

Attachment B – Draft General Terms and Conditions

**Washington State
Administrative Office of the Courts
1206 Quince Street SE
PO Box 41170
Olympia, Washington 98504-1170**

**Exhibit A
GENERAL TERMS AND CONDITIONS
Personal Services Contract – PSC _____**

ACCESS TO DATA: In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to AOC, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED: No payment in advance or in anticipation of services to be provided under this contract shall be made by the AOC.

AMERICAN 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.

ANTI-TRUST ASSIGNMENT: The Contractor assigns to the AOC any and all claims for price fixing or overcharges, which arise under the anti-trust laws of the State of Washington, relating to goods, products, or services purchased under this contract.

CHANGES AND MODIFICATIONS: Any change or modification to this contract must be in writing and signed by both parties.

CONFLICT OF INTEREST: The AOC may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the AOC that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, the AOC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the AOC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

CONTRACT MANAGEMENT: The Contract manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract. Contract Managers' contact information is set forth in the main body of the contract called "Designated Contact." Invoices and bills should be sent to AOC, Financial Services whose address is set forth in the main body of the contract.

COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for commissions, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for purposes of securing business. The AOC shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

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

Time is of the essence in resolving disputes. 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 Business Days.

Then, both parties shall have three Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three Business Days, an objective and unbiased dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. The panel member must not be employed by the party nor have any type of affiliation through agency, retainer, or subcontracting with the party.

Within three Business Days of receipt of the initiating party's request, the responding party will designate a panel member. The panel member must not be employed by the party nor have any type of affiliation through agency, retainer, or subcontracting with the party. The two chosen panel members will appoint a third individual to the dispute resolution panel within the next three Business Days.

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.

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

Both parties agree to be bound by the determination of the dispute resolution panel.

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

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

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR or mediation method in addition to the dispute resolution procedure outlined above.

GOVERNING LAW: This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor by execution of this contract acknowledges the jurisdiction of the courts of the state of Washington in this matter.

INDEMNIFICATION: The Contractor shall defend, protect, and hold harmless the state of Washington, the AOC, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark or tradename through use or reproduction of material of any kind. Contractor shall be required to indemnify, defend, and hold harmless the AOC only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor, Contractor's agents, employees or subcontractors.

INDEPENDENT CAPACITY OF THE CONTRACTOR: The Contractor and his or her employees or agents performing under this contract are not employees or agents of AOC. The Contractor will not hold himself/herself out to be an officer or employee of AOC or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under chapter 28B.16 RCW or chapter 41.06 RCW or which would accrue to an employee of the Judicial Branch specifically exempted by chapter 41.06 RCW. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE: Prior to performing work under this agreement, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required by an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. Should the Contractor fail to secure industrial insurance or fail to pay premiums, as may be required under Title 51 RCW, the AOC may deduct the amount of premiums and any penalties owing from the amounts payable to the Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the AOC.

The AOC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any Subcontractor or employee of the

Contractor which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the AOC and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

LICENSING, ACCREDITATION AND REGISTRATION: The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this contract.

LIMITATION OF AUTHORITY: Only the Contracting Officer or the Contract Officer's delegates (delegation to be made in writing prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract on behalf of the AOC. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contracting Officer or his or her delegate.

NONASSIGNABILITY: Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

NONDISCRIMINATION: During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS: In the event of the 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, and the Contractor may be declared ineligible for further contracts with the AOC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

PERSONALITY RIGHTS: AOC must obtain the Contractor's prior approval before use of the Contractor's name, voice, signature, photograph or other likeness in conjunction with services provided under this Agreement and to videotape or audio record the presentation. Such approval shall not be unreasonably withheld.

PRIVACY PROTECTION: 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 agency or as provided by law. Contractor agrees to

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

The AOC reserves the right 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 AOC. Salting is the act of placing a record containing unique but false information into 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 AOC for any damages related to Contractor's sole unauthorized use of personal information.

PUBLICITY: The Contractor agrees to submit to the AOC all advertising and publicity matters relating to this contract in which AOC’s name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of AOC.

RECORDS, DOCUMENTS, AND REPORTS: The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other material relevant to this contract for six years after settlement, and make them available for inspection by persons authorized in this provision.

