

Master Contract Number T06-MST-002

for

**Power Management Software, Services,
Maintenance and Support**

between

The Department of Information Services

and

Verdiem Corporation

Effective Date: July 7, 2006

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Note: *Exhibits A and B are not attached but are available upon request from the DIS Contract Administrator*

MASTER CONTRACT NUMBER T06-MST-002

for

Power Management Software, Services, Maintenance and Support

PARTIES

This Master Contract ("Contract") is entered into by and between the state of Washington acting through the **Department of Information Services**, an agency of Washington State government (hereinafter "DIS"), and **Verdiem Corporation**, licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the provisioning of Power Management Software, Services, Maintenance and Support to the State.

RECITALS

The state of Washington, acting by and through DIS, issued a Request for Proposal (RFP) #T06-RFP-004, dated February 2, 2006, revised on February 16, 2006 (Exhibit A) for the purpose of establishing Master Contracts for Power Management Software, Services, Maintenance and Support in accordance with its authority under chapter 43.105 RCW.

Verdiem Corporation submitted a timely Response to DIS' RFP (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFP and has identified Verdiem Corporation as an apparently successful Vendor.

DIS has determined that entering into a Master Contract with Verdiem Corporation will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to Verdiem Corporation this Master Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers Power Management Software, Services, Maintenance and Support. This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Products 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 Date" for Contractor-installed Products shall mean the date of Purchaser's written notification to Contractor of acceptance of the Products; and for Purchaser-installed Products, shall mean the date of Purchaser's receipt of the Products. In absence of evidence to the contrary, the Acceptance Date for Purchaser-installed Products shall be deemed to be the third (3rd) day after the date of shipment.

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

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 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.

“Contractor” shall mean Verdiem Corporation, its employees and agents. Contractor 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 Contractor as permitted under the terms of this Contract.

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

“Contractor Project Manager” shall mean a representative of Contractor 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 Contractor Project Manager.

“Delivery Date” shall mean the date by which delivery of the Products ordered hereunder must be completed.

“DIS” shall mean the Washington State Department of Information Services.

“DIS Contract Administrator” shall mean the Master Contract Administrator, or other person designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

“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.

“End User” shall refer to the Purchasers hereunder who shall be the licensees of the Software.

“Equipment” shall mean any hardware if required to be purchased from Contractor along with the Software for a complete solution to the State’s Power Management needs. Equipment does not include client PCs managed by Contractor’s Software or any commodity server hardware supplied by Purchasers to run Contractor’s Software.

“Exhibit A” shall mean the RFP.

“Exhibit B” shall mean Contractor’s Response.

“Help Desk” shall mean a service provided by Contractor for the support of Contractor’s Products. Purchaser shall report warranty or maintenance problems to Contractor’s Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Installation Date” shall mean the date by which all Products ordered hereunder shall be in place, in good working order and ready for use or Acceptance Testing.

“Master Contract” or **“Contract”** shall mean this document, all incorporated documents, all schedules and exhibits, all amendments hereto and all Orders hereunder.

“Order” or **“Order Document”** shall mean Verdiem’s Sales Order Form (See Schedule C) or Purchaser’s official purchase document and attachments thereto specifying the Products and/or Services to be purchased from Contractor under this Contract.

“Power Management Software” shall mean a network based comprehensive power management solution to provide software tools to dynamically measure, manage, and reduce PC network energy use. This will allow Purchasers to conserve energy and realize a savings on energy spending.

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

“Product(s)” shall mean Verdiem’s Power Management Software (Surveyor™) and documentation and, if required, shall include Equipment, as defined above, within the scope of this Contract.

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

“Purchaser” shall mean DIS and Washington State agencies, institutions, school districts and political subdivisions (e.g., counties, cities, public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW and public benefit nonprofit corporations that have executed a Customer Service Agreement with DIS, collectively referred to as Purchaser. Purchaser shall be the End User of the Software.

“RCW” shall mean the Revised Code of Washington.

“RFP” shall mean the Request for Proposal T06-RFP-004 used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“Response” shall mean Contractor’s Response to RFP T06-RFP-004, Exhibit B hereto.

“Schedule A: *Product and Price List*” shall mean the attachment to this Contract that identifies the Products and Services and Prices available under this Contract.

“Schedule B: *Contractor’s Sales Order Form*” shall mean the attachment to this contract that represents Contractor’s Order Document.

