APPENDIX B, SAMPLE CONTRACT
TO
OFM CP #16-100

Washington All Payer Health Care Claims Database (WA-APCD)

between the

[OFM]

and

[Contractor]

Effective Date: _____

[Add Effective Date]

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TO
OFM CP #16-100
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APPENDIX B, SAMPLE CONTRACT
TO
OFM CP #16-100

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CONTRACT NUMBER *[XXX-XXX-XXX]*

for
Washington All Payer Health Care Claims Database

PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Office of Financial Management ("OFM"), an agency of Washington State government ("State") located at *[OFM address]*, and *[Contractor]*, a *[non-profit/government entity]* licensed to conduct business in the state of Washington ("Contractor"), located at *[Contractor address]* for the purpose of providing Services and related Products related to the implementation and ongoing operations of the Washington All Payer Health Care Claims Database (WA-APCD).

RECITALS

In accordance with its authority under chapter 43.371 RCW and chapter 39.26 RCW, the state of Washington, acting by and through OFM, issued a Competitive Procurement (CP) dated *[date]*, (Exhibit A) for the purpose of contracting for Services to implement the *Washington All Payer Health Care Claims Database.*

[Contractor] submitted both a timely Response and Final Submission to the OFM's CP (Exhibit B).

The OFM evaluated all properly submitted Responses and Final Submissions to the above-referenced CP and identified *[Contractor]* as the Apparently Successful Bidder.

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

NOW THEREFORE, OFM awards to *[Contractor]* this Contract, the terms and conditions of which shall govern Contractor's furnishing to OFM the Services necessary to implement the *Washington All Payer Health Care Claims Database*. IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

"Acceptance" means that the Contractor has satisfactorily provided the Services to implement the Washington All Payer Health Care Claims Database. Acceptance shall be formalized in a written notice from OFM to Contractor.

"Agency" means the same as OFM.

"Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"**Claim**" means a request or demand on a carrier for payment of a benefit.

"Competitive Procurement" or "CP" means the solicitation document used to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

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"Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW, Public Records Act or other state or federal statutes and regulations. 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, law enforcement records, agency source code or object code, agency security data, Direct or Indirect Patient Identifiers, Proprietary Financial Information, or Health Care claims data.

"Contract" means this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

"Contractor Account Manager" means a representative of Contractor who is assigned as the primary contact person whom the OFM Business Manager shall work with for the duration of this Contract and as further defined in the section titled **Contractor Account Manager**.

"Contractor Contracting Officer" means *[title of Contractor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Contractor Contracting Officer acting within the limits of his/her authority.

"**Data submission guide**" means the document that contains data submission requirements, including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"**Data Supplier**" means: (a) A carrier, third-party administrator, or a public program identified in RCW 43.371.030 that provides claims data; and (b) a carrier or any other entity that provides claims data to the database at the request of an employer-sponsored self-funded health plan or Taft-Hartley trust health plan pursuant to RCW 43.371.030(1).

"Data Vendor" means an entity contracted with the Contractor to perform data collection, processing, aggregation, extracts, analytics and reporting related to the WA-APCD as defined in chapter 43.371 RCW.

"Direct Patient Identifiers" means a data variable that directly identifies an individual, including: Names; telephone numbers; fax numbers; social security number; medical record numbers; health plan beneficiary numbers; account numbers; certificate or licenses numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators; internet protocol address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

"Effective Date" means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

"Exhibit A" means the Competitive Procurement Number 16-100 released by OFM for the purpose of procuring All Payer Health Care Claims Database Lead Organization and Data Vendor Services.

"Exhibit B" means *[Contractor]*'s Final Submission including but not limited *[add appropriate phase1, phase 2 and other documents]* in response to OFM's Competitive Procurement Number 16-100.

"Final Submission" means the bidder's final proposal submitted to OFM as a result of the final phase of the Competitive Procurement process.

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"**Health Care**" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes but is not limited to (1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and (2) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Indirect Patient Identifier" means a data variable that may identify an individual when combined with other information.

"**Lead Organization**" means the entity selected by the Office of Financial Management to coordinate and manage the database as provided in chapter 43.371 RCW. The Lead Organization is the Contractor under this Contract. The Lead Organization includes Contractor, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

"OFM" means the state of Washington, Office of Financial Management, any division, section, office, unit or other entity of OFM or any of the officers or other officials lawfully representing OFM.

"OFM Business Manager" means the person designated by OFM who is assigned as the primary contact person whom Contractor's Account Manager shall work with for the duration of this Contract and as further defined in the section of this Contract titled **OFM Business Manager**.

"OFM Contract Administrator" means that person designated by OFM to administer this Contract on behalf of OFM.

"OFM Contracting Officer" means the Director of OFM, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the OFM Contracting Officer acting within the limits of his/her authority.

