PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is between the WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (AGO), and the below named firm/person (CONSULTANT). AGO and CONSULTANT are individually referred to in this Contract as a “party” or, collectively, as the “parties.”

Consultant Name:

Consultant Firm Name:

Address:

City, State & Zip:

Phone Number:

Email:

Statewide Payee Number:

NOW THEREFORE, the AGO and CONSULTANT agree to the following terms and conditions:

1. **TERM**

The parties agree that the period of performance under this Contract will begin on       (the “Effective Date”) and shall end on      . The parties may extend the Term of this Contract by written amendment, which must be fully executed before the end date and prior to the performance of services during the extended Term.

**2. SERVICES PROVIDED**

Upon the request of the AGO, CONSULTANT will perform for the AGO the following professional services:

**3. COMPENSATION**

The AGO shall pay an amount not to exceed       ($     ) (“Maximum Contract Total”) for the performance of all things necessary for or incidental to the performance of work as set forth in the “Services Provided” section of this Contract. If work that will exceed the Maximum Contract Total becomes necessary, a written amendment to this Contract increasing the Maximum Contract Total must be executed **before** additional costs and expenses are incurred.

The CONSULTANT’s compensation for services rendered shall be based on the following rates or in accordance with the following terms:

|  |  |
| --- | --- |
|  | **$** per hour |

All rates are inclusive of all normal overhead and operating costs.

**4. EXPENSES**

AGO will reimburse CONSULTANT for reasonable and actual expenses incurred in the performance of the service herein. No markup will be allowed on reimbursable expenses.

The AGO will reimburse the CONSULTANT for preauthorized travel related to services provided under this Contract. Preapproval for travel must be documented in writing, which includes email, by the AGO Contract Coordinator. Lodging and/or meals, if allowed by Office of Financial Management Accounting Rules ([See Section 10, Travel-of the State Administrative and Accounting Manual](http://www.ofm.wa.gov/policy/10.htm)), shall be paid at the current regular state per diem rates as set forth by the Office of Financial Management; these rates are subject to change throughout the Term of this Contract. Mileage shall be reimbursed at the current rate authorized for state employees, or the actual cost of a rental car, if authorized. Mileage rates are subject to change throughout the term of this Contract. Current mileage and per diem rates can be found at: <http://www.ofm.wa.gov/resources/travel.asp>. Authorized air travel, will be reimbursed for economy/coach class only.

CONSULTANT shall provide a detailed itemization of expenses, including description of the expense; start and end time in travel status, including city and state (when applicable); amounts and dates, when requesting reimbursement. AGO retains the right to reject expenses that it deems insufficiently connected to work performed under this Contract, or excessive for services performed.

**Receipts are required to obtain reimbursement for all expenses with the exception of meals and mileage.**

The maximum amount to be paid to the CONSULTANT for authorized expenses is **included** in the Maximum Contract Total set forth in the "Compensation” section of this Contract.

**5. BILLING PROCEDURE/INVOICING**

The CONSULTANT must be registered with the Statewide Payee program and obtain a Statewide Payee Number in order to receive payment. Statewide Payee registration information and forms can be obtained from the Washington State Department of Enterprise Services website at <https://des.wa.gov/services/contracting-purchasing/doing-business-state/receiving-payment-state>.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the AGO. Payment for services provided will be made upon receipt of invoices sent directly to the AGO Contract Coordinator, listed below in the “Notice” section, for review and approval by the 15th day of the following month. Payment shall be considered timely if paid by the AGO within thirty (30) calendar days after receipt of properly completed invoices. Invoices that fail to contain all the information required by this Contract may be returned, unpaid, to the CONSULTANT for correction. The CONSULTANT is responsible for providing a detailed invoice identifying, at a minimum, the name of the individual provider of the services; description of the services performed; rate that corresponds with the services as identified in the “Compensation” section of this Contract, or if applicable attached rate sheet; date accomplished; hours; and total amount invoiced.  **Invoices must include the CONSULTANT’s Washington Statewide Payee Number.** Absent good cause, the AGO may not pay any invoices submitted more than 90 days after the calendar month in which the services were performed.

**6. NOTICE**

Any notices required to be sent under this Contract will be delivered to the CONSULTANT at the address or email provided in the opening paragraph of this Contract, and to both the AGO Contract Coordinator and AGO Contract Administrator at the following addresses:

AGO Contract Coordinator:

AGO Contract Administrator:

Sydney M. Wright

AGO Assistant Contracts Administrator

7141 Cleanwater Drive SW

Olympia, WA 98501

Email: [Contracts@atg.wa.gov](mailto:Contracts@atg.wa.gov)

The AGO Contract Coordinator and AGO Contract Administrator may be changed without executing a Contract amendment, by providing the CONSULTANT with written notice of the new AGO Contract Coordinator’s or AGO Contract Administrator’s name and contact information.