“Services” shall mean those services provided under this Contract and related to the Products being acquired, that are appropriate to the scope of this Contract and includes Purchased Services such as installation services, maintenance, and training.

“Software” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“**Specifications**” shall mean the technical and other specifications set forth in the RFP, Exhibit A, any additional specifications set forth in Contractor’s Response, Exhibit B, and the specifications set forth in Contractor’s Product documentation, regardless of whether Contractor produces such documentation before or after this Contract’s Effective Date.

“**State**” shall mean the state of Washington.

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

“**Warranty Period**” shall mean the period of time as set forth in the section titled **Software Warranty** wherein Contractor warrants that the Software shall be in good operating condition and shall conform to the Specifications.

“**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 three (3) years, commencing upon the Effective Date.
- 2.2. This Master Contract’s term may be extended by two (2) additional one (1) year terms, provided that the extensions shall be at DIS’ option and shall be effected by DIS giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term’s expiration and Contractor accepting such extension prior to the Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

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 Contractor; Contractor Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; License Grant; Software Ownership; Date Warranty; No Surreptitious Code Warranty; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor’s Records; Patent and Copyright Indemnification; Contractor’s Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Contractor agrees to provide the Products and Services to Purchasers at the prices set forth in the *Product and Price List* attached as Schedule A to this Master Contract. Such prices may not be increased during the term of this Master Contract. No other costs shall be payable to Contractor.
- 4.2. Contractor agrees that all the discounts, Prices, terms, warranties, and benefits provided in this Contract are competitive with the terms presently being offered by Contractor to any other U.S. state governmental entity purchasing a similar quantity under similar terms and conditions. In the event DIS determines that other U.S. state governmental entities are being offered better prices and terms than those offered under this Contract, Contractor agrees to increase the discounts offered under this Contract for subsequent purchases as mutually agreed.

5. Advance Payment Prohibited

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

6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property.
- 6.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

7. Invoice and Payment

- 7.1. Contractor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser. Invoices shall provide and itemize, as applicable:
 - a) Master Contract number T06-MST-002;
 - b) Purchaser's Order Number;
 - c) Contractor name, address, phone number, and Federal Tax Identification Number;
 - d) Description of Products, including quantity ordered, model and serial numbers;
 - e) Description of Services provided;
 - f) Date(s) of delivery of Products or Services and/or date(s) of Product installation and set up;
 - g) Price for each item;

- h) Total Purchase Price;
 - i) Applicable taxes;
 - j) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);
 - k) Other applicable charges;
 - l) Total invoice amount; and
 - m) Payment terms including any available prompt payment discounts.
- 7.2. Payments shall be due and payable within thirty (30) calendar days after the Acceptance Date for Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Purchaser shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.
- 7.4. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 7.5. The DIS Contract number T06-MST-002 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.7. If Purchaser fails to make timely payment, Contractor 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 Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of the Acceptance Date for Products or Services, or receipt of Contractor's properly prepared invoice, whichever is later.

8. Overpayments to Contractor

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

Software License

9. License Grant

- 9.1. Contractor grants to Purchaser a non-exclusive, fully-paid-up, perpetual, site-wide, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract.
- 9.2. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Contractor or Software owner.

- 9.3. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when Purchaser's facilities, or any portion thereof, are inoperable due to emergency situations.
- 9.4. Business or Support Termination Rights. In the event that Contractor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, subject to payment obligations not to exceed the Contract Prices.
- 9.5. Freedom of Use. Contractor understands that Purchaser may provide information processing services to other users that are governmental entities and other tax supported entities. Contractor further understands that Purchaser may provide services to the public through web-based applications. Software delivered hereunder may be used in the delivery of these services. Contractor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

10. Software Ownership

Contractor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to Purchaser that Contractor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that Contractor has the right to license the Software to Purchaser as provided in this Contract; and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

11. Software Specifications

All Software will conform to its Specifications. Contractor warrants that Products delivered hereunder shall perform in accordance with these Specifications.

12. Compliance with Standards

Contractor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Contractor to conform to applicable industry standards.

13. Date Warranty

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

14. Physical Media Warranty

14.1. Contractor warrants to Purchaser that each licensed copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the “Physical Media Warranty”). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the Acceptance Date for the Software copy by Purchaser.

14.2. Contractor shall replace, at Contractor’s expense including shipping and handling costs, any Software copy provided by Contractor that does not comply with this warranty.