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

"Product(s)" means any Contractor-developed information offered for sale as described in the Contractor's sustainability plan or as developed and approved from time to time.

"Response" means Contractor's submission to the phases of OFM's CP for Services to implement and ensure ongoing operations of the WA-APCD, Exhibit B hereto.

"Preexisting Material" means proprietary products, software, methods, devices or the like delivered by the Contractor to fulfill its obligations under this Contract. Preexisting Material does not originate from this Contract but may be incorporated into or be required to properly support deliverables under this Contract. Preexisting Material may be owned by the Contractor or a third party that has given permission for its use hereunder.

"Proprietary Financial Information" means claims data or reports that disclose or would allow the determination of specific terms of contracts, discounts, or fixed reimbursement arrangements or other specific reimbursement arrangements between an individual health care facility or health care provider, as those terms are defined in RCW 48.43.005, and a specific payer, or internal fee schedule or other internal pricing mechanism of integrated delivery systems owned by a carrier.

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

"RCW" means the Revised Code of Washington.

"Schedule A: *Authorized Services and Price List*" means the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

"Schedule B: *Statement of Work Template*" means the attachment to this Contract that provides example terms and conditions for a Statement of Work.

"Schedule C: *MWBE Certification*" means the attached certificate(s) indicating Contractor's and/or one or more of Contractor's Subcontractor's status as a minority or women's business enterprise.

"Services," means professional or technical expertise proposed by the Contractor to accomplish the objectives of the project or specific tasks or duties required to accomplish the work described in the CP, proposed by the Contractor and further refined in this Contract or a Statement of Work hereto.

"Specifications" means the technical and other specifications set forth in the CP, Exhibit A, and any additional specifications set forth in Contractor's Final Submission, Exhibit B.

"Statement of Work" or **"SOW"** means a document signed by the parties that articulates the work to be accomplished by Contractor under the terms and conditions of this Contract. Each SOW is attached to and incorporated into this Contract. A sample SOW is attached as Schedule B.

"Subcontractor" means one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means Subcontractor(s) of any tier.

"**WA-APCD**" means the Washington statewide all payer health care claims database authorized in chapter 43.371 RCW.

"Work Product" means deliverables, data and products produced under this Contract including but not limited to, the Data Submission Guide, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

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Contract Term

2. Term

2.1. Term of Contract

a) The initial term of this Contract shall be five (5) years commencing upon the Effective Date. No later than June 30, 2018 or as otherwise agreed during the initial term of this Contract the parties may determine, after good faith and collaborative efforts, that the essential purpose of the contract cannot be reasonably met or sustained. In this case, the contract may be terminated by mutual agreement. The Termination by Mutual Agreement provision of this contract will be invoked for such circumstance.

b) This Contract's term may be extended by additional two (2) year terms. Extensions will be offered at OFM's sole option and shall be affected by OFM giving written notice of

its offer to extend this Contract to Contractor no less than sixty (60) calendar days prior to the then-current expiration date of the Contract. Execution of extensions will be by mutual agreement. OFM will not be required to offer nor will the Contractor be required to accept such extensions.

c) OFM's decision to offer an extension to this Contract will be based on the performance of the Contractor. Factors may include, but are not limited to, Contractor's demonstrated ability to be self-sustaining, compliance with the terms and conditions of this Contract, compliance with OFM rules, effectiveness of service, responsiveness to users or any other measure or assessment OFM determines to be a key factor in its decision-making. OFM shall have no obligation to extend the Contract.

2.2. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of any SOW under this Contract may not exceed the term of this Contract. Any SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

3. Survivorship

All transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices 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 titled **Overpayments to Contractor; Ownership/Rights in Data; Access to Contract Related Data; Contractor Commitments, Warranties and Representations; Protection of Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Third Party Claims-Patent and Copyright Infringement; Contractor's Proprietary Information; Disputes; and Limitation of Liability; Privacy Requirements; Security Requirements** shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

4.1. The total amount expended under this Contract shall not exceed *[____]* dollars *($___)*.

4.2. Contractor agrees to provide the Services at the Prices set forth in its Final Submission to OFM's CP. No other or additional Prices may be charged by Contractor for implementation of Contractor's Final Submission.

4.3. The parties may negotiate pricing for additional work as documented in writing in a statement of work signed by both parties.

4.4. OFM shall not reimburse Contractor for travel and other expenses, unless otherwise agreed to by OFM prior to incurring the expense.

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5. Advance Payment Prohibited

Subject to the provisions of any grant provision(s) to the contrary, no advance payment shall be made for Services furnished by Contractor pursuant to this Contract.

6. Taxes

6.1. OFM will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. OFM, as an agency of Washington State government, is exempt from property tax.