**7. ENTIRE AGREEMENT**

This Contract, including any referenced exhibits and attachments, represents all the terms and conditions agreed upon by the parties and supersedes any prior agreements made by the parties regarding the subject matter herein. No other statements or representations, written or oral, shall be deemed a part hereof.

The Standard Terms and Conditions attached as Exhibit A are expressly incorporated into this Contract. The signatures below constitute acceptance of this Contract and will enable processing of payment for the services agreed upon herein.

A manually signed copy of this Contract or any amendments, SOWs or other transaction documents delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

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

THIS CONTRACT, including any referenced exhibit(s) and/or attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the Contract.

|  |  |
| --- | --- |
| **OFFICE OF THE ATTORNEY GENERAL**    By: (Signature)    (Printed Name)  Title: | **CONSULTANT**    By: (Signature)    (Printed Name)  Title: |
| Date: | Date: |

**TO BE COMPLETED BY THE CONSULTANT(S):** IF ANY CONSULTANT PROVIDING SERVICES UNDER THIS CONTRACT IS/WAS A PRESENT OR FORMER STATE EMPLOYEE, PLEASE PROVIDE THE FOLLOWING INFORMATION FOR EACH CONSULTANT:

Employing agency:

Position Name:

Termination Date:

Are you retired from one of the Washington State Retirement Systems? \_\_\_\_Yes \_\_\_\_No

If the answer is yes, please fill out the DRS Contractor or Third-Party Worker Retirement Status Verification Form and attach to this Contract.

**EXHIBIT A**

**STANDARD TERMS AND CONDITIONS**

1. **Definitions**

|  |  |
| --- | --- |
| **AAG** | Assistant attorney general. An attorney employed by the AGO to practice law. |
| **AGENCY** | When used as generic term, “agency” references State of Washington institutions, the offices of the elective State officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, institutions of higher education and the offices of all appointive officers of the State.  When capitalized and used in a non-generic fashion, “AGENCY” shall mean the institution or entity for which the AGO has retained the services of a SAAG under this Contract. |
| **AGO** | The Washington State Office of the Attorney General; legal counsel to Washington State agencies, boards, commissions, public institutions of higher education, and State elected officials. |
| **AGO Contract Administrator** | An AGO employee tasked with providing high-level oversight of AGO Contracts. The AGO Contract Administrator must be copied on all written notices required by this Contract, but is not the person who coordinates day-to-day performance. |
| **AGO Contract Coordinator** | AGO employee responsible to oversee this Contract, who shall serve as the Consultant’s primary contact regarding the work performed. The AGO Contract Coordinator may preauthorize expenditures, and will oversee the details of the work performed. |
| **Business Associate**[[1]](#footnote-1) | With respect to a Covered Entity, a person to whom a Covered Entity discloses Protected Health Information so that the person can carry out, assist with the performance of, or perform on behalf of, a function or activity for the Covered Entity, including any agent, contractor or any other person who receives Protected Health Information from the Covered Entity (or from another Business Partner of the Covered Entity) for the purposes described herein. |
| **Business Days** | Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding holidays observed by the State of Washington. |
| **Calendar Days** | Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When “days” are not specified, Calendar Days shall prevail. |
| **CONSULTANT** | The firm, provider, organization, individual or other entity performing services under this Contract, and shall include all employees of the CONSULANT. |
| **Contract** | When used as a generic term: An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.  When used in reference to this agreement: The written documents memorializing the agreement between the CONSULTANT and AGO for legal services. Contract documents include the written Agreement; the solicitation documents, if any, issued by the AGO, and Responses thereto; all attachments incorporated by reference (including these Standard Terms and Conditions and the Litigation Management Plan, if applicable); and all Contract Amendments. |
| **Covered Entity**  **and**  **Hybrid Covered Entity**[[2]](#footnote-2) | Covered entities are those that are subject to the requirements of the Health Insurance Portability and Accountability Act (“HIPAA”). Hybrid covered Entities are single legal entities that are covered entities and whose business activities include both HIPAA covered and non-covered functions. Work performed for the covered functions is subject to the same requirements as work for a Covered Entity. *See* 45 C.F.R. §§ 160 and 164. |
| **Designated Record Set**[[3]](#footnote-3) | A group of records maintained by or for the AGENCY that is: (i) the medical records and billing records about individuals maintained by or for the AGENCY, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) used, in whole or in part, by or for the AGENCY to make decisions about individuals. As used herein the term “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the AGENCY. *See* 45 C.F.R. §164.501. |
| **Division** | A main programmatic unit within the AGO. |
| **Disclosure** | The release, transfer, provision of access to, or divulging in any other manner information outside of the entity holding the information. |
| **Electronic Media** | The mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media. |
| **Individually Identifiable Health Information**[[4]](#footnote-4) | A subset of health information, including demographic information collected from an individual, and (i) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (ii) relates to the past, present or future physical or mental health or condition of an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe that the information can be used to identify an Individual. |
| **Personal Information** | Information identifiable to any person, including, but not limited to, information that relates to a person’s health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers. |
| **PHI or Protected Health Information**[[5]](#footnote-5) | Individually Identifiable Health Information that is: (i) transmitted by electronic media, (ii) maintained in any medium constituting electronic media, or (iii) transmitted or maintained in any other form or medium. “Protected Health Information” shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g(a)(4)(B)(iv). |
| **Public Record** | "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. *See* RCW 42.56.010. |
| **SAAG/Special Assistant Attorney General** | A lawyer who has been designated and appointed by the AGO to serve as counsel of record, sign pleadings, sign advice memoranda, and directly provide services listed in the Contract. SAAGs may serve as Division Contract Managers. |
| **State** | The State of Washington, including state elected officials, state boards, commissions, agencies and public institutions of higher education. |
| **Subcontractor** | A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the CONSULTANT and with the prior agreement of the AGO. |
| **Use** | When the verb “use” is employed in a generic sense, it shall mean to take, hold, or deploy something as a means of accomplishing a purpose or end. When the verb “use” is employed in conjunction with information shared by the AGO or AGENCY with the CONSULANT under this Contract, it shall mean the sharing, employment, application, utilization, examination, analysis, canonization, or commingling of information provided under this Contract with other information. |
| **Writing** | "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. *See* RCW 42.56.010. |

