



SERVICE CONTRACT
Child Care Time and Attendance

THIS CONTRACT is made and entered into by and between the State of Washington, acting by and through the Department of Children, Youth, and Families, a department of Washington State government (hereinafter referred to as "DCYF") and KinderSystems, Inc., a Corporation, and is licensed to conduct business in the state of Washington, (hereinafter referred to as "Contractor"), located at 101 State Place, Suite Q, Escondido CA 92029.

CONTRACTOR BUSINESS ADDRESS

KinderSystems, Inc.
101 State Place, Suite Q
Escondido CA 92029
TIN: 33-0719233
UBI: 603-460-354

CONTRACTOR CONTRACT MANAGER

Norbert Haupt
Executive Chairman
nhaupt@kindersystems.com
Phone: (760) 502-3763

DCYF ADDRESS

Department of Children, Youth, and Families
PO Box 40970
Olympia WA 98504-0970

DCYF PROGRAM CONTRACT MANAGER

Jeff Nelson
Project Manager
jeffery.nelson@dcyf.wa.gov
Phone: (360) 701-1271

THIS CONTRACT CONTRIBUTES TO THE FOLLOWING AGENCY GOALS:

- Support all early learning professionals with research-based professional development and resources.

THE PURPOSE OF THIS CONTRACT is to provide maintenance and support of the Child Care Time and Attendance System.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. CONTRACT MANAGEMENT

a. Contract Managers

- (1) The Contract Manager as shown on page 1 for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.
- (2) Each party shall provide the other party with written notice of any changes of the name and contact information regarding either party's designated Contract Manager. The written notice shall not be effective until fourteen business days from the date of mailing. The requirements contained in the Section titled Contractor Staff of exhibit D shall apply to this Section (Section 1.a).

b. Notices

- (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, properly addressed, and either emailed, delivered in person or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the addresses listed in Section 1.a.
- (2) Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four calendar days after mailing or emailing. The notice address as provided herein may be changed by written notice given as provided on page 1.

2. EXHIBITS AND ATTACHMENTS

Attached hereto and incorporated herein as though set forth in full are the following exhibits and attachments:

- Exhibit A - Statement of Work
- Exhibit B - Budget Report
- Exhibit C - Deliverables Report
- Exhibit D - General Terms and Conditions
- Attachment 1 - Confidentiality and Non-Disclosure Agreement
- Attachment 2 - Certification of Data Disposition
- Attachment 3 - Federal Certifications and Assurances

The parties agree that the exhibits and attachments listed in this paragraph shall be enforceable against the parties and are a part of this Contract.

3. STATEMENT OF WORK

The Contractor shall perform the activities and obligations as set forth and described in Exhibit A. The Contractor shall also furnish the necessary personnel, equipment material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work as set forth and described in Exhibit A. The Contractor shall provide the services, goods, products and activities at the costs set forth in this Contract.

4. PERIOD OF PERFORMANCE

The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later. The Contract must be completed on or before June 30, 2026. Performance on this Contract shall not begin before the effective date.

The term of this Contract may be extended by two (2) additional one (1) year term, PROVIDED: The extension shall be at the option of DCYF and shall be effected by DCYF giving written notice of its intent to extend the Contract to the Contractor and the Contractor accepting such extensions.

5. COMPENSATION

The cost of accomplishing the work described in this Contract shall not exceed \$1,615,068.00. Any additional authorized expenditures, for which reimbursement is sought, must be submitted as written documentation to the DCYF Contract Manager for pre-approval by the DCYF Secretary or the Secretary's delegate as described in this Contract, and established by a written Contract Amendment. Exhibit B is an actual budget of the costs associated with this Contract. If the Contractor reduces its prices for any of its services during the term of this Contract, DCYF shall receive the immediate benefit of such lower prices for services following the price reduction. Compensation for services will be paid upon the timely completion of services as described in Exhibit A and is contingent upon acceptance of relevant work products and approval of vouchers by DCYF as described in this Contract.

6. BILLING PROCEDURE

- a. The Contractor shall submit, not more than semi-monthly, properly completed A-19 vouchers (the "voucher") to one of the following:

The Department of Children, Youth, and Families
Attn: Jeff Nelson
PO Box 40970
Olympia WA 98504-0970

Or, email a scan of an original, signed A-19 voucher directly to the DCYF Contract Manager at jeffery.nelson@dcyf.wa.gov

- b. Payment to the Contractor for approved and completed work shall be made by warrant or Electronic Funds Transfer by DCYF and considered timely if made within 30 days of receipt of a properly completed voucher. Payment shall be sent to the address designated by the Contractor and set forth in this Contract.
- c. Each voucher must clearly reference the DCYF Contract Number and the Contractor's Statewide Payee Registration number assigned by the Office of Financial Management (OFM).
- d. Properly completed vouchers and attachments completed by the Contractor must contain the information described in Exhibit A under the Section titled "Compensation and Voucher Payment".
- e. For Statewide Payee Registration: OFM maintains a central contractor registration file for Washington State agencies to use for processing contractor payments. This allows many contractors to receive payments by direct deposit. The Contractor must be registered in the Statewide Payee Registration system, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>, prior to submitting a request for payment under this Contract. No payment shall be made until the Statewide Payee Registration is complete.
- f. Upon the expiration of this Contract, any claim for payment or voucher not already made shall be submitted to DCYF no later than forty-five (45) days following the expiration date of this Contract. In the event the Contractor does not provide to DCYF a claim for payment or voucher within forty-five (45) days following the expiration date of the Contract, DCYF shall have no obligation to pay such claim for payment or voucher even if the service or product has been delivered and/or accepted. The final voucher shall certify that the Contractor has completed all requirements of this Contract.

7. SIGNATURES

THIS CONTRACT, including the exhibits and attachments described in Section 2, is executed by the persons signing below who warrant they have read and understand this Contract, including the exhibits and attachments. The persons signing below further represent they have the authority to execute this Contract.

KinderSystems, Inc.

**DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES**

Signature

Signature

Name

Name

Title

Title

Date

Date



Exhibit A - Statement of Work

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1. Background

- a. Through RFP 16-1118 DEL/DCYF contracted with KinderSystems (then named Controltec) in September 2017 for a Childcare Time and Attendance solution. The system has been in production operation since spring of 2018. The original contract (#18-1117) expires on June 30, 2024.
- b. KinderSystems’ products are licensed under a Software-as-a-Service (SaaS) business model according to the size of the childcare subsidy organization, as determined by the number of active providers and children served in EAS. For Washington DCYF, the KinderSystems EAS product is currently used by 3,400 providers and 34,000 subsidized children in care. We confirmed these numbers based on data in the current production system.

2. Intent of these Services

- a. Contractor will do all things necessary for, or related to, the performance of the work in this Contract. Contractor will be responsible for, but are not limited to the following:
 - (1) Software-as-a-Service licenses for system users, approximately 3,400 users.
 - (a) KinderConnect – the provider portal where providers see general information, collect and manage attendance records, submit attendance and obtain general reports. This system is accessed by providers and DCYF management and staff.
 - (b) KinderSign – tablet application for attendance tracking. Used by providers and sponsors (parents and other authorized adults) to track attendance for children. In Washington, providers supply their own tablets. No tablets are supplied by KinderSystems, and no mobile device management (MDM) system is included.
 - (c) KinderSmart – smartphone mobile application used by sponsors to track attendance and absences using their private smartphones.
 - (d) Telephone IVR – provides the ability to support rural areas where there is no Internet access to allow parents to track attendance via touch-tone telephones.
 - (2) Maintenance and Support Services, including but not limited to the following:
 - (a) Project Management
 - i. Project management for estimates, change requests, upgrades, service orders and other general consulting as requested by the Agency
 - ii. Resolution of questions about application, features, use, reports, capabilities and functionality of the base system
 - iii. Virtual meetings, internal or external with the Agency regularly scheduled or ad-hoc meetings
 - iv. Site visits at the Agency, if requested or required

- v. Participation in round-table events that the Agency may hold with its constituents, including providers, unions, etc.
 - vi. Coordination of support activities in the event of escalations
 - vii. Maintenance and distribution of system documentation, change orders, or release notes
 - viii. Assistance with system configuration questions and issues brought forth by the Agency
- (b) Engineering
- i. Level 3 support when escalations occur, assisting project management and support staff if needed
 - ii. Software license maintenance for ongoing product use, which includes features and capabilities that may be added to the base system modules that may be of interest to the Agency
 - iii. Product upgrades and fixes if defects are found in other deployments that affect the State system
 - iv. Quality assurance services for any security patches, general patches, upgrades, or fixes, including regression testing as required
 - v. Fixes of reported software defects as identified internally or by the Agency, including design, implementation, testing and release notes
 - vi. Research and fixes related to any corrupt data incidents, ie, ingesting erroneous data from the State or one of its partners
 - vii. Monitoring and ongoing maintenance of live interfaces
 - viii. Backup and redundancy maintenance and testing
 - ix. Monitoring and support of specific client processes, including system user processes
 - x. Diagnostics, analysis, fixes, and deployment of system issues that arise (e.g., browser compatibility issues, interfaces, data integrity, etc.)
 - xi. Monitoring and integrity checking of database exports and general system ingest processes
 - xii. Static Code Analysis for security vulnerabilities on all code check-ins prior to deployment of new code to production
 - xiii. Remediation of security defects identified by KinderSystems or the State.
 - xiv. Data analysis when users report anomalies that cannot readily be duplicated and may not be the result of defects
 - xv. Review, analysis and estimating of change requests
 - xvi. Monitoring and agency assistance with interfaces and any ongoing processes
 - xvii. Emergency design, development, testing and patches for urgent tickets
 - xviii. Participation in group meetings, calls when requested and required of a specific engineering discipline
 - xix. General administration of code base, documentation, labeling, deployment maintenance, etc.
 - xx. Ongoing updates to ensure accessibility compliance with WCAG 2.1 AA standards.
- (c) System Administration
- i. Monitor system security, through our SIEM and other monitoring tools
 - ii. Yearly penetration testing using commercially available tools
 - iii. Manage hosted identities and governance