15. No Surreptitious Code Warranty

15.1. Contractor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Contractor further warrants Contractor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out or other function, implemented by any type of means or under any circumstances, which may restrict Purchaser’s use of or access to any program, data or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

15.2. As used in this Contract, “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by

authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

- 15.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 15.4. Contractor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

16. Reauthorization Code Required

If a reauthorization code must be keyed in by Vendor for the Software to remain functional upon movement to another computer system, Vendor shall provide the reauthorization code to Purchaser within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

17. Software Documentation

- 17.1. Contractor shall provide Purchaser two (2) complete sets of documentation for each Software Order and for each updated version of Software Contractor provided pursuant to the Software Upgrades and Enhancements section, including technical, maintenance, and installation information as follows:
 - a) Manuals (operations manual, training manual, installation manual, end user manual, etc).
 - b) Technical architecture diagrams, if applicable and necessary for a full and effective installation/implementation of the software (details of system design drawings)
 - c) Configurations/workflow, if applicable and necessary for a full and effective installation/implementation of the software.
 - d) Test methodology and plans if necessary for a full and effective installation/implementation of the software (including integration, system, performance, and stress testing), test scripts, test results, etc.
- 17.2. Contractor shall provide the documentation on or before the date Contractor delivers its Software or updated version of Software.
- 17.3. There shall be no additional charge for this documentation or the updates, in whatever form provided.
- 17.4. Contractor's Software documentation shall be comprehensive, well structured, and indexed for easy reference.
- 17.5. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM.
- 17.6. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

18. Software Warranty

Contractor warrants that the Software shall be in good operating condition and shall conform to the Specifications for a period of one (1) year, the Warranty Period. This Warranty Period begins the first day after the Acceptance Date. Contractor's warranty shall include patches, bug fixes, and updates during the Warranty Period. Contractor shall replace all Software that is defective or not performing in accordance with the Specifications, at Contractor's sole expense.

19. Software Upgrades and Enhancements

Contractor shall, as part of Software Warranty or maintenance purchased pursuant to this contract:

- 19.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 19.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Products supplied to Purchaser; and
- 19.3. Supply at no additional cost interface modules that are developed by Contractor for interfacing the Software to other Software products.

20. Software Maintenance and Support Services

During the Warranty Period or when the Software is under a Contractor-offered maintenance plan, Contractor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications. Contractor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Contractor shall disclose all known defects and their detours or workarounds to Purchaser.

In addition, Contractor shall provide the following Services:

- 20.1. **Help Desk Services.** Contractor shall provide Help Desk Services for reporting warranty issues, errors and malfunctions and for trouble-shooting problems. Contractor's Help Desk Services may be web-based (see <http://virtual.pnw.com/support/default.asp>) and shall be available via email at support@verdiem.com or via toll-free number **1-866-837-3436 (extension 2)**. Contractor's Help Desk Services shall include but are not limited to the following Services:
 - a) Assistance related to questions on the use of the subject Software;
 - b) Assistance in identifying and determining the causes of suspected errors or malfunctions in the Software;
 - c) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
 - d) Information on errors previously identified by Purchaser and reported to Contractor and detours to these where available; and

- e) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Contractor.
- 20.2. Guaranteed response time. Contractor shall respond to all Purchaser questions or issues reported to the Help Desk within twenty-four (24) hours of the Help Desk contact.
- 20.3. On-line Support. Contractor may execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Software errors or malfunctions.
- 20.4. Error and Malfunction Service. Contractor shall provide Purchaser with detour or code correction to the reported Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problem resolved and any significant operational differences resulting from the correction that are known by Contractor.
- 20.5. On-Site Support. If a problem occurs that significantly impacts Purchaser's usage of the Software and remains unidentified or unresolved after Purchaser has utilized the detour or code correction prescribed by Contractor pursuant to subsection 20.1 or 20.4 above, Contractor will dispatch a qualified representative to the system location during Business Days and Hours. The representative must arrive within eight (8) Business Hours. This representative shall have the qualifications necessary to provide:
 - a) Advice and assistance in diagnosis and identification of Software errors or malfunctions.
 - b) On-site consultation on correction or detour of identified errors or malfunctions.
- 20.6. Maintenance Release Services. Contractor will provide error corrections and maintenance releases to the Software that have been developed by Contractor at no additional cost to Purchaser. Such releases shall be licensed to Purchaser pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release that are known by Contractor. Contractor agrees that each maintenance release of Software will be compatible with the then-current unaltered release of Software applicable to the computer system.