1. **Terms & Conditions**
   1. **CONSULTANT Supervision and Coordination**

The CONSULTANT shall competently and efficiently supervise and coordinate the implementation and completion of all Contract requirements specified herein. The CONSULTANT shall consult with and keep the Managing AAG fully informed as to the progress of all matters covered by this Contract.

* 1. **Changes/Amendments**

Alterations to any of the terms, conditions, or requirements of this Contract shall be effective only upon execution of a written Contract Amendment signed by the AGO and the CONSULTANT. Notwithstanding this provision: changes to the AGO contacts may be communicated in a writing, including an email, without issuing a Contract Amendment.

* 1. **Notice**

Notices will be deemed received on only Business Days. Notices delivered after regular business hours, or on holidays or weekends, will be deemed received on the following Business Day.

All notices, requests, demands and other communications required under this Contract shall be in writing and shall be deemed duly given and received (i) if personally delivered, on the date of delivery as documented by the recipient’s stamp on the document; (ii) if mailed, three (3) days after deposit in the United States Mail, postage prepaid and addressed as provided in the Contract Special Terms, Notice/Contract Administration; or (iii) if delivered by email, upon receipt in the recipient’s email system.

* 1. **Assignment**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the CONSULTANT without the prior written consent of the AGO. The AGO reserves the right to reject an assignment.

* 1. **Safeguarding Confidential Information**

The CONSULTANT will be provided information to enable it to perform its duties under this contract that is exempt from disclosure under the Public Records Act, chapter 42.56 RCW, or other state or federal law. Confidential information may include medical or other personal information; privileged information, and protected work product. The CONSULTANT shall not use, disclose, or share any information concerning the AGO or its clients or any information provided to it under this Contract for any purpose not directly connected with the performance of its duties under this Contract, except with prior written consent of the AGO Contract Coordinator, or as may be required by law. The CONSULTANT shall protect such information against disclosure, using the degree of care a reasonable person would use to protect its own confidential or protected information.

* 1. **Use of Subcontractors**

CONSULTANT may not use Subcontractors in the performance of any duties under this Contract without obtaining prior written approval from the AGO Contract Coordinator. CONSULTANT may submit a request to use a Subcontractor by identifying such Subcontractor in writing, which includes email, addressed to the AGO Contract Coordinator and copied to the AGO Contract Administrator. The AGO Contract Coordinator may provide approval, or otherwise respond to the request, via email, with a copy to the AGO Contract Administrator, regardless of the form in which the written request was delivered. CONSULTANT shall be responsible for all actions of any Subcontractors in the performance of this Contract. CONSULTANT shall be responsible to ensure that all requirements of the Contract flow down to any Subcontractor. In no event shall the existence of a subcontract operate to release or reduce the liability of CONSULTANT to the AGO and the State for any breach in the performance of the CONSULTANT’s duties. Subcontractors, if preauthorized as set out above by the AGO, shall be paid by CONSULTANT. AGO will reimburse CONSULTANT, at cost and no markup will be allowed.

