

STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE

CONTRACT No.

By and Between

STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE

and

Dated

CONTRACT NO. [-]

(Title of Contract) []

This Contract ("Contract") is made and entered into by and between the State of Washington acting by and through the Office of the Secretary of State, a Washington State governmental agency ("OSOS") and [], a [] ("Contractor") and is dated & effective as of [], [], []. OSOS and Contractor are sometimes referred to herein individually as a "Party" and, collectively, as the "Parties."

RECITALS

- A. Pursuant to Legislative direction codified in RCW 39.26, OSOS is authorized to competitively solicit and award contracts for goods and/or services for use by OSOS.
- B. OSOS issued RF [] No. [-] dated [], [], [] for the purpose of obtaining a contractor to provide [], in accordance with its authority under RCW 39.26 (the "Competitive Solicitation").
- C. OSOS evaluated all responses to the Competitive Solicitation and identified Contractor as the Apparent Successful Contractor.
- D. OSOS has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the Parties hereto hereby agree as follows:

- 1. **Term.** The term of this Contract is for a period commencing on [], [], [] and ending on [], [], [].
- 2. **SCOPE – INCLUDED SERVICES AND COST.**
 - 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to and shall provide the services and deliverables set forth in *Exhibit A – Statement of Work* at the rates and total not-to-exceed cost set forth in *Exhibit B – Project Cost*. *(If contract is for multiple years or contains options for renewal for additional terms, consider whether cost will be the same in each subsequent year or renewal term, and whether some type of adjustment year-over-year is appropriate)*
 - 2.2. **STATE’S ABILITY TO MODIFY SCOPE OF CONTRACT.** Subject to mutual agreement between the Parties, OSOS reserves the right to modify the services and/or deliverables included in this Contract; *provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 3. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make

such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify OSOS, in writing, of such breach.

- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- 3.4. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.
- 3.5. WAGE VIOLATIONS. Contractor represents and warrants as previously certified in Contractor's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 3.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.7. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS *[IF APPLICABLE]*. Contractor represents and warrants, as previously certified in Contractor's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 3.8. WASHINGTON SMALL BUSINESS *[IF APPLICABLE]*. Contractor represents and warrants, as previously certified in Contractor's Certification, that Contractor qualifies as a Washington Small Business pursuant to RCW 39.26.010.
- 3.9. CERTIFIED VETERAN-OWNED BUSINESS *[IF APPLICABLE]*. Contractor represents and warrants, as previously certified in Contractor's Certification, that Contractor qualifies as a Certified Veteran-Owned Business pursuant to RCW 43.60A.190.

- 3.10. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3)-year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.
- 3.11. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to State employees.
- 3.12. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 3.13. ADVERTISING AND ENDORSEMENT. Contractor understands and acknowledges that neither OSOS nor the State of Washington are endorsing Contractor's services or suggesting that such services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to OSOS or the State of Washington in any promotional material without the prior written consent of OSOS.
- 3.14. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 3.15. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any services that are the subject of this Contract.
- 3.16. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 3.17. TOOLS, EQUIPMENT, PERSONNEL, & SUPPLIES. Contractor represents and warrants, as previously certified in Contractor's Certification, that Contractor possess all necessary personnel to fulfill the roles outlined in the Competitive Solicitation.
- 3.18. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist OSOS for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

