

CONTRACT FOR COMMERCIAL REAL ESTATE BROKERAGE SERVICES

BETWEEN THE

WASHINGTON STATE OFFICE OF THE SECRETARY OF STATE

AND

CONTRACT # _____

This Contract for Commercial Real Estate Brokerage Services (Contract) is made and entered into by and between the Washington State Office of the Secretary of State (OSOS), and the below named firm, a _____, hereinafter referred to as Contractor:

Phone: _____

E-mail: _____

WA State UBI Number: _____

FEIN: _____

RECITALS

WHEREAS, OSOS issued a Request for Proposals (RFP) dated November 8, 2021 for the purpose of securing a commercial real estate broker to market and bring about a lease of the office space located at 2025 9th Avenue, Seattle, Washington, which RFP is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, Contractor submitted a timely Proposal in response to the RFP, which Proposal is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, OSOS evaluated all properly submitted Proposals and identified Contractor as the apparent successful Contractor, and has further determined that entering into a contract with Contractor will meet OSOS's needs and will be in its best interests.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, OSOS and Contractor agree as follows:

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1. PURPOSE

The purpose of this Contract is to provide commercial real estate brokerage services.

2. SCOPE OF WORK

- A. This Contract, and the General Terms and Conditions attached hereto as Exhibit C and incorporated herein by this reference, contain the terms governing the work to be performed under this Contract, the nature of the working relationship between OSOS and Contractor, and the specific obligations of both parties.
- B. Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of the work, as set forth below:
- (1) Brokerage Services. Commercial brokerage services include, but are not limited to, marketing the Property, negotiating the lease on behalf of OSOS, and assisting OSOS with the drafting and editing of lease documents. OSOS agrees to cooperate with Contractor in Contractor's efforts to bring about the lease of the Property, provided such efforts are in accordance with the terms of the Contract.
 - (2) Exclusive Agent. Contractor shall have the exclusive right to act as agent of OSOS for the limited purpose of marketing and offering the Property for lease to interested parties. OSOS agrees to refer to Contractor all inquiries made by any person or entity interested in the Property.
 - (3) Lease Terms. The Property shall generally be offered for lease at market rates (as agreed to by OSOS) for a period of five years, with the potential for options for lease renewal. The terms of the lease and any renewals thereof shall be based on the state of Washington's standard lease document in effect at the time of the lease negotiation.
 - (4) Offers. Contractor agrees to submit all offers for OSOS's consideration unless OSOS directs otherwise. Contractor will provide OSOS with information regarding the financial capability and criteria of any prospective tenant, and OSOS reserves the right to reject any proposed tenant it deems to not have adequate financial capacity or whose criteria would, as determined by OSOS, render such tenancy incompatible with the Property or the operations of the building's occupants. All negotiations shall be through Contractor. OSOS authorizes Contractor to accept a deposit from any prospective tenant. It is understood that it is illegal for either Contractor or OSOS to refuse to present or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.
 - (5) Standard of Care. Contractor shall perform the work in a professional manner, consistent with best industry practices and all applicable statutes, administrative rules and ordinances.

3. TERM

The period of performance under this Contract will be from January 7, 2022 through January 6, 2023. OSOS shall have the option to extend for an additional term or portions thereof upon written notice to

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Contractor not less than thirty (30) days prior to the end of the then-current term. The total term of the Contract shall not exceed two (2) years.

4. COMPENSATION AND PAYMENT

Total compensation payable to Contractor for satisfactory performance of the work under this Contract shall be as stated on and shall be made in accordance with the procedures set forth on Exhibit D attached hereto and incorporated herein by this reference. Total costs shall not be increased except by an amendment to this Contract duly executed by both parties.

5. INSURANCE

Contractor shall provide insurance coverage as set out in this section. The intent of 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 Contractor or any subcontractor of Contractor, or agents of either, while performing under the terms of this Contract.

Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

- A. Commercial General Liability Insurance. Provide a commercial general liability insurance policy, including contractual liability, in adequate quantity to protect against legal liability arising out of Contract activity but not less than \$1,000,000 per occurrence.
- B. Business Automobile Liability Insurance. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by Contractor, Contractor shall maintain business automobile liability insurance with a limit of not less than \$1,000,000 per occurrence, using a combined single limit for bodily injury and property damage.