* 1. **Conflict of Interest**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGO may, in its sole discretion, by written notice to the CONSULTANT, immediately terminate this Contract if it is found, after due notice and examination by the AGO, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the CONSULTANT in the procurement of, or services provided, under this Contract.

In the event this Contract is terminated as provided above, the AGO shall be entitled to pursue the same remedies against the CONSULTANT as it could pursue in the event of a breach of this Contract by the CONSULTANT. The rights and remedies of the AGO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGO makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this Contract.

* 1. **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 the AGO. The CONSULTANT is hereby commissioned to create the Materials. “Materials” 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, register and the ability to transfer these rights.

If for any reason the work product would not be considered a work made for hire under applicable law, the CONSULTANT assigns and transfers to the AGO the entire right, title and interest in and to all rights in the Materials and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

For Materials that are delivered under this Contract, but that incorporate pre-existing materials not produced under this Contract, CONSULTANT hereby grants to the AGO 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 CONSULTANT warrants and represents that CONSULTANT has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGO.

The CONSULTANT shall advise the AGO, 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. The AGO shall receive prompt written notice of each notice or claim of copyright infringement received by the CONSULTANT with respect to any data delivered under this Contract. The AGO shall have the right to modify or remove any restrictive markings placed upon the data by the CONSULTANT.

* 1. **Signature**

A manually signed copy of this Contract or any amendments or other transaction documents delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

* 1. **Treatment of Assets/Ownership Rights**

Title to all property furnished by the AGO and/or AGENCY shall remain with the AGO and/or AGENCY. Any property of the AGO and/or AGENCY furnished to the CONSULTANT shall, unless otherwise provided herein or approved by the AGO and/or AGENCY, be used only for the performance of this Contract.

The CONSULTANT shall be responsible for damages as a result of any loss or damage to property of the AGO and/or AGENCY which results from the negligence of the CONSULTANT or which results from the failure on the part of the CONSULTANT to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

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

The CONSULTANT shall surrender to the AGO and/or AGENCY all AGO and/or AGENCY property upon completion, termination, or cancellation of this Contract, unless it receives written direction to the contrary from the AGO and/or AGENCY.

All documents, data, and records produced by the CONSULTANT and any sub-consultants in carrying out the obligations and services hereunder, whether preliminary or final, are and shall become and remain the property of the AGO.

The AGO shall have the right to use all such documents, data, and records in any manner it deems appropriate, without restriction or limitation and without additional compensation to the CONSULTANT and any subconsultants and the CONSULTANT and any subconsultants shall have no right or interest therein. This shall include the right to copy, modify, prepare derivative works from, and publish and distribute (to the extent consistent with ethical obligations), any component of the documents, data and records.

Documents, data, and records given to or prepared by the CONSULTANT and any subconsultants under this Contract shall not be made available to any individual or organization without the prior written approval of the AGO Contract Coordinator.

Notwithstanding the provisions of this section, the CONSULTANT may retain copies of documents, data and records delivered to the AGO and is granted a non-exclusive license to use those materials, to the extent consistent with its ethical obligations.

* 1. **Overpayment**

If the AGO or CONSULTANT realizes that the CONSULTANT was erroneously paid or overpaid, they will provide written notice of such overpayment. AGO retains the right to be reimbursed for any erroneous payment or overpayment**.**

* 1. **Fees/Licenses, CONSULTANT Expenses and Audits**

1. **Fees/licenses**

After award of Contract, and prior to commencing performance under the Contract, the CONSULTANT shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the CONSULTANT’s sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

1. **Audits**

The AGO and the State reserve the right to audit, or have a designated third-party audit, applicable records to ensure that the State has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

* 1. **Information and Communications**

1. **Retention and review of materials**

The CONSULTANT shall maintain:

1. All books, records, documents, data and other materials relating to this Contract, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.
2. All documents, records, correspondence, e-mail, notes, audio and/or video recordings, reports and any other materials related to this Contract including all iterations and drafts of such materials that CONSULTANT creates or receives from any source.
3. All such materials described in subparagraphs i and ii above, whether they are in paper, electronic, or other form, in such a manner that they can be readily identified and located as records relating to this Contract. To the greatest extent practicable, materials relating to this Contract shall be segregated from materials relating to other matters handled by the CONSULTANT, and materials containing privileged or confidential information relating to this Contract shall be segregated from other materials relating to this Contract.