- iv. Manage scheduled and/or emergency maintenance
 - v. Manage hosted Active Directory objects and configuration
 - vi. Manage hosted resources (Virtual Machines, SQL instances, disks, content distribution network, network security groups, and firewall rules)
 - vii. Manage encryption key vault and associated keys, including yearly key rotation
 - viii. Manage hosted object storage
 - ix. Monitor Application Gateway/load balancing performance
 - x. Monitor environment using Azure Monitor & Log Analytics
 - xi. Monitor web servers for proper scaling (spinning of resources, up and down based on system load past and present)
 - xii. Deploy, configure, and maintain KinderSystems applications, their prerequisites and or any other associated components. Including but not limited to hotfixes, upgrades, and deployments manual or automated
 - xiii. Quarterly tests of backups
 - xiv. 365x24x7 On-call phone line and monitoring for system outages
 - xv. Monitor FedRAMP Moderate compliance through Azure Policy and other internal auditing processes
 - xvi. Review and update environment documentation as needed
 - xvii. Other tasks as required to maintain the daily operation of the hosted system
 - xviii. Licenses for mobile application security, using the AppDome security platform
- (d) Support, Documentation, Quality Control and Training
- i. Level-1 customer support for system users, including providers and sponsors, via email, phone, chat and online sessions
 - ii. Level-2 support for Agency assigned contact person, technical support, payment calculation questions, database issues and complex application issues
 - iii. Incident tracking, ticket tracking, monitoring and reporting to the Agency
 - iv. Post onboarding Training Survey for Providers and other users of the System
 - v. Monitoring and support for attendance tracking devices, if deployed
 - vi. Monitoring and support for provider software interfaces, if deployed
 - vii. Spanish language coverage upon request
 - viii. Agency staff training sessions, if requested by the Agency
 - ix. Review training curricula and training materials for users for accuracy and effectiveness if requested by the agency
 - x. Produce a monthly report on outstanding development tickets stemming from support tickets and their status.
 - xi. Regular SLA reporting as required by the contract
 - xii. Updated “in-app” Documentation, user guides, and electronic Quick Reference Cards for all end-users in both English and Spanish
 - xiii. Access for State users to the decision tree software used by support agents
 - xiv. Ongoing audits of support agent interactions with users of the system to ensure continuous improvement and quality standards are met

- xv. Change management and configuration tracking for KinderSystems resources
- (e) Comprehensive Disaster Recovery Services
 - i. Quarterly, bi-annual, or annual exercises as requested by DCYF.
 - ii. KinderSystems can independently execute exercises, or they can involve DCYF staff as well. (IE for validation purposes)
 - iii. Disaster Recovery Exercises can be simulated or actual Disaster Recovery failovers for at least 24 hrs.
 - iv. Ongoing monitoring of the Disaster Recovery solution, including automated notifications via email and to IT on-call line of delayed or failed replication.
 - v. Replication of production data across three different geographical regions.
 - vi. DCYF will receive a written report documenting the completion of all DR exercises, including any issues encountered.
 - vii. KinderSystems will post updates to KinderConnect splash screen messages to indicate upcoming DR drills.
 - viii. KinderSystems will proactively Monitor error logs, including KinderConnect, mobile applications, IVR, and interfaces, during and after the exercises.
 - ix. Ongoing updates to the disaster recovery methodology in alignment with emerging best practices.

3. Compensation and Voucher Payment

- a. Compensation is Deliverable based, Contractor will be paid the amount shown in Exhibit B Budget when each Deliverable is complete and accepted by DCYF.
- b. Budget for the duration of the contract term is set forth below.

Term	Monthly Costs	Annual Costs
July 1, 2024 - June 30, 2025	66,300.00	795,600.00
July 1, 2025 - June 30, 2026	68,289.00	819,468.00
July 1, 2026 - June 30, 2027	70,337.67	844,052.04
July 1, 2027 - June 30, 2028	72,447.80	869,373.60

- c. If DCYF decides to add KinderBridge during the term of the contract the monthly fees will be set at \$10,200.00.
- d. If DCYF is not satisfied with the performance of work, DCYF reserves the right to refuse to pay full compensation for the amount invoiced by Contractor.

4. Deliverables

- a. KinderSystems will submit an Annual RoadMap or report summarizing any functionality changes, additions, or improvements planned to the system for the upcoming year.
- b. When doing projects or system enhancements involving change for Washington State Users, KinderSystems will provide a regular monthly defect tracking report including errors, risks, bugs, defects, and help desk tickets during or post system enhancement to monitor system performance and reduce any risk and negative impact to user or DCYF.
- c. A monthly Issue Tracking report should be created and discussed with DCYF covering any potential issue, risk, and incident that negatively impacts the system or user. The format will be produced by KinderSystems and must be approved by DCYF.

- d. If there is a system failure or production issue in EAS: DCYF will receive an incident report within 24 business hours of resolution. An extension may be requested by KinderSystems.
- e. If there is a system failure or production stop issue in EAS: DCYF will receive scheduled updates from KinderSystems during the incident until resolution (Schedule TBD based on severity)
- f. In the event that DCYF needs to verify its data for accuracy, per request KinderSystems will provide a copy of its Database. The Database will only include tables. Functions, stored procedures, or views will not be included.
- g. Computer Systems, which DCYF retrieves data from regarding an individual's name or other personal identifiers requires the Agency to take meaningful steps to protect the privacy and security of the data. Policy in this area is growing, which in the future will include and encompass EAS.
- h. Multi Factor Authentication Systems is the current preference and tool used in the state of Washington to help safeguard data. Washington State has created and uses Secured Access Washington (SAW) as its multi factor authentication system for user access to most Washington State systems. Per Washington State computer policy, any new externally facing computer system must be constructed with the incorporation of SAW as its multi factor authentication for logging into and accessing the computer system.
 - (1) We will need KinderSystems collaboration in implementing SAW. The expectation is that KinderSystems work with DCYF in implementing SAW to Washington State policy requirements. KinderSystems will need to work with WA Tech and DCYF to integrate the SSO capability to SAW or the appropriate multi factor authentication system. KinderSystems will provide SAML and SCIM integration support to DCYF upon request.



Exhibit B - Budget Report

Any variances to the Payment Points allocated within this Budget must be pre-approved by the DCYF Contract Manager in writing. Failure to obtain pre-approval may result in non-payment of the unapproved expense.

State Fiscal Year 2025 (July 1 2024 - June 30 2025):

Payment Point	Qty Unit	Unit Cost	Budget Limit	Note
1. Support for FY24	12 Monthly	\$66,300.00	\$795,600.00	
2. Support for FY25	12 Monthly	\$68,289.00	\$819,468.00	
		Total:	\$1,615,068.00	

Contract Maximum: \$1,615,068.00

Contract Funding Source(s)

Federal Funds \$1,615,068.00

ALN #: 93.575



Exhibit C - Deliverables Report

State Fiscal Year 2025 (July 1 2024 - June 30 2025):

#	Deliverable Title, Due Note, Description	Due Date
1.00	Issue Tracking Report <i>Monthly</i> <i>KinderSystems will provide a Issue Tracking report covering any potential issue, risk, and incident that negatively impacts the system or user.</i>	No Date
2.00	Annual RoadMap <i>KinderSystems will submit an Annual RoadMap or report summarizing any functionality changes, additions, or improvements planned to the system for the upcoming year</i>	Jun 30, 2025
3.00	System Failure or Production Stop Issues <i>Within 24 hours of Resolution</i> <i>If there is a system failure or production issue in EAS: DCYF will receive an incident report within 24 business hours of resolution. An extension may be requested by KinderSystems.</i>	No Date

State Fiscal Year 2026 (July 1 2025 - June 30 2026):

#	Deliverable Title, Due Note, Description	Due Date
1.00	Issue Tracking Report <i>Monthly</i> <i>KinderSystems will provide a Issue Tracking report covering any potential issue, risk, and incident that negatively impacts the system or user.</i>	No Date
2.00	Annual RoadMap <i>KinderSystems will submit an Annual RoadMap or report summarizing any functionality changes, additions, or improvements planned to the system for the upcoming year</i>	Jun 30, 2026
3.00	System Failure or Production Stop Issues <i>Within 24 hours of Resolution</i> <i>If there is a system failure or production issue in EAS: DCYF will receive an incident report within 24 business hours of resolution. An extension may be requested by KinderSystems.</i>	No Date