6.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

7. Invoice and Payment

7.1. Contractor will submit properly itemized invoices to *[title of person to receive invoices]* at *[provide appropriate address]*. Invoices shall provide and itemize, as applicable:

a) OFM Contract number *[XXX-XXX-XXX]*;
b) SOW number *[YY-YY]*;
c) Contractor name, address, phone number, and Federal Tax Identification Number;
d) Description of Services and deliverables provided;
e) Date(s) that Services and deliverables were provided, Contractor's Price for Services or Products;
f) Net invoice Price for each Service or Products;
g) Applicable taxes;
h) Other applicable charges;
i) Total invoice Price; and
j) Payment terms including any available prompt payment discounts.

[Include the following 7.2 if – MWBE Certification is attached.]

7.2. With each invoice Contractor shall provide an *Affidavit of Amounts Paid* specifying the amounts paid to each certified MWBE under the Contract, as set forth in the Section titled *Minority and Women's Business Enterprise (MWBE) Participation* 15 below.

7.3. Incorrect or incomplete invoices will be returned by OFM to Contractor for correction and reissue.

7.4. The OFM Contract number *[XXX-XXX-XXX]* and SOW number *[YY-YY]* must appear on all correspondence relating to this Contract.

7.5. OFM shall not honor drafts, nor accept goods on a sight draft basis.

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7.6. If OFM fails to make timely payment, Contractor may invoice OFM one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.

8. Overpayments to Contractor

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

Contractor's Responsibilities

9. Services and Statement of Work

9.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW established by mutual agreement between OFM and Contractor. A sample SOW is attached as Schedule B to this Contract.

9.2. The SOW shall at a minimum:

a) Reference this Contract number *[XXX-XXX-XXX]*;
b) Define project or task objectives;
c) Describe the scope of Services or work to be performed;
d) Identify deliverables;
e) Specify a timeline and period of performance;
f) Specify compensation and payment, e.g., the hourly rate and total Contractor hours to be provided or the fixed price for a deliverable (whichever is applicable), total cost of the project, and reimbursable Contractor expenses if applicable;
g) Describe Contractor's roles and responsibilities and identify specific Contractor staff;
h) Describe OFM's roles and responsibilities;
i) Any additional terms and conditions specific to the SOW
j) Provide signature block for both parties.

9.3. Except when the parties specifically agree in an SOW, the terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail. Any exception made in an SOW will be solely for that SOW and shall not modify the Contract terms and conditions for any other work unless so specified in an amendment to this Contract.

10. Commencement of Work

No work shall be performed by Contractor until this Contract is fully signed by the parties and each party is in receipt of a signed contract. Additionally, specific work shall not be performed prior to receipt by both parties of an SOW signed by both parties.

11. Ownership/Rights in Data

11.1. Ownership of Work Products produced for the State of Washington

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OFM and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract specifically for OFM and for which no pre-existing material is included, shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by OFM. Pre-existing material is treated as provided in Section11.2 *Ownership of Preexisting Material* below. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, the Data Submission Guide, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

a) If for any reason the Work Product would not technically be considered a work made for hire under applicable law, and when the parties recognize and agree that OFM ownership is intended under this Contract, Contractor assigns and transfers to OFM the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

b) Contractor shall execute all documents and perform such other proper acts as OFM may deem necessary to secure for OFM the rights pursuant to this section.

c) Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of OFM. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

11.2. Ownership of Preexisting Material

a) Ownership of material that is delivered by the Contractor under this Contract, but that does not originate from this Contract ("Preexisting Material"), shall remain with the Contractor or any third-party owner of such Preexisting Material.

b) When Preexisting Materials are incorporated into products or required to support the functionality of deliverables under this Contract, the Contractor must include a nonexclusive, royalty-free, irrevocable license for OFM to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license.

c) Contractor shall exert all reasonable effort to advise OFM at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such deliverable which was not produced in the performance of this Contract.

d) Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material.

e) OFM shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

11.3. Ownership of Data Supplied to the Data Vendor

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Ownership of data supplied to the Data Vendor by Data Suppliers as required by chapter 43.371 RCW shall not pass to the Contractor, the Data Vendor or any other Subcontractor nor OFM.

12. Access to Contract Related Data

In compliance with chapter 39.26 RCW, Contractor shall provide access to data generated under this Contract to OFM, to the Joint Legislative Audit and Review Committee, and to the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodologies for those models.

Such access shall not include data in unprocessed form contained in the WA-APCD as required by chapter 43.371 RCW.

13. Site Security

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

14. Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response and Final Submission or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, recorded presentations and any other communication medium accompanying or referred to in its Response or used to effect the sale to OFM.

15. Minority and Women's Business Enterprise (MWBE) Participation

If applicable, with each invoice for payment and within thirty (30) days of OFM Contract Administrator's request, Contractor shall provide OFM an *Affidavit of Amounts Paid.* The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Review of Contractor's Records** section.

