (45) calendar days from the original Installation Date, whichever occurs first.

67. Failure to Perform

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

68. Limitation of Liability

68.1. The parties agree that Supplier, UW 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 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 or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA, Termination for Default, and Review of Supplier's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

68.2. Supplier, UW and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Supplier, UW 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 UW or 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 Supplier, UW, Purchaser, or their respective Subcontractors.

- 68.3. If delays are caused by a Subcontractor without its fault or negligence, Supplier 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 Supplier to meet its required performance schedule.
- 68.4. Neither Supplier, UW nor Purchaser 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.

Contract Termination

69. Termination for Default

- 69.1. If Supplier violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its material obligations under this Master Contract, then the UW Contract Administrator or Purchaser shall give Supplier written notice of such failure or violation, and the failure or violation shall be corrected by Supplier within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Supplier shall commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Supplier's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from the UW Contracting Officer to Supplier, or a Work Order Document/SOW may be terminated by written notice to Supplier from Purchaser.
- 69.2. In the event of termination of an Work Order Document/SOW by Purchaser or this Master Contract by UW, Purchaser or UW shall have the right to procure the Equipment and Services that are the subject of this Master Contract on the open market and Supplier shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Equipment and Services and the replacement costs of such Equipment and Services acquired from another Supplier; (ii) if applicable, all administrative costs directly related to the replacement of the Work Order Document/SOW 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 UW resulting from Supplier's breach. UW and Purchasers shall have the right to deduct from any monies due to Supplier, or that thereafter become due, an amount for damages that Supplier will owe UW or Purchasers for Supplier's default.
- 69.3. If either UW or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Supplier shall give UW or Purchaser, as appropriate, written notice of such failure, which shall be corrected by UW or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Work Order may be terminated by written notice from Supplier to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Supplier to UW.

69.4. 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**.

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

70. Termination for Convenience

70.1. When, at the sole discretion of UW, it is in the best interest of the UW, the UW Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Supplier.

70.2. Purchaser may terminate its Work Order Document/SOW upon sixty (60) days notice to Supplier. If an Work Order Document/SOW is so terminated, Purchasers are liable only for payments for Materials and Services received and accepted by Purchaser prior to the effective date of termination.

71. Termination for Withdrawal of Authority

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

72. Termination for Non-Allocation of Funds

If funds are not allocated to UW or a Purchaser to continue this Master Contract or Work Order in any future period, UW may terminate this Master Contract, or Purchaser may terminate its Work Order(s) by seven (7) Business Days written notice to Supplier or otherwise work with Supplier to arrive at a mutually acceptable resolution of the situation. UW or Purchasers will not be obligated to pay any further charges for Materials or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. UW or Purchaser agrees to notify Supplier in writing of such non-allocation at the earliest possible time. No penalty shall accrue to UW or Purchasers in the event this section shall be exercised. This section shall not be construed to permit UW to terminate this Master Contract, or a Purchaser to terminate its Work Order Document/SOW(s) in Work Order to acquire similar Materials or Services from a third party.

73. Termination for Conflict of Interest

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

74. Termination Procedure

74.1. Upon termination of this Master Contract or any Work Order Document/SOW(s), UW and Purchaser, in addition to any other rights provided in this Master Contract and applicable Work Order Document/SOW, may require

Supplier to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Work Order Document/SOW as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

74.2. Unless otherwise provided herein, Purchaser shall pay to Supplier the agreed-upon Price, if separately stated, for the Materials and Services received by Purchaser, provided that in no event shall Purchaser pay to Supplier an amount greater than Supplier would have been entitled to if this Master Contract or Work Order Document/SOW had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Supplier such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

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

75. Covenant Against Contingent Fees

75.1. Supplier warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Supplier.

75.2. In the event Supplier breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser's discretion, deduct from payments due to Supplier, or otherwise recover from Supplier, the full amount of such commission, percentage, brokerage, or contingent fee.

76. Interlocal Contracts and other Public Agencies

The University of Washington is a member of the Washington State Institutions of Public Higher Education (WIPHE) and is aware that other WIPHE members may be interested in purchasing the product(s) included in this solicitation. Therefore, pursuant to the Interlocal Cooperative Act, RCW 39.34 and other provisions of the law, all WIPHE members and any public agency political subdivision or non-profit organization and institution will be eligible to utilize the contract(s) awarded as a result of this solicitation, if all parties are willing.

Supplier AGREES to sell items included in this solicitation to other WIPHE institutions, or other public agencies, at prices/discounts offered for this solicitation.

Contract Execution

77. Authority to Bind

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

78. Counterparts

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

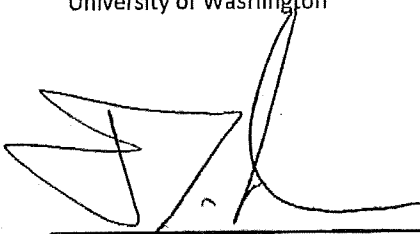
In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree to each and every particular and have thus set their hands hereunto.

Approved

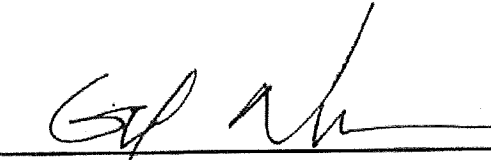
University of Washington

Approved

(SUPPLIER)



Signature



Signature

Jarrett Gordon 1/3/2017

Print or Type Name

Date

Graft Newman 1/3/17

Print or Type Name

Date

Contract Manager

Title

Dir. Spec. Systems

Title

Exhibit A

Cabling and Telcom RFQQ UW16-0902JG

Exhibit B
Suppliers response to RFQQ UW16-0902JG

Exhibit B – 1
Supplier Pricing Matrix