Exhibit D - General Terms and Conditions

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1. DEFINITIONS

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

- a. **“CFR”** means the Code of Federal Regulations. All references in this Agreement and any Program Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation
- b. **“Confidential Information”** means information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal laws. Confidential Information includes, but is not limited to, Personal Information, agency source code or object code, and agency security data.
- c. **“Contract”** or **“Agreement”** means the entire written agreement between DCYF and the Contractor, including any Exhibit, attachments, documents, program agreement, materials incorporated by reference, and all amendments hereto. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this Contract shall be the same as delivery of an original.
- d. **“Contractor”** means one not employed by the department that is the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise state in this Contract. For purposes of any permitted Subcontract, “Contractor” includes any Subcontractor and its owners, members, officers, director, partners, employees, and/or agents.
- e. **“Converted Data”** means the data which has been successfully converted by the Contractor for processing by DCYF’s computer system.
- f. **“Data”** means DCYF’s records, files, forms, data, information and other documents in electronic or hard copy form, including but not limited to Converted Data.
- g. **“Debarment”** means an action taken by a State or Federal agency to exclude a person or business entity from participating in transactions involving certain federal or state funds.
- h. **“DCYF”** or **“Department”** means the Washington State Department of Children, Youth, and Families, including any division, section, office, unit or other entity thereof, or any of the officers or other officials lawfully representing DCYF.
- i. **“In-home Caregiver”** means an in-home child care provider that (1) provides regularly scheduled care for a child; (2) receives child care subsidies; and (3) is either licensed by the state or is exempt from licensing.
- j. **“Materials”** means all items in any format and includes, but is not limited to, Data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.
- k. **“Overpayment”** means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including the amounts in dispute.
- l. **“Personal Information”** means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, email addresses, credit card information, law enforcement records or other identifying numbers or Protected Health Information, any financial identifiers, and other information that may be exempt from disclosure under either chapter 42.56 RCW or other state and federal statutes.
- m. **“RCW”** means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
- n. **“Regulation”** means any federal, state, or local rule, rule, or ordinance.

- o. **“Sensitive Personal Information”** means personally identifying information of In-home Caregivers including, but not limited to: names, addresses, GPS [global positioning system] coordinates, telephone numbers, email addresses, social security numbers, driver’s license numbers, or other personally identifying information.
- p. **“Staff”** means the Contractor’s directors, officers, employees, and agents who provide goods or services pursuant to this Contract. “Staff” also means Subcontractors’ directors, officers, employees, and agents who provide goods or services on behalf of the Contractor. The term “Staff” also means the Subcontractors’ directors, officers, employees, and agents who provide goods or services on behalf of the Subcontractor and Contractor.
- q. **“Subcontract”** means a contract or contractual action entered into by the Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this Contract. The terms "subcontract" and "subcontracts" means subcontract(s) in any tier.
- r. **“Subcontractor”** means a person, partnership, company, or other entity that is not in the employment of or owned by Contractor and that is performing services under this Contract under a separate contract with or on behalf of the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- s. **“WAC”** means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
- t. **“USC”** means the United States Code. All references in this Agreement and any Program Agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

2. ADVANCE PAYMENTS PROHIBITED

No payments in advance or in anticipation of goods or services to be provided under this Contract shall be made by DCYF.

3. AMENDMENT

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. ASSIGNMENT

- a. **Assignment by Contractor.** With the prior written consent of DCYF’s Contract Administrator, which consent shall not be unreasonably withheld, the Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve the Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DCYF that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.
- b. **Assignment by DCYF.** DCYF may assign this Contract 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 DCYF of any of its duties and obligations hereunder.

5. ATTORNEY FEES

In the event of litigation or other action brought to enforce this Contract, each party agrees to bear its own attorney fees and costs.

6. CHOICE OF LAW AND VENUE

- a. This Contract shall be governed by the laws of the State of Washington without regard to the conflict of law rules of any jurisdiction. Every dispute concerning the interpretation or effect of this Contract and/or the use of the goods or services described in this Contract must be resolved in the federal or state courts located in Washington. The Contractor agrees to the exclusive personal jurisdiction, and subject matter jurisdiction of these courts. Thurston County shall be the venue of any litigation arising out of this Contract.
- b. The Contractor agrees that the United States Bankruptcy Court, Western District of Washington in Seattle, shall be the venue of any and all bankruptcy proceedings that may involve the Contractor.

7. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

- a. **Assurances.** The Contractor agrees that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules, and regulations, including but not limited to the Public Records Act (chapter 42.56 RCW), the Freedom of Information Act (5 U.S.C. 522) and the Records Retention Act (chapter 40.14 RCW).
- b. **Child Health, Safety, And Well Being And Child Abuse Or Neglect.** In the delivery of services under this Contract, children's health, safety, and well-being shall always be the primary concern of the Contractor. Contractors shall fully comply with the mandatory reporting requirements of RCW 26.44.030 pertaining to child abuse or neglect. In addition, pursuant this Contract, when the Contractor has reasonable cause to believe that a child has suffered abuse or neglect at the hands of any person, the Contractor shall immediately report such incident to Child Protective Services (CPS) Intake at 1-866-ENDHARM.
- c. **Civil Rights Laws**
 - (1) During the performance of this Contract the parties shall comply with all federal and state nondiscrimination laws including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. § 12101 et seq., the Americans with Disabilities Act (ADA).
 - (2) **Nondiscrimination Requirement.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
 - (3) **Obligation to Cooperate.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
 - (4) **Default.** Notwithstanding any provision to the contrary, DCYF may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until DCYF receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), DCYF may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- (5) **Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract 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, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. DCYF shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe DCYF for default under this provision.

d. **Conflict of Interest**

- (1) Notwithstanding any determination by the Executive Ethics Board or other tribunal, DCYF may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by DCYF 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.
- (2) In the event this Contract is terminated as provided above, DCYF 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 DCYF provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which DCYF makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

- e. **Licensing, Accreditation and Registration.** The Contractor and its Subcontractors shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this Contract.

- f. **Noncompliance with Laws, Regulations, or Policies.** The Contractor shall be responsible for and shall pay any fines, penalties, or disallowances imposed on the State or Contractor arising from any noncompliance with the laws, regulations, policies, guidelines and Collective Bargaining Agreements that affect the Services, goods, or Deliverables that are to be provided or that have been provided by Contractor, its Subcontractors or agents.

g. **Registration with Department of Revenue and Payment of Taxes**

The Contractor must pay all taxes including, but not limited to, sales and use taxes, Business and Occupation taxes, other taxes based on the Contractor's income or gross receipts, or personal property taxes levied or assessed on the Contractor's personal property. The 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.

8. CONTRACTOR STAFF

- a. Prior to the effective date of this Contract, the Contractor shall have provided to DCYF an organization chart of the Contractor's Staff, including the names and positions of Staff that will be performing services pursuant to this Contract. The Contractor shall also provide to DCYF job descriptions for the Staff performing services pursuant to this Contract.
- b. During the term of the Contract, DCYF reserves the right to approve or disapprove Contractor's and any Subcontractor's Staff assigned to this Contract, to approve or disapprove any proposed changes in Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by DCYF, subject to DCYF's compliance with applicable laws and regulations. Contractor shall provide DCYF with a resume of any member of its Staff or a Subcontractor's Staff assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.
- c. All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced. The Contractor shall provide DCYF with written notice of any Staff changes that the Contractor proposes. The written notice shall not be effective until fourteen (14) business days from the date of the mailing.

- d. Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor shall ensure that any transition to new Staff will not affect the schedule or provision of services set forth in this Contract. Contractor understands and agrees that DCYF does not assume liability for the actions of the Contractor's, the Contractor's Subcontractors, or the Contractor's agents. Contractor agrees that it has no right to indemnification or contribution from DCYF for any judgments rendered against Contractor, its Subcontractors or agents.
- e. Due to the confidential nature of the information and Materials which will be accessible to Contractor, DCYF shall have the right to conduct reference checks and background checks on the Contractor Staff to be used to provide the services and goods pursuant to this Contract. DCYF reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks, background checks, or additional sources of information. In addition, the Contractor shall conduct its own reference and background checks on Staff or their substitutes to be used to provide the services pursuant to this Contract, subject to Contractor providing to DCYF the questions asked during such checks and other information about the checks as requested by DCYF, and to those questions and this information satisfying DCYF's requirements. Contractor further agrees to cooperate fully with DCYF in completion of these requirements.

9. CONTINUED PERFORMANCE

If DCYF, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, DCYF may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five (5) business days) may, at DCYF's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

10. COPYRIGHT

- a. Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by DCYF. DCYF shall be considered the author of such Materials. In the event the Materials are not considered "works for hire," under the U.S. Copyright Laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to DCYF effective from the moment of creation of such Materials.
- b. For Materials that are delivered under the Contract, but that incorporate preexisting materials not produced under the Contract, Contractor hereby grants to DCYF a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to DCYF.
- c. The Contractor shall exert all reasonable effort to advise DCYF, at the time of delivery of Data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. DCYF shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Data delivered under this Contract. DCYF shall have the right to modify or remove any restrictive markings placed upon the Data by the Contractor.

11. DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION

- a. **Scope of Protection.** This Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION) applies to Data, information, or Materials related to the subject matter of this Contract which is received, created, developed, revised, modified, or amended by DCYF, the Contractor, or Subcontractors. Such Data, information, and Materials shall include but is not limited to all Confidential Information and Sensitive Personal Information of In-home Caregivers.
- b. **Use of Confidential Information and Sensitive Personal Information**

- (1) For Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information that is collected, used, or acquired in connection with this Contract the parties shall comply with the following:
 - (a) All federal and state laws and regulations, as currently enacted or revised, regarding the protection, security, and electronic interchange of Sensitive Personal Information of In-home Caregivers, data, and Confidential Information; and
 - (b) All federal and state laws and regulations, as currently enacted or revised, regarding the use, disclosure, modification or loss of Sensitive Personal Information of In-home Caregivers, data, and Confidential Information.
- (2) DCYF does not warrant or guarantee the accuracy of the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information provided pursuant to this Contract. The Contractor understands all the risks and liabilities of the use and misuse of the information provided pursuant to this Contract.

c. Protection of Sensitive Personal Information

- (1) The Contractor agrees to protect the confidentiality of Sensitive Personal Information of In-home Caregivers.
- (2) The Contractor further understands and agrees that Sensitive Personal Information of In-home Caregivers may only be released or disclosed if required by this Contract, or a lawfully issued court order. The Contractor further understands and agrees that before the Contractor can release the Sensitive Personal Information of In-home Caregivers pursuant to a third party request, or for any other reason, the Contractor must comply with all the requirements, including notice requirements, contained in this Section (Protection of Sensitive Personal Information).
- (3) **Notice of Third Party Request and Intended Disclosure**
 - (a) **Written Notice Required.** If a third party requestor seeks from the Contractor the Sensitive Personal Information of an In-home Caregiver, or the Contractor intends to release or disclose the Sensitive Personal Information of an In-home Caregiver for any other reason not related to a third party request, the Contractor shall give notice to DCYF of such request and/or the Contractor's intent to release or disclose such information.
 - (b) **Notice Deadline: Third Party Request.** The notice required under this Section (Notice of Third Party Request and Intended Disclosure) shall be provided to DCYF's program contact within five (5) calendar days from the date of the request, to allow DCYF to seek a protective order from the proper tribunal.
 - (c) **Notice Deadline: Disclosure for any Other Reason.** If the Contractor intends to release or disclose the Sensitive Personal Information of an In-home Caregiver for a reason that is unrelated to a particular third party request, the Contractor shall provide written notice to DCYF no less than twenty-one (21) calendar days prior to the intended release date.
 - (d) **Basis for Disclosure.** The Contractor understands and agrees that it will not release the Sensitive Personal Information of an In-home Caregiver without the express written consent from DCYF, or a lawfully issued court order in which DCYF has been given an opportunity to oppose prior to entry of the order.
- (4) If the Contractor is required by this Contract to release or disclose the Sensitive Personal Information of an In-home Caregiver(s), prior to such release or disclosure the Contractor must obtain from the recipient of such Sensitive Personal Information a signed Statement of Confidentiality and Non-Disclosure Agreement consistent with Attachment 1 to this Contract.
- (5) The Contractor understands and agrees that before the Contractor releases or discloses, pursuant to the terms of this Contract, the Sensitive Personal Information of In-home Caregivers to a subcontractor, the Contractor must obtain prior written approval from DCYF agreeing to such disclosure.

d. Information Technology Security Standards

- (1) The Contractor and its Staff and the Subcontractors and their Staff shall comply with the following:
 - (a) All security standards, practices, and procedures which are equal to or exceed those of the DCYF (which security standards, practices, and procedures of DCYF shall have been provided to Contractor in writing); and
 - (b) The Washington State Office of the Chief Information Officer IT Standards.
- (2) The parties agree to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent the unauthorized access, use, or disclosure of Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information. The Contractor shall make the Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information available to amend as directed by DCYF and incorporate any amendments into all the copies maintained by the Contractor or their Subcontractors.

e. Confidentiality Protection

To safeguard the confidentiality of all Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information, and in addition to the requirements contained in this Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION) the Contractor must:

- (1) Ensure that the Contractor's Staff, Subcontractors, and the Subcontractors' Staff use Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information solely for the purposes of accomplishing the services set forth in this Contract. The term "Staff" shall have the same meaning as set forth in Section (DEFINITIONS).
- (2) Limit access to Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information to the Contractor's Staff and Subcontractors' Staff requiring access for performance of their assigned duties.
- (3) Require that the Contractor's Staff and Subcontractors' Staff having access to Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information sign a Statement of Confidentiality and Non-Disclosure Agreement consistent with Attachment 1. Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information shall not be released to the Contractor's Staff person(s) or Subcontractors' Staff person(s) until the following conditions have been met:
 - (a) DCYF approves the Contractor's Staff person, or Subcontractor's Staff person, to work on this Contract; and
 - (b) DCYF must receive the signed original Statement of Confidentiality and Non-Disclosure Agreement, signed by the Staff person, from the Contractor or Subcontractor.
- (4) Notify its Staff person(s) and ensure its Subcontractors notify the Subcontractors' Staff person(s) of the requirements of Section (COMPLIANCE WITH LAWS, RULES AND REGULATIONS), and this Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION).
- (5) Ensure that Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information is not released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of the individual named or as otherwise authorized by law.
- (6) Ensure that Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information is protected from loss and from unauthorized physical or electronic access.

- (7) Ensure that the input of user identifications and passwords are necessary and required before the Contractor, the Contractor's Staff, or Subcontractor's Staff can access electronically stored Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information.
- (8) Destroy all Sensitive Personal Information of In-home Caregivers, Data, and Confidential Information so that it cannot be accessed by unauthorized individuals and cannot be recovered when the information is no longer required or used for providing services under this Contract, and retention is no longer required by the Records Retention Act (chapter 40.14 RCW) or Section (RECORD MAINTENANCE), whichever is longer. Unless the Washington State Office of the Chief Information Officer IT Standards require a different method for the destruction of Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information, the information required to be destroyed under this Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION) must be destroyed as follows:
 - (a) For paper documents containing Data, but not Sensitive Personal Information of In-home Caregivers or Confidential Information, a contract with a paper shredding firm is acceptable, provided the contract ensures that the confidentiality of the Data will be protected. Such documents may also be destroyed by on-site shredding, pulping, or incineration.
 - (b) For paper documents containing Sensitive Personal Information of In-home Caregivers, or Confidential Information, requiring special handling (e.g. Protected Client Information) the documents must be destroyed by on-site shredding, pulping, or incineration.
 - (c) If Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information has been contained on optical discs (e.g. CDs or DVDs), the Contractor shall either destroy by incineration the disc(s), shredding the discs, or completely deface the readable surface with a coarse abrasive.
 - (d) If Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information has been stored on magnetic tape(s), the Contractor shall destroy the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information by degaussing, incinerating or crosscut shredding.
 - (e) If Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information has been stored on server or workstation data hard drives or similar media, the Contractor shall destroy the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information by using a "wipe" utility which will overwrite the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information, cannot be reconstructed, or physically destroying disk(s).
 - (f) If Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information has been stored on removable media (e.g. floppies, USB flash drives, portable hard disks, or similar disks), the recipient shall destroy the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information by using a "wipe" utility which will overwrite the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the Sensitive Personal Information of In-home Caregivers, Data, or Confidential Information cannot be reconstructed, or physically destroying disk(s).
- (9) Ensure that within fifteen (15) calendar days after the completion of the requirements contained in Section (Confidentiality Protection) the Contractor shall complete and deliver to DCYF a signed Certification of Data Disposition (Attachment 2).