16. Protection of Confidential Information

16.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge or the possession or knowledge of its Subcontractor, the Data Vendor, in connection with this Contract or its performance may consist of information that is exempt or prohibited from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW, *Public Records Act* or other state or federal statutes.

16.2. 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, Health Care data, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual

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that relates to any of these types of information. Confidential Information also includes Personal Information which is defined in RCW 42.56.590 as an individual's first name or first initial and last name in combination with any one or more of the following data elements:

(a) Social security number;

(b) Driver's license number or Washington identification card number; or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

Contractor agrees and shall compel its Subcontractor(s) at any tier, to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without OFM's express written consent, as provided by law or OFM rule. Contractor agrees to that access to or release of such Confidential Information shall be only to employees or Subcontractors who have signed a nondisclosure agreement, data sharing agreement and/or a data use agreement as may be required, the terms of which have been previously approved by OFM. Contractor, as the Contractor, understands and agrees that it shall be foreclosed from direct access to such Confidential Information except when it has gained approval for such access and signed a nondisclosure agreement, data sharing agreement and/or a data use agreement or other such document as may be required, the terms of which have been previously approved by OFM.

Contractor through its Data Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Data must be stored on secure servers that are compliant with the Health Insurance Portability and Accountable Act. (HIPAA) and its regulations, with access to the data strictly controlled and limited to staff with appropriate training, clearance, and background checks as required by 43.371.020 (3)(h) RCW.

16.3. Immediately upon expiration or termination of this Contract, Contractor shall, at OFM's option comply with the following or, instruct its Data Vendor to: (i) certify to OFM that all Confidential Information has been destroyed; or (ii) return all Confidential Information to its owner; or (iii) take whatever other steps OFM requires of Contractor to protect Confidential Information.

16.4. Use of Confidential Information shall be consistent with state and federal law related to such use and OFM Rule. At a minimum, Contractor shall maintain records documenting the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with **Review of Contractor's Records**.

16.5. OFM reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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

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17. Privacy Requirements

17.1. The parties understand and acknowledge that Data Suppliers will supply data to the WA-APCD in order to comply with the requirements of chapter 43.371 RCW and OFM rule.

17.2. Data released from the WA-APCD shall be de-identified using best practices as defined by applicable industry standards for the information technology industry unless explicitly required or allowed otherwise.

17.3. Encryption: All Confidential Information, including but not limited to patient claims data, shall be encrypted in transmission from the Data Supplier source to theWA-APCD, at rest in the data base or other data facility maintained by the Data Vendor, and when retransmitted to Data Requestors authorized to receive such information.

All personal information maintained in researcher or third party databases shall be encrypted at rest, and shall be encrypted in transmission.

17.4. Patient Information: Any personal Health Care information provided is considered Confidential Information under this Contract and when included in any data set, with respect to the functions of both the Contractor and the Data Vendor, shall protect such information as set forth in this Contract relating to access to data by third parties where the patient has not specifically authorized the sharing of such data with the applicable third party.

17.5. Requesters: Requesters qualified by the Contractor to receive data from the WA-APCD shall be subject to the following requirements: a) Agreement to adhere to the Security Requirements for the WA-APCD; b) Agreement to adhere to the Privacy Requirements for the WA-APCD; c) Agreement to a Confidentiality Agreement, which shall include provisions for indemnification in the case of data loss or data breach.

18. Security Requirements

The Contractor acknowledges and agrees that it is responsible for ensuring that security requirements are implemented and maintained for the WA-APCD and therefore agrees to include in its contract with the Data Vendor the following reuquirements:

Information Security

18.1. Safeguarding Confidential Information - Data Vendor represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information does and will comply with all applicable federal, state and data protection laws, as well as all other applicable regulations and directives.

18.2. Data Vendor shall implement administrative, physical and technical safeguards to protect Confidential Information that are no less rigorous than accepted industry practices including the International Organization for Standardization's standards ISO-IEC 27002:2013 – Code of Practice for International Security Management, the Control Objectives for Information and related Technology (COBIT) standards and the current State of Washington Office of the Chief Information Officer (OCIO) IT Security Policy and Standards (OCIO 141.10) relating to Securing Information Technology Assets Standards, and shall ensure that all such safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

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18.3. Data Vendor agrees to designate an individual responsible for compliance with the terms of the OCIO Security Standards for the duration of this Contract.

18.4. On or before commencement of data release, Data Vendor will provide the following documentation of compliance with all applicable security policies and standards as outlined in this document:

a) Documentation of organizational security program outlining its security policies and practices, which conform to those outlined and required in this Contract,

b) Results of compliance audits including findings and mitigations, and expected compliance date,

c) Incident response plan including notification procedures to the Contractor and the State Office of Financial Management,

d) Documented communication plan regarding breach notification including notification to the State of Washington Chief Information Officer (CIO) and State Chief Information Security Officer (CISO), and

e) Statement on Standards for Attestation Agreements (SSAE) No. 16 Service Organization Control 2 (SOC 2) Type II audit report.