Contractor's Responsibilities

21. In-State Presence and Statewide Coverage

Contractor shall have a place of business staffed by Contractor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Orders and communications and all sales and Services provided to Purchasers will be through this in-state location. Contractor's Products and Services shall be available under this Master Contract to Purchasers located throughout the state of Washington.

22. Purchaser Eligibility

In order to be eligible to purchase under this Master Contract, Purchasers shall have a Customer Service Agreement (Interlocal Agreement) with DIS. Contractor shall be responsible for verifying Purchaser eligibility. Contractor may use the search feature on the DIS website:

<http://techmall.dis.wa.gov/CSA1/CSASearch.asp> or may contact the Office of Legal Services within DIS at 360-902-3551 to ascertain Purchaser eligibility.

23. RFP Mandatory Requirements

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

24. Shipping and Risk of Loss

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

25. Delivery

25.1. Delivery will be complete when Purchaser has received the Products; or, if Contractor staff are providing Installation Services, delivery will be complete when the Products have been installed, tested and are ready for use. The day that delivery is complete shall be the Delivery Date and shall be within forty-five (45) calendar days of Contractor's receipt of an Order, unless an extension has been granted at the sole option of Purchaser. Time is of the essence with respect to delivery and Contractor may be subject to termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.

25.2. All deliveries made pursuant to this Contract must be complete. Incomplete deliveries or backorders will not be accepted, unless Contractor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Contractor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

26. Site Security

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

27. Installation and Set-up

- 27.1. When requested in an Order Document by Purchaser, Contractor shall provide installation Services for Products purchased under this Contract according to the provisions of this Section 27.
- 27.2. When installing Products, Contractor will provide, at no additional charge:
 - a) Station reviews to identify user requirements;
 - b) An on-site Manufacturer certified technician during and after the installation until the Product operates properly;
 - c) On-site user training for the Products; and
 - d) System administration and Product training.
- 27.3. When Contractor is installing Products, Purchaser and Contractor shall enter into a written installation support plan that sets forth the schedule and addresses staffing, site preparation requirements, resource allocation and, if requested by Purchaser, acceptance testing procedures and standard of performance as determined by Purchaser.
- 27.4. Contractor personnel shall be Manufacturer certified in accordance with Manufacturer requirements. Upon request Contractor will furnish a copy of such certification to Purchaser or DIS.
- 27.5. Purchaser shall have access to the work site at all times during installation.
- 27.6. Contractor shall install the Products, tested and ready for use on or before the Installation Date(s) specified in the Order Document. Failure to meet the Installation Date(s) may subject Contractor to termination of an Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.
- 27.7. After installing the Products, Contractor shall provide Purchaser with documentation of a successful system audit using Contractor's diagnostic routines, as approved by Purchaser, demonstrating that the Products meet or exceed the Specifications and are ready for use. After reviewing such documentation, if Purchaser agrees that the Products are ready for use and has not previously requested Acceptance Testing in the Order Documents, Purchaser shall provide Contractor with a written notice of Acceptance.
- 27.8. If Purchaser has requested Acceptance Testing in the Order Documents, the testing process shall begin the next Business day and be conducted according to the procedures and standard of performance determined by Purchaser and set forth in the installation support plan. Upon successful completion of Acceptance Testing, Purchaser shall provide Contractor with a written notice of acceptance.

28. Acceptance Testing

When requested by Purchaser in an Order Document, the Products may be subject to an Acceptance Testing process and required to meet a standard of performance before they are accepted and paid for. The standard of performance is defined as a percentage (for example, 90%, 95% or 100%) effectiveness during a defined testing period. The specific testing procedures and standard of performance for installed Products will be provided by Purchaser to Contractor in writing and included in the installation support plan required in Section 27.3 above.

29. Training

29.1. Contractor agrees to provide training, which shall be sufficiently thorough to instruct, and certify, if required, Purchaser's staff in the use of the Products. This will include, at a minimum, orientation and familiarization training on the Products. Initial training shall be completed in time for the staff to operate the Products in the required fashion with minimum Contractor aid by the Acceptance Date.

