**SAMPLE AGREEMENT ONLY**

***This is a sample Agreement only. The purpose of this sample is to give the basic structure and content of an interagency agreement between state agencies. State agencies are also free to use it for other governmental agreements, such as those with counties. This Agreement template has been reviewed and approved by the Office of the Attorney General (ATG). This template is NOT meant to contain in its entirety the terms & conditions of a final agreement. Significant changes to the content may require approval by agency’s assigned Assistant Attorney General. There is a separate document titled Interagency Agreement Optional Terms and Conditions, also approved by the Office of the Attorney General, which contains examples of clauses that should be reviewed and added to this template if applicable.***

**INTERAGENCY AGREEMENT**

**BETWEEN**

***(State Agency Name )***

**AND**

***(State Agency Name)***

This Agreement is made and entered into by and between the *(State Agency Name)*, referred to as *(State Agency Abbreviation)*, located at *(State Agency Physical and Mailing Address)*  and the *(State Agency Name)*, referred to as *(State Agency Abbreviation)* and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

1. **PURPOSE**

The purpose of this Agreement is to \_\_\_\_\_\_\_ .

1. **STATEMENT OF WORK**

**Alternative Clauses - Select One**

The (State Agency Abbreviation) shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of work set forth in **Exhibit “A”** attached and incorporated herein.

**Or**

The (State Agency Abbreviation) shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of work set forth below: *(see Statement of Work,* ***Exhibit A****, for sample language to enter here, in lieu of a separate attachment).*

1. **PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall commence on , 20\_\_, and be completed on , 20\_\_, unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.

1. **COMPENSATION**

**Alternative Clauses - Select One**

Compensation for the work provided in accordance with this Agreement has been established under the terms of chapter 39.34.130 RCW. The parties have estimated that the cost of accomplishing the work herein will not exceed $ . Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Compensation for services shall be based on the following rates and in accordance with the following terms: *(see Budget,* ***Exhibit B****, for sample language to enter here, in lieu of a separate attachment).*

**Or**

Compensation for the work provided in accordance with this Agreement has been established under the terms of chapter 39.34.130 RCW. The parties have estimated that the cost of accomplishing the work herein will not exceed $ . Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded. Compensation for services shall be in accordance with the Budget in **Exhibit “B”** which is attached and incorporated herein.

**Or**

This is a non-financial Agreement. In no event shall either party seek compensation for work performed under this Agreement.

1. **BILLING PROCEDURES**

The (State Agency Abbreviation) shall submit invoices (monthly, quarterly, etc.). Payment for approved goods and/or services will be made by check, warrant or account transfer within 30 days of receipt of the invoice. Upon expiration of the Agreement, invoices shall be paid, if received within 30 days after the expiration date. However, invoices for all work done within a fiscal year must be submitted within 30 days after the end of the fiscal year

1. **BILLING DETAIL**

Each invoice voucher submitted to Agency by the (State Agency Abbreviation) shall include such information as is necessary for the Agency to determine the exact nature of all expenditures. At a minimum, the (State Agency Abbreviation) shall specify the following:

* 1. (State Agency abbreviation) Agreement Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  2. The (e.g., monthly fixed cost, etc.) for each (e.g., month billed, deliverable, etc.).
  3. The total number of (hours worked for each employee).
  4. The total amount of taxes. *(If applicable)*
  5. (Any other applicable information).
  6. The total invoice charge.

1. **DUPLICATION OF BILLED COSTS**

The (State Agency Abbreviation) shall not bill the Agency for services performed under this contract, and the Agency shall not pay the (State Agency Abbreviation), if the (State Agency Abbreviation) is entitled to payment or has been or will be paid by any other source, including grants, for that service.

1. **FUNDING CONTINGENCY**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the work in this Agreement, the Agency may:

* 1. Terminate this Agreement with *(number)* (*#*) days advance notice. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
  2. Renegotiate the terms of the Agreement under those new funding limitations and conditions,
  3. After a review of project expenditures and deliverable status, extend the end date of this Agreement and postpone deliverables or portions of deliverables, or
  4. Pursue such other alternative as the parties mutually agree to writing. [[1]](#footnote-1)

1. **AMENDMENT**

This Agreement 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.

