

SERVICE CONTRACT
BETWEEN
THE STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE
AND

PARTIES

This Contract is made and entered into by and between the state of Washington, Office of the Secretary of State, P.O. Box 40220, Olympia, Washington 98504-0220, hereinafter referred to as the "OSOS," and _____, hereinafter referred to as the "Contractor", for the express purposes set forth in the following provisions of this contract.

RECITALS

The state of Washington, acting by and through *Office of the Secretary of State*, issued a Request for Proposal dated January 13, 2014, (Exhibit A) for the purpose of purchasing User Interface Design and Documentation to replace the Corporations and Charities Division imaging and filing system in accordance with its authority under chapter 43.105 and chapter 39.26 RCW.

[Contractor] submitted a timely Response to the Purchaser's RFP 14-02 (Exhibit B).

The Purchaser evaluated all properly submitted Responses to the above-referenced RFP and has identified *[Contractor]* as the apparently successful Contractor.

The Purchaser has determined that entering into a Contract with *[Contractor]* will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, Purchaser awards to *[Contractor]* this Service Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchaser the User Interface Design and Documentation. This Contract is not for personal use.

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

1. Definition of Terms

"OSOS" shall mean the Office of the Secretary of State of the state of Washington.

"OSOS Project Manager" shall mean the person designated by OSOS who is assigned as the primary contact person for the Contractor while performing work under this Contract.

"Agent" shall mean the Secretary of State, and/or the delegate authorized in writing to act on the Secretary of State's behalf.

“Contract” shall mean this document, including all Exhibits and all amendments hereto.

“Contractor” shall mean _____ and shall include all employees, agents and subcontractors of the Contractor.

“Contractor Project Manager” shall mean a representative of the Contractor who is assigned as the primary contact person for OSOS whom OSOS shall work with for the duration of this Contract.

“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: (1) names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, or other information identifiable to an individual that relates to any of these types of information; (2) agency source code or object code, agency security data, source code or other proprietary information owned by election management system vendors with whom OSOS does business, or other trade secrets.

“Date of Execution” shall mean the first date this Contract is in full force and effect, which will be the date of the last signature of a party to this Contract.

“Deliverables” 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.

“Effective Date” shall mean the first date this Contract is in full force and effect, that being the date of the last signature of a party to this Contract.

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

“Proprietary Information” shall mean information owned by the Contractor to which the Contractor claims a protectable interest under law, including without limitation the Contractor’s proprietary voter registration software product (and any updates, enhancements or new versions of such product) and the modifications and interfaces to such product developed under this Contract. Proprietary information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“RCW” shall mean the Revised Code of Washington.

“Services,” shall mean professional or technical expertise provided by the Contractor to accomplish the tasks or duties set forth in this Contract.

“Specifications” shall mean the technical and other specifications set forth in this contract and any subsequently published modifications thereto.

STATEMENT OF WORK

2. Statement of Work

The Contractor will provide services and staff and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

CONTRACT TERM

3. Period of Performance

The term of this Contract shall be commencing upon the Effective Date and terminating on June 30, 2014.

This Contract’s term may be extended up to two (2) years, provided that the extensions shall be at Purchaser’s option.

4. Commencement of Work

Under the provisions of Chapter 39.29 RCW, this personal service contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

5. Survivorship

The terms of Section 11 entitled “Ownership/ Rights in Data”, and Section 14 entitled “Protection of Confidential Information” shall survive termination of this Contract.

PRICING, INVOICE AND PAYMENT

6. Pricing

OSOS shall pay an amount not to exceed _____, for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work. Contractor’s compensation for services, including all expenses, rendered shall be based on the following:

7. Invoice and Payment

OSOS shall pay the Contractor upon completion of deliverables as set forth below:

Upon completion of the deliverables, the Contractor shall submit an invoice to OSOS’s billing contact:

Bea Huynh-Tien
State of Washington
Office of the Secretary of State
Financial Services
P.O. Box 40224

Olympia, WA 98504-0224
Phone: (360) 704-5267
E-mail address: bea.huynhtien@sos.wa.gov

Payment shall be considered timely if made by OSOS within thirty (30) days after receipt of properly completed invoices. **The Contract number S-_____ must be referenced on the invoice in order for the invoice to be processed.** Payment shall be sent to the address designated by the Contractor. If OSOS fails to make timely payment of any amount due hereunder, the Contract may charge OSOS one percent (1%) per month on the amount due, until paid in full.

OSOS may, in its sole discretion, terminate the contract or withhold payment claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any terms or conditions of this contract.

8. Advance Payment Prohibited

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by OSOS.