- a) The starting dates of the training will be as agreed by the parties
- b) The training fee, whether separately stated under the pricing provisions of this Contract or included in the cost of the Products, shall cover all costs of training. Purchaser shall not be responsible for any additional manufacturer's costs for training required pursuant to this section.
- c) Purchaser shall have the right, so long as the Products purchased hereunder are in use by Purchaser, to give instruction to Purchaser's personnel in all courses described above and all revisions thereto without charge, using materials supplied by Contractor. Such use by Purchaser of Contractor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Contractor. Contractor grants to Purchaser the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

30. Contractor Commitments, Warranties and Representations

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

31. Protection of Purchaser's Confidential Information

31.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose

other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

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

Purchaser's Authority and Responsibilities

32. Purchaser Use of Master Contract

- 32.1. This Master Contract may be used only by Purchasers who have a Customer Service Agreement with DIS and is not for personal use. Purchaser shall comply with *all* the terms and conditions of this Master Contract, including but not limited to, Contractor's software license terms, **License Grant, Schedule B, Export Restrictions and Contractor's Proprietary Information**.
- 32.2. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document signifies agreement to comply with these requirements. Failure to abide by these requirements may result in Purchaser forfeiting the right to make future purchases under this or other Master Contracts.

33. Export Restrictions

Purchaser shall not transport or transmit, directly or indirectly, the Software or any technical data received from Contractor, nor the direct product derived there from, outside the United States or Canada without Contractor's prior written consent and without complying with all export laws and regulations of the United States.

Contract Administration

34. Legal Notices

- 34.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Products) 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, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

Verdiem Corporation

Attn: Charles Mulberg

1525 Fourth Avenue, Suite 700
Seattle, WA 98101

Phone: 206-838-2803

Fax: 206-838-2801

E-mail: charlesm@verdiem.com

To DIS at:

State of Washington
Department of Information Services
Attn: TSD Contract Administrator

If by US Postal Service: If by Overnight Courier:

PO Box 42445 2411 Chandler Court SW
Olympia, WA 98504 Olympia, WA 98502

Phone: 360-725-4200

Fax: 360-664-0711

E-mail: mcadmin@dis.wa.gov

or to **Purchasers** at the address and fax number listed on their Order Document.

- 34.2. 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.
- 34.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Contractor 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.

35. Contractor Account Manager

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



Contractor Account Manager: Maddie Hostetter

Address: 1525 Fourth Avenue, Suite 700

Phone: 206-838-2830 Fax: 206-838-2801 E-mail: maddieh@verdiem.com

36. Contractor Project Manager

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

37. Section Headings, Incorporated Documents and Order of Precedence

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

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

- a) Schedule A;
- b) DIS' RFP (Exhibit A);
- c) Contractor's Response to DIS' RFP (Exhibit B);
- d) The terms and conditions contained on the Order Documents, if used; and
- e) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Products to Purchaser.

37.3. 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 Contract;
- c) Schedule A;
- d) DIS' RFP (Exhibit A);
- e) Contractor's Response to DIS' RFP (Exhibit B);
- f) The terms and conditions contained on the Order Documents, if used; and
- g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Products to Purchaser.

38. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party.

Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

39. Authority for Modifications and Amendments

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

40. Additional Products and Services

Contractor may submit new Products and Services with associated discounts or prices to the DIS Contract Administrator. New or changed Products and Services submitted by Contractor shall meet all mandatory requirements of the RFP. Additional Products or Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to Schedule A of this Master Contract by an instrument in writing, signed by both Contractor and DIS. Such writing shall include a specific description of the additional Products and/or Services, pricing, and additional terms and conditions as relevant.

41. Independent Status of Contractor

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

42. Governing Law

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

43. 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.

44. Subcontractors

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

purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor 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, Protection of Purchaser's Confidential Information, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Software Ownership, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

45. Assignment

- 45.1. With the prior written consent of DIS, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor 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.
- 45.2. DIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

46. Publicity

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

47. Review of Contractor's Records

- 47.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this 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 Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

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

General Provisions

48. Patent and Copyright Indemnification

- 48.1. Contractor, at its expense, shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims against DIS 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. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DIS or Purchaser provided that DIS or Purchaser:
- a) Promptly notifies Contractor in writing of the claim, but DIS' or Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- 48.2. If such claim has occurred, or in Contractor's opinion is likely to occur, DIS and Purchaser agree to permit Contractor, 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 Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Contractor 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 three (3) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the

Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Contractor.

- 48.3. Contractor has no liability for any claim of infringement arising solely from:
- a) Contractor's compliance with any designs, specifications or instructions of Purchaser;
 - b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Contractor;
 - c) Use of the Product in a way not specified by Contractor; or,
 - d) Use of the Product with equipment not supplied by Contractor;
- unless the claim arose against Contractor's Product independently of any of these specified actions.