1. **ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

1. **ASSURANCES**

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

1. **CONTRACT MANAGEMENT**

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

|  |  |
| --- | --- |
| **The Contract Manager for** *(e.g., State Agency abbreviation, etc.)* **is:** | **The Contract Manager for** *(e.g., State Agency abbreviation, etc.)* **is:** |
| *(Contract Manager’s Name & Title)*    *(State Agency’s Name)*    *(Contract Manager’s Address)*    *(Contract Manager’s Address)*  Phone: ( )  FAX: ( )  E-Mail: | *(Contract Manager’s Name & Title)*    *(State Agency’s Name)*    *(Contract Manager’s Address)*    *(Contract Manager’s Address)*  Phone: ( )  FAX: ( )  E-Mail: |

1. **DISPUTES**

**Alternative Clauses – Select One**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties.

**Or**

In the event that a dispute arises under this Agreement, either of the parties may request intervention by the Governor, as provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

1. **GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

1. **INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

1. **MAINTENANCE** **OF RECORDS**
   1. The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.
   2. 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.
   3. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.
2. **ORDER OF PRECEDENCE**

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

* 1. Applicable state and federal statutes, and local laws, rules and regulations;
  2. Statement of Work;
  3. Exhibits and Appendices – list separately; and
  4. Any other provisions of the agreement, including materials incorporated by reference.

1. **RESPONSIBILITIES OF THE PARTIES**

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

1. **SEVERABILITY**

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

1. **SITE SECURITY**

While on Agency premises, the (State Agency Abbreviation), its agents, employees, or Subcontractors shall comply with the Agency security policies and regulations.

1. **SUBCONTRACTING**
   1. “Subcontractor" means one not in the employment of a party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
   2. Except as otherwise provided in the Agreement, the (State Agency Abbreviation) shall not subcontract any of the contracted services without the prior approval of the Agency. The (State Agency Abbreviation) is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of (State Agency Abbreviation) or its Subcontractors to perform the obligations of this Agreement shall not discharge (State Agency Abbreviation) from its obligations under this Agreement.
2. **TERMINATION FOR CAUSE**

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

1. **TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

1. **WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. 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 Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

1. **ALL WRITINGS CONTAINED HEREIN**

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

*IN WITNESS WHEREOF*, the parties have executed this Agreement.

State of Washington State of Washington

**(*State Agency Name)*****(*State Agency Name)***

*(Signature)* *(Date)* *(Signature)* *(Date)*

*(Print Name) (Print Name)*

*(Title) (Title)*

APPROVED AS TO FORM ONLY

Approval on File

Office of the Attorney General *(Date)*

Exhibit A

STATEMENT OF WORK

The (State Agency Abbreviation) shall provide *(description of services)*. This work shall include:

*DELIVERABLES/COSTS*

*REPORTS REQUIRED*

*SCHEDULE*

Attachment B

BUDGET

The parties have estimated that the cost of accomplishing the work herein will not exceed $ .

**The PAYMENT OPTIONS are listed below as examples only and can be revised. If you select one, then delete the others.**

*COST PER DELIVERABLE*

Describe deliverables and cost for each

The parties agree that (State Agency Abbreviation) shall **NOT** be responsible for any additional costs or expenses incurred by (State Agency Abbreviation) in the performance of work described in this Agreement, which include but are not limited to travel, lodging, meals, and other miscellaneous expenses otherwise incurred by the \_\_\_\_\_\_. Compensation for a deliverable shall be up to, but shall not exceed, the budgeted cost for a deliverable regardless of hours worked or other expenses related to a deliverable. Any variance shall be justified to (State Agency Abbreviation) ‘s Contract Manager who shall have discretion to approve/disapprove compensation for such variance.

In the event additional funds become available, any Agreement awarded may be renegotiated to provide for additional services (e.g., model development, implementation, etc.) subject to satisfactory completion of a previous phase.

*MONTHLY FEE*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Monthly fee includes amounts to cover any and all charges including but not limited to salary, benefits and indirect costs. No other charges or costs may be applied to this Agreement.

*HOURLY RATES*

Hourly rates include an amount to cover any and all charges including but not limited to salary, benefits and indirect costs. No other charges or costs may be applied to this Agreement.

**Interagency Agreement**

**Optional Terms and Conditions**

***These terms and conditions may be used in Interagency Agreements as necessary. This list is not all-inclusive. There may be additional optional terms that an Agency may wish to consider such as those regarding datasharing, subcontracting, funding limitations/requirements, agency contracting authorities, or any agency specific requirements.***

# **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY** *(This is sample language. Each Agency should ensure that language included in this clause reflects its own needs. Agencies may also want to check applicable Code of Federal Regulations (CFR).*

If federal funds are the basis for this Agreement, the (state agency abbreviation) certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency.   The (state agency abbreviation) 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 non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed $25,000, and sub-awards to subrecipients for any amount. \_\_\_\_ 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.

