

**QQ 17-06 Exhibit B
Sample Contract****GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions marked as Exhibit A (this "Exhibit A") are attached and incorporated into that certain Service Contract (the "Contract") by and between the Office of the Secretary of State ("OSOS") and [_____] dated [_____] [___], 20[___]. Capitalized terms used and not defined herein shall have the meanings given to them in the Contract.

1. **DEFINITIONS** - As used throughout this Exhibit A, the following terms shall have the meaning set forth below:
 - a. "Agent" shall mean Secretary of State, and/or the delegate authorized in writing to act on the Secretary of State's behalf.
 - b. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under the contract, and shall include all employees of Contractor.
 - c. "Individually Identifiable Health Information" shall mean a subset of health information, including demographic information collected from an individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, as set forth in 45 CFR § 164.501 as currently adopted and subsequently amended or revised.
 - d. "Materials" shall mean all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.
 - e. "Protected Health Information" shall mean Individually Identifiable Health Information that is transmitted by electronic media, or transmitted or maintained in any other form or medium, as set forth in 45 CFR § 164.501, as currently adopted and subsequently amended or revised.
 - f. "Subcontractor" shall mean one not in the employment of Contractor, who is performing all or part of those services under the Contract under a separate contract with Contractor. The terms "Subcontractor" and "Subcontractors," means Subcontractor(s) in any tier.
2. **ACCESS TO DATA** - In compliance with RCW 39.29.080, Contractor shall provide access to data generated under the Contract to OSOS, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models.

Contractor agrees to make personal information covered under the Contract available to OSOS for inspection or to amend the personal information. Contractor shall, as directed by OSOS, incorporate any amendments to the personal information into all copies of such personal information maintained by Contractor or its Subcontractors.
3. **AMERICANS WITH DISABILITIES ACT (ADA)** - Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

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4. **NO ASSIGNMENT** – Neither the Contract, nor any claim arising under the Contract, shall be transferred or assigned by Contractor without prior written consent of OSOS. For the purposes of the Contract, assignment shall include assignment by merger.
5. **ATTORNEY’S FEES** – In the event of litigation or other action brought to enforce the terms of the Contract, each party agrees to bear its own attorney’s fees and costs.
6. **CONFIDENTIALITY / SAFEGUARDING OF INFORMATION** - Contractor shall not use or disclose any information concerning OSOS, or information which may be classified as confidential, for any purpose not directly connected with the administration of the Contract without prior written consent of OSOS, or as may be required by law.
7. **CONFLICT OF INTEREST** - Notwithstanding any determination by the Executive Ethics Board or other tribunal, OSOS may, in its sole discretion, by written notice to Contractor terminate the Contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving Contractor in the procurement of, or performance under the Contract.
- In the event the Contract is terminated as provided above, OSOS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of the contract by Contractor. The rights and remedies of OSOS provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this Section 7 shall be an issue and may be reviewed as provided in Section 10 below.
8. **COPYRIGHT PROVISIONS** – Unless otherwise provided, all Materials produced under the Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by OSOS. OSOS shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to OSOS effective from the moment of creation of such Materials. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.
- For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to OSOS a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to OSOS.
- Contractor shall exert all reasonable effort to advise OSOS, at the time of delivery of Materials furnished under the Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of the Contract. OSOS shall receive prompt written notice of each notice or claim of infringement received by Contractor with respect to any data delivered under the Contract. OSOS shall have the right to modify or remove any restrictive markings placed upon the data by Contractor.
9. **COVENANT AGAINST CONTINGENT FEES** - Contractor warrants and represents that no person or selling agent has been employed or retained to solicit or secure the Contract upon an

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agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by Contractor for the purpose of securing business. OSOS shall have the right, in the event of breach of this Section 9 by Contractor, to annul the Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

- 10. DISPUTES** - Except as otherwise provided in the Contract, when a bona fide dispute arises between OSOS and Contractor and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent. The request for a dispute hearing must:
- a. be in writing;
 - b. state the disputed issue(s);
 - c. state the relative positions of the parties;
 - d. state Contractor's name, address, and contract number; and
 - e. be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
 - f. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
 - g. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
 - h. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in the Contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above.

- 11. GOVERNING LAW** - The Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

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

Contractor expressly agrees to indemnify, defend, and hold harmless Washington State for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless Washington State shall not be eliminated or reduced by any actual or alleged concurrent negligence of Washington State or its agents, agencies, employees and officials.

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

- 13. INDEPENDENT CAPACITY OF THE CONTRACTOR** - The parties intend that an independent contractor relationship will be created by the Contract. Contractor and his or her employees or agents performing under the Contract are not employees or agents of OSOS.

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Contractor will not hold himself/herself out as or claim to be an officer or employee of OSOS or of the state of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

14. INDUSTRIAL INSURANCE COVERAGE - Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, OSOS may collect from Contractor the full amount payable to the Industrial Insurance accident fund. OSOS may deduct the amount owed by Contractor to the accident fund from the amount payable to Contractor by OSOS under the Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from Contractor.