The insurance required shall be issued by an insurance company authorized to do business in the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policies.

All policies shall be primary to any other valid and collectible insurance. Contractor shall instruct the insurers to give OSOS thirty (30) calendar days advance notice of any insurance cancellation. Contractor agrees to disclose the existence and nature of any limiting endorsement that applies to any liability insurance policy required pursuant to this Contract.

Contractor shall submit to OSOS within fifteen (15) calendar days of the Contract effective date the certificates of insurance that outline the coverages, limits and terms specified herein. Contractor shall submit renewal certificates as appropriate during the term of the Contract.

Contractor hereby waives all rights against OSOS for recovery of damages to the extent such damages are covered by insurance maintained pursuant to this Contract.

6. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Each of the exhibits listed below is incorporated by reference into this Contract. In the event of any inconsistency, the inconsistency shall be resolved by giving precedence in the following order:

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- A. Applicable federal and state of Washington statutes and regulations
- B. This Contract
- C. General Terms and Conditions- Exhibit C
- D. Compensation and Payment Procedures-Exhibit D
- E. Request for Proposals 22-01- Exhibit A
- F. Contractor’s Proposal dated _____, 2021- Exhibit B

7. CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person listed below for all communications, notices and billings regarding the Contract:

CONTRACTOR

OSOS

CONTRACT MANAGER

CONTRACT MANAGER

Patrick McDonald
Office of the Secretary of State
416 Sid Snyder Avenue SW
Olympia, WA 98501
Phone: (360) 902-4148
E-mail: patrick.mcdonald@sos.wa.gov

Phone: _____

E-mail: _____

8. ASSURANCES

OSOS and Contractor agree that all activity pursuant to this Contract will be in accordance with applicable current federal, state and local laws, rules and regulations.

9. NOTICES

Any notice, demand or other communication required or permitted to be given under this Contract or applicable law will be effective only if it is in writing and signed by the party giving notice, properly addressed, and either delivered in person or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid to the other party at the other party’s address provided in section 7 of this Contract.

Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. A notice address may be changed by written notice given as provided above.

10. ENTIRE AGREEMENT

This Contract, including the exhibits hereto, represent all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

11. CONFORMANCE

If any provision of this Contract violates any statute or regulation of the state of Washington, it is considered modified to conform to that statute or regulation.

12. APPROVAL

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

13. COUNTERPARTS

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

THIS CONTRACT is executed by the persons signing below, who warrant that they have the authority to execute this Contract.

(Signature)

(Printed Name)

(Title)

(Date)

STATE OF WASHINGTON

OFFICE OF THE SECRETARY OF STATE

(Signature)

(Title)

(Date)

EXHIBIT A
[REQUEST FOR PROPOSALS]

EXHIBIT B
[CONTRACTOR'S PROPOSAL]

EXHIBIT C

GENERAL TERMS AND CONDITIONS

DEFINITIONS

“Agent” means the Secretary of State and/or the delegate authorized in writing to act on the Secretary of State’s behalf.

“Contract” means the Contract entered into by and between OSOS and Contractor for commercial real estate brokerage services, including all exhibits incorporated by reference into the Contract.

“Contractor” means the entity or individual performing services under this Contract, and includes all employees of Contractor.

“OSOS” means the Office of the Secretary of State.

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

“Subcontractor” means an entity or individual not in the employment of Contractor who is performing all or part of the work to be performed under the Contract under a separate contract or agreement with Contractor. The terms “Subcontractor” and “Subcontractors” may refer to Subcontractor(s) in any tier.

AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendment shall not be binding unless in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT COMPLIANCE

Contractor must comply with the Americans with Disabilities Act of 1990, Public Law 101-336, 28 CFR Part 35, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by Contractor without prior written consent of OSOS, and any such attempted transfer or assignment without such consent shall be void and of no effect.

ATTORNEYS’ FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, the parties will share equally in the cost of the alternative dispute resolution method, including the cost of a dispute resolution panel. In addition, each party will be responsible for its own attorneys’ fees incurred while utilizing such alternative dispute resolution method. If any litigation is brought to enforce any term, condition, right or obligation under this Contract, or as a result of the Contract in any way, each party agrees to bear its own attorneys’ fees, costs and expenses.