9. Overpayments to Contractor

Contractor shall refund to Agency 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, Agency may charge Contractor one percent (1%) per month on the amount due, until paid in full.

10. Taxes

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

11. Ownership/Rights in Data

Unless otherwise provided, all Materials produced under this 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.

A material means all items in any format and includes, but is not limited to, data, computer code, computer programs, and related documentation. 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, the 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. The 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.

The Contractor shall exert all reasonable effort to advise OSOS, at the time of delivery of Materials furnished under this 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 this contract. OSOS shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. OSOS shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

12. Access to Data

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this 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 the Contractor's reports, including computer models and methodology for those models.

13. Site Security

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

14. Protection of Confidential Information

(a) Each party to this contract acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information" as defined in this Contract). Each party hereto agrees to hold Confidential Information of the other party 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 it known to any other party without the express written consent of the other party or as provided by law. The 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 the other party. The contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information of the other party.

(b) Vendors and consultants should be aware that this contract will require them to work with the election/voting records of many counties and that they may be exposed to or work with proprietary information of other vendors/consultants. It must be clearly understood that this information is also considered Confidential Information and that any such Confidential Information obtained by/through this contract cannot be used for any reason whatsoever.

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

(d) OSOS reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by the Contractor through this Contract.

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

CONTRACT MANAGEMENT

15. Contractor's Project Manager

The Contractor has appointed a Project Manager under this Contract who will provide oversight of Contractor activities conducted hereunder. The Contractor's Project Manager will be the principal point of contact for OSOS concerning the Contractor's performance under this Contract. The Contractor shall notify OSOS's Project Manager, in writing, when there is a new Contractor Project Manager assigned to this Contract. The Contractor's Project Manager Information is:

Name:

Address:

Phone:

Fax:

E-mail:

16. Agency Project Manager

OSOS has appointed a Project Manager under this Contract who will provide oversight of the activities conducted hereunder. OSOS's Project Manager will be the principal point of contact for the Contractor concerning business activities under this Contract. OSOS shall notify the Contractor's Project Manager, in writing, when there is a new Agency Project Manager assigned to this Contract. OSOS's Project Manager Information is:

Name:

Address:

Phone:

Fax:

E-mail:

17. Independent Status of Contractor

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of OSOS. The 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 the 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 the Contractor. No third party will have any third-party-beneficiary or other rights under this contract.

18. Governing Law

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

19. Subcontractors

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

20. Assignment

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of OSOS.

21. Publicity

The award of this Contract to the Contractor is not in any way an endorsement of the Contractor or the Contractor's Services by OSOS and shall not be so construed by the Contractor in any advertising or other publicity materials.

The Contractor agrees to submit to OSOS all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by the Contractor wherein OSOS's name is mentioned, language is used, or Internet links are provided from which the connection of OSOS's name therewith may, in OSOS's judgment, be inferred or implied. The 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 OSOS prior to such use.

22. Review of Contractor's Records

The Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to, protection and use of 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. The Contractor shall retain all such records for six (6) years after the 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 termination of this Contract, whichever is later.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by OSOS's Contract Officer 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, the Contractor shall provide access to these items within Thurston County. Such persons shall be subject to written obligations of confidentiality providing substantially the same protection of Contractor Confidential Information as this Contract. The Contractor shall be responsible for any audit exceptions or disallowed costs incurred by the contractor or any of its Subcontractors in violation of this contract.

The Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to the Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from OSOS's review.

23. Right of Inspection

The 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 state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

24. Patent and Copyright Indemnification

- a. The Contractor, at its expense, shall defend, indemnify, and save Agency harmless from and against any claims against OSOS that any Deliverable supplied hereunder, or Agency's use of the Deliverable within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. The 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 OSOS provided that Agency:
 - Promptly notifies the Contractor in writing of the claim, but Agency'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
 - 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.
- b. If such claim has occurred, or in Contractor's opinion is likely to occur, Agency agrees to permit Contractor, at its option and expense, either to procure for Agency the right to continue using the Deliverable or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Deliverable 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 Deliverable and provide Agency a refund. In the case of Deliverable, Contractor shall refund to

Agency the entire amount Agency paid to Contractor for Contractor's provision of the Deliverable.

- c. Contractor has no liability for any claim of infringement arising solely from:
- Contractor's compliance with any designs, specifications or instructions of Agency
 - Modification of the Deliverable by OSOS or a third party without the prior knowledge and approval of Contractor; or
 - Use of the Deliverable in a way not specified by Contractor, except to the extent that the claim arose against Contractor's Deliverable independently of any of these specified actions.