4. QUALITY; WARRANTY; REMEDIES.

- 4.1. SERVICES WARRANTY. Contractor warrants that: (a) Services will be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform the services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”).
 - 4.2. SERVICES REMEDY. If the services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at OSOS’s election, Contractor shall re-perform or correct the nonconforming services at no additional cost to OSOS or refund the amounts paid for the services.
 - 4.3. IT WARRANTY *[IF APPLICABLE]*. Contractor warrants, that all hardware, software, and firmware associated with the services will not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of OSOS, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty will expire twelve (12) months after the date the services are complete.
 - 4.4. IT REMEDY *[IF APPLICABLE]*. If the services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at OSOS’s election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective items; (b) re-perform or correct the non-conforming services at no additional cost to OSOS; or (c) refund the amounts paid for the services.
 - 4.5. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from OSOS, or if an emergency exists rendering it impossible or impractical for OSOS to have Contractor provide a remedy, OSOS may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace items or services, in which case Contractor shall reimburse OSOS for its actual costs or, at OSOS’s option, OSOS will offset the costs incurred from amounts owing to Contractor.
5. **SAFETY; SECURITY.** Contractor’s failure to comply with any of the requirements in this Section shall be cause for termination.
- 5.1. REGULATORY REQUIREMENTS/SAFETY. Goods and/or services supplied by Contractor shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the goods and/or services.

- 5.2. MATERIAL SAFETY DATA SHEETS. As applicable, Contractor shall provide OSOS with all appropriate Material Safety Data Sheets (“MSDS”) for materials used by Contractor while performing the services and any updates of the same.
- 5.3. CLEAN-UP. If Contractor, its agents, employees, or subcontractors perform onsite services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a site after completion of work, OSOS will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.
- 5.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at OSOS’s premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any OSOS investigation of incidents.
- 5.5. ON SITE REQUIREMENTS. While on OSOS premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with OSOS’s physical, fire, access, safety, and other security requirements and not interfere with OSOS operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access OSOS premises will be adequately trained and at all times comply with OSOS requirements.

6. SUBCONTRACTORS.

- 6.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall: (a) incorporate Contractor’s responsibilities under this Contract into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract; (c) be the sole point of contact for OSOS regarding all contractual matters; and (d) defend, indemnify, and hold OSOS harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier).
- 6.2. REPORTING. If Contractor is required to report to OSOS, such report(s) will include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated ‘rollup’ report combining Contractor and subcontractor data.
- 6.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington’s Statewide Payee Desk, unless OSOS will pay such subcontractor directly.

7. PERFORMANCE OF SERVICES.

- 7.1 PERFORMANCE REQUIREMENTS. Contractor must ensure that its services are performed as required by this Contract, including, without limitation, the requirements set forth in *Exhibit A – Statement of Work*.

- 7.2 DELIVERY OF SERVICES. Contractor understands and acknowledges that, Contractor may be required, upon request, to perform contracted services on-site at OSOS's facilities in [REDACTED], Washington. On-site services may include, but are not limited to, attending meetings at OSOS's location. Contractor's service rates set forth in *Exhibit B – Project Cost* shall include costs associated with the delivery of such services on-site at OSOS's location.
- 7.3 TECHNOLOGY EQUIPMENT AND ACCESS. Contractor is responsible for providing all equipment and access required to perform the services as defined in this Contract, including but not limited to video conferencing ability using webinar platforms such as Microsoft Teams and Zoom.
- 7.4 ON SITE REQUIREMENTS. While on OSOS premises, Contractor, its agents, employees, and subcontractors shall comply, in all respects, with OSOS's physical, fire, access, safety, and security requirements.
- 7.5 CONTRACTOR SAFETY PLAN. If requested by OSOS, Contractor shall provide OSOS with a copy of Contractor's current health/safety plan. OSOS reserves the right to condition access to its premises upon receipt of Contractor's health/safety plan.
- 7.6 OWNERSHIP OF DELIVERABLES. Notwithstanding any provision to the contrary, the parties understand and agree that OSOS shall own all rights to any plans, reports, or other deliverables provided to OSOS pursuant to this Contract. The copyright in all works of authorship created pursuant to this Contract shall be owned by the State of Washington. All such works or portions of works created by the Contractor are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. § 201. If, however, the State of Washington is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to State of Washington all right, title, and interest in: (a) the copyright to Contractor's work of authorship ("Work") and contribution to any such Work ("Contribution"); (b) any registrations and copyright applications, along with any renewals and extensions thereof, relating to the Contribution or the Work; (c) all works based upon, derived from, or incorporating the Contribution or the Work; (d) all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Work; (e) all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Contribution or the Work, and all rights corresponding to any of the foregoing, throughout the world. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Contractor has in the Contribution or the Work, the Contractor waives those rights as to State of Washington, its successors, licensees, and assigns.
- 7.7 CONTRACTOR KEY STAFF CHANGES. Except in the case of a leave of absence, sickness, death, termination of employment or unpaid or paid leave of absence, agreed upon key staff must not be changed during the term of this Contract. Otherwise, any change in key staff must be agreed in writing between the Parties. During the term of the Contract, OSOS reserves the right to approve or disapprove of Contractor and subcontractor key staff assigned to perform services as required by this Contract, or to require the removal or reassignment of any Contractor or subcontractor key staff found unacceptable by OSOS, subject to OSOS's compliance with applicable laws and regulations. Contractor must provide OSOS with a resume of any member of its key staff or a subcontractor's key staff assigned to or proposed for any aspect of performance under this Contract prior to commencing any services.