REGISTRATION WITH DEPARTMENT OF REVENUE: The Contractor shall complete registration with the State of Washington, Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION: The Contractor shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

RIGHTS IN DATA: The Contractor shall own all rights, title and interest in and to all materials developed and delivered under this contract. The Contractor grants to the AOC an irrevocable, royalty-free, perpetual license to copy, use, distribute, and modify all materials developed and delivered under this contract for the use and benefit of the judicial branch of the Washington State government. This license does not include the right to sub-license, sell or otherwise transfer the materials or any rights to the materials

to any other person or organization for any purpose without the express written authorization of the Contractor.

Materials provided by the AOC to the Contractor remain the sole property of the AOC and cannot be used by the Contractor for purposes beyond this contract without the express written authorization of the AOC.

SAFEGUARDING OF INFORMATION: The use or disclosure by the Contractor of any information obtained as a result of performance under this contract concerning the AOC or the Court for any purpose not directly connected with the administration of the AOC's, the Court's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the AOC or the Court.

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 AOC may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions. Under this scenario, Contractor shall have the right to bill and will be paid for completed deliverables as set forth in the Statement of Work.

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

SUBCONTRACTING: Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval from the AOC.

TERMINATION:

A. **Termination for Default:** The AOC may, by written notice, terminate this contract, in whole or in part, for failure of the Contractor to perform any of the obligations or provisions required by the contract. In the event of default, the Contractor shall be liable for damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience. Contractor shall be liable for any damages that results from termination of this contract due to failure to meet the deadlines and criteria in attached schedule B.

B. Termination for Convenience: Except as otherwise provided in this contract, either party may terminate this contract by providing written notice of such termination to the other specifying the effective date thereof, at least five (5) calendar days prior to such date. If this contract is so terminated, the AOC shall be liable only for payment for deliverables completed and accepted prior to the effective date of termination.

TERMINATION PROCEDURE: Upon termination of this contract, the AOC, in addition to any other rights provided in this contract, shall require the Contractor to deliver to the AOC any property specifically produced or acquired for the performance of such part of the contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AOC shall pay to the Contractor the agreed upon price for deliverables completed and accepted by the AOC (as defined in the Statement of Work Section of this contract), and the amount agreed upon by the Contractor and the AOC for (i) completed work and services for which no separate price is stated, (ii) other property or services which are accepted by the AOC, and (iii) the protection and preservation of property, unless the termination is for default, in which case the parties to this Contract shall mutually determine the extent of liability of the AOC.

The rights and remedies of the AOC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. After receipt of notice of termination, and except as otherwise directed by the AOC, the Contractor shall:

- A. Stop work under this contract on the date and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- C. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;
- D. Transfer title to the AOC and deliver in the manner, at the times, and to the extent directed by the AOC any property which, if the contract had been completed, would have been required to be furnished to the AOC;
- E. Complete performance of such part of work as shall not have been terminated by the AOC; and
- F. Take such actions as may be necessary, or as the AOC may direct, for the protection and preservation of the property related to this contract which is in possession of the Contractor and in which the AOC has or may acquire an interest.

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

Any property of the AOC furnished to the Contractor shall, unless otherwise provided herein or approved by the AOC, be used only for the performance of this contract. The Contractor shall be responsible for any loss or damage to property of the AOC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

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

The Contractor shall surrender to the AOC all property of the AOC prior to settlement upon completion, termination or cancellation of this contract.

WAIVER: Waiver of any default of any term or condition of this contract shall not be deemed to be a waiver of any other prior or subsequent default. Waiver of breach of any provision of the contract shall not be deemed a waiver of any other or subsequent breach and shall not be construed as a modification of the terms of this contract unless stated to be such in writing, signed by the both parties to this contract and attached to the original contract.

LIMITATIONS ON LIABILITY: The parties agree that neither the Contractor nor Purchaser 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 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 or any 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.

Neither the Contractor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or Purchaser. Such causes may include, but are not restricted to, acts of

God or of the public enemy, acts of a governmental body other than the Purchaser 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 the Contractor, Purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, the 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 the Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

DRAFT