- (10) Ensure that paper records are protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
- (11) Shall immediately notify DCYF after becoming aware of any potential, suspected, attempted or actual breaches of security including, but not limited to, unauthorized access, use or disclosure, and compromised Data, or compromised login IDs or passwords. The Contractor shall take all necessary steps to mitigate the harmful effects of such breach of security. The Contractor agrees to defend, protect and hold harmless DCYF for any damages related to a breach of security by their officers, directors, employees, Subcontractors or agents. Immediately after becoming aware of a suspected, attempted, or actual breach the Contractor must contact the DCYF Contract Manager and DCYF's Help Desk at (360) 407-1960 or dcyf.servicedesk@dcyf.wa.gov.

f. Confidentiality Breach

- (1) In the event of a breach by the Contractor of this Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION) and in addition to all other rights and remedies available to DCYF, DCYF may elect to do any of the following:
 - (a) Terminate the Contract;
 - (b) Require that the Contractor return all Sensitive Personal Information of In-home Caregivers and Confidential Information to DCYF that was previously provided to the Contractor by DCYF;
 - (c) Require that the Contractor destroy all Sensitive Personal Information of In-home Caregivers and Confidential Information so it cannot be accessed by unauthorized individuals and cannot be recovered; or
 - (d) Suspend the Contractor's on-line access to accounts and other information.

g. Method of Transfer

- (1) All Data transfers to or from the Contractor shall be made by using an approved solution that meets agency and state IT security standards.
- (2) Approved options include:
 - (a) MFT service provide Washington Technology Solutions (WaTech)
 - (b) The DCYF instance of Box.com
- (3) Any information containing sensitive data elements must be encrypted and password protected using a tool such as WinZip, 7zip, or something similar.
- (4) An account is required to access either of the above solutions, you will need to make a request by contacting the contract contact listed on the cover page of this Agreement.
- (5) Any other solutions must be approved by the DCYF Information Security Office. To obtain approval, contact the contract contact listed on the first page of this Agreement. Request must include the name of the solution, as well as, any information to help in the approval process.

h. Public Disclosure

- (1) Either party to this Contract may designate certain Confidential Information as "Confidential Information/Notice Requested." This designation shall be made by clearly stamping, watermarking, or otherwise marking each page of the Confidential Information. The party who owns the Data is responsible for informing the other party what it considers Confidential Information.

- (2) If a third party requestor seeks information that has been marked "Confidential Information/Notice Requested," notice shall be given to the marking party prior to release of the information. Such notice shall be provided to the program contact no less than five (5) business days prior to the date of the disclosure, to allow the party objecting to disclosure to seek a protective order from the proper tribunal.

i. **Access to Data**

- (1) In compliance with RCW 39.26.180, the Contractor shall provide access to Data generated under this Contract to DCYF, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes, but is not limited to, access to all information that supports the findings, conclusions and recommendations of the Contractor's reports, including computer models and methodology for those models.

12. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or that of its Subcontractors.

13. DISPUTES

- a. Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a Dispute Resolution Board ("DRB").
- b. A request for a DRB must:
 - (1) Be in writing;
 - (2) State the disputed issues;
 - (3) State the relative positions of the parties;
 - (4) State the Contractor's name, address, and contact telephone number; and
 - (5) Be mailed to the other party's (respondent's) Contract Manager after the parties agree that they cannot resolve the dispute.
- c. The respondent shall mail a written answer to the requester's Contract Manager within ten (10) business days of the receipt of the request for a DRB.
- d. Once a party requests a DRB, each party shall designate a representative. The representatives shall mutually select a third member. The DRB shall evaluate the facts, Contract terms and applicable statutes and rules and make a determination by majority vote. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding concerning the Contract. The parties agree that the DRB shall precede any action in a judicial or quasi-judicial tribunal.

14. DUPLICATE PAYMENT

DCYF shall not pay the Contractor if the Contractor has charged or will charge the State of Washington, or any other party under any other contract or agreement, for the same services or expenses.

15. ENTIRE CONTRACT

This Contract, including all referenced exhibits and attachments, contains all the terms and conditions agreed upon by the parties. No other understanding, written, oral, or otherwise regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

16. EXPENSES

All expenses not provided for specifically in this Contract shall be the responsibility of the Contractor unless otherwise mutually agreed upon by the parties.

17. FEDERAL FUNDING REQUIREMENTS

If this Contract is funded, in whole or in part, with federal funds, the Contractor makes the assurances and certifications and agrees to the terms and conditions contained in Attachment 3.

18. FUNDING CONTINGENCY

- a. 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 completion of the work in this Contract, DCYF may:
 - (1) Terminate this Contract with ten (10) days advance notice. If this Contract is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination;
 - (2) Renegotiate the terms of the Contract under the new funding limitations and conditions;
 - (3) After a review of project expenditures and deliverable status, extend the end date of this Contract and postpone deliverables or portions of deliverables; or
 - (4) Pursue such other alternatives as the parties mutually agree to in writing.
- b. Any termination under this Section (FUNDING CONTINGENCY) shall be considered a Termination for Convenience.

19. INDEMNIFICATION

- a. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.
- b. Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform under the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.
- c. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

20. HEADINGS

The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

21. INDEPENDENT CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of DCYF. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of DCYF 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 such employee under law. Conduct and control of the work will be solely with the Contractor.

22. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW (Industrial Insurance). If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, DCYF may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DCYF may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DCYF under this Contract, and DCYF may also transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's right to collect from the Contractor.

23. LIMITATION OF AUTHORITY

Only the Contractor's agent or agent's delegate by writing (delegation to be made prior to action) and DCYF's agent or agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. 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 agents for both parties.

24. INSURANCE

- a. **Insurance Required.** Prior to commencement of any activity under this Contract, Contractor, at Contractor's sole expense, shall obtain and maintain in full force and effect during the term of this Contract and during any other period during which Contractor is acting pursuant to this Contract the insurance coverages set forth herein on Contractor's operations and activities. The failure to purchase, maintain, and provide evidence of the required insurance shall constitute material default.
- b. **Eligible Insurance Companies.** 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.
- c. **Failure to Purchase and Maintain Insurance.** If Contractor fails to buy and maintain the insurance coverage described in this Section (INSURANCE), DCYF may terminate this Contract under Section (TERMINATION FOR CAUSE). The intent of the required insurance is to protect DCYF should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractors, or agents of either, while performing under the terms of this Contract.
- d. **Evidence of Insurance Coverage.** Contractor shall furnish to DCYF copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's effective date, and copies of renewal certificates and endorsements of all required insurance within thirty (30) calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section (INSURANCE). Failure to provide these documents shall be grounds for immediate termination or suspension of this Contract by DCYF for material breach under Section (TERMINATION FOR CAUSE). The insurance and policies described in this Section (INSURANCE).
- e. **Advance Notice of Revocation.** Such policies 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 DCYF by the insurer.
- f. **Cancellation.** 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 DCYF within one (1) business day of Contractor's receipt of such notice from the insurance provider.
- g. **Additional Insured.** With the exception of the Professional Liability, Automobile Liability, and Workers Compensation coverages, the State of Washington, DCYF, its elected and appointed officials, agents and employees shall be named as an Additional Insured and Contractor shall provide a copy of the policy endorsement(s) designating such entities and persons as an additional named insured.

- h. **Primary Insurance.** All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State of Washington and shall include a severability of interests (cross-liability) provision. This provision means all insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.
- i. **Subcontractors.** Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Contractor shall ensure that all Subcontractors have and maintain insurance with the same types and limits of coverage as required of Contractor under the Contract and shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each Subcontractor as evidence that each Subcontractor maintains insurance as required by the Contract. 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.
- j. **Contractor's Liability.** By requiring insurance, the State and DCYF do not represent that the coverage and limits specified will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the terms and conditions of this Contract.
- k. **Premiums.** Premiums for all insurance policies provided for by this Contract shall be paid by Contractor or its Subcontractors.
- l. **Employees and Volunteers.** Insurance required of Contractor under the Contract shall include coverage for the acts and omissions of Contractor's employees, agents, and volunteers.
- m. **Insurance Description and Limits.** The minimum acceptable insurance and limits shall be as indicated below with no deductible as indicated below:

(1) **Commercial General Liability Insurance**

The Contractor shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than two million dollars (\$2,000,000.00) per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain a separation of insureds (cross liability) condition.

(2) **Business Automobile Liability Insurance**

The Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit of not less than one million dollars (\$1,000,000.00) per accident. Such insurance shall cover liability (bodily injury and property damage) arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

(3) **Employer's Liability ("Stop Gap") Insurance**

The Contractor shall maintain employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than one million dollars (\$1,000,000.00) each accident for bodily injury by accident or one million dollars (\$1,000,000.00) each employee for bodily injury by disease.

(4) **Property Insurance**

The Contractor shall maintain "All-Risk" property insurance including coverage for Earthquake and Flood for all locations where State of Washington Data is held. This coverage shall include all Computer Property. This insurance shall also include coverage for Business Interruption and Extra Expense that extends to the loss of Computer Property. Limits shall be declared and subject to review and approval by the state of Washington.

(5) **Crime Insurance**

The Contractor shall maintain crime coverage of not less than one million dollars (\$1,000,000.00) single limit per occurrence and not less than two million dollars (\$2,000,000.00) in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Robbery; Safe Burglary; Forgery or Alteration; Money and Securities; Employee Dishonesty and Theft; Computer and Electronic transmission Fraud; and Theft; Disappearance and Destruction of Property. Crime Coverage shall include coverage for Contractor employees working at DCYF locations.

(6) **Umbrella Insurance**

The Contractor shall maintain an umbrella policy providing excess limits over the primary policies described herein, in an amount not less than 3 million dollars (\$3,000,000.00).