In the event that proposed Contractor resources are unavailable to deliver the work, Contractor must staff the project with resources with equal or greater skills and capabilities, subject to approval from OSOS.

OSOS must be notified of any change in Contractor key staff as soon as practicable but in no event less than five (5) working days after removal of such staff from their duties in support of this Contract. Contractor must provide resumes and describe the roles and responsibilities of any replacement staff to OSOS as soon as practicable but in no event less than five (5) working days prior to the date that such staff begin work under this Contract. OSOS reserves the right, in its sole judgment, to approve or reject such replacement staff. OSOS's approval of such staff will not be unreasonably withheld.

8. INVOICING & PAYMENT.

- 8.1 CONTRACTOR INVOICE. Contractor shall submit to OSOS's designated invoicing contact properly itemized invoices for services delivered under this Contract. Such invoices shall itemize the following:
- a) Contract No. - [REDACTED];
 - b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor customer service representative);
 - c) Contractor's Federal Tax Identification Number;
 - d) Description of services and deliverables provided, and date(s) of delivery;
 - e) Net invoice charges for each service or deliverable;
 - f) Applicable taxes;
 - g) Total invoice amount; and
 - h) Payment terms, including any available prompt payment discounts.
- 8.2 CONTRACTOR INVOICES FOR PAYMENT SHALL REFLECT ACCURATE CONTRACT RATES/PRICES. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. OSOS shall have no obligation to pay Contractor for any services that do not comply with this Contract.
- 8.3 PAYMENT. Payment is the sole responsibility of, and will be made by, OSOS. Payment is due within thirty (30) days of invoice. If OSOS fails to make timely payment(s), Contractor may invoice OSOS in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 8.4 OVERPAYMENTS. Contractor promptly shall refund to OSOS the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *provided*, however, that OSOS shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, OSOS may impose a one percent (1%) per month charge on the amount overdue thirty (30) days after notice to Contractor.
- 8.5 NO ADVANCE PAYMENT. No advance payments shall be made for any products or services furnished by Contractor pursuant to this Contract.

- 8.6 NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 8.7 TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, OSOS shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and OSOS agrees to furnish Contractor with an exemption certificate where appropriate.

9. CONTRACT MANAGEMENT.

- 9.1 CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of contract administration for this Contract. OSOS’s contract administrator shall provide contract administrative oversight. Contractor’s contract administrator shall be Contractor’s principal contact for invoice/billing activities under this Contract. The parties may change contract administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

OSOS:

Attn: _____

Tel: _____

Email: _____

Contractor:

Attn: _____

Tel: _____

Email: _____

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 9.2 CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform OSOS of the same) who shall be responsible for addressing OSOS’s issues pertaining to this Contract.
- 9.3 LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

OSOS:

Attn: _____

Email: _____

Contractor:

Attn: _____

Email: _____

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

10. RECORDS RETENTION & AUDITS.

10.1 RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

10.2 AUDIT. OSOS reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced OSOS. Accordingly, Contractor shall permit OSOS and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor’s books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

10.3 OVERPAYMENT OF PURCHASES. Without limiting any other remedies available to OSOS, Contractor shall reimburse OSOS for any overpayments inconsistent with the terms of this Contract, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor’s records.