49. Save Harmless

Contractor shall defend, indemnify, and save DIS 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 Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligation to defend, indemnify, and save DIS and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent DIS or Purchaser negligence.

50. Insurance

- 50.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor 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, Contractor shall provide written notice of such to DIS within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Contract's termination.
- 50.2. 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 a limit of not less than \$1 million per occurrence/\$1 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 Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease; and
 - d) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$1 million general aggregate.

- 50.3. Contractor shall pay premiums on all insurance policies. DIS shall be named as an additional insured on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) designating DIS as an additional named insured. Such policies shall also reference this Contract number T06-MST-002 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 DIS by the insurer.
- 50.4. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 50.5. Contractor 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.
- 50.6. Contractor shall furnish to DIS 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 must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS sole option, result in this Contract's termination.
- 50.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DIS in this Contract.

51. Industrial Insurance Coverage

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

52. Licensing Standards

Contractor 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.)

53. OSHA/WISHA

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

54. Uniform Commercial Code (UCC) Applicability

- 54.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 54.2. To the extent this 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.
- 54.3. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

55. Antitrust Violations

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

56. Compliance with Civil Rights Laws

During the performance of this Contract, Contractor 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 Contractor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with the State.

57. 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.

58. Waiver

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

59. Treatment of Assets

- 59.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser. As used in this section

Treatment of Assets, if the “property” is Contractor’s proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

- 59.2. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 59.3. Contractor shall be responsible for any loss of or damage to property of Purchaser that results from Contractor’s negligence or that results from Contractor’s failure to maintain and administer that property in accordance with sound management practices.
- 59.4. Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 59.5. Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 59.6. All reference to Contractor under this section shall also include Contractor’s employees, agents, or Subcontractors.

60. Contractor’s Proprietary Information

Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor’s Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

Disputes and Remedies

61. Disputes

- 61.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot be resolved between the parties or by the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 61.2. 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 three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will

designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) 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 its attorneys' fees and share equally the cost of the third panel member.
- 61.3. 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.
- 61.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 61.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

62. 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.

63. Failure to Perform

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

64. Limitation of Liability

- 64.1. The parties agree that Contractor, DIS 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 a Date Warranty or No Surreptitious Code Warranty issue or 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 Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 64.2. Contractor, DIS or Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of each of them respectively.

Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS 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 Contractor, DIS, Purchaser, or their respective Subcontractors.

- 64.3. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 64.4. Contractor, DIS or Purchaser shall not 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

65. Termination for Default

- 65.1. If Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from DIS to Contractor, or an Order may be terminated by written notice to Contractor from Purchaser.
- 65.2. In the event of termination of an Order by Purchaser or this Master Contract by DIS, Purchaser or DIS shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DIS resulting from Contractor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DIS or Purchasers for Contractor's default.
- 65.3. If either DIS 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 Contractor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated

by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DIS.

65.4. 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**.

65.5. 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.

66. Termination for Convenience

66.1. When, at the sole discretion of DIS, it is in the best interest of the State, DIS may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Contractor.

66.2. Purchaser may terminate its Order upon sixty (60) calendar days notice to Contractor. If an Order is so terminated, Purchasers are liable only for payments for Products and Services received and accepted by Purchaser prior to the effective date of termination.

67. Termination for Withdrawal of Authority

In the event that DIS' 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 Order and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its Order(s), by seven (7) Business Days written notice to Contractor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Products or Services from a third party.

68. Termination for Non-Allocation of Funds

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

69. Termination for Conflict of Interest

DIS may terminate this Master Contract, or Purchaser its Order(s), by written notice to Contractor if DIS 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 Order is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Master Contract or any Order.

70. Termination Procedure

- 70.1. Upon termination of this Master Contract or any Order, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable Order, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Order as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 70.2. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Products and Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or Order 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 Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 70.3. Contractor shall pay amounts due Purchaser or DIS as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser or DIS may charge interest on the amounts due at one percent (1%) per month until paid in full.

71. Covenant Against Contingent Fees

- 71.1. Contractor 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 Contractor.
- 71.2. In the event Contractor 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 Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting and Administration Fee

72. DIS Master Contract Administration Fee and Collection

- 72.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Contractor and remitted to DIS.
- 72.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the total purchase price. The total purchase price is defined as the sum of the prices for all the products and services (before sales tax).
- 72.3. The Master Contract Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 72.4. Contractor shall hold the Master Contract Administration Fee in trust for DIS until the Fees are remitted to the DIS Contract Administrator, along with the Master Contract Activity Report.