(7) **Cyber-Liability Insurance**

Contractor shall maintain in force during the term an insurance policy that includes cyber-liability coverage. Such policy shall have a deductible not to exceed ten thousand dollars (\$10,000.00) and coverage of not less than one million dollars (\$1,000,000.00) single limit per occurrence and two million dollars (\$2,000,000.00) in the aggregate, which shall at a minimum cover breach response cost, regulatory fines and penalties, and other liabilities and costs, and that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including but not limited to information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alternation of electronic information, extortion and network security, unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract,

(8) **Professional Liability (Errors and Omissions) Insurance**

The Contractor shall maintain professional liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per claim with a two million dollars (\$2,000,000.00) aggregate. The Contractor shall continue such coverage for at least five (5) years beyond the expiration or termination of this Contract. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

25. MONITORING

- a. DCYF has the right to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide a right of access to its facilities to DCYF, personnel authorized by DCYF, 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.
- b. Monitoring activities may include, but not be limited to:
 - (1) Review of the deliverables and other requirements listed in Exhibit A.
 - (2) Site visits to review records, observe implementation of services or follow up on compliance issues. These visits may be unannounced.
 - (3) Intensive program reviews, including intensive on-site program reviews. The off-site and on-site program reviews may include, but not be limited to, review of the following:
 - (a) Contractor's compliance with Section (COMPLIANCE WITH LAWS, RULES AND REGULATIONS);
 - (b) Contractor's compliance with Section (DATA SHARE AND PROTECTION OF CONFIDENTIAL INFORMATION AND SENSITIVE PERSONAL INFORMATION);

- (4) On-site program reviews and site visit records reviews must be scheduled in advance with the Contractor.

26. NEUTRAL AUTHORSHIP

Each of the provisions of this Contract has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Contract in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Contract.

27. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Contract, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable State of Washington statutes, regulations, and policies
- b. The Contract terms and conditions (pages 1 thru 4)
- c. Exhibit D (General Terms and Conditions)
- d. Exhibit A (Statement of Work)
- e. Exhibit C (Deliverables)
- f. Exhibit B (Budget)
- g. Attachment 1 (Statement of Confidentiality and Non-Disclosure Agreement)
- h. Attachment 2 (Certification of Data Disposition)
- i. Attachment 3 (Federal Certifications and Assurances)

28. OVERPAYMENT

- a. Contractor shall promptly, but in all cases within thirty (30) Days, pay to DCYF the full amount of any erroneous payment or overpayment (a) upon Notice of an erroneous payment or overpayment to which Contractor is not entitled with supporting documentation to substantiate such erroneous payment or overpayment and the grounds for DCYF's determination of such erroneous payment or overpayment or (b) when any such erroneous payment or overpayment is otherwise discovered by Contractor.
- b. In addition to the requirements contained in this Section (OVERPAYMENT), the Contractor agrees that DCYF may also recover overpayments made to the Contractor by deducting amounts owed to the Contractor. DCYF must provide written notice to the Contractor if it elects to recover overpayments by deducting amounts owed to the Contractor.

29. PUBLICITY

- a. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by DCYF and shall not be so construed by Contractor in any advertising or publicity materials.
- b. The Contractor agrees to submit to DCYF all advertising and publicity matters relating to this Contract in which the State of Washington or DCYF's name, state seal or logo is mentioned or used or language is used from which a connection with the State of Washington or DCYF may, in DCYF's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of DCYF.
- c. All publications funded, in whole or in part, under this Contract will use DCYF logo and will acknowledge credit as either providing "funding in partnership with" or "funded by" DCYF. The full-color or black-and-white DCYF logo, provided by DCYF Contract Manager, shall appear in its entirety, without modification.

30. RECAPTURE

- a. In the event that the Contractor fails to expend funds under this contract in accordance with state laws and/or the provisions of this Contract, DCYF reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.
- b. Such right of recapture shall exist for a period not to exceed six (6) years following Contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within thirty (30) days of demand. In the event that DCYF is required to institute legal proceedings to enforce the recapture provision, DCYF shall be entitled to its costs thereof.

31. RECORDS MAINTENANCE

- a. The Contractor shall maintain all books, records, documents, Data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including Materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by DCYF, personnel duly authorized by DCYF, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.
- b. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

32. REMEDIES

Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

33. SEVERABILITY

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

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

34. SITE SECURITY

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

35. SUBCONTRACTING

- a. **Subcontractor Approval by DCYF.** 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 DCYF.
- b. **Subcontract Terms and Conditions.** The Contractor must ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. The Contractor shall forward to DCYF upon request, copies of all subcontracts and other materials pertaining to any and all subcontracts.

- c. **Performance.** Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to DCYF for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts shall be made in writing. Any failure of the Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations under this Contract.
- d. **Direct Agreements.** Upon expiration or termination of this Contract for any reason, DCYF and/or the State will have the right to enter into direct contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct contracts with DCYF.

36. TERMINATION FOR CAUSE

- a. In the event DCYF determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, DCYF has the right to suspend or terminate this Contract. DCYF shall notify the Contractor in writing of the need to take corrective action. If appropriate corrective action is not taken within thirty (30) days, the Contract may be terminated.
- b. DCYF reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by DCYF to terminate the Contract.
- c. In the event of termination, 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. The termination shall be deemed to be a "Termination for Convenience" if it is determined that: (1) the Contractor was not in default; or (2) failure to perform was outside of Contractor's control, fault or negligence. The rights and remedies of DCYF provided in this Section (TERMINATION FOR CAUSE) shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- d. A filing for bankruptcy by Contractor will be deemed a material breach and may result in immediate termination of this Contract.
- e. Section titled TERMINATION FOR CAUSE, sub-section a. shall not apply to conduct in the performance of this Contract by the Contractor or sub-contractor(s) that involves child abuse or neglect. In the event DCYF has reason to believe that in the performance of this Contract the Contractor or its sub-contractors cause a child to be abused or neglected as defined in chapter 26.44 RCW, DCYF may immediately suspend or terminate this Contract. DCYF may elect to notify the Contractor in writing of the need to take corrective action before the Contract is suspended or terminated by DCYF.

37. TERMINATION FOR CONVENIENCE

DCYF may terminate this Contract in whole or in part when it is in the best interest of DCYF by giving the Contractor at least thirty (30) calendar days' written notice. If this Contract is so terminated, DCYF shall be liable only for payment required under the terms of this Contract for services received and accepted, or goods delivered and accepted, prior to the effective date of termination.

38. TERMINATION PROCEDURE

- a. Upon termination of this Contract the DCYF, in addition to any other rights provided in this Contract, may require the Contractor to deliver to DCYF any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of Section (TREATMENT OF ASSETS) shall apply in such property transfer.

- b. DCYF shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) accepted by DCYF, and the amount agreed upon by the Contractor and DCYF for (i) completed work and service(s) for which no separate price is stated, (ii) partially completed work and service(s), (iii) other property or services which are accepted by DCYF, and (iv) the protection and preservation of property, unless the termination is for default, in which case DCYF and Contractor may agree to the extent of the liability of DCYF. Failure to agree to the extent of the liability shall be a dispute within the meaning of Section (DISPUTES) of this Contract. DCYF may withhold from any amounts due the Contractor such sum as DCYF determines to be necessary to protect DCYF against potential loss or liability.
- c. The rights and remedies of DCYF provided in this Section (TERMINATION PROCEDURE) shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- d. After receipt of a notice of termination, and except as otherwise directed by DCYF, the Contractor shall:
 - (1) Stop work under the contract on the date, and to the extent specified, in the notice;
 - (2) 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;
 - (3) Assign to DCYF, in the manner, at the times, and to the extent directed by DCYF, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case DCYF has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (4) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DCYF to the extent DCYF may require, which approval or ratification shall be final for all the purposes of this clause;
 - (5) Transfer title to DCYF and deliver in the manner, at the times, and to the extent directed by this Contract or by DCYF any property which, if the contract had been completed, would have been required to be furnished to DCYF;
 - (6) Complete performance of such part of the work as shall not have been terminated by DCYF; and
 - (7) Take such action as may be necessary, or as DCYF may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which DCYF has or may acquire an interest.

39. TREATMENT OF ASSETS

- a. Title to all property furnished by DCYF shall remain in DCYF. 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 DCYF 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 DCYF 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 DCYF in whole or in part, whichever first occurs.
- b. Any property of DCYF furnished to the Contractor shall, unless otherwise provided herein or approved by DCYF, be used only for the performance of this Contract.
- c. The Contractor shall be responsible for any loss or damage to property of DCYF 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.
- d. If any property of DCYF is lost, destroyed or damaged, the Contractor shall immediately notify DCYF and shall take all reasonable steps to protect the property from further damage.
- e. The Contractor shall surrender to DCYF all property of DCYF prior to settlement upon completion, termination or cancellation of this contract.

- f. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

40. WAIVER

A failure by either party to exercise its rights under this Contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by personnel authorized to bind each of the parties.