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CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

Contractor shall not use or disclose any information concerning OSOS, or information that may be classified as confidential, for any purpose not directly connected with the administration of this Contract, except with prior written consent of OSOS, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Washington State Executive Ethics Board or other tribunal, OSOS may, in its sole discretion, by written notice to Contractor, terminate the Contract if it is found after due notice and examination by OSOS that there is a violation of the Ethics in Public Service Act, RCW Chapter 42.52 or any similar statute involving Contractor in the procurement of, or performance under, this Contract. In the event this Contract is terminated as provided above, OSOS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. The rights and remedies of OSOS provided for in this clause shall not be exclusive and are in addition to any and all other rights and remedies provided by law. The existence of facts upon which OSOS makes any determination under this clause may be an issue for adjudication as provided in the **DISPUTES** clause of this Contract.

CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that OSOS is subject to RCW Chapter 42.56, and that this Contract is a public record as defined therein. Any specific information that is claimed by Contractor to be proprietary and confidential must be clearly identified as such by Contractor. Price information and entire bid proposals will not be treated as proprietary and confidential. To the extent consistent with state law, OSOS will maintain the confidentiality of all Proprietary information. If a public records request is made for such information, OSOS will notify Contractor of the request and of the date such records are scheduled to be released unless Contractor obtains an order from a court of competent jurisdiction enjoining the release.

COPYRIGHT PROVISIONS

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 that the materials are not considered "works for hire" under U.S. copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in the materials, including all intellectual property rights, to OSOS, effective from the moment of creation of such materials.

"Materials" in this context means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to OSOS a non-exclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform and publicly display. Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to OSOS.

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Contractor shall exert all reasonable efforts to advise OSOS, at the time of delivery of the materials furnished under the Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of the Contract.

OSOS shall receive prompt written notice of each notice or claim of infringement received by Contractor with respect to any data delivered under the Contract. OSOS shall have the right to modify or remove any restrictive markings placed upon the data by Contractor.

COVENANT AGAINST CONTINGENT FEES

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 Contractor for securing business. OSOS shall have the right, in the event of breach of this clause by Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISALLOWED COSTS

Contractor is responsible for any audit exceptions or disallowed costs incurred by Contractor or its Subcontractors.

DISPUTES

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

The request for a dispute hearing must: (1) be in writing; (2) state the disputed issue(s); (3) state the relative positions of the parties; (4) state requester's name, address, and the contract number; and (5) be mailed to the Agent and the 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 business days.

The Agent shall review the written statements and reply in writing to both parties within ten business days. The Agent may extend this period if necessary by notifying the parties.

The parties agree that this dispute hearing 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 alternative dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

OSOS shall not pay Contractor if Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

FAILURE TO PERFORM AND REMEDIES

If Contractor fails to perform any substantial obligation under the Contract, OSOS will give Contractor written notice of such failure. If after 30 calendar days from the date of notice, or other time period agreed between the parties, Contractor has still not performed, OSOS may then withhold some or all monies due and payable to Contractor until such failure is cured or is otherwise resolved. This remedy is

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not exclusive, but is in addition to any and all other remedies available to OSOS as provided herein or as are available under law.

GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, without reference to conflict of law principles. Jurisdiction for any action hereunder and venue for any such action shall be in Superior Court for King County, Washington.

INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless OSOS, its officials, agents and employees from and against all claims, including reasonable attorneys' fees resulting from such claims, by third parties arising out of or incident to Contractor's or any Subcontractor's intentional, willful or negligent acts or omissions in the performance of the Contract. Contractor's obligation to indemnify, defend and hold harmless OSOS shall not be eliminated or reduced by any actual or alleged concurrent negligence of OSOS or its officials, agents or employees.

"Claim" as used in this Contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor or its employees.

Contractor waives its immunity under RCW Chapter 51 to the extent it is required to indemnify, defend and hold harmless OSOS and its officials, agents and employees.

INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent contractor relationship be created by this Contract, and that the employees or agents of one party will not be deemed or construed to be employees or agents of the other party for any purpose whatever. Contractor and Contractor's employees or agents performing under the Contract are not employees or agents of OSOS. Contractor will not hold itself out as or claim to be an officer or employee of OSOS by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law.

INDUSTRIAL INSURANCE COVERAGE

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

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LICENSING, ACCREDITATION AND REGISTRATION

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

LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment and/or services rendered by Contractor under the Contract shall be free of all liens, claims or encumbrances of any kind, and Contractor shall deliver a formal release of the same to OSOS upon request.

LIMITATION OF AUTHORITY

Only the Agent, the Assistant Secretary of State or the Deputy Secretary of State or their designees shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

NONDISCRIMINATION

During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, OSOS may rescind, cancel or terminate the Contract in whole or in part, and Contractor may be declared ineligible for further contracts with OSOS. Contractor shall be given a reasonable time in which to cure any non-compliance, and any dispute regarding nondiscrimination compliance may be resolved in accordance with the **DISPUTES** procedures set forth herein.

PERSONAL LIABILITY

In no event shall any official, employee or agent of OSOS be in any way personally liable or responsible for any covenant or agreement to be observed by OSOS in this Contract, whether express or implied, nor for any statement or representation made in connection with the Contract.

PUBLICITY

The award of this Contract is not in any way an endorsement of Contractor or Contractor's services by OSOS, and may not be so construed by Contractor in any advertising or other publicity materials. Contractor agrees to submit to OSOS all advertising and publicity matters relating to the Contract wherein OSOS is named or mentioned or language is used from which the connection of OSOS's name may, in OSOS's judgment, be inferred. Contractor agrees not to publish or use such advertising and publicity materials without the prior written consent of OSOS.

OVERPAYMENTS TO CONTRACTOR

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

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RECORDS MAINTENANCE

Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by OSOS, personnel duly authorized by OSOS, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to OSOS, or any of its officers, or to any other authorized agent or official of the 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.

SAVINGS

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 10-day notice requirement, subject to renegotiation at OSOS's discretion under those new funding limitations and conditions.

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.

SITE SECURITY

While on OSOS premises, Contractor, its agents, employees and subcontractors shall conform in all respects with the physical, fire and other security policies and regulations applicable to the premises.

SUBCONTRACTING

Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of OSOS. In no event shall the existence of the subcontract operate to release or reduce the liability of Contractor to OSOS for any breach in the performance of Contractor's duties. This clause does not include contracts of employment between Contractor and personnel assigned to work under this Contract. Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

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SURVIVORSHIP

All terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive. In addition, the terms of the sections titled **OVERPAYMENTS TO CONTRACTORS, CONTRACTOR'S PROPRIETARY INFORMATION, COPYRIGHT PROVISIONS, DISPUTES, INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**, and **PUBLICITY** shall survive the termination of this Contract.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, and any other taxes, insurance or other expenses for Contractor or its staff shall be the sole responsibility of Contractor.

TERMINATION FOR CAUSE

In the event that OSOS determines that 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 Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days of such notice, the Contract may be terminated or suspended.

In the event of termination or suspension, Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., the cost of competitive bidding, mailing, advertising and staff time.

OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by OSOS to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of Contractor's 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.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, OSOS may, by 10 calendar 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.

TERMINATION PROCEDURES

Upon termination of this Contract, OSOS, in addition to any other rights provided in this Contract, may require Contractor to deliver to OSOS any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the **TREATMENT OF ASSETS** clause shall apply in such property transfer.

OSOS shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by OSOS, and the amount agreed upon by Contractor and OSOS for (i) completed work and

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services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that 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 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 direct by the Agent, Contractor shall:

1. Stop work under the Contract on the date, and to the extent specified, in the notice;
2. 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 that is not terminated;
3. Assign to OSOS, in the manner, at the times, and to the extent directed by OSOS, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case OSOS has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. 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 Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. 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;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. 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 Contractor and in which OSOS has or may acquire an interest.

TREATMENT OF ASSETS

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

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

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

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

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

All references to Contractor under this clause shall also include Contractor's employees, agents and Subcontractors.

WAIVER

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

EXHIBIT D

[COMPENSATION AND PAYMENT PROCEDURES]