73. Activity Reporting

- 73.1. Contractor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Products and Services purchased under this Master Contract. The report shall identify:
 - a) This Master Contract number;
 - b) The month in which the purchase occurred;
 - c) Each Purchaser making purchases during each month of the reporting period (identified and grouped by state, local or educational entity);
 - d) The total purchase price for each Purchaser;
 - e) The DIS Master Contract Administration Fee for each Purchaser;
 - f) The sum of all purchase prices for all Purchasers; and
 - g) The total amount of the DIS Master Contract Administration Fee.
- 73.2. The Activity Report and the DIS Master Contract Administration Fee shall be submitted on a quarterly basis in accordance with the following schedule:

<u>For activity in the months:</u>	<u>Report & Fee Due:</u>
January, February, March	April 15 th
April, May, June	July 15 th
July, August, September	October 15 th
October, November, December	January 15 th

- 73.3. Reports are required to be submitted electronically, in either Microsoft Word or Excel format. Reports are to be sent electronically via E-mail to: mcadmin@dis.wa.gov.
- 73.4. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Contractor.
- 73.5. Activity Reports are required even if no activity occurred.
- 73.6. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

74. Electronic Funds Transfer

When agreed by DIS and Contractor, the DIS Master Contract Administration Fee shall be paid through Electronic Funds Transfer (EFT) to an Automated Clearing House (ACH). Contractor shall utilize the ACH Debit option, which is an arrangement between the Contractor and DIS' bank. Contractor initiates the action, specifying the amount of funds and the effective date of payment. On the effective date, the funds are withdrawn from Contractor's account and transferred to the DIS account. Contractor will be provided by separate instrument the DIS account information and a toll-free number to initiate the quarterly transaction. There is no cost to Contractor.

75. Failure to Remit Reports/Fees

- 75.1. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Master Contract with Contractor.

- 75.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Contractor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 75.3. The DIS Contract Administrator will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.
- 75.4. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

Contract Execution

76. Authority to Bind

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

77. Counterparts

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

Schedule A
Product and Price List

as of June, 2006

for
Contract Number T06-MST-002
with
Verdiem Corporation

Contractor is authorized to sell only the Products and Services at the prices and discounts listed below under this Contract.

SURVEYOR SOFTWARE LICENSE PRICING

Pricing for Surveyor is based on the number of Surveyor client licenses that are required. There is no charge for Surveyor server licenses; the Purchaser may install an unlimited number of server licenses. *All prices include one year of Verdiem's Software Maintenance Program; first year maintenance must be sold whenever software licenses are purchased, and cannot be "unbundled."*

Standard Pricing

Standard pricing is based on the volume of client licenses purchased on a statewide basis:

Number of Client PCs	Price per PC
1 – 2,999	\$20.00
3,000 to 5,999	\$19.00
6,000 to 8,999	\$18.00
9,000 to 11,999	\$17.00
12,000 to 14,999	\$16.00
15,000 +	\$15.00

Standard Pricing includes:

- the required number of perpetual client licenses
- an unlimited number of perpetual server software licenses
- one year of maintenance (not optional)

SURVEYOR SOFTWARE MAINTENANCE PRICING

Verdiem offers a Software Maintenance Program for \$2/PC per year. The Software Maintenance Program includes technical support (Telephone and e-mail during standard business hours), New Releases of Surveyor, and an annual energy audit for the Purchaser.

PROFESSIONAL SERVICES PRICING

Installation and Configuration pricing is based on the type of installation requested as outlined below. Pricing includes travel and is not subject to discounting.

Remote Installation and Configuration includes installation and configuration (via phone) of the server software, software Administrator training and establishing a method to install the client software on the PCs. The Purchaser is responsible for installing the client software on the PCs. Remote pricing is \$1,500.

Standard Installation and Configuration includes installation and configuration of the server software, software Administrator training and establishing a method to install the client software on the PCs. The Purchaser is responsible for installing the client software on the PCs. Standard price is \$2,500.

Premium Installation and Configuration includes installation and configuration of the server software, software Administrator training and establishing a method to install the client software on the PCs. Verdiem is responsible for installing the client software to a minimum of 80% of the Purchaser's PCs. Premium price is \$2,500 plus \$1,000 for each additional day, based on an 8-hour day. Additional services are also available for \$1000 per day.