The CONSULTANT shall retain any and all materials identified above until advised by the AGO that retention is no longer required. In the event that CONSULTANT has entered a business associate agreement and has accessed PHI, retention and/or destruction of PHI is to be coordinated with the AGO upon conclusion of the Contract, as set forth in subparagraph f of this section.

At no additional cost, all materials, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the AGO, personnel duly authorized by the AGO, the Washington State Auditor’s Office, and federal and state officials so authorized by law, regulation or agreement.

1. **Non-endorsement and publicity**

The AGO is not endorsing the CONSULTANT’s services, nor suggesting that they are the best or only solution to their needs. The CONSULTANT agrees to make no reference to the AGO in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the AGO.

The CONSULTANT shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the AGO.

1. **Media contact**

No statement may be made by the CONSULTANT to the press or any other media, on or off the record, unless prior express written approval is secured from the AGO. The CONSULTANT may be asked on occasion to assist in the development of media responses. All media inquiries must be immediately reported to the Managing AAG and the AGO’s Communications Director ([atgmedia@atg.wa.gov](mailto:atgmedia@atg.wa.gov)).

1. **Protection of Confidential Information**

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance of the services under the Contract may consist of information that is exempt from disclosure to the public or other unauthorized persons under either [chapter 42.56 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56) or other state or federal statutes (“Confidential Information”). Confidential Information includes, but is not limited to, CONSULTANT, AGENCY and/or AGO communications delivered in order to provide the services described in Section 2 of the Contract; AGO source code or object code; AGO security data; or Personal Information. The CONSULTANT shall hold Confidential Information in strictest confidence and not make use of Confidential Information for any purpose other than the performance of this Contract. CONSULTANT will release Confidential Information only to employees and others requiring access to such information for the purposes of carrying out duties under this Contract, and will not release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without the AGO’s express written consent or as provided by law. The CONSULTANT agrees to implement industry standard security procedures and guidelines to prevent unauthorized access to Confidential Information.

After consultation with the AGO, the CONSULTANT must comply with Washington State RCW 42.56.590, Personal Information – Notice of Security Breaches, and RCW 19.255.010, Disclosure, notice – Definitions – Rights, remedies.

AGO reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by the CONSULTANT through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases. “Salting” is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

1. **Public records procedure for CONSULTANT**

CONSULTANT understands and agrees that the records it obtains or produces under this Contract may be public records under chapter 42.56 RCW (the Public Records Act, or “PRA”), or its successor act. The **CONSULTANT** shall cooperate in a timely manner with the AGO in responding to public records requests (“PRRs”) related to this Contract or the services provided under this Contract. Such cooperation shall include searching all records regarding the “Services Provided” described in Section 2 of the Contract, and producing all records that are potentially responsive to a PRR to the AGO. CONSULTANT shall mark and segregate all materials in its possession that are protected by work product or attorney-client privilege to protect against inadvertent disclosure of such documents and to facilitate the AGO’s application of allowable PRA exemptions. CONSULTANT shall not charge for the time spent gathering and producing records pursuant to a PRR.

1. **Business Associate Agreement (HIPAA)**, as applicable

Purpose of activity: The AGO is statutorily mandated to provide legal advice and representation to AGENCY. Pursuant to 45 C.F.R. Parts 160 and 164, this Business Associate Agreement applies to the extent the AGENCY is a Covered Entity or a Hybrid Covered Entity; in which case the AGO is a business associate of the AGENCY when it provides legal services that require the use or disclosure of Protected Health Information (PHI). When the AGO, in its role as business associate, contracts with a third party in connection with providing legal services for the AGENCY, the AGO is required to ensure that a third party agrees to maintain the security and confidentiality of PHI. The Contract Services, as described in Paragraph 2, will require that the CONSULTANT access PHI.

Use or disclosure of Protected Health Information: The CONSULTANT shall not use or disclose Protected Health Information received from the AGENCY or AGO in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions (“HIPAA Standards”) and applicable provisions of Washington state law. The CONSULTANT shall ensure that its employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of the AGENCY or AGO in accordance with the provisions of this Contract and federal and state law. The CONSULTANT shall not use or disclose PHI in any manner other than that permitted or required by the AGENCY or AGO for the purpose of accomplishing services for or on behalf of the AGENCY or AGO as described in this Contract.