11. INSURANCE.

11.1 REQUIRED INSURANCE. During the term of this Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C– Insurance Requirements*.

11.2 WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, 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 terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51

to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

12. CLAIMS.

- 12.1 ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. OSOS has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any OSOS property resulting directly or indirectly from its acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.
- 12.2 THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold OSOS and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', and subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract; *provided, however*, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of OSOS. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep OSOS's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 12.3 INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold OSOS and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the products and/or services provided, or the use of the products and/or services under this Contract. If OSOS's use of products or services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for OSOS the right to continue using the products and/or services or, after consulting with OSOS and obtaining OSOS's consent, replace or modify the products and/or services with substantially similar and functionally equivalent non-infringing products and/or services.

13. DISPUTE RESOLUTION. The Parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either Party, each Party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other Party. The receiving Party then shall have three (3) business days to review and respond in writing. In the event that the Parties cannot then agree on a resolution of the dispute, the Parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the Parties cannot agree, either Party may resort to court to resolve the dispute.

14. TERMINATION; EXPIRATION; DEFAULT; SUSPENSION; REMEDIES.

- 14.1 TERMINATION. This Contract may be terminated: (a) upon the mutual written agreement of the Parties; (b) by the non-breaching Party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching Party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a Party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching Party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching Party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.
- 14.2 TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. OSOS may suspend or terminate this Contract, at the sole discretion of OSOS or, as applicable, if OSOS reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either Party to perform under the terms of this Contract; or (b) that a change in available funds affects OSOS's ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, OSOS will reimburse Contractor for products properly ordered and/or services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, OSOS will have no obligation or liability to Contractor.
- 14.3 TERMINATION FOR PUBLIC CONVENIENCE. OSOS, for public convenience, may terminate this Contract; *provided, however*, that such termination for public convenience must, in OSOS's judgment, be in the best interest of the State of Washington; *and provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; *and provided further*, that such termination for public convenience shall not relieve OSOS from payment for products and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, OSOS shall not have any obligation or liability to Contractor.
- 14.4 EXPIRATION – OSOS's Obligations. Upon expiration of this Contract, OSOS shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.
- 14.5 EXPIRATION OR TERMINATION – Contractor's Obligations. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any products and/or services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to OSOS all keys, badges, and other materials supplied by OSOS pursuant to this Contract.
- 14.6 DEFAULT. Any of the following events shall constitute cause for OSOS to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - (b) Contractor breaches any representation or warranty provided herein; or

- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

14.7 SUSPENSION & TERMINATION FOR DEFAULT. OSOS may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to OSOS's reasonable satisfaction; Provided, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, OSOS may terminate Contractor's rights under this Contract. All of Contractor's obligations to OSOS survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.

14.8 REMEDIES FOR DEFAULT.

- (a) OSOS's rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.
- (b) In the event of termination for default, OSOS may exercise any remedy provided by law including, without limitation, the right to procure replacement products and/or services. In such event, Contractor shall be liable to OSOS for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

14.9 LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the Parties agree that in no event shall any Party be liable to the other for exemplary or punitive damages; *provided, however*, that nothing contained in this Section will in any way exclude or limit: (a) a Party's liability for all damages arising out of that Party's intentional acts or omissions; (b) the operation of any products and/or services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either Party's obligations under this Contract, by delivery slips or other documentation is void.

