

**CONTRACT K8290****BETWEEN****WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT****AND****CODESMART INC.****1. INTRODUCTION**

This Contract is made and entered into by and between the Washington State Employment Security Department, hereinafter called "ESD", located at 212 Maple Park Ave SE, Olympia, Washington 98501 and CodeSmart Inc., hereinafter called "Contractor", located at 975 Carpenter Road NE, Suite 101, Lacey, Washington 98516.

**2. PURPOSE**

It is the purpose of this Contract is for Contractor to provide ESD with Senior Level Developer support position for the Next Generation Tax System (NGTS).

**3. CONTRACT MANAGEMENT**

ESD's Contract Manager shall monitor the performance and compliance of this Contract. ESD's Contract Manager shall be responsible for the review and acceptance of the Contractor's performance, deliverables, invoices, expenses, and reports from the Contractor. The Contract Manager will be the main contact for any questions about the contract.

ESD Contract Manager responsible for management of this Contract is:

Name:	<u>Judy Dew</u>
Title:	<u>IT Systems Manager</u>
Phone Number:	<u>360-507-9566</u>
E-mail:	<u>JDew@ESD.WA.GOV</u>

Contractor staff member responsible for management of this Contract is:

Name:	<u>Nick Nortelli</u>
Title:	<u></u>
Phone Number:	<u>415-577-5187</u>
E-mail:	<u>nick.nortelli@codesmartinc.com</u>

**4. LEGAL NOTICES**

Any legal notice necessary with regards to this Contract shall be addressed to:

Employment Security Department  
Attn: Contracts Office  
212 Maple Park SE  
Olympia, WA 98501

Or emailed to: [esdgpcontractsoffice@esd.wa.gov](mailto:esdgpcontractsoffice@esd.wa.gov)

## 5. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below.

- 5.1. "CONTRACTOR" means that agency, firm, organization, individual or other entity performing services and/or providing goods under this Contract. This includes any SUBCONTRACTOR retained by the prime Contractor as permitted under the terms of this Contract.
- 5.2. "FORCE MAJEURE" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.
- 5.3. "INFORMATION TECHNOLOGY RESOURCES" means ESD computing and communications resources or equipment, ESD's electronic messaging systems and internet access.
- 5.4. "MICROBUSINESS" as defined by RCW 39.26.010(16) means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal income tax return or on its return filed with the Department of Revenue.
- 5.5. "MINIBUSINESS" as defined by RCW 39.26.010(17) means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal income tax return or on its return filed with the Department of Revenue.
- 5.6. "MINORITY BUSINESS ENTERPRISE," "MINORITY-OWNED BUSINESS ENTERPRISE," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the Office of Minority and Women's Business Enterprises. The minority owners must be United States citizens or lawful permanent residents.
- 5.7. "RCW" means Revised Code of Washington.
- 5.8. "SMALL BUSINESS" as defined by RCW 39.26.010(22) means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either: (i) fifty or fewer employees; or (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the Department of Revenue over the previous three consecutive years; or (b) is certified with the Office of Women and Minority Business Enterprises (OWMBE) under Chapter 39.19 RCW.
- 5.9. "VETERAN-OWNED BUSINESS" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more Veterans.
- 5.10. "WOMEN'S BUSINESS ENTERPRISE," "WOMEN-OWNED BUSINESS ENTERPRISE," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business

enterprises certified by the Office of Minority and Women's Business Enterprises. The women owners must be United States citizens or lawful permanent residents.

5.11. "WRITTEN NOTICE" means notice by USPS mail or by email.

**6. STATEMENT OF WORK**

The Contractor shall furnish the necessary personnel, labor, and services, and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work attached and incorporated as Exhibit A.

**7. TERMS AND CONDITIONS**

All rights and obligations of the parties to this Contract shall be subject to and governed by the terms contained in this Contract.

**8. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Contract shall start on January 1, 2024 and end on December 31, 2024, unless terminated sooner as provided herein. Parties reserve the right to extend this agreement upon mutual execution of an amendment.

**SOLE SOURCE / DIRECT BUY**

This Contract is a sole source contract per RCW 39.26.140. Sole source contracts are required to be filed with the Washington State Department of Enterprise Services (DES). Contracts required to be filed with DES are not effective, and no work may be commenced, nor payment made, until ten (10) working days following the date of filing, and until approved by DES.

**9. REPORTING**

The Contractor shall provide the ESD Contract Manager with reports as outlined in Exhibit A, Statement of Work.

**10. COMPENSATION**

10.1. The parties have agreed that the total compensation including expenses payable to the Contractor, for satisfactorily accomplishing the work set forth in Exhibit A, Statement of Work, will not exceed \$225,576.00.

10.2. The Contractor will not be reimbursed for any travel expenses.

**11. BILLING PROCEDURE**

11.1. The Contractor shall submit invoices monthly for services performed under this Contract on an Invoice Voucher (Form A-19), or similar invoice. Invoices shall include such information as is necessary for ESD to determine the exact nature of all expenditures, and goods or services provided to and received by ESD. ESD must receive all invoices no later than thirty (30) days after services itemized on invoice are rendered. Failure by the Contractor to submit the invoice by this date may result in non-payment. ESD shall pay the Contractor for completed and approved work within thirty (30) days of receipt of invoice.

11.2. Final invoice must be received within thirty (30) days after contract end date.

11.3. Each invoice will clearly indicate that it is "FOR SERVICES RENDERED IN PERFORMANCE UNDER ESD CONTRACT NUMBER K7046". The invoice document shall be mailed to:

Employment Security Department  
Attention: Vendor Payments  
PO Box 9046  
Olympia, WA 98507

Or email invoice document to: [VendorPayments@esd.wa.gov](mailto:VendorPayments@esd.wa.gov)

- 11.4. **Contractor must register as a Washington State Statewide Vendor (ofm.wa.gov/payee) and receive a Statewide Vendor Number (SWV) in order receive payment from ESD.**

## **12. INFORMATION TECHNOLOGY RESOURCES**

- 12.1. Contractor is required to conserve and protect state resources for the benefit of the public interest. This requirement is necessary to maintain public trust, conserve public resources and protect the integrity of state information resources and systems.
- 12.2. Contractor may only use ESD-provided state-owned information technology resources with expressed permission from ESD Contract Manager.
- 12.3. If the performance of this Contract requires Contractor to use ESD-provided state-owned information technology resources Contractor may only use such resources to conduct business that is necessary for the performance of this Contract and within the scope of the Contract. Furthermore, Contractor is prohibited from using the resources for any unlawful purpose or any personal use.
- 12.4. Nothing contained in this section shall be construed to create a right of privacy in any content transmitted via ESD's electronic messaging systems. ESD may monitor and log all activity on ESD computing and communication resources, including, but not limited, to internet access. ESD monitoring and logging may be used by ESD for any purpose.
- 12.5. USB, external and internal peripherals, and similar devices connected to agency equipment are subject to all applicable federal laws, state laws, state polices, agency policies, executive orders, and this Contract.

## **13. INSURANCE**

- 13.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington. 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 ESD within five business days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at ESD's sole option, result in this Contract's termination.
- 13.2. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 13.3. Upon ESD's request, Contractor shall furnish to ESD copies of certificates of all required insurance within thirty (30) days.

### **13.4. Minimum Acceptable Limits**

The minimum acceptable limits must be as indicated below, with no deductible for each of

the following categories:

- 13.4.1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate.
- 13.4.2. Professional Liability Errors and Omissions coverage of not less than \$10 million per claim; Cyber-security coverage of not less than \$1 million per claim/\$2 million general aggregate. Contractor shall continue Professional Liability Errors and Omissions coverage and be required, upon request, to provide ESD certificates of insurance for one year beyond the expiration or termination of this of this Contract.
- 13.4.3. Crime Coverage coverage of not less than \$1 million single limit per occurrence, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

**13.5. Industrial Insurance Coverage**

- 13.5.1. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless ESD and the State and its agencies, officials, agents or employees from claims by Contractor's employees or agents.
- 13.5.2. The Contractor must 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, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund.
- 13.5.3. The Agency may:
  - 13.5.3.1. Deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Agency under this Contract; and
  - 13.5.3.2. Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.
- 13.5.4. This provision does not waive any of L&I's right to collect from the Contractor.

- 13.6. In accordance with the Survival clause, this section, Insurance, shall survive the expiration or termination of this Contract.

**14. PRICE WARRANT**

Contractor warrants all prices, terms, rates, warranties, and benefits granted by Contractor to ESD in this Contract are comparable to or better than those being offered by Contractor to any present customer meeting similar qualifications or requirements.

**15. TERMINATION, SUSPENSION, AND REMEDIES**

- 15.1. Termination or Suspension for Cause

- 15.1.1. In the event ESD determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, ESD has the right to suspend or terminate this Contract. ESD may terminate immediately or, at its sole discretion, ESD may notify the Contractor in writing of the need to take corrective action, prior to termination, and allow the Contractor time to cure. In the event of termination or suspension, 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 the costs to cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.
  - 15.1.2. ESD reserves the right to suspend all or part of this 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 ESD to terminate this Contract.
  - 15.1.3. A termination shall be deemed to be a "Termination for Convenience" if the investigation determines that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of ESD provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.
  - 15.1.4. ESD reserves the right to immediately suspend all, or part of, this Contract, and to withhold further payments, or to prohibit the Contractor from incurring additional obligations of funds when it has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of the Contractor under this Contract.
- 15.2. Termination for Funding Reasons
- ESD may unilaterally terminate this Contract in the event that funding from federal, state or other sources becomes no longer available to ESD or is not allocated for the purpose of meeting ESD's obligation hereunder. In the event funding is limited in any way, this Contract is subject to re-negotiation under any new funding limitations and conditions. Such action is effective upon receipt of written notification by the Contractor.
- 15.3. Termination for Convenience
- Except as otherwise provided in this Contract, either party may, by ten (10) days' written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, ESD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.
- 15.4. Suspension for Convenience
- Except as otherwise provided in this Contract, ESD may, by ten (10) days' written notice, suspend this Contract, in whole or in part. If this Contract is so suspended, ESD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of suspension. If this Contract is suspended, the Schedule shall be delayed for a period of time equal to the period of such suspension. ESD may, by ten (10) days' written notice, lift the suspension of the

Contract, in whole or in part, at which time the Schedule and the parties' right and obligations shall resume to the extent that the suspension is lifted.

15.5. Termination for Withdrawal of Authority

In the event that ESD's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, ESD may terminate this Contract by seven (7) calendar days or other appropriate time period by written notice to Contractor. No penalty shall accrue to ESD in the event this Section is exercised. This Section shall not be construed to permit ESD to terminate this Contract in order to acquire similar Services from a third party.

**16. TERMINATION PROCEDURE**

- 16.1. Upon termination of this Contract, ESD, in addition to any other rights provided in this Contract, may require the Contractor to deliver to ESD any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the TREATMENT OF ASSETS Section will apply in such property transfer.
- 16.2. Transition. In order to ensure business continuity, upon termination or expiration of this Contract, Contractor shall confer and cooperate with ESD in carrying out the activities required for transition in a safe and orderly manner without interruption of Services by Contractor to a replacement Contractor, subsequent operator, or ESD as applicable. Obligations under this provision shall continue for no longer than ninety (90) days and are conditioned upon reasonable, mutually agreed upon compensation for services beyond the date of termination or expiration.
- 16.3. ESD shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by ESD and the amount agreed upon by the Contractor and ESD for (1) completed work and service(s) for which no separate price is stated; (2) partially completed work and services; (3) other property or services which are accepted by ESD; and (4) the protection and preservation of property, unless the termination is for default, in which case ESD shall determine the extent of liability of ESD. Failure to agree with such determination shall be a dispute within the meaning of DISPUTES Section of this Contract. ESD may withhold from any amounts due to the Contractor such sum as ESD determines to be necessary to protect ESD against potential loss or liability.
- 16.4. The rights and remedies of ESD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 16.5. After receipt of a notice of termination and except as otherwise directed by ESD, the Contractor shall:
  - 16.5.1. Stop work under this Contract on the date, and to the extent specified, in the notice;
  - 16.5.2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of work under this Contract as is not terminated;
  - 16.5.3. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of ESD to the extent ESD may require, which approval or ratification shall be final for all purposes of this clause;

- 16.5.4. Complete performance of such part of the work as shall not have been terminated by ESD; and
- 16.5.5. Take such action as may be necessary, or as ESD 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 ESD has or may acquire an interest.
- 16.6. In accordance with the Survival clause, this section, Termination Procedure, shall survive the expiration or termination of this Contract.

**17. USE AND DISCLOSURE OF INFORMATION**

- 17.1. The Contractor shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Contractor shall not misuse any private and confidential information under this Contract. The Contractor shall not disclose any private and confidential information unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information shall subject Contractor, its employees or agents to a civil penalty of \$5,000 and other applicable sanctions under state and federal law (RCW 50.13.060[13] and 50.13.080[3]).
- 17.2. In accordance with the Survival clause, this section, Use and Disclosure of Information, shall survive the expiration or termination of this Contract.

**18. GENERAL TERMS**

**18.1. RECORDS and AUDITS**

**18.1.1. Record Retention**

Contractor shall retain all books, records, documents and other material which reflect all direct and indirect costs of any nature expended in the performance of this Contract for a period of six years from termination of the Contract. Records shall be retained beyond the above referenced retention periods if litigation or audit is begun prior to the end of the period referenced above, or if a claim is instituted prior to the end of the period referenced above involving the Contract covered by the records. In these instances, the records will be retained until the litigation, claim or audit has been finally resolved.

**18.1.2. Access To Records and Facilities / Audits**

ESD and its designees shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. ESD shall have the right to access, examine and inspect any site where any phase of the program is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Contractor. The Contractor must maintain its records and accounts in such a way as to facilitate the audit and examination, and assure that Subcontractors also maintain records that are auditable. Access must be available at all reasonable times not limited to the required retention period but as long as records are retained, and at no additional cost to ESD.

**18.1.3. In accordance with the Survival clause, this section, Records and Audits, shall**



survive the expiration or termination of this Contract.

**18.2. ADVANCE PAYMENTS PROHIBITED**

No payment in advance or in anticipation of services or supplies to be provided by this Contract shall be made by ESD. In cost reimbursement contracts, the Contractor shall be entitled only to reimbursement for expenses incurred during the contract period for work accomplished as provided elsewhere in this Contract. In fixed unit price contracts, the Contractor shall be entitled only to payment for work accomplished during the contract period and in accordance with the terms of this Contract.

**18.3. ASSIGNMENT**

The work to be provided under this Contract, and any claim arising thereunder, 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.

**18.4. ASSURANCES**

18.4.1. ESD and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

**18.5. ATTORNEY FEES AND COSTS**

18.5.1. If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

**18.6. CHANGES AND AMENDMENTS**

18.6.1. Either party may request changes to the terms of this Contract. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by the Parties, will only be valid when in writing and must be signed by the authorized representatives of the parties.

18.6.2. If the changes requested by either party substantially changes the scope of work of the original contract or substantially increases the value of the original contract ESD may be required to purchase the additional goods and/or services through a new competitive solicitation (RCW 39.26.120[2]). However, in such circumstances, no new competitive solicitation shