CONTRACT NO. VR24-0009

# CLIENT SERVICE CONTRACT

# BETWEEN

# STATE OF WASHINGTON

# DEPARTMENT OF SERVICES FOR THE BLIND

# AND VENDOR

This Contract is made and entered into by and between the state of Washington, Department of Services for the Blind, hereinafter referred to as the "AGENCY" or “DEPARTMENT” or “DSB”, and the below named firm, hereinafter referred to as “CONTRACTOR.”

**Business name**Address
City State

**Point of contact**

Email:
Phone:
Statewide Vendor Number:

## PURPOSE

The purpose of this contract is for DSB for the purchase and delivery of a fully operational and towable food trailer that is designed and constructed to the AGENCY’S approved specifications. Trailer must be manufactured in accordance with all applicable Washington state laws and regulations.

## SCOPE OF WORK

1. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
2. The CONTRACTOR will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
3. Provide services to the AGENCY as described below:

### Deliverables

* Food trailer built to agreed-upon specifications
	+ Successfully complete State of Washington Labor & Industries inspection and permit process
	+ Professionally install all materials and equipment to specification
* Deliver trailer to specified DSB location in Olympia, Washington by September 29, 2024.
	+ Delivery shall be Free of Board (FOB) destination and all prices shall include all fees listed separately, including any and all taxes and duties of any kind levied by Federal, State, Municipal or other governmental authority.
	+ DSB reserves the right of pickup and removal of delivery charge.
	+ Provide manufacturer’s specifications, warranty information, and owner operations manuals
* Schedule date and time prior to October 31, 2024, to provide trailer equipment and maintenance tutorial

Neither AGENCY nor the CONTRACTOR may perform their specific responsibilities under this Contract unless the AGENCY has issued an Authorization for provision of services.

## PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from April 16, 2024, or the date of execution, whichever is later, through November 30, 2024.

## COMPENSATION/ PAYMENT

CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

* TBD

## EXPENSES

CONTRACTOR shall receive reimbursement for travel expenses as authorized in advance by the DEPARTMENT as reimbursable and as described in Exhibit B. Reimbursable expenses must be negotiated with the Contract Administrator or DEPARTMENT Representative and included in the approved authorization.

## CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all matters related to the specified terms and conditions of the contract.

### Contract Manager for CONTRACTOR is:

Name:

Address:

Phone:

Email:

### Contract Manager for AGENCY is:

Name: Jim Hemmen, BEP Manager

Address: PO Box 40933, Olympia, WA 98504-0933

Phone: 360-725-3844

E-mail address: Jim.hemmen@dsb.wa.gov

## ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

## ORDER OF PRECEDENCE

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

1. Applicable federal and state of Washington statutes and regulations
2. Exhibit A – General Terms and Conditions
3. Exhibit B – Insurance Requirements

## ENTIRE AGREEMENT

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

## CONFORMANCE

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

## APPROVAL

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

 THIS CONTRACT, consisting of 37 pages, is executed by the persons signing below who warrant that they have the authority to execute the contract.

|  |  |
| --- | --- |
| VENDOR | DEPARTMENT OF SERVICES FOR THE BLIND |
|  |  |
| **Contractor Signature** | **Department Signature** |
|  | Business Enterprise Program Manager |
| **Title**  | **Title**  |
|  |  |
| **Date Signed** | **Date Signed** |

# EXHIBIT A - DSB GENERAL TERMS AND CONDITIONS

## Definitions

As used throughout this contract, the following terms shall have the meanings set forth below:

1. **CLIENT**: individual that is blind, low vision or DeafBlind receiving services under this contract.
2. **COGNIZANT STATE AGENCY**: state agency from which the sub‑recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency that contributes the largest portion of federal financial assistance to the sub‑recipient.
3. **CONTRACTOR**: agency, firm, provider organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this agreement.
4. **CONTRACTING OFFICER**: individual authorized to execute this agreement on behalf of the Department.
5. **DEPARTMENT**: the Department of Services for the Blind of the state of Washington, any division, section, office, unit, or other entity of the DEPARTMENT or any of the officers or other officials lawfully representing that DEPARTMENT.
6. **PERSONAL INFORMATION**: information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
7. **SUBCONTRACTOR**: one not an employee of the contractor, who is performing all or part of those services under this contract under a separate contract with the contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
8. **SUBRECIPIENT**: a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
9. **VENDOR**: entity that agrees to provide the amount and kind of services requested by the Department; provides services under the contract only to those beneficiaries individually determined to be eligible by the Department and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

## Scope – Included Services and Price

### Contract Scope.

Pursuant to this Contract, Contractor is authorized to sell and provide only those services set forth in *Exhibit C – Services* for the prices set forth in *Exhibit D – Fee Schedule*

* + - * 1. **Services.** For purposes of this Contract, “Services” means all services of any nature ordered by DSB pursuant to this Contract.
				2. **Specifications**. Where applicable, specifications for Services as detailed in this Contract. Unless otherwise specified, all Services provided shall be new and unused of the latest model or design.

### State’s Ability to Modify Scope of Contract.

Subject to mutual agreement between the parties, DSB reserves the right to modify the services included in this Contract; *Provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.

###  Price Ceiling.

Although Contractor may offer lower prices to DSB, during the term of this Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit D – Fee Schedule*.

## Contractor Representations and Warranties.

Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify DSB, in writing, of such breach.

### Qualified to do Business.

Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.

### Taxes.

Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

### Licenses; Certifications; Authorizations; & Approvals.

Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor’s proper performance of this Contract.

### Suspension & Debarment.

Contractor represents and warrants as previously certified in Contractor’s Bidder’s Certification, that neither Contractor nor its principals or affiliates presently are not have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.

### Wage Violations.

Contractor represents and warrants as previously certified in Contractor’s Bidder’s Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.

### Civil Rights.

Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

### Public Contracts and Procurement Fraud.

Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.

### Procurement Ethics & Prohibition on Gifts.

Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to State employees.

### Washington’s Statewide Payee Desk.

Contractor represents and warrants that Contractor is registered with Washington’s Statewide Payee Desk, which registration is a condition to payment.

### Advertising and Endorsement.

Contractor understands and acknowledges that neither DSB nor the State of Washington are endorsing Contractor’s services or suggesting that such services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to DSB or the State of Washington in any promotional material without the prior written consent of DSB.

### Contingent Fees.

Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.

### Financially Solvent.

Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.

### Operational Capability.

Contractor represents and warrants, as previously certified in Contractor’s Bidder’s Certification, that Contractor has the operational and financial capability to perform the Contract.

### Contract Transition.

Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist DSB for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

## Performance of Services.

### Ownership of Deliverables.

Notwithstanding any provision to the contrary, the parties understand and agree that DSB shall own all rights to any plans, reports, or other deliverables provided to DSB pursuant to this Contract. The copyright in all works of authorship created pursuant to this Contract shall be owned by the State of Washington. All such works or portions of works created by the Contractor are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. § 201. If, however, the State of Washington is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to State of Washington all right, title, and interest in: (a) the copyright to Contractor’s work of authorship ("Work") and contribution to any such Work ("Contribution"); (b) any registrations and copyright applications, along with any renewals and extensions thereof, relating to the Contribution or the Work; (c) all works based upon, derived from, or incorporating the Contribution or the Work; (d) all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Work; (e) all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Contribution or the Work, and all rights corresponding to any of the foregoing, throughout the world. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Contractor has in the Contribution or the Work, the Contractor waives those rights as to State of Washington, its successors, licensees, andassigns.

### Contractor Key Staff Changes.

Except in the case of a leave of absence, sickness, death, termination of employment or unpaid or paid leave of absence, agreed upon Key Staff must not be changed during the term of this contract. Otherwise, any change in Key Staff must be agreed in writing between the parties. During the term of the Contract, DSB reserves the right to approve or disapprove of Contractor Key Staff assigned to perform services as required by this contract, or to require the removal or reassignment of any Contractor Key Staff found unacceptable by DSB, subject to DSB ’s compliance with applicable laws and regulations. Contractor must provide DSB with a resume of any member of its Key Staff assigned to or proposed for any aspect of performance under this Contract prior to commencing any Services.

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

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

## Invoicing & Payment.

### Contractor Invoice.

Contractor shall submit properly itemized invoices monthly to DSB’s designated invoicing contact for Services delivered under this Contract. Such invoices shall itemize the following:

* + - * 1. Contract Number VR24-0009;
				2. Contractor name, address, telephone number, and email address for billing issues;
				3. Contractor’s Federal Tax Identification Number or Statewide Payee Number;
				4. Date(s) of delivery;
				5. Description of services;
				6. Net invoice Price for each Service or Deliverables;
				7. Total invoice amount; and
				8. Payment terms, including any available prompt payment discounts.

Contractor’s invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. DSB shall have no obligation to pay Contractor for any services that do not comply with this Contract.

### Payment.

Payment is the sole responsibility of, and will be made by, DSB. Payment is due within thirty (30) days of invoice. If DSB fails to make timely payment(s), Contractor may invoice DSB in the amount of one percent (1%) per month on the amount overdue or a minimum of $1. Payment will not be considered late if a check or warrant is mailed within the time specified.

### Overpayments.

Contractor promptly shall refund to DSB the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that DSB shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by such credit memo), Contractor shall pay DSB interest at a rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.

### Advance Payment Prohibited.

Except as authorized by law, Contractor shall not request or receive advance payment for any Good and/or Services furnished by Contractor pursuant to this Contract.

### No Additional Charges.

Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.

### Taxes/Fees.

Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, DSB shall pay applicable sales tax imposed by the State of Washington on purchased services. Contractor’s invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to DSB, DSB has not provided Contractor with a valid exemption certificate from such federal excise taxes.

## Contract Management.

### Contract Administration & Notices.

Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of contract administration for this Contract. DSB’s contract administrator shall provide contract administrative oversight. Contractor’s contract administrator shall be Contractor’s principal contact for invoice/billing activities under this Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

|  |  |
| --- | --- |
| DEPARTMENT | CONTRACTOR |
| DSB – Contract TeamPO Box 40933Olympia, WA 98504-0933DSBContracts@dsb.wa.gov  |  **Name, address, email** |

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

### Contractor Customer Service Representative.

Contractor shall designate a customer service representative (and inform DSB of the same) who shall be responsible for addressing DSB’s issues pertaining to this Contract

### Legal Notices.

Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

|  |  |
| --- | --- |
| ****DEPARTMENT**** | ****CONTRACTOR**** |
| DSB - Contract TeamPO Box 40933Olympia, WA 98504-0933DSBContracts@dsb.wa.gov |  **Name, address, email** |

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

## Records Retention & Audits.

### Records Retention.

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

### Audit.

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

## Insurance.

### Required Insurance.

Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C– Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to, and included in the prices for Services and no additional payment shall be made to Contractor.

### Workers Compensation.

Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DSB may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (LNI) rights to collect from Contractor. If Contractor performs Services on DSB’s behalf in the State of Washington, and only to the extent of claims against Contractor by DSB under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor’s indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers’ compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

## Claims.

### Assumption of Risks; Claims Between the Parties.

Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor’s operations under this Contract. DSB has made no representations regarding any factor affecting Contractor’s risks. Contractor shall pay for all damage to any DSB’s property resulting directly or indirectly from Contractor’s acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.

### Third-Party Claims; General Indemnity.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold DSB and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys’ fees, consultant fees, and expert fees (collectively “Claims”) arising out of Contractor’s or its successors’, agents’ negligence, other tortious fault, or intentional misconduct under this Contract, ; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of DSB. The parties agree that if there are any limitations of Contractor’s liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep DSB’s property free of liens arising from Contractor’s activities, and promptly obtain or bond the release of any such liens that may be filed.

### Intellectual Property Indemnity.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold DSB and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods or Services provided, or the use of the Goods or Services under this Contract. If DSB’s use of Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for DSB the right to continue using the Goods or Services or, after consulting with DSB and obtaining DSB’s consent, replace or modify the Services with substantially similar and functionally equivalent non-infringing Services.

## Dispute Resolution.

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

## Suspension; Expiration; Termination; Remedies.

### Termination.

This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

### Termination for Non-Appropriation or Reduction of Funds or Changes in Law.

DSB may suspend or terminate this Contract, at the sole discretion of DSB or, as applicable, if DSB reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects DSB’s ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, DSB will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for non-appropriation or reduction of funds or changes in law, DSB will have no obligation or liability to Contractor.

### Termination for Public Convenience.

DSB, for public convenience, may terminate this Contract; Provided, however, that such termination for public convenience must, in DSB’s judgment, be in the best interest of the State of Washington; and Provided further, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and Provided further, that such termination for public convenience shall not relieve DSB from payment for Goods and/or Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, DSB shall not have any obligation or liability to Contractor.

### Expiration – DSB’s Obligations.

Upon expiration of this Contract, DSB shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.

### Expiration or Termination – Contractor’s Obligations.

Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to DSB all keys, badges, and other materials supplied by DSB pursuant to this Contract.

### Default.

Any of the following events shall constitute cause for DSB to declare Contractor in default of this Contract:

1. Contractor fails to perform or comply with any of the terms or conditions of this Contract;
2. Contractor breaches any representation or warranty provided herein; or
3. Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

### Suspension & Termination for Default.

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

### Remedies for Default.

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

### Limitation on Damages.

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

### Suspension/Termination Procedure.

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

## Public Information & Public Records Disclosure Requests.

### Washington’s Public Records Act.

Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington’s Public Records Act, RCW 42.56.

### Contractor Obligation.

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

### DSB’s Obligation.

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

## General Provisions.

1. 1.

### Amendment or Modification.

Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.

### Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR part 35

The contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

* 1.

### Assignments.

Contractor may not assign its rights under this Contract without DSB’s prior written consent and DSB may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to DSB within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.

### Assignment of Antitrust Rights Regarding Purchased Goods/Services.

Contractor irrevocably assigns to DSB, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any services provided in Washington for the purpose of carrying out the Contractor’s obligations under this Contract, including, at DSB’s option, the right to control any such litigation on such claim for relief or cause of action.

### Attorneys’ Fees.

In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each party agrees to bear its own attorneys’ fees and costs.

### Authority.

 Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

### Binding Effect; Successors & Assigns.

This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

### Captions & Headings.

The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.

### Compliance with Law.

Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.

### Counterparts

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

### Criminal Background Check

The CONTRACTOR and any persons employed by the CONTRACTOR who have direct contact with persons being served under this contract or supervisory responsibility for such employees shall have undergone successfully, or will undergo, a criminal background check prior to providing services. All persons who are hired after the effective date of this contract to provide services to DEPARTMENT clients under this contract shall undergo criminal background checks before providing direct services.

For the purpose of this contract, a criminal background check shall screen for the evidence of criminal misdemeanor and felony convictions and shall consist of a Federal Bureau of Investigation criminal background check. Evidence of the criminal background check shall be kept on file for the duration of the period during which the subject person is providing direct or supervisory services under this and any subsequence contracts and for ten years after that time. If the criminal background check reveals evidence of criminal convictions, the CONTRACTOR will consult with the DEPARTMENT about the significance and consequences of the conviction.

For the purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural 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

### Electronic Signatures.

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

### Entire Agreement.

This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

### Exhibits.

All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.

### Fair Construction & Interpretation.

The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.

### Federal Funds.

To the extent that DSB uses federal funds to purchase services pursuant to this Contract, DSB shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.

### Force Majeure.

Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.  The term “force majeure” means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence.  Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.  If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours.  The notification shall provide evidence of the force majeure to the satisfaction of the other party.  Such delay shall cease as soon as practicable and written notification of same shall likewise be provided.  So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.  Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30 days, DSB shall have the right to terminate the Contract and/or purchase the services set forth in this Contract; *Provided*, however, that in such event, Contractor shall not be liable to DSB for any price difference for such services.

### Further Assurances.

In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.

### Governing Law.

The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.

### Independent Contractor.

The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of DSB. Contractor shall not have authorization, express or implied, to bind DSB to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker’s compensation benefits through DSB or the State of Washington and DSB and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.

### Jurisdiction & Venue.

In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

### No Agency.

The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.

### Privacy

Personal information collected, used, or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Department or as provided by law.

Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the rights to monitor, audit or investigate the use of personal information collected, used, or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include but is not limited to “salting” by the Department.

Contractor shall certify the return or destruction of all personal information upon expiration of this contract. 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.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless the Department for any damages related to the contractor’s unauthorized use of personal information.

### Safeguarding of Information

The contractor shall not use or disclose any:

* Personal Information gained by reason of this contract, or
* Information that may be classified as confidential for any purpose not directly connected with the administration of this contract except (1) with prior written consent of the Department or (2) as may be required by law. The contractor shall safeguard such information and shall return or certify destruction of the information upon contract expiration or termination.

### 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, the Department may terminate the contract under the "Termination for Convenience" clause, without advance notice, subject to renegotiation at the Department’s discretion under those new funding limitations and conditions.

### Severability.

If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.

### SINGLE AUDIT ACT REQUIREMENTS

If the contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers.

The contractor shall make the contractor’s records available for review or audit by officials of the federal awarding agency, the General Accounting Office, the Department, and the Washington State Auditor’s Office. The contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the contractor and its subcontractors who are subrecipients. The contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the contractor expends $500,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 31, 2003, the contractor shall procure and pay for a single or program-specific audit for that year.

Upon completion of each audit, the contractor shall submit to the contracting officer named in this contract the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable).

**NOTE**: The single audit requirements above do not apply to "vendors" (as defined in this contract) who provide goods or services.

### Subgrants

Subgrants are not allowed by this program due to the federal source of funding.

### Survival.

All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

### Time Is of the Essence.

Time is of the essence for each and every provision of this Contract.

### Waiver.

Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

# EXHIBIT B – INSURANCE REQUIREMENTS

## Insurance Obligation.

During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor’s sole expense, the following insurance coverages:

### Commercial General Liability Insurance.

Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an ‘occurrence form’ in the amount of not less than $1,000,000 per occurrence and $1,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.

### Workers’ Compensation Insurance.

Contractor shall comply with applicable Workers’ Compensation or Industrial Accident insurance, providing benefits as required by law.

### Insurance Carrier Rating.

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

### Additional Insured.

Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized DSB (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

### Certificate of Insurance.

Prior to execution of the Contract, Contractor shall furnish to DSB, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to DSB that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to DSB an updated or renewed certificate of insurance, satisfactory to DSB, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract**. All certificates of Insurance and any related insurance documents shall be delivered to DSB by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as DSB may specify in writing:

* US Mail: DSB – Contract Team

PO Box 40933

Olympia, WA 98504-0933

* Email: DSBContracts@dsb.wa.gov

### Extended Reporting Period.

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

### Notice of Change or Cancellation.

There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to DSB. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

### Primary Coverage.

Contractor’s insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any DSB. All insurance or self-insurance of the State of Washington and/or DSB shall be excess of any insurance provided by Contractor.

### Waiver of Subrogation.

Contractor waives all rights of subrogation against the State of Washington and any DSB for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.