Safeguards against unauthorized use or disclosure of PHI: The CONSULTANT agrees that it will implement all appropriate safeguards to prevent the inappropriate use or disclosure of PHI pursuant to the terms and conditions of this Contract. To the extent the CONSULTANT carries out the AGENCY’s obligations under the HIPAA Privacy, Breach Notification, Security, and Enforcement Rules and regulations, CONSULTANT shall comply with the requirements of such Rules and regulations that apply to the AGENCY in the performance of such obligations.

Reporting unauthorized use or disclosure of PHI: If the CONSULTANT has reason to believe that PHI may have been accessed, disclosed, or acquired without proper authorization, the CONSULTANT shall, within five (5) business days of discovery, notify the AGO and the AGENCY. If the unauthorized use or disclosure constitutes a Breach, as defined by 42 U.S.C. § 17921, the CONSULTANT shall (a) provide all information necessary to enable the AGENCY to fully understand the nature and scope of the Breach, including identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed (b) take action to preserve forensic evidence and to identify, mitigate and remediate the cause of the breach, and (c) take such other steps as needed to comply with 42 U.S.C. § 17932, and all applicable regulations adopted to implement that statute. The CONSULTANT shall indemnify, hold harmless, and defend the AGO and the AGENCY from and against any penalties, claims, actions, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys’ fees, system remediation, or forensic analysis, arising from or pertaining to such a Breach, including any violation of state or federal laws applicable to the use, disclosure or protection of PHI. The indemnification provided hereunder includes the full costs of notice to impacted individuals, including the costs to retain an outside consulting firm to undertake the notification effort.

Agreements by third parties: The CONSULTANT shall enter into a written agreement with any consultant, CONSULTANT, subcontractor or agent who will have access to PHI that is received or created or received on behalf of the AGENCY or the AGO, and shall ensure that the consultant, CONSULTANT, subcontractor or agent agrees to be bound by the same restrictions, terms and conditions that apply to the CONSULTANT through this Contract with respect to PHI. The CONSULTANT shall require that any consultant, CONSULTANT, subcontractor or agent notify the CONSULTANT of any instances in which PHI is used or disclosed in an unauthorized manner. The CONSULTANT shall take steps to reasonably cure the breach of confidentiality and end the violation or shall terminate the contract with the consultant, subcontractor or agent.

Access to information: To the extent applicable, within five (5) business days of a request by the AGENCY for access to PHI about an individual contained in a Designated Record Set, the CONSULTANT shall make available to the AGENCY such PHI for so long as the information is maintained in the Designated Record Set. If any individual requests access to PHI directly from the CONSULTANT, the CONSULTANT shall within two (2) business days forward such request to the AGENCY. The CONSULTANT shall not deny any individual's request for access to the individual's PHI. Instead, any denials of access to PHI requested will be the responsibility of the AGENCY.

Availability of PHI for amendment: To the extent applicable, within ten (10) business days of a request from the AGENCY for the amendment of an individual’s PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), the CONSULTANT shall provide such information to the AGENCY for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

Accounting of disclosures:To the extent applicable, within ten (10) business days of notice by the AGENCY to the CONSULTANT that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, the CONSULTANT shall make available to the AGENCY such information as is in the CONSULTANT’s possession and is required for the AGENCY to make the accounting required by 45 C.F.R. §164.528. At a minimum, the CONSULTANT shall provide the AGENCY with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If the request for an accounting is delivered directly to the CONSULTANT, the CONSULTANT shall within two (2) business days forward such request to the AGENCY. It shall be the AGENCY’s responsibility to prepare and deliver any such accounting requested. The CONSULTANT agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section.

Electronic Protected Health Information: If the CONSULTANT creates, receives, maintains or transmits Electronic Protected Health Information (“ePHI”) on behalf of the AGENCY, the CONSULTANT agrees to (1) implement administrative, physical and technical safeguards and documentation requirements consistent with the standards and implementation specifications set forth in sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations; (2) ensure that any third party agent (including consultants and CONSULTANTs) or subcontractor who receives such ePHI from the CONSULTANT agrees to implement administrative, physical and technical safeguards and documentation requirements consistent with the standards and implementation specifications set forth in sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations; and (3)  deploy appropriate safeguards to implement the Secretary of Health and Human Services’ annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards.

Availability of books and records: The CONSULTANT agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from the AGENCY, or created or received on behalf of the AGENCY, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the AGENCY’s and the CONSULTANT’s compliance with the HIPAA Standards.

Return or destruction of information:At the expiration or termination of this Contract, the CONSULTANT shall contact AGENCY for a determination as to whether AGENCY directs the return or destruction of all PHI received from, or created or received on behalf of the AGENCY that the CONSULTANT still maintains in any form. If destruction or return of PHI is not feasible, the CONSULTANT shall not use PHI received from, created or received on behalf of the AGENCY in a manner other than those permitted or required by state and federal laws or for the purposes described herein.

All terms in this subsection not otherwise defined in this Contract, including these *Standard Terms and Conditions*, shall be given the meanings accorded them in 45 C.F.R. Parts 160, 162, and 164 and state laws governing healthcare privacy, including but not limited to, Public Records - Personal Information – Notice of Security Breaches (RCW 42.56.590 ), the Uniform Healthcare Information Act (RCW 70.02), mental illness (RCW 71.05), mental health services for minors (RCW 71.34), drug and alcohol abuse (RCW 70.96A, 42 CRF part 2), and HIV/AID/STDs (RCW 70.24).

* 1. **General Provisions**

1. **Governing law/venue**

Unless otherwise provided in the Contract, 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.

**The County may change depending upon the location of the services.**

1. **Severability**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

1. **Survivorship**

All transactions executed for services provided pursuant to the authority of this Contract shall be bound by all of the terms and conditions, set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections or subsections titled Overpayment or Erroneous Payment; Treatment of Assets/Ownership Rights; Protection of Confidential Information; Non-endorsement and Publicity; Retention and Review of Records; Immunity, Indemnification and Hold Harmless; the Business Associate Agreement; Protection of Confidential Information; and Disputes and Remedies shall survive the termination of this Contract.

1. **Independent status of the CONSULTANT**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as employees, partners, joint ventures, or associates of one another. The employees of one party shall not be deemed or construed to be the employees of the other party for any purpose whatsoever. The CONSULTANT shall not make any claim of right, privilege or benefit which would accrue to an employee under [chapter 41.06 RCW](http://apps.leg.wa.gov/RCW/default.aspx?cite=41.06), or [Title 51 RCW](http://apps.leg.wa.gov/RCW/default.aspx?Cite=51).

1. **Gifts, gratuities and conflicts of interest**

The CONSULTANT shall comply with all state laws regarding gifts and gratuities, including but not limited to: [RCW 39.26](http://apps.leg.wa.gov/RCW/default.aspx?cite=39.26), [RCW 42.52.150](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52.150), [RCW 42.52.160](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52.160), and [RCW 42.52.170](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52.170) under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or Contract activities.

Under [RCW 39.26](http://apps.leg.wa.gov/RCW/default.aspx?cite=39.26) and the Ethics in Public Service Law, [chapter 42.52 RCW](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52), state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by [RCW 42.52.150](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52.150)) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

The CONSULTANT must comply with [chapter 42.52 RCW](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52), Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

1. **Immunity, indemnification and hold harmless**

The CONSULTANT expressly agrees to indemnify and hold harmless the Indemnified Parties for any claim arising out of or incident to the CONSULTANT's performance or failure to perform the Contract. The CONSULTANT shall be required to indemnify, defend, and hold harmless the Indemnified Parties only to the extent claim is caused in whole or in part by negligent, reckless or willful acts or omissions of the CONSULTANT, its agents, employees, representatives, or its employees.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the AGO, the State of Washington and all of its agencies, boards, commissions, officials, agents, employees and authorized volunteers (the “Indemnified Parties”), from and against all claims for malpractice, bodily injury, death or damage to property, and all harm relating to the CONSULTANT’s unauthorized use of personal information or the unauthorized use of personal information by unauthorized persons as a result of the CONSULTANT’s failure to sufficiently protect against unauthorized use, disclosure, modification, or loss. The CONSULTANT's obligation to indemnify and hold harmless includes any claim by the CONSULTANT’s agents, employees, or representatives.

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

1. **Personal liability**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

* 1. **Professional liability insurance**

The CONSULTANT shall maintain errors and omissions (professional liability) insurance and such additional insurance as may be required to enable it to fulfill its duty to indemnify throughout the term of this Contract.

In the event that services delivered pursuant to this Contract involve the use of vehicles or the transportation of clients, required insurance shall include a business automobile policy. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the CONSULTANT or its employees.

Failure to maintain sufficient coverage shall not relieve the CONSULTANT of its duty of indemnification as stated in this Contract. The CONSULTANT agrees to provide evidence of such insurance coverage upon request by the AGO.

* 1. **Industrial insurance coverage**

The CONSULTANT will at all times comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent required by law. The State of Washington will not be held responsible in any way for claims filed by the CONSULTANT or its employees for services performed under the terms of this Contract.

For work performed by any of the CONSULTANT’s Washington State employees, the CONSULTANT shall comply with the provisions of [Title 51 RCW](http://apps.leg.wa.gov/rcw/default.aspx?Cite=51), Industrial Insurance. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the CONSULTANT.

* 1. **Nondiscrimination**

During the performance of this Contract, the CONSULTANT shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to: Title VII of the Civil Rights Act, [42 U.S.C. § 12101](http://www.access.gpo.gov/uscode/title42/chapter126_.html) et. seq.; the Americans with Disabilities Act (ADA); and, [chapter 49.60 RCW](http://apps.leg.wa.gov/RCW/default.aspx?cite=49.60), Discrimination – Human Rights Commission.

* 1. **Waiver**

Failure or delay of the AGO to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the AGO’s acceptance of or payment for materials, supplies, services and/or equipment, shall not release the CONSULTANT from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the AGO to insist upon the strict performance of the entire agreement by the CONSULTANT. In the event of any claim for breach of contract against the CONSULTANT, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the AGO of any existing or future right and/or remedy available by law.

* 1. **Disputes and remedies**

1. **Problem resolution and disputes**

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level by those possessing authority to resolve such problems.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have three (3) business days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) business days to negotiate in good faith to resolve the dispute, which will normally include escalating the issue within each party’s organization.

If a problem persists and cannot be resolved through negotiation after five (5) business days, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties.

The request for a dispute mediation must:

• be in writing;

• state the disputed issue(s);

• state the relative positions of the parties;

• state the CONSULTANT’s name, address, and this Contract number; and

• be mailed to the other party’s (the responding party’s) Contract Manager.

The parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a mediator whenever possible.

The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by the AGO for materials or services supplied by the CONSULTANT, the CONSULTANT shall continue providing materials and services pending resolution of the dispute provided the AGO pays the CONSULTANT the amount it, in good faith, believes is due and payable.

1. **Alternative dispute resolution fees and costs**

In the event that the parties engage in any form of alternative dispute resolution to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys’ fees incurred as a result of the alternative dispute resolution method.

1. **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.

* 1. **Contract termination and/or suspension**

The AGO may upon written notice, terminate or suspend this Contract, in whole or in part. If this Contract is so terminated or suspended, the AGO 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 or suspension.

If the AGO terminates or suspends this Contract, CONSULTANT shall follow any procedures the AGO specifies in the termination or suspension notice. After receipt of a termination or suspension notice, and except as otherwise expressly directed in writing by the AGO, the CONSULTANT shall:

1. Stop all work under the Contract on the date, and to the extent specified, in the notice;
2. Complete or fulfill such work under the Contract that is not terminated or suspended in compliance with all Contractual requirements;
3. Transfer title to the AGO and deliver in the manner, at the times, and to the extent directed by the AGO any property which, if the Contract had been completed, would have been required to be furnished to the AGO;
4. Take such action as may be necessary, or as the AGO may direct, for the protection and preservation of the property related to this Contract which is in the possession of the CONSULTANT and in which the AGO has or may acquire an interest.

* 1. **Registration with Department of Revenue**

In accordance with the registration requirements of the Washington State Department of Revenue (<https://dor.wa.gov/doing-business/register-my-business>), the CONSULTANT shall complete the required business application and be responsible for payment of all taxes due on payments made under this Contract.

* 1. **Taxes, fees and licenses**

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

CONSULTANT shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the CONSULTANT's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

* 1. **No Wage Violation**

CONSULTANT warrants that within three (3) years prior to the date of execution of this Contract, CONSULTANT 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 judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48, or 49.52.

CONSULTANT further warrants that it will remain in compliance with these requirements during the life of this Contract. CONSULTANT will immediately notify AGO of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the life of this Contract.

1. **Only applicable when services provided under this Contract are in connection with the AGO’s work for a Covered Entity and the CONSULTANT will have access to PHI.** [↑](#footnote-ref-1)
2. **Only applicable when services provided under this Contract are in connection with the AGO’s work for a Covered Entity and the CONSULTANT will have access to PHI.** [↑](#footnote-ref-2)
3. **Only applicable when services provided under this Contract are in connection with the AGO’s work for a Covered Entity and the CONSULTANT will have access to PHI.** [↑](#footnote-ref-3)
4. **Only applicable when services provided under this Contract are in connection with the AGO’s work for a Covered Entity and the CONSULTANT will have access to PHI.** [↑](#footnote-ref-4)
5. **Only applicable when services provided under this Contract are in connection with the AGO’s work for a Covered Entity and the CONSULTANT will have access to PHI.** [↑](#footnote-ref-5)