

CONTRACT K_ _ _ _

Between

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
 And

[ASB – to be named later]

CONTRACT INFORMATION		
Contract start date	Contract end date	Contract amount \$
Purpose Transcription Services for review of Administrative Hearings.		
PARTIES:		Other Party's Contract Number:
[ASB Entity Name] (Contractor)		
Address	Business registration or UBI	Statewide Vendor Number
Contract Manager	Telephone:	Email
Employment Security Department (ESD)		
Address 202 Maple Park Ave. SE., Olympia, WA 98501	Division Administrative Services	
Contract Manager Robert L. Page	Contract Manager Phone 360-890-3504	Contract Manager email robert.page@esd.wa.gov
EXHIBITS: This Contract includes the following Exhibit(s) and document(s) incorporated herein		
Exhibit A – Statement of Work. Exhibit B – Data Security Requirements		
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding, all previous Contracts, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract.		
Contractor: _____	Date _____	Employment Security Department _____ Date _____
Name _____	Name _____	
Title _____	Title _____	

1. IDENTIFICATION

This Contract is between the Washington State Employment Security Department, hereinafter called "ESD" and [ASB], hereinafter called "Contractor." ESD and Contractor may also be individually referred to as Party, or jointly referred to as Parties.

The Parties hereby mutually agree as follows:

2. BACKGROUND AND PURPOSE

ESD has thousands of administrative hearings annually concerning unemployment insurance claims and related activities. All such hearings are digitally recorded. When a determination from an administrative hearing is sought for review in the Superior Court, a certified transcription of the administrative hearing is required. ESD estimates a volume of approximately 3 to 4 review hearings per month, or 40 annually, are reviewed. The average number of pages for a transcribed hearing is estimated to be 50 pages but may vary widely.

To establish a long-term solution for the transcription work that is needed, ESD is preparing to procure a convenience pool of professional vendors who can provide this work. Until ESD can complete the RFP for the convenience pool, it must initiate a temporary "as needed" contract with a local transcription entity to provide such services on an interim basis.

The purpose of this Contract is to set out the terms and conditions for the Contractor herein to provide "as needed" transcription services.

3. AUTHORITY

This Contract is authorized in accordance with RCW 39.26.120, whereby ESD, performed a competitive solicitation, RFP 2022-13 and the Contractor herein is an awarded bidder from that solicitation.

TERMS AND CONDITIONS:

4. CONTRACT TERM

The term of this Contract starts on the date of mutual execution, and ends [DATE TO BE DETERMINED], unless terminated sooner as provided herein. Contractor will be reviewed every two years to determine whether it should be extended for additional terms, per the use of a mutually executed amendment.. This contract will not exceed six (6) years in total unless ESD has a business need to justify extending beyond.

5. STATEMENT OF WORK

The Contractor shall furnish the necessary personnel, labor, and services, and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work attached as Exhibit A.

6. COMPENSATION

Compensation for work will be based on the following pricing breakdown.

Extended Time Rate: \$ per page - 10 business day turnaround, from time of receipt of recorded interview until time of providing transcribed interview to requestor.

Standard Rate: \$ per page - 5 business day turnaround, from time of receipt of recorded interview until time of providing transcribed interview to requestor

Expedited Rate: \$ per page - 24-hour turnaround – for any immediate needs identified by the ESD contract manager or ESD supervisor, such as for legal proceedings.

Compensation is based on a per-page total based on the number of pages transcribed. This includes any cover page that identifies the underlying hearing and the parties thereto. The rate noted above

is an “all inclusive” rate and includes any inherent costs incurred by the Contractor and further includes any state business or professional tax consequences to be paid by the vendor.

Performance Based Contract: Compensation is conditioned on the contractor providing all necessary work and deliverables as set forth in the Statement of Work. Both parties agree and understand that pursuant to RCW 39.26.180(3), this contract is intended to be a performance based contract and that ESD obligation to compensate is made in accordance with the actual performance provided by the Contractor, relative to the requirements set forth the statement of work.

Contractor will not be reimbursed for travel expenses.

No advance payment shall be made for any Products or Services furnished by Contractor pursuant to this Contract. All payments are predicated upon ESD first receiving a proper and accurate invoice.

7. BILLING PROCEDURE

Contractor must submit invoices for services performed under this Contract on an Invoice Voucher (Form A-19). Invoices should be submitted upon completion of each transcription project and must identify such information as is necessary for ESD to itemize and determine the exact nature of all expenditures, goods, and/or services invoiced. The invoice must include the following information:

- a. The Contract number.
- b. The Identified Hearing

ESD will pay the Contractor for completed and approved work within thirty (30) days of receipt of invoice.