41. CONTRACTOR REPRESENTATIONS AND WARRANTIES

Contractor makes each of the following representations and warranties as of the effective date of this Contract:

- a. **Qualified to do Business.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- b. **Suspension & Debarment.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- c. **Quality of Goods or Services.** Contractor represents and warrants that any goods and/or services sold pursuant to this Contract shall be merchantable, shall conform to this Contract, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to DCYF) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in DCYF's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- d. **Wage Violations.** Contractor represents and warrants that, during the term of this Contract and the three (3) year period immediately preceding the effective date of this Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52. For purposes of this Subsection (Wage Violations) and pursuant to RCW 49.48.082, "willful" shall mean a knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2).
- e. **Pay Equality.** Contractor represents and warrants that, as required by Washington state law (Laws of 2019, Chap. 415, §225(4)(f)), during the term of this Contract the Contractor agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals.
 - (1) For purposes of this Subsection (Pay Equality), employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
 - (2) For purposes of this Subsection (Pay Equality), the Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

- (a) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (b) A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.
- (3) Notwithstanding any provision to the contrary, upon breach of this pay equality warranty (Subsection Pay Equality) and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, DCYF may suspend or terminate this Contract.
- f. **Procurement Ethics & Prohibition on Gifts.** Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasers' employees.
 - g. **Sensitive Personal Information of In-home Caregivers.** Contractor represents and warrants that, as required by state law (RCW 42.56.640, RCW 42.56.645, and RCW 43.17.410), it agrees to fully comply with all applicable non-disclosure requirements that pertain to the Sensitive Personal Information of In-home Caregivers.

42. WITHHOLDING PAYMENTS

DCYF may withhold payment to the Contractor for any services/deliverables not performed as required hereunder until such time as the Contractor modifies or delivers services/deliverables to the satisfaction of DCYF.



Attachment 1 - Confidentiality and Non-Disclosure Agreement

STATEMENT OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

The Department of Children, Youth, and Families

And

KinderSystems, Inc.

I. Recitals

- 1.1 Pursuant to Department of Children, Youth, and Families (the "DCYF") Contract Number 25-1008, attached hereto KinderSystems, Inc. (the "Contractor") has agreed to provide maintenance and support of the Child Care Time and Attendance System..
- 1.2 During the course of providing such services the Contractor and its employees, agents, and subcontractors will have access to confidential or personal information owned by the DCYF relating to DCYF Contact Number 25-1008 which may be protected from disclosure under the Public Records Act (chapter 42.56 RCW), the Freedom of Information Act (5 U.S.C. 522), or other state or federal statutes.

II. Definition of Confidential or Personal Information

- 2.1 "Confidential Information" or "Data" means information that may be exempt from disclosure under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, personal information, agency source code or object code, and agency security data.
- 2.2 "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, e-mail addresses, credit card information, law enforcement records or other identifying numbers or Protected Health Information, any financial identifiers, and other information that may be exempt from disclosure under either chapter 42.56 RCW or other state and federal statutes.

III. Terms of Agreement

- 3.1 As an employee, agent, or subcontractor of the Contractor I have access to information or data described and contained DCYF Contract Number 25-1008. This information may be confidential information or data, and I understand that I am responsible for maintaining this confidentiality. I understand that the information may only be used for the purposes of the work described in DCYF Contract Number 25-1008.
- 3.2 I understand that before I am allowed access to information and data that is described and/or contained in DCYF Contract Number 25-1008, I must sign and agree to the following:
 - (A) I have been informed and understand that information provided under DCYF Contract Number 25-1008 may be confidential information or data and may not be disclosed to unauthorized persons. I agree not to divulge, transfer, sell, or otherwise make known to unauthorized persons any information described or contained in DCYF Contract Number 25-1008.
 - (B) I also understand that I am not to access or use the information that is provided under DCYF Contract Number 25-1008 for my own personal information, but only to the extent necessary and for the purpose of performing my assigned duties as an employee of the Contractor under this Agreement. I understand that a breach of this confidentiality will be grounds for disciplinary action which may also include termination of my employment and other legal action.

(C) I agree to abide by all Federal and state laws and regulations regarding confidentiality and disclosure of the information in DCYF Contract Number 25-1008.

By signing this Agreement, the undersigned agree to this Agreement being effective as of the last signing date noted below.

Contractor Name:

Signature: _____

Print Full Name: _____

Job Title: _____

Date: _____

Signature: _____

Print Full Name: _____

Job Title: _____

Date: _____

Signature: _____

Print Full Name: _____

Job Title: _____

Date: _____

Signature: _____

Print Full Name: _____

Job Title: _____

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Employee/Sub-Contractor/Agent Name:

Signature: _____

Print Full Name: _____

Job Title: _____

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(The number of signature lines can be deleted and copied to meet your needs).



Attachment 2 - Certification of Data Disposition

Date of Data Disposition _____

I. Data Disposition Requirements

Unless the Washington State Office of the Chief Information Officer IT Standards require a different method for the destruction of data or confidential information, data or confidential information required to be destroyed under DCYF Contract No. 25-1008 must be destroyed as follows:

- (A) For data or confidential information that is contained on optical discs (e.g. CDs or DVDs), the Contractor shall either destroy by incineration the disc(s), shredding the discs, or completely deface the readable surface with a coarse abrasive.
- (B) For data or confidential information that is contained on magnetic tape(s), the Contractor shall destroy the data or confidential information by degaussing, incinerating, or crosscut shredding.
- (C) For data or confidential information that is contained on a server or workstation data hard drive or similar media, the data or confidential information shall be destroyed by either
 - (1) Physically destroying the disk(s); or
 - (2) Using a "wipe" utility which will overwrite the data or confidential information at least three times using either random or single character data, degaussing sufficiently to ensure that the data, or confidential information cannot be reconstructed.
- (D) For data or confidential information that is contained on removable media (e.g. floppies, USB flash drives, portable hard disks, or similar disks), the data or confidential information shall be destroyed by either:
 - (1) Physically destroying the disk(s); or
 - (2) Using a "wipe" utility which will overwrite the data or confidential information at least three times using either random or single character data, degaussing sufficiently to ensure that the data, or confidential information cannot be reconstructed.

II. Certification

- ___ All copies of any data sets related to DCYF Contract No. 25-1008 have been wiped from data storage systems.
- ___ All materials and non-wiped computer media containing any data sets related to DCYF Contract No. 25-1008 have been destroyed.
- ___ All paper copies of the information related to DCYF Contract No. 25-1008 have been destroyed on-site by cross cut shredding.
- ___ All copies of any data sets related to DCYF Contract No. 25-1008 that have not been disposed of in a manner described above, have been returned to the DCYF's Contract Manager listed in this Contract.

The Contractor hereby certifies by the signature below that the data disposition requirements as described in this Certification of Data Disposition and DCYF Contract No. 25-1008, have been complied with as indicated above.

Signature of Contract Manager: _____ Date: _____

Print Name: _____

Return original to DCYF Public Records at dcyf.publicrecords@dcyf.wa.gov



Attachment 3 - Federal Certifications and Assurances

THE FOLLOWING CERTIFICATIONS AND ASSURANCES ARE MADE AND VERIFIED BY THE SIGNATURE OF THE OFFICIAL SIGNING FOR THE CONTRACTOR ON THE SIGNATURE PAGE OF THIS CONTRACT.

THE CONTRACTOR AGREES TO REQUIRE THAT THE LANGUAGE OF THESE CERTIFICATIONS AND ASSURANCES BE INCLUDED IN ALL LOWER TIER COVERED TRANSACTIONS AND IN ALL SOLICITATIONS FOR LOWER TIER COVERED TRANSACTIONS.

1. Acknowledgement of Federal Funding Pursuant to Public Law 115-31

- a. If the Contractor is a grantee receiving Federal Funds, or recipient of Federal research grants, the Contractor certifies that it will provide the following notice when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money:
- b. The percentage of the total costs of the program or project which will be financed with Federal money;
- c. The dollar amount of Federal funds for the project or program; and
- d. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

2. Assurance of Compliance with Federal Nondiscrimination Laws

- a. The Contractor provides this assurance in consideration of and for the purpose of obtaining Federal grants, loans, contracts, property, discounts or other Federal financial assistance. The Contractor hereby agrees that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
- b. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.; 45 C.F.R. Part 80) which prohibits discrimination on the basis of race, color or national origin;
- c. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 et seq.; 45 C.F.R. Part 86), which prohibits discrimination on the basis of sex;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794; 45 C.F.R. Parts 84 and 85), which prohibits discrimination on the basis of handicaps;
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101et seq.; 45 C.F.R. Parts 90 and 91), which prohibits discrimination on the basis of age;
- f. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made.

3. Audit Certification Requirements for Department of Health and Human Services

a. Payment Request Certification.

(1) To ensure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved budgets, the vouchers requesting payment under this Contract must include a signed certification by the Contractor that says the following:

- (a) By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.

b. Cost Allocation Plan or Indirect Cost Rate Certification and Compliance

- (1) A proposal by the Contractor to establish a cost allocation plan or an indirect Facilities and Administration (F & A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by DCYF, must be certified by the Contractor using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in the Appendices to 45 C.F.R. Part 75: Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the Contractor by an individual at a level no lower than the Contractor's vice president or chief financial officer.
- (2) Unless the Contractor has elected the option under [45 C.F.R. § 75.414\(f\)](#), the Federal Government may either disallow all indirect F & A costs or unilaterally establish such a plan or rate when the Contractor fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the Contractor failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

c. Non-profit Organization Certification

- (1) If the Contractor is a non-profit organization, but does not qualify as a Major Non-profit Organization, the Contractor must provide a certification that it does not meet the definition of a Major Non-profit Organization as defined in 2 C.F.R. § 200.414.

d. Lobbying Certification

- (1) The Contractor must submit as a part of its annual indirect F & A cost rate proposal a certification that the Contractor is in compliance with the requirements and standards contained in 45 C.F.R. § 75.450.

e. Definitions

- (1) As used throughout this Contract, the following terms shall have the meanings set forth below:
- (2) "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.
- (3) "Cost allocation plan" means central service cost allocation plan or public assistance cost allocation plan
- (4) "Indirect Administration Cost Rate" means general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable).
- (5) "Indirect Facilities Cost Rate" means depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.
- (6) "Major Non-profit Organization" means a non-profit organization that receives more than \$10 million dollars in direct federal funding.