18.5. In the event of a data breach the Contractor shall be responsible for following all protocols related to notification which shall be at the individual claimant level. Further the Contractor shall provide, at a minimum, two (2) years of identity tracking for each individual whose data has been breached or may have been breached.

19. Contract Compliance – Audit by Third Party

Upon OFM's written request to confirm Contractor and Data Vendor's compliance with this Contract or in compliance with OFM rules or OCIO standards, as well as any applicable laws, regulations and industry standards, the Contractor and Data Vendor jointly and severally grant OFM or, upon OFM's election, a third party on its behalf, permission to perform, at the expense of the Data Vendor, an assessment, audit, examination or review of all controls in the Data Vendor's physical and/or technical environment in relation to all Confidential Information being handled and/or services being provided pursuant to this Contract. Data Vendor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that processes, stores or transports Confidential Information pursuant to this Contract. In addition, upon OFM's written request, Data Vendor shall provide OFM with the results of any audit by or on behalf of Data Vendor performed that assesses the effectiveness of Data Vendor's information security program as relevant to the security and confidentiality of Confidential Information shared during the course of this Contract.

20. Data Vendor Site Audit Rights

At least once every three years, Contractor shall require the Data Vendor to conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Upon OFM's written request, Contractor shall require

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the Data Vendor to make available to OFM or its agent for review all of the following, at no expense to OFM, as applicable: Data Vendor's latest Payment Card Industry (PCI) Compliance Report, WebTrust, SysTrust, and Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control 2 (SOC 2) Type II audit reports and any reports relating to its ISO/ICE 27001 certification. OFM shall treat such audit reports as Contractor's Confidential Information under this Contract. Any exceptions noted on the SSAE report or other audit reports must be promptly addressed with the development and implementation of a corrective action plan by Contractor and its Data Vendor.

21. Federal Grant Funding Requirements

Certain services provided by the Contractor under this Contract are funded by federal grants and subject to federal grant requirements. In such instances federal grant requirements specific to those services will be attached to the specific statement of work to which they apply. The Contractor is responsible for complying with and actively assisting OFM in compliance with all grant requirements that involve Contractor cooperation.

21.1. **Conflict of Interest Requirements:** The Contractor will provide a copy of its by-laws showing its compliance with Section 2749(d)(2) of the Affordable Care Act that states that a center "established under Section 2794(c)(1)(C) shall adopt by-laws that ensure that the center (and all members of the governing board of the center) is independent and free from all conflicts of interest. Such by-laws shall ensure that the center is not controlled or influenced by, and does not have any corporate relation to, any individual or entity that may make or receive payments for Health Care services based on the center's analysis of Health Care costs."

a) To ensure that a Data Center (the Lead Organization) is independent and free from conflicts of interests, the Data Center must establish by-laws that prohibit governing board members of the Data Center from participating, directly or indirectly, in the selection, award, or administration of any matter that gives rise to a potential conflict of interest involving the work of the Data Center. This would involve any situation in which a member could benefit, financially or otherwise, from the impact of the Data center's work on payments for Health Care services made or received. For example, if a board member shares in the profits of a provider that could benefit by Data Center analysis showing that payments to providers should be higher, or the profits of an issuer that would benefit from analysis showing that payments should be lower, the governing board member must recuse himself or herself from the matter and notify a compliance official, the chairman of the Board, or other official appointed to address conflicts of interest.

b) Those conducting data analyses at the Lead Organization or Data Vendor must not be controlled or influenced by, or financially related to, an individual or entity that could be in a position to "base" charge or payments for Health Care services on the Data Center's analysis. To meet conflict of interest requirements in section 2794(d) (2), the by-laws of the Data Center must include steps to ensure that this does not occur.

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Contract Administration

22. Legal Notices

22.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, via e-mail at the e-mail addresses below or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, to the parties at the addresses provided in this section.

To Contractor at:	**To OFM at:**
[Contractor]	State of Washington *[OFM]*
Attn: *[Contractor address]*	**Attn:** *[OFM Contract Administrator]* *[OFM address]*
Phone: E-mail:	Phone: E-mail:

22.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

22.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services or Products provided pursuant to this Contract is served upon Contractor or OFM, such party agrees to notify the other party via the most expeditious method possible following receipt of such subpoena or other legal process. Contractor and OFM further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

23. Contractor Account Manager

Contractor shall appoint an Account Manager for OFM's account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for OFM concerning Contractor's performance under this Contract. Contractor shall notify OFM Contract Administrator and OFM Business Manager, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Contractor Account Manager:
Address:
Phone: E-mail:

24. OFM Business Manager

OFM shall appoint *[name]* who will be the OFM Business Manager for this Contract and will provide oversight of the activities conducted hereunder. OFM Business Manager will be the principal contact for Contractor concerning business activities under this Contract. OFM shall

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notify Contractor, in writing, when there is a new OFM Business Manager assigned to this Contract.