14.10 SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the Parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to OSOS all products and/or services that are complete (or with approval from OSOS, substantially complete) and OSOS shall inspect, accept, and pay for the same in accordance with this Contract. Unless directed by OSOS to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

15. PUBLIC INFORMATION AND PUBLIC RECORDS DISCLOSURE REQUESTS.

15.1. WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.

15.2. CONTRACTOR OBLIGATION. Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to OSOS that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of

confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

- 15.3. OSOS'S OBLIGATION. In the event that OSOS receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure, or (b) sensitive, OSOS, prior to disclosure, will do the following: OSOS's Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, OSOS will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where OSOS determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, OSOS will notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that OSOS intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining OSOS from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, OSOS will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

16. GENERAL PROVISIONS.

- 16.1 TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- 16.2 COMPLIANCE WITH LAW. Contractor shall comply with all applicable laws.
- 16.3 INTEGRATED AGREEMENT. This Contract constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 16.4 AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each Party.
- 16.5 AUTHORITY. Each Party to this Contract, and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such Party.
- 16.6 NO AGENCY. The Parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither Party is an agent of the other Party nor authorized to obligate it.
- 16.7 INDEPENDENT CONTRACTOR. The Parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of OSOS. Contractor shall not have authorization, express or implied, to bind OSOS to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to

unemployment insurance or worker's compensation benefits through OSOS or the State of Washington and OSOS and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.

- 16.8 ASSIGNMENTS. Contractor may not assign its rights under this Contract without OSOS's prior written consent and OSOS may consider any attempted assignment without such consent to be void; *provided, however*, that, if Contractor provides written notice to OSOS within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.
- 16.9 BINDING EFFECT; SUCCESSORS & ASSIGNS. This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
- 16.10 ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED PRODUCTS/SERVICES. Contractor irrevocably assigns to OSOS, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any products and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Contract, including, at OSOS's option, the right to control any such litigation on such claim for relief or cause of action.
- 16.11 FORCE MAJEURE. Except for payment of sums due, neither Party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such Party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that causes a delay that is beyond the control of the Party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either Party is delayed by force majeure, said Party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other Party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed Party from performing in accordance with this Contract. Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30) days, OSOS shall have the right to terminate the Contract and/or purchase the services set forth in this Contract; *provided, however*, that in such event, Contractor shall not be liable to OSOS for any price difference for such services.
- 16.12 FEDERAL FUNDS. To the extent that OSOS uses federal funds to purchase services pursuant to this Contract, OSOS shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.
- 16.13 SEVERABILITY. If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known

or apparent to the Parties, the Parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.

- 16.14 **WAIVER.** The failure of either Party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other Party in the event of breach, shall not release the other Party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either Party operate as a waiver of any of the terms hereof. No waiver by either Party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 16.15 **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract; *provided, however*, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 16.16 **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- 16.17 **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Contract, the Parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 16.18 **ATTORNEYS' FEES.** In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each Party agrees to bear its own attorneys' fees and costs.
- 16.19 **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each Party hereto and its counsel has reviewed and revised this Contract and agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Contract. Each term and provision of this Contract to be performed by either Party shall be construed to be both a covenant and a condition.
- 16.20 **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Contract, the Parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 16.21 **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 16.22 **CAPTIONS & HEADINGS.** The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.

16.23 ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.

16.24 COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the Parties shall not affect the validity thereof so long as all the Parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

OSOS:

CONTRACTOR:

STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

STATEMENT OF WORK

EXHIBIT B

PROJECT COST

EXHIBIT C

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.
 - e. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE***[IF APPLICABLE]*. Professional liability (errors & omissions) insurance appropriate to the Contractor's profession, with limits no less than \$2,000,000 per occurrence or claim, \$4,000,000 in the aggregate.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. EWSHS reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and the Office of the Secretary of State (OSOS) (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to OSOS, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to OSOS that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to OSOS an updated or renewed certificate of insurance, satisfactory to OSOS, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be delivered to OSOS by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as OSOS may specify in writing:

US MAIL:

Contract Insurance Certificate
Contract No. [REDACTED]
Attn: Contracts
Office of the Secretary of State
Operations Division
PO Box 40224
Olympia, WA 98504-0224

EMAIL:

Send to: **CONTRACTS@SOS.WA.GOV**
Subject Line: Contract Insurance Certificate
Contract No. [REDACTED]

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and OSOS for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to OSOS. Failure to provide such

notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.