Schedule B
Contractor's Sales Order Form

for
Contract Number T06-MST-002
with
Verdiem Corporation

Please refer to the Contractor's Sales Order Form, separately posted on the DIS TechMall as an Excel document. See http://techmall.dis.wa.gov/master_contracts/mc.aspx

DIS #07-01

June 5, 2007

State of Washington Department of Information Services
TSD Contract Administrator
2411 Chandler Court SW
Olympia, WA 98502

Fax: (360) 664-0711

Re: Notification Pursuant to the Master Contract Number T06-MST-002 (the "Master Contract"), dated July 7, 2006, by and between Verdiem Corporation, a Washington corporation, and the State of Washington Department of Information Services ("DIS")

Dear Sir or Madam:

We are writing to inform you that Verdiem Corporation, a Washington corporation ("Verdiem Washington"), is currently in the process reincorporating in the state of Delaware (the "Reincorporation"). In connection with the Reincorporation, Verdiem Washington will be merged with and into Verdiem Corporation (DE), a Delaware corporation and wholly owned subsidiary of Verdiem Washington ("Verdiem Delaware"), and the separate existence of Verdiem Washington will cease, with Verdiem Delaware succeeding to, without other transfer, all of the assets, rights, powers, property, debts, liabilities and obligations of Verdiem Washington, including the Master Contract.

Pursuant to the terms of the Master Contract, including Section 45.1 therein, notice or consent of the Reincorporation may be required for the Master Contract to continue to remain in effect following the Reincorporation.

In connection with the Reincorporation, we request that you have an authorized signatory of the DIS sign this letter to (i) acknowledge DIS's receipt of this letter as prior written notice of the Reincorporation; (ii) consent to the survival of the Master Contract as a right and obligation of Verdiem Delaware following the closing of the Reincorporation and (iii) waive (prospectively and retrospectively) any and all notice periods, rights or remedies that DIS may be entitled to in connection with the closing of the transaction as part of the Reincorporation, whether pursuant to the terms of the Master Contract or otherwise.

Please fax a copy of an executed copy of this letter to the attention Robert Allison of Wilson Sonsini Goodrich & Rosati, Professional Corporation at (206) 883-2699. Please also return the original signed copy of this letter to the following address:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
Attention: Robert Allison
701 Fifth Avenue
Suite 5100
Seattle, Washington 98104-7036

If you have any questions, please feel free to contact Denise Masters at (206) 838-2803.

Very truly yours,

VERDIEM CORPORATION



Denise Masters
Chief Financial Officer

ACKNOWLEDGED, AGREED AND ACCEPTED to by

STATE OF WASHINGTON DEPARTMENT OF INFORMATION SERVICES

By: 

Name: ROLANDS RIVERA

Title: TSD Assistant Director

Dated: 8/6/07

Amendment Number 08-02
to
Master Contract Number T06-MST-002
for
Power Management Software, Services, Maintenance and Support

In accordance with Provision 39 (*Authority for Modifications and Amendments*) of Master Contract Number T06-MST-002, this Amendment 08-02 is entered into by and between the **State of Washington, Department of Information Services** ("DIS") and **Verdiem Corporation** ("Contractor").

DIS and Verdiem agree to amend the Contract as follows:

- 1) With respect to Section 34, the Legal Notices information is hereby deleted and replaced with the following:

Legal Notices: Denise Masters
Address: 1525 Fourth Avenue, Suite 700, Seattle, Washington 98101
Phone: 206-838-2803
E-mail: densiem@verdiem.com

- 2) Section 35, the Contractor Account Manager information is hereby deleted and replaced with the following:

Contractor Account Manager: Glenn Baker
Address: 1525 Fourth Avenue, Suite 700, Seattle, Washington 98101
Phone: 206-838-2830
E-mail: glennb@verdiem.com

All other provisions of Master Contract T06-MST-002 shall remain in full force and effect.

This Amendment 08-02 shall be effective the date signed by DIS.

Approved

**State of Washington,
Department of Information Services**



Signature

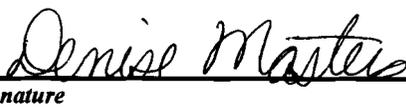
Print or Type Name

Title

8/6/07
Date

Approved

Verdiem Corporation



Signature

Denise Masters

Print or Type Name

CFO July 25, 2007

Title **Date**