25. Section Headings, Incorporated Documents and Order of Precedence

25.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

25.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

a) OFM Rules set forth in chapter 82-75 WAC
b) Schedules, Exhibits and Attachments to this Contract; *[include as appropriate]*
c) OFM CP dated [date];
d) Contractor's Proposal to the OFM CP dated *[date]*;
e) Any SOW entered into pursuant to this Contract; and
f) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to OFM and used to effect the award of this Contract and sale of Services or Products hereunder.

25.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

a) Applicable federal and state statutes, laws, and regulations;
b) OFM Rules set forth in chapter 82-75 WAC
c) This Contract;
d) Schedules, Exhibits and Attachments to this Contract; *[include as appropriate]*
e) OFM CP dated *[date];*
f) Any SOW entered into pursuant to this Contract;
g) Contractor's Final Submission to OFM CP dated *[date]*; and
h) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to OFM and used to effect the award of this Contract and sale of Services or Products hereunder.

26. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, cost or price, quality, requirements or specifications of this Contract will be effective without the written consent of both parties.

27. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by OFM and Contractor Contracting Officers. Only OFM Contracting Officer shall have the

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express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of OFM.

28. Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

29. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

30. Subcontractors

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

Data Vendor as Subcontractor. Chapter 43.371 RCW [1] requires the Lead Organization to enter into a contract with a Data Vendor to perform data collection, processing, aggregation, extracts, and analytics. For avoidance of doubt, the parties acknowledge and agree that the contract with the Data Vendor shall be a Subcontract as it is defined hereunder. The Lead Organization shall ensure, through its contract with the Subcontractor, that in addition to the terms and conditions listed above, all relevant terms and conditions of this Contract are included in such subcontract. Prior to executing the subcontract between the Contractor and the Data Vendor, OFM reserves the right to review the subcontract.

[1] http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5084-S.SL.pdf

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31. Key Staff Changes

OFM shall 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 shall provide resumes and describe the roles and responsibilities of any replacement staff to OFM 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. OFM reserves the right, in its sole judgement, to approve or reject such replacement staff. OFM's approval of such staff shall not be unreasonably withheld.

32. Assignment

32.1. With the prior written consent of OFM Contracting Officer, which consent shall be at OFM's sole option, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to OFM that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.

32.2. OFM may assign this Contract or SOW to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve OFM of any of its duties and obligations hereunder.

32.3. Defacto Unilateral Assignment of Data Vendor Subcontract. In the event the Contractor is no longer contracted with OFM to perform the duties set forth in this Contract, the subcontract with the then current Data Vendor shall automatically be assigned to OFM. OFM will have the right to unilaterally submit notice of such assignment to the Data Vendor and the Contractor. OFM shall have no obligation to the Contractor for any loss or damages it may incur in such event. Further, OFM shall incur no liabilities that have accrued to the Contractor in its activites related to fulfullment of its role under this Contract. The Contractor shall specifically include this provision in its Subcontract with the Data Vendor. By its signature on such Subcontract, Data Vendor shall be deemed to accept such Unilateral Assignment.

33. Publicity

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

33.2. Contractor agrees to submit to OFM, all advertising, sales promotion, and other publicity materials relating to this Contract and Services or Products furnished by Contractor wherein the state of Washington, the WA-APCD or the OFM's name is mentioned, language is used, or Internet links are provided from which the connection of such name therewith may, in OFM's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of OFM *prior* to such use.

33.3. If such publicity materials are approved by OFM, Contractor shall comply with Section 21. *Grant Funding Requirements*, Subsection 21.1 *Public Reporting of this Contract*.

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34. Review of Contractor's Records

34.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

34.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the OFM's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

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

34.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from OFM's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

35. Right of Inspection

Contractor shall provide right of access to its facilities to OFM, or any of OFM's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

36. Third Party Claims - Patent and Copyright Infringement

36.1. To the extent that the Contractor or its Subcontractor relies for its performance hereunder upon third party technologies that are licensed or otherwise restricted due to patent or copyright rights, it shall be the responsibility of the Contractor and/or its Subcontractor(s) to ensure that such technologies are properly used. In the event that the Contractor or its Subcontractor(s) receive an infringement claim, the Contractor and/or the Subcontractor shall, at its expense, ensure that the Products, Services or Work Product contracted for hereunder continue without interruption.