15. LICENSING, ACCREDITATION AND REGISTRATION – Contractor shall comply with all applicable local and state licensing, accreditation and registration requirements/standards, necessary for the performance of the Contract.

16. LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of the Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of the Contract is not effective or binding unless made in writing and signed by the Agent.

17. NONDISCRIMINATION - During the performance of the Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

18. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy the Contract may be rescinded, canceled, or terminated in whole or in part, and Contractor may be declared ineligible for further contracts with OSOS. Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 10 above.

19. PRIVACY - Personal information including, but not limited to Protected Health Information collected, used, or acquired in connection with the Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth in the Contract. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of OSOS or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. Contractor agrees to indemnify and hold harmless Washington State for any damages related to Contractor's unauthorized use of personal information.

20. PUBLICITY - Contractor agrees to submit to OSOS all advertising and publicity matters relating to the Contract wherein OSOS's name is mentioned or language used from which the

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connection of OSOS's name may, in OSOS's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without the prior written consent of OSOS.

21. RECORDS MAINTENANCE - Contractor shall maintain books, records, documents, data and other evidence relating to the Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of the Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by OSOS, personnel duly authorized by OSOS, the Office of the State Auditor, and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

22. REGISTRATION WITH DEPARTMENT OF REVENUE – Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Contract.

23. RIGHT OF INSPECTION - Contractor shall provide right of access to its facilities to OSOS, or any of its officers, or to any other authorized agent or official of the Washington State, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Contract.

24. SAVINGS - In the event funding from state, or other sources is withdrawn, reduced, or limited in any way after the effective date of the Contract and prior to normal completion, OSOS may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation under those new funding limitations and conditions.

25. SITE SECURITY – While on OSOS premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

26. SUBCONTRACTING - Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under the Contract without obtaining prior written approval of OSOS. In no event shall the existence of the subcontract operate to release or reduce the liability of Contractor to the Department for any breach in the performance of Contractor's duties. This clause does not include contracts of employment between Contractor and personnel assigned to work under the Contract.

Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in the Contract are carried forward to any subcontracts. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of OSOS or as provided by law.

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27. TAXES – All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for Contractor or its staff shall be the sole responsibility of Contractor.

28. TERMINATION FOR CAUSE – In the event OSOS determines Contractor has failed to comply with the conditions of the Contract in a timely manner, OSOS has the right to suspend or terminate the Contract. Before suspending or terminating the Contract, OSOS shall notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated or suspended. In the event of termination or suspension, Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by OSOS to terminate the Contract.

A termination shall be deemed to be a “Termination for Convenience” if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of OSOS provided in the Contract are not exclusive and are in addition to any other rights and remedies provided by law.

29. TERMINATION FOR CONVENIENCE - Except as otherwise provided in the Contract, OSOS may, by 10 days written notice, beginning on the second day after the mailing, terminate the Contract, in whole or in part. If the Contract is so terminated, OSOS shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

30. TERMINATION PROCEDURES - Upon termination of the Contract OSOS, in addition to any other rights provided in the Contract, may require Contractor to deliver to OSOS any property specifically produced or acquired for the performance of such part of the Contract as has been terminated. The provisions of the “Treatment of Assets” in Section 31 below shall apply in such property transfer.

OSOS shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by OSOS, and the amount agreed upon by Contractor and OSOS for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by OSOS, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of OSOS. Failure to agree with such determination shall be a dispute within the meaning of the “Disputes” clause in Section 10 above. OSOS may withhold from any amounts due Contractor such sum as the Agent determines to be necessary to protect OSOS against potential loss or liability.

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

After receipt of a notice of termination, and except as otherwise directed by the Agent, Contractor shall:

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- a. Stop work under the contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- c. Assign to OSOS, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case OSOS has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to OSOS and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to OSOS;
- f. Complete performance of such part of the work as shall not have been terminated by the Agent; and
- g. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to the Contract which is in the possession of Contractor and in which OSOS has or may acquire an interest.

31. TREATMENT OF ASSETS

A. Title to all property furnished by OSOS shall remain in OSOS. Title to all property furnished by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under the Contract, shall pass to and vest in OSOS upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under the Contract, shall pass to and vest in OSOS upon (i) issuance for use of such property in the performance of the Contract, or (ii) commencement of use of such property in the performance of the Contract, or (iii) reimbursement of the cost thereof by OSOS in whole or in part, whichever first occurs.

B. Any property of OSOS furnished to Contractor shall, unless otherwise provided herein or approved by OSOS, be used only for the performance of the Contract.

C. Contractor shall be responsible for any loss or damage to property of OSOS which results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain and administer that property in accordance with sound management practices.

D. If any of OSOS property is lost, destroyed or damaged, Contractor shall immediately notify OSOS and shall take all reasonable steps to protect the property from further damage.

E. Contractor shall surrender to OSOS all property of OSOS prior to settlement upon completion, termination or cancellation of the Contract.

F. All reference to Contractor under this Section 31 shall also include Contractor's employees, agents or Subcontractors.

32. **WAIVER**- Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing and signed by authorized representative of OSOS.

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