The invoice voucher shall be submitted to:

Employment Security Department
Attention: Vendor Payments
PO Box 9046
Olympia, WA 98507

Or email invoice to: VendorPayments@esd.wa.gov and recordsdisclosure@esd.wa.gov

Contractor must register as a Washington State Statewide Vendor (ofm.wa.gov/payee) and receive a Statewide Vendor Number (SWV) in order receive payment from ESD.

8. INSURANCE

Contractor shall, during the term of this Contract, maintain in full force and effect, Commercial General Liability insurance covering the risks of bodily injury, property damage, and personal injury, and coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate. Contractor shall also maintain in full force professional Liability or Errors and Omissions Insurance with minimum limits of no less than one million dollars (\$1,000,000) per occurrence.

Contractor shall acquire insurance from a carrier or carriers licensed to conduct business in the State of Washington. Contractor’s insurance must be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and must include a severability of interests (cross-liability) provision.

In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to ESD within five business days of Contractor’s receipt of such notice. Failure to acquire and maintain insurance may, at ESD’s sole option, result in Contract termination.

Upon ESD's request, Contractor shall furnish to ESD copies of certificates of all required insurance within thirty (30) days.

9. TERMINATION AND SUSPENSION

Non-compliance

Termination or Suspension for Cause: In the event ESD determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, ESD has the right to suspend or terminate this Contract. ESD may terminate immediately or, at its sole discretion, ESD may notify the Contractor in writing of the need to take corrective action, prior to termination, and allow the Contractor time to cure its breach. Additionally, if ESD deems it necessary, it may immediately suspend this contract while it investigates the nature of a breach, and/or while it allows the Contractor to complete its cure process. If ESD elects to utilize an immediate termination, it must be able to demonstrate how continuation of the contract may cause immediate harm to ESD, the State of Washington, or its residents.

Administrative Terminations: Each of the below are available only to ESD.

Termination for Funding Reasons: ESD may terminate or suspend this Contract in the event that funding from federal, state, or other sources becomes no longer available to ESD or is no longer allocated for the purpose of meeting ESD's obligation hereunder. In the event funding is limited in any way, this Contract is subject to re-negotiation under any new funding limitations and conditions.

Termination for Convenience: ESD, upon providing at least twenty days' written notice, may terminate or suspend this Contract, in whole or in part for convenience. Contractor shall continue to provide services under this Contract until the actual termination or suspension date stated by ESD. If this Contract is terminated, ESD shall be liable only for final payment for services rendered or expenses incurred prior to the effective date of termination.

Termination for Withdrawal of Authority: In the event that ESD's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract, ESD may terminate this Contract by seven (7) calendar days or other appropriate time period by written notice to Contractor. If the authority is withdrawn before ESD can provide a full seven-day notice, ESD will only be required to give the amount of notice available. No penalty shall accrue to ESD in the event this Section is exercised.

None of ESD's administrative terminations shall be construed to permit ESD to terminate this Contract in order to acquire similar Services from a different third party.

10. NON EXCLUSION OF REMEDIES

All remedies stated herein are not exclusive and the parties may seek additional remedies, monetary or otherwise, as allowed by law. However, in no event, may either party hereto be responsible to the other for any indirect, special, or consequential damages as a result of any breach of this Contract even if informed of the possibility of such damages.

11. AMENDMENTS

The parties are allowed to amend this Contract to the extent that such amendments do not alter this Contract outside the scope of the Contract. Amendments are binding only when made in writing and mutually signed by an authorized signatory who has the authority to bind the respective party. Under no circumstances does ESD's acting Contract Manager have the authorization to sign an amendment.

12. ASSIGNABILITY

Contractor shall not assign or delegate any rights or services, nor any claims arising thereunder, whether in whole or in part, to other entity without the express prior written consent of ESD, which will not be unreasonably withheld.

13. COMPLIANCE WITH APPLICABLE LAW

Contractor acknowledges and agrees that in contracting with a state agency, it must comply with all applicable federal, state, and local laws and regulations, including but not limited to, civil rights, employment, nondiscrimination, taxes, and disability requirements. Noncompliance may be deemed as material grounds for default and termination without showing a direct effect on the work being performed under this Contract.

Contractor is expressly responsible for making sure that it is properly licensed with all state or federal agencies and is fully able to maintain employees and conduct the required business within the state of Washington.