36.2. If such claim has occurred, or in Contractor's opinion is likely to occur, OFM agrees to permit Contractor, at its option and expense, either to procure for OFM the right to continue using the Product, Service or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product, Service or Work Product is enjoined by a court and Contractor determines that none of these alternatives is

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reasonably available, Contractor, at its risk and expense shall pay any damages or additional costs incurred by OFM as a result of a finding of infringement.

37. Save Harmless

Contractor shall defend, indemnify, and save OFM harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligation to defend, indemnify and save OFM harmless shall not be eliminated or reduced by any alleged concurrent OFM negligence.

38. Insurance

38.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in Attachment 2, *Insurance* of the OFM CP Number 16-100 attached hereto as Exhibit A. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to OFM within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at OFM's sole option, result in this Contract's termination.

38.2. Contractor shall pay premiums on all insurance policies. Such insurance policies shall name OFM as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number *[XXX-XXX-XXX]* and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to OFM by the insurer.

38.3. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

38.4. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

38.5. Contractor shall furnish to OFM copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at OFM's sole option, result in this Contract's termination.

38.6. By requiring insurance herein, OFM does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to OFM in this Contract.

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39. Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. OFM will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

40. Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

41. Compliance with Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with OFM.

42. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

43. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

44. Treatment of Assets

44.1. Title to all property furnished by OFM shall remain with OFM. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement including, but not limited to the Data Submission Guide, and other than rental payments, under this Contract, shall pass to and vest in OFM pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in OFM.

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

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44.3. Contractor shall be responsible for any loss of or damage to property of OFM that results from Contractor's negligence or that results from Contractor's failure to maintain and administer that property in accordance with sound management practices.

44.4. Upon loss or destruction of, or damage to any OFM property, Contractor shall notify OFM thereof and shall take all reasonable steps to protect that property from further damage.

44.5. Contractor shall surrender to OFM all OFM property prior to completion, termination, or cancellation of this Contract.

44.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

45. Contractor's Proprietary Information

Contractor acknowledges that OFM is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, OFM shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, OFM will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, OFM will release the requested information on the date specified.

Disputes and Remedies

46. Disputes

46.1. In the event a bona fide dispute concerning a question of fact arises between OFM and Contractor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

46.2. 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 three (3) 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.

a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

46.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel, except as provided in subsection 46.4 below.

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46.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute. Notwithstanding the foregoing, if a party to the dispute in good faith believes that the decision of the Dispute Resolution Panel will result in irreparable harm it may commence litigation.

46.5. OFM and Contractor 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.

46.6. If the subject of the dispute is the amount due and payable by OFM for Products, Services or Work Product being provided by Contractor, Contractor shall continue providing Products, Services or Work Product pending resolution of the dispute provided OFM pays Contractor the amount OFM, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

47. Attorneys' Fees and Costs

47.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, each party shall be responsible for its own attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

47.2. In the event that the parties engage in mediation or any other alternative dispute resolution forum 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.

48. 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.

49. Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, OFM shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then OFM may withhold all monies due and payable to Contractor, without penalty to OFM, until such Failure to Perform is cured or otherwise resolved.

50. Limitation of Liability

The parties agree that neither Contractor nor OFM shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on data breach, patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages, if any, or any

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other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

51. Force Majeure

51.1. Neither Contractor nor OFM shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or OFM. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than OFM acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, OFM, or their respective Subcontractors.

51.2. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Contract Termination

52. Termination for Default

52.1. If either OFM or Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. OFM reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of any alleged Contractor compliance breach and pending corrective action by Contractor or a decision by OFM to terminate the Contract.

52.2. In the event of termination of this Contract by OFM, OFM shall have the right to procure the Products, Services or Work Product that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products, Services or Work Product and the replacement costs of such Products, Services or Work Product acquired from another Contractor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to OFM resulting from Contractor's breach. OFM shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe OFM for Contractor's default.

52.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

52.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

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53. Termination for Convenience

When, at the sole discretion of OFM, it is in the best interest of the State, OFM Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by ten (10) Business Days written notice to Contractor. OFM may, in its sole judgement, provide more time in its written notice when it is in the best interest of the state to do so. If this Contract is so terminated, OFM is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by OFM prior to the effective date of termination.

54. Termination for Withdrawal of Authority

In the event that OFM's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, OFM may terminate this Contract by seven (7) Calendar Days written notice to Contractor. OFM may, in its sole judgement, provide more time in its written notice when it is in the best interest of the state to do so. No penalty shall accrue to OFM in the event this section shall be exercised. This section shall not be construed to permit OFM to terminate this Contract in order to acquire similar Services from a third party.

55. Termination for Non-Allocation of Funds

If funds are not allocated to OFM to continue this Contract in any future period, OFM may terminate this Contract by seven (7) Calendar Days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. OFM may, in its sole judgement, provide more time in its written notice when it is in the best interest of the state to do so. OFM will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. OFM agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to OFM in the event this section shall be exercised. This section shall not be construed to permit OFM to terminate this Contract in order to acquire similar Services from a third party.