# **SAFEGUARDING OF CONFIDENTIAL INFORMATION** *(This is sample language. Each Agency should ensure that language included in this clause reflects its own needs.)*

## Each Party shall not use or disclose Confidential Information in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Each Party agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of Confidential Information.

## Each party shall protect Confidential Information collected, used, or acquired in connection with this Agreement, against unauthorized use, disclosure, modification or loss. Each party shall ensure their directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this Agreement. Each party and their Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of the other party or as otherwise authorized by law. Each party agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure. \_\_\_\_ shall make the Personal Information available to amend as directed by \_\_\_\_ and incorporate any amendments into all the copies maintained by \_\_\_\_ or their Subcontractors.

## Each party shall notify the other party immediately after becoming aware of any unauthorized access, use or disclosure, and shall take necessary steps to mitigate the harmful effects of such use or disclosure. Each party agrees to defend, protect and hold harmless the other party for any damages related to unauthorized use or disclosure by their officers, directors, employees, Subcontractors or agents.

## Any breach of this clause may result in termination of the Agreement, suspension of on-line access accounts and the demand for return of all confidential information.

## The agency who owns the data is responsible for informing the other agency what it considers confidential.

## Public Disclosure

### Either party to this Agreement 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.

### 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 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.

## Human Research Review Process. *(If Applicable)* Each party shall protect Confidential Information and comply with state and federal human research review processes, as implemented by the Washington State Institutional Review Board, if applicable, and as defined in chapter 42.28 RCW.

# **RIGHTS IN DATA**

**Optional Clauses - Select One**

\_\_\_\_ shall be the copyright owner for all purposes under Title 17 U.S.C., of all data which originates from this Agreement. Data shall include, but not be limited to reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, training materials and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

**Or**

*Agency Ownership:* Material created by the *\_\_\_\_*and paid for by \_\_\_\_ as a part of this Agreement shall be owned by the \_\_\_\_ and shall be a “work made for hire” as defined by Title 17 U.S.C., Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material the \_\_\_\_ uses to perform the Agreement but is not created for or paid for by \_\_\_\_ is owned by \_\_\_\_ and is not a “work made for hire”; however, \_\_\_\_ shall have a perpetual license to use this material for \_\_\_\_ internal purposes at no charge to\_\_\_\_, provided that such license shall be limited to the extent which the \_\_\_\_ has a right to grant such a license.

**Or**

*State Ownership:* Copyright in all material created by the \_\_\_\_ and paid for by \_\_\_\_ as a part of this Agreement shall be the property of the State of Washington. Both \_\_\_\_ and \_\_\_\_ may use these materials, and permit others to use them, for any purpose consistent with their respective missions as agencies of the state of Washington. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material that the \_\_\_\_ uses to perform this Agreement but which is not created for or paid for by \_\_\_\_ shall be owned by \_\_\_\_ or such other party as determined by Copyright law and/or \_\_\_\_\_ internal policies. \_\_\_\_ hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to \_\_\_- to use the materials for \_\_\_\_ internal purposes.

**Or**

Material used to perform this Agreement but which is not created for or paid for in this Agreement shall be owned by such party as determined by law. The owner hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to the other party to use the materials for internal purposes.

# **TREATMENT OF ASSETS**

Title to all property furnished by the Agency shall remain with the Agency. Title to all property furnished by the (state agency abbreviation), the cost of which the (state agency abbreviation) is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the Agency upon delivery of such property by the (state agency abbreviation). Title to other property, the cost of which is reimbursable to the (state agency abbreviation) under this Agreement, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this Agreement or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

# **DEFINITIONS**

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

## *“Confidential Information*” shall mean information that may be exempt from disclosure under either chapter 42.56 RCW or other state or federal statutes. [Note: update to use the current RCW cite. Also, would not equate the public with unauthorized persons.] Confidential Information includes, but is not limited to, Personal Information, agency source code or object code, and agency security data.

## *“Individually Identifiable Health Information”* is a subset of health information, including demographic information collected from an individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, as set forth in 45 CFR ξ 164.501 as currently adopted and subsequently amended or revised.

## *“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.

## *“Protected Health Information”* means Individually Identifiable Health Information that is transmitted by electronic media, or transmitted or maintained in any other form or medium, as set forth in 45 CFR ξ 164.501, as currently adopted and subsequently amended or revised.

APPROVED AS TO FORM ONLY

Approval on File

Office of the Attorney General *(Date)*

1. If the agreement is non-financial, remove clauses 5 – 8. [↑](#footnote-ref-1)