25. Hold Harmless

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of 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 the 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 the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of 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 State and its agencies, officials, agents or employees.

26. Insurance

The Contractor shall provide the following insurance coverage which shall be maintained in full force and effect during the term of this contract. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing services under this contract.

- Commercial General Liability Insurance, including contractual liability for both bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- Automobile Liability: In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- Employer's liability with limits of not less than \$1,000,000 each accident;

- The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the 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 the Contractor the full amount payable to the Industrial Insurance accident fund. OSOS may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by OSOS under this 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 the Contractor.

The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct its insurers to give Agency 30 days advance notice of any insurance cancellation.

The Contractor shall submit to Agency within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in this section of the contract. Contractor shall submit renewal certificates as appropriate during the term of the contract.

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. 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.

27. Licensing Standards

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/ standards, necessary for the performance of this contract.

28. Nondiscrimination

During the performance of this Contract, the 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 the 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, and the Contractor may be declared ineligible for further contracts with OSOS. The 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 herein.

29. Assurances

OSOS and Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules and regulations. These include, but is not limited to, 41 Code of Federal Regulations (CFR) Part 105, Government-wide Debarment and Suspension (Nonprocurement), which provides that an individual, corporation, unit of government or other entity that is debarred or suspended shall be excluded from Federal financial or non-financial assistance and benefits under Federal programs and activities.

30. Severability

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

31. 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 this Contract unless stated to be such in writing and signed by authorized representative of OSOS.

32. Treatment of Assets

- a. Title to all property furnished by OSOS shall remain in OSOS.
- b. Any property of OSOS furnished to the Contractor shall, unless otherwise provided herein or approved by OSOS, be used only for the performance of this contract.
- c. The Contractor shall be responsible for any loss or damage to property of OSOS which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- d. If any OSOS property is lost, destroyed or damaged, the Contractor shall immediately notify OSOS and shall take all reasonable steps to protect the property from further damage.
- e. The Contractor shall surrender to OSOS all property of OSOS prior to settlement upon completion, termination or cancellation of this contract.
- f. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

33. Contractor's Proprietary Information

Contractor acknowledges that Agency is 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 the Contractor. To the extent consistent with chapter 42.17 RCW, Agency shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, Agency 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, Agency will release the requested information on the date specified.

DISPUTES AND REMEDIES

34. Disputes

Except as otherwise provided in this contract, when a bona fide dispute arises between OSOS and the Contractor and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

1. The request for a dispute hearing must:
 - be in writing;
 - state the disputed issue(s);
 - state the relative positions of the parties;
 - state the Contractor's name, address, and contract number; and
 - be mailed to the Agent and the other party's (respondent's) Contract Manager.
 - The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
2. 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.
3. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

35. Attorney's Fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

36. 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.

CONTRACT TERMINATION

37. Termination for Cause

In the event OSOS determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, OSOS has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, OSOS shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional

obligations of funds during investigation of the alleged compliance breach and pending corrective action by the 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 the 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 this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

38. Termination for Convenience

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

39. Termination Procedures

Upon termination of this contract OSOS, in addition to any other rights provided in this contract, may require the Contractor to deliver to OSOS any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

OSOS shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by OSOS, and the amount agreed upon by the 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 of this contract. OSOS may withhold from any amounts due the 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 this contract.

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

- Stop work under the contract on the date, and to the extent specified, in the notice;
- 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;
- 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 the 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;

- 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;
- 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;
- Complete performance of such part of the work as shall not have been terminated by the Agent; and
- Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which OSOS has or may acquire an interest.

40. Termination for Non-Allocation of Funds

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this 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.

41. Covenant Against Contingent Fees

The Contractor 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 maintained by the Contractor for the purpose of securing business. OSOS shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in OSOS's 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.

42. Section Headings, Incorporated Documents and Order of Precedence

- a. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- b. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:
- c. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
 - i. Applicable federal and Washington state statutes, laws, and regulations
 - ii. Sections of this Contract
 - iii. Any other provision, term, or material incorporated by reference or otherwise incorporated

43. Entire Agreement

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed a part hereof.

CONTRACT EXECUTION

44. Authority to Bind / Amendments

This contract shall be subject to the written approval of OSOS's authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by written amendment executed by both parties.

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

45. 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.

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

This Contract is effective this _____ day of _____, 2014.

Washington State UBI No.: _____

Federal Employer ID No./SSN: _____

CONTRACTOR

OFFICE OF THE SECRETARY OF STATE

Authorized Signatory Date
Print Name: _____
Title:

Date

APPROVED AS TO FORM
Attorney General's Office