56. Termination by Mutual Agreement

When, within the initial term of the Contract, the parties determine that, after good faith and collaborative efforts, that the essential purpose of the contract cannot be reasonably met or sustained, the contract may be terminated by mutual agreement. Except as required by section 3, *Survivorship* of this Contract or as otherwise mutually agreed in writing, neither party will have any further obligation to the other in the event that this provision is invoked.

57. Termination for Conflict of Interest

OFM may terminate this Contract by written notice to Contractor if OFM determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, OFM shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

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58. Contract Expiration or Termination Procedure

58.1. In addition to the procedures set forth below, if OFM terminates this Contract, Contractor shall follow any procedures OFM specifies in OFM's Notice of Termination.

58.2. Upon expiration or termination of this Contract, regardless of the reason for such termination, the Contractor and its Subcontractor(s) shall assist OFM, in an orderly transition to a new contractor and/or subcontractor as required by OFM in its termination notice.

58.3. OFM, in addition to any other rights provided in this Contract, may require Contractor to deliver to OFM any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has not been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

58.4. Unless otherwise provided herein, OFM shall pay to Contractor the agreed-upon price, if separately stated, for the Services received by OFM, provided that in no event shall OFM pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. OFM may withhold from any amounts due Contractor such sum as OFM determines to be necessary to protect OFM from potential loss or liability.

58.5. Contractor shall pay amounts due OFM as the result of termination, if any, within thirty (30) calendar days of notice of amounts due. If Contractor fails to make timely payment, OFM may charge interest on the amounts due at one percent (1%) per month until paid in full.

59. Covenant Against Contingent Fees

59.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

59.2. In the event Contractor breaches this section, OFM shall have the right to either annul this Contract without liability to OFM, or, in OFM's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Contract Execution

60. Authority to Bind

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

61. Counterparts

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

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

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Approved
State of Washington
[OFM]

Signature

Print or Type Name Date

Title

Title Date

Approved
[Contractor]

Signature

Print or Type Name Date

Title

Contractor Information
Contractor's UBI Number:
Minority or Woman Owned Business Enterprise Yes _____ No ☐ (Certification Number)

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Schedule A
Authorized Services and Price List

as of *[date]*

for
Contract Number *[XXX-XXX-XXX]*
with
[Contractor]

[Contractor] is authorized to provide **the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

[Final Cost Sheet to be added here.]

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Schedule B
Sample Statement of Work

Statement of Work *[YY-YY]*
to
Contract Number *[XXX-XXX-XXX]*
for
[describe acquisition]

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This Statement of Work (SOW) is made and entered by and between *[OFM]* ("OFM"), and *[Contractor]* ("Contractor"), for *[describe acquisition or purpose of SOW]*. This SOW incorporates by reference the terms and conditions of Contract Number *[XXX-XXX-XXX]* in effect between the OFM and Contractor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. OFM and Contractor agree as follows:

1. **Project or Task Objectives**

   [Describe in detail the project or task objectives.]

2. **Scope of Work and Deliverables**

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

   [Describe in detail what work Contractor will perform. Identify all tasks, work elements and objectives of the SOW, and timelines for completion of the major elements of the project.]

   Contractor shall produce *[describe in detail what deliverables Contractor will produce]*.

3. **Timeline and Period of Performance**

   Subject to filing or approval requirements, the period of performance for this project will start on *[start date]* and the work tasks are estimated to continue through *[end date]*. OFM has the right to extend or terminate this SOW at its sole discretion.

   No work shall be performed by Contractor until this SOW is executed by Contractor and OFM and is received by Contractor.

4. **Compensation and Payment**

   OFM shall pay Contractor an amount not to exceed *[_____]* dollars *($___) [specify maximum dollar amount]* for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Contractor's compensation for services rendered shall be based on Contractor's Prices as set forth in the Contract's Schedule A, *Authorized Services and Price List* as follows:

   [List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc.]

5. **Contractor Staff, Roles and Responsibilities**

   [Identify Contractor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]

6. **OFM Staff, Roles and Responsibilities**
   [Identify OFM staff who will be involved and describe in detail their roles and responsibilities.]

7. **Additional Terms and Conditions Specific to this SOW**
   [State additional terms and conditions specific to this SOW not found in Contract, if any.]

In Witness Whereof, the parties hereto, having read this SOW *[YY-YY]* to Contract Number *[XXX-XXX-XXX]* in its entirety, do agree thereto in each and every particular.

Approved	**Approved**
[OFM]	*[Contractor]*
Signature	*Signature*
Print or Type Name	*Print or Type Name*
Title *Date*	*Title* *Date*

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Schedule C

MWBE Certification

(if applicable)

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