4. Award Term for Trafficking in Persons

- a. This award is subject to the requirements of [2 C.F.R. § 175.15](#) (CHAPTER I—OFFICE OF MANAGEMENT AND BUDGET GOVERNMENTWIDE GUIDANCE FOR GRANTS AND AGREEMENTS). If all or part of the funding for this Contract is in the form of a Federal grant or cooperative agreement, the Contractor agrees to the award terms and conditions as described below:

"l. Trafficking in persons.

- b. Provisions applicable to a recipient that is a private entity.

- (1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - (a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (b) Procure a commercial sex act during the period of time that the award is in effect; or
 - (c) Use forced labor in the performance of the award or subawards under the award.

- i. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (d) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (e) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by [the Department of Health and Human Services] at 2 CFR part [376]
- (2) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - (a) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - (b) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by [the Department of Health and Human Services] at 2 CFR part [376].
- (3) Provisions applicable to any recipient.
 - (a) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - (b) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - (c) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- c. Definitions. For purposes of this award term:
 - (1) “Employee” means either:
 - (a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (b) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (3) “Private entity”:
 - (a) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
 - (b) Includes:
 - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - ii. A for-profit organization.
 - (4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).”

For the full text of the award term, go to: (<http://www.ecfr.gov>). The use of Federal funds from this award constitutes the Contractor’s acceptance of these terms and conditions.

5. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352; 45 C.F.R. Part 93)

- a. The Contractor certifies, to the best of the Contractor's knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (<http://www.gsa.gov/portal/forms/download/116430>) in accordance with its instructions.
 - (3) The Contractor understands and agrees that this Anti-Lobbying certification is a material representation of fact upon which reliance by the Department of Children, Youth and Families (DCYF) was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- b. Statement for Loan Guarantees and Loan Insurance. The Contractor certifies, to the best of the Contractor's knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Certification Regarding Debarment, Suspension, and Ineligibility

- a. If federal funds are the basis for this Contract the Contractor, by signature to this Contract, certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a nonprocurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to subrecipients for any amount. The Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" provided on-line by the General Services Administration.
- b. The Contractor shall immediately notify DCYF if during the term of this Contract, the Contractor or the Contractor's sub-contractor(s) becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions. DCYF may immediately terminate this Contract by providing Contractor Notice if the Contractor, or the Contractor's Subcontractor(s), becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions during the Period of Performance.

7. Certification Regarding Drug-Free Workplace Requirements

- a. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- b. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by establishing an ongoing drug-free awareness program to inform employees about --

- (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations;
- c. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by Paragraph 7.a;
 - d. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by notifying the employee in the statement required by Paragraph 7.a that, as a condition of employment under the grant, the employee will --
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - e. **Written Agency Notification within Ten Calendar Days after Receiving Notice under Paragraph 7.d.(2) from an Employee, or Otherwise Receiving Actual Notice of such Conviction.**
 - (1) After the Contractor receives the notice required under Section 7.d.(2), the Contractor certifies that it will, or will continue, to provide a drug-free workplace by providing notice of the conviction, including position title, to the Department of Children, Youth, and Families, unless the United States Department of Health and Human Services has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
 - f. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by taking one of the following actions, within 30 calendar days of receiving notice under Paragraph 7.d.(2), with respect to any employee who is so convicted --
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
 - g. The Contractor certifies that it will, or will continue, to provide a drug-free workplace by making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs 7.a, 7.b, 7.c, 7.d, 7.e and 7.f.

8. **Covenant Against Contingent Fees**

- a. The Contractor represents and warrants that no person, agency, or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a Contingent fee, excepting bona fide employees or a bona fide agency maintained by the Contractor for securing business. For breach or violation of this warranty, DCYF shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of such Contingent fee.
- b. Bona fide agency, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
- c. Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.
- d. Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

- e. Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

9. Crime Control Act – Reporting of Child Abuse

- a. Public Law 101-647 (42 U.S.C. 20341), also known as the Crime Control Act of 1990 (Crime Control Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Crime Control Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.
- b. The Crime Control Act designates “covered professionals” as those persons engaged in professions and activities in eight different categories including, but not limited to, teachers, social workers, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Crime Control Act defines the term “child abuse” as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.
- c. Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Crime Control Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency shall be contacted. For more information about where and how to file a report, the Childhelp USA, National Child Abuse Hotline (1-800-4-A-CHILD) shall be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.
- d. By acceptance of this Contract or order, the Contractor agrees to comply with the requirements of the Crime Control Act. The Crime Control Act also applies to all applicable subcontracts awarded under this Contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Crime Control Act.

10. Limited English Proficiency (Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons) ([Executive Order 13166](#), August 11, 2000)

- a. E
Executive Order 13166 requires recipients of Federal financial assistance to take steps to insure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for accurate and effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at:
- b. <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html>.

11. Pro-Children Act (January 2006) Certification Regarding Environmental Tobacco Smoke

- a. The Pro-Children Act , 20 U.S.C. § 7973, imposes restrictions on smoking in facilities where certain Federally funded children's services are provided. The Pro-Children Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of (i) kindergarten, elementary, or secondary education or library services or (ii) health, day care services, or early childhood education programs. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.
- b. By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Pro-Children Act. The Pro-Children Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Pro-Children Act. Failure to comply with the Pro-Children Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

12. Prohibition of Text Messaging and Emailing While Driving During Official Federal Grant Business

- a. Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email when driving. Recipients must comply with these conditions under [Executive Order 13513](#), "Federal Leadership On reducing Text Messaging While Driving," October 1, 2009.

13. Purchase of American-Made Equipment and Products

- a. In accordance with Public Law 103-333 the "Departments of Labor, Health and Human services, and Education, and Related Agencies Appropriations Act of 1995," the following provision is applicable to this grant award:
 - (1) Section 507: "Purchase of American-Made Equipment and Products – It is the sense of the congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made." See Public Law 103-333 § 507.

14. Single Audit Requirements

- a. **Subrecipient of Federal Award.** If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) 2 Code of Federal Regulations (C.F.R.) § 200, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance (CFDA) Numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DCYF, and the Washington State Auditor's Office. The Contractor shall incorporate OMB 2 C.F.R. § 200 audit requirements into all contracts between the Contractor and its Subcontractors who are subrecipients. The Contractor shall comply with any future amendments to OMB 2 C.F.R. § 200 and any successor or replacement Circular or regulation.
- b. **Expends \$750,000 or More in Federal Awards.** If the Contractor expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 26, 2014, the Contractor shall procure and pay for a single or program specific audit for that year. Upon completion of each audit, the Contractor shall submit to DCYF's Contract Manager the data collection form and reporting package specified in OMB 2 C.F.R. § 200, and any reports required by the program-specific audit guide (if applicable).
- c. **Exemption when Federal awards expended are less than \$750,000.** A non- Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR § 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, DCYF, and Government Accountability Office (GAO).
- d. **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding Research & Development), and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 2 C.F.R. § 200.507. A program-specific audit may not be elected for Research & Development unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- e. **Audit Report Submission**
 - (a) **Single Audit Deadline.** Pursuant to 2 C.F.R. § 200.512 the single-audit must be completed, and the data collection form and reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.
 - (b) **Program Specific Audit Deadline.** Pursuant to 2 C.F.R. § 200.507 the program-specific audit must be completed and the reporting submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period

is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

15. Whistleblower Protections for Contractor Employees (48 C.F.R. 3.908)

- a. The Contractor is hereby given notice that this Contract and employees working on this Contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239, Div. A, Title VIII, § 828) and FAR 3.908 (48 C.F.R. § 3.908).
- b. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in 48 C.F.R. § 3.908 of the Federal Acquisition Regulation.
- c. The Contractor certifies that it will provide the following notice to its employees in the employees' predominant native language.
 - (1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to any of the entities listed in Section 15.c.(2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. A reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.
 - (2) Entities to Whom Disclosure May be Made. The information described in Section 15.c.(1) may be disclosed to the entities described in this paragraph by an employee of the Contractor, subcontractor or grantee.
 - (a) A Member of Congress or a representative of a committee of Congress.
 - (b) An Inspector General.
 - (c) The Government Accountability Office.
 - (d) A Federal employee responsible for contract or grant oversight or management at the relevant agency.
 - (e) An authorized official of the Department of Justice or other law enforcement agency.
 - (f) A court or grand jury.
 - (g) Management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.