14. CONTRACT MANAGEMENT

Each respective Contract Manager listed on page one is the designated person for the general management of this Contract, to include receiving all communications and notices related to the maintenance of the contract. All correspondence and all legal notices from either party will be deemed as being properly sent to the other party by emailing said written communication to the other party's identified Contract Manager.

Each party is required to notify the other manager in writing within three business days of any changes to that party's Contract Manager's information. Contract Managers may be changed through administrative notice to the other party, and do not require a full amendment.

15. DATA OWNERSHIP

All data produced, compiled, used, or received through the engagement of this contract is, and will always be, owned solely by ESD, and may not be deemed as granting any rights to the Contractor except as expressly permitted by this Contract. ESD only provides Contractor with a limited temporary license to access the data as set forth in this Contract for purposes of engaging in the statement of work herein.

16. DATA RESTRICTIONS AND SAFEGUARDING OF CONFIDENTIAL INFORMATION

Contractor shall comply with the Data Security restrictions set forth on Exhibit B, which apply to the access, storage, transfer, and/or disclosure of Confidential information received or accessed under this Contract. These restrictions are in addition to any other required security standards set by the Washington State Office of the Chief Information Officer, as set forth (and available at) https://www.ocio.wa.gov/sites/default/files/public/policies/141.10_SecuringITAssets_201711_5.pdf Contractor must cumulatively meet OCIO and ESD standards.

17. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

Data accessed by Contractor, and/or otherwise provided to the Contractor pursuant to this Contract may contain both confidential and non-confidential information. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, agency or third-party source code or object code, agency security data, or Unemployment Insurance Claimant information, or any personal information identifiable to an individual. Because Confidential and nonconfidential information maybe comingled, all information accessed under this Contract is to be construed and treated by Contractor as being Confidential Information, unless it is clearly understood and agreed upon by both parties to be non-confidential information. To the extent possible, Contractor is required to provide a list of all information it needs in advance, so that ESD has adequate time to determine whether such information necessitates additional safeguarding requirements.

Contractor shall protect and safeguard all Confidential Information received and/or accessed under this Contract against any unauthorized disclosure, use, or loss as set forth under all state and

federal requirements enacted or revised over time, regarding Data Security, electronic data interchange, and restricted Permissible Uses of such information.

Any unauthorized disclosure of the Confidential Information to a non-authorized person may be immediate grounds for a full termination of this Contract and may further subject Contractor to additional financial liabilities or other judicial remedies.

Contractor shall only release Confidential information to employees or subcontractors who are directly authorized and assisting in the performance of work set forth in any statement(s) of work. Contractor shall ensure that all employees or subcontractors who gain access to the Confidential Information will have fully read and understood the Data Security measures contained in this Contract and agree to the same. For any unauthorized use or disclosure of confidential information, Contractor may not assert as a defense that it was unaware that such information was confidential versus non-confidential. Contractor is also strictly liable for the unauthorized use or disclosure of Confidential Information caused by its executives, employees, agents, or subcontractors.

18. PERMISSIBLE USE OF CONFIDENTIAL INFORMATION

Confidential information received or accessed under this Contract may only be used for the Permissible Uses of executing the statement(s) of work incorporated into this Contract. Any other use or disclosure of confidential information is strictly prohibited unless approved by ESD or lawfully predicated on a court order or court ordered subpoena from a court of competent jurisdiction.

19. DISLCOSURE OF BREACH TO CONFIDENTIALITY

Contractor shall disclose to ESD any unauthorized access, release, use, or disclosure of Confidential information allowed or otherwise caused by Contractor. Such notice shall be made within 24hours of discovery by the Contractor. Contractor further agrees to work with ESD to provide any public notice of any breach of Confidential Information caused by Contractor. Such public notice will be as requested by ESD and consistent with the notice protocols established by ESD or the Washington OCIO.

20. ELECTRONIC SIGNATURES, COUNTERPARTS, AND DELIVERY

The parties agree that this contract may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one Contract; and that electronic signature, or e-signature, of this contract shall be deemed as having the same effect as execution of an original ink signature; and that E-mail, photocopy, or facsimile delivery of a signed copy of this Contract shall be deemed as the same as delivery of an original.

21. GOVERNANCE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue hereunder will be in the Superior Court for Thurston County.

In the event of an inconsistency in this Contract, unless otherwise provided, the inconsistency is resolved by giving precedence in the following order:

- a. Applicable Federal and Washington State Statutes and Regulations.
- b. All terms and conditions herein.
- c. Any Exhibits in their descending alphabetical order.

22. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the State of Washington and ESD along with their officers, agents, and employees as well as any person or entity for which they may be liable (collectively, the "Indemnified Parties," and each an "Indemnified Party"), from and against claims, damages, expenses, liabilities or causes of action

including reasonable attorneys' fees and related costs arising directly or indirectly from: (i) the negligent or wrongful act(s), error(s), or omission(s) of the Contractor, its employees, or Subcontractors at any tier relating to the performance under the Contract; or (ii) a breach of the Contract.

23. INDEPENDENT CAPACITY

The parties create an independent contractor relationship under this Contract. The Contractor and its employees or agents performing under this contract are not employees or agents of ESD. The Contractor may not hold itself out as, nor claim to be, an officer or employee of ESD or of the state of Washington by reason of this Contract, nor may the Contractor make any claim of right, privilege or benefit which would accrue to an employee of the state of Washington.

24. LIMITATION OF LIABILITY

Neither Contractor nor ESD shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except any claim related to bodily injury or death; a breach of confidentiality or cyber security; or a claim or demand based on patent, copyright, or other intellectual property right infringement.

Neither party shall be liable to the other party unless damage is proximately caused by such party's respective fault or negligence. Neither the Contractor nor ESD shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the party. Such causes may include, but are not restricted to, acts of God or acts of a governmental body other than the ESD acting in either its sovereign or contractual capacity.

25. RECORDS, DOCUMENTS AND REVIEW

Maintenance of Records: Unless otherwise specified in the Contract, all books, records, documents, and other materials relevant to this Contract will be retained for six (6) years after expiration of this Contract. Each party will utilize reasonable security procedures and protections to assure records and documents provided by the other party are not erroneously disclosed to third parties.

Review of Records: Contractor shall grant ESD and its designees full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. Access must be available at all reasonable times not limited to the required retention period but as long as records are retained, and at no additional cost to ESD.

26. SEVERABILITY

If any term or condition of this Contract is held invalid, the remainder of the Contract remains valid and in full force and effect.

27. SUBCONTRACTORS

The Contractor may subcontract work under this Contract. However, the use of any Subcontractor does not reduce or release the Contractor of its liability for any breach of the Contractor's or Subcontractor's duties. The Contractor shall remain responsible and liable to ESD for all of the Subcontractor's performance to the same extent that Contractor would be responsible and liable to ESD had Contractor performed such services itself.

28. SURVIVORSHIP

Notwithstanding the expiration of the initial term of this Contract or any extension thereof, 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. This shall minimally include, without limitation, all matters concerning the

permissible use and safeguarding of confidential information and matters pertaining to record preservation and subsequent disposition.

29. USE OF NAME PROHIBITED

Contractor shall not in any way act or contract on behalf of, or in the name of, ESD. Nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of ESD.

30. WAIVER

Any omission by either party to exercise its rights under this Contract does not preclude that party from subsequent exercising of such rights and does not constitute a waiver of any rights. A waiver of rights must be stated in a writing signed by an authorized representative with signature authority on behalf of the party.

SAMPLE

EXHIBIT A

Statement of Work

1. Transcript Ordering

ESD may request services by means of an online account portal or through mail. The Contractor will confirm through the online account portal or an email ESD Contract Manager request upon receipt.

2. Contents of Transcription of Recorded Hearing

The transcription of the recorded hearing shall contain:

- a. Docket number or other applicable case identifiers.
- b. Date of hearing and location.
- c. Verbatim transcription of hearing.
- d. Certification of transcribed hearing by the transcriber, to include name of transcriber, in the format prescribed by ESD.

3. Transcript Delivery.

Transcript format: Except where established by a court, transcripts must be twenty-five lines per 8 1/2 x 11 inch twenty (20) pound long grain paper for use in high speed copiers, laser printers and plain paper faxes. No fewer than nine (9) and no more than ten (10) characters per inch of text. No fewer than fifty-four and no more than sixty (60) characters per standard line of text.

Paper must be minimum of 25% post-consumer content and 25% pre-consumer content, comprising at least 50% of total weight to meet state specifications.

Completed transcripts shall be received as requested by the ESD, in Olympia, by 5:00 p.m. on or before the tenth (10th) business day after the Contractor receives an order for the transcript. If the Contractor fails to meet this delivery schedule, it shall be subject to a penalty of ten (10) percent in transcript fee per page for each day in excess of ten (10) business days.

4. Computerized and Hard Copy Transcription Requirements

Unless specifically requested, the Contractor will deliver an electronic format copy to ESD through an online account portal or email to ESD Contract Manager.

Upon specific request, the Contractor will mail a paper or sealed paper copy to ESD, Attn: Records Disclosure Unit P.O. Box 9046 Olympia WA 98507-9046.

5. Clarifications

The Contractor must ensure that:

They provide for a procedure for the transcriber to call the Contract Manager to ask for clarification of certain parts of the recorded hearing, if necessary; and also a like procedure for the Contract Manager to call the contractor/transcriber for clarification of any transcribed portion of the interview that may not be clear,

EXHIBIT B

Data Security Requirements

For all Confidential Data to be electronically stored, processed, or transmitted, by the Contractor on its own computers/servers, Contractor shall apply the following requirements:

1. Data Security

Contractor must protect the confidentiality, integrity and availability of Data with administrative, technical and physical measures that meet generally recognized industry standards and best practices or standards established by the Office of the Chief Information Officer (OCIO).

Examples of industry standards and best practices include any of the following:

- a. ISO 27002
- b. PCI DSS
- c. NIST 800 series
- d. OCIO 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>)

2. Network Security

Contractor's network security must include the following:

- a. Network firewall provisioning
- b. Intrusion detection
- c. Quarterly vulnerability assessments
- d. Annual penetration tests.

3. Access Security

Contractor shall restrict Authorized User access to the Data by requiring a login using a unique user ID and complex password or other authentication mechanism which provides equal or greater security. The sharing of user ID and passwords is strictly prohibited. Contractor is solely responsible for protection of all of its user IDs and passwords, and is responsible for all breaches caused through the use of its user IDs and passwords.

4. Application Security

Contractor shall maintain and support its software and subsequent upgrades, updates, patches, and bug fixes such that the software is, and remains secure from known vulnerabilities. Contractor must secure web applications that minimally meet all the security controls as generally described in either:

The Open Web Application Security Project Top Ten (OWASP Top 10), or.

The CWE/SANS TOP 25 Most Dangerous Software Errors.

5. Computer Security

Contractor shall maintain computers that access Data by ensuring the operating system and software are updated and patched monthly, such that they remain secure from known vulnerabilities. Contractor computer device(s) must also be installed with an Anti-Malware solution and signatures updated no less than monthly.

6. Data Storage

Contractor shall designate and be able to identify all computing equipment, on which Contractor stores, processes, and maintains Data. No ESD Data at any time may be processed on or transferred to any portable storage medium. Laptop/tablet computing devices are not considered portable storage medium in this context provided that each is installed with end-point encryption.

7. Electronic Data Transmission

Contractor shall maintain secure means (e.g., HTTPS or SFTP) for the electronic transmission or exchange of system and application data with ESD or any other authorized Contractor.

8. Data Encryption

Contractor shall encrypt all Data, whether in transit or at rest, by using only NIST or ISO approved encryption algorithms; this includes all back-up copies of Data. Contractor further must install any laptop/notebook computing device, processing Data, with end-point encryption (i.e., full disk encryption).

9. Data Disposal

Unless a more immediate disposal requirement is set forth in this Contract, Contractor upon termination of this Contract, shall erase, destroy, and render unrecoverable all ESD Confidential Data and certify in writing that these actions have been completed within thirty (30) days of the termination of this Contract. At a minimum, media sanitization is to be performed according to the standards enumerated by NIST SP 800-88r1 Guidelines for Media Sanitization.

10. Offshoring - Electronic

Licensee must maintain the primary, backup, disaster recovery and other sites for storage of Confidential Data only from locations in the United States.

Licensee may not commit the following unless it has advance written approval from ESD:

- a. Directly or indirectly transmit any Confidential Data outside the United States; or
- b. Allow any Confidential Data to be accessed from locations outside of the United States.

If the Confidential Data is to be physically stored, processed, or distributed, Contractor shall apply the following requirements:

11. Hardcopy Storage

To prevent unauthorized access to printed information obtained under this Contract, and loss of, or unauthorized access to this information, printed copies must be stored in locked containers or storage areas, e.g. cabinets or vaults. Hard copy documents must never be unattended or in areas accessible to the public, especially after business hours.

12. Hardcopy Transportation

If hard copy documents containing Data are taken outside a secure area, those documents must be physically kept in possession of an authorized person, or a trusted courier providing tracking services. Records must be maintained for all transported hardcopies showing the person(s)/courier(s) responsible for such transportation, including the receiving party.

13. Offshoring - Hardcopy

Contractor must maintain all hardcopies containing Confidential Information at locations in the United States. Licensee may not directly or indirectly transport any Confidential Information outside the United States unless it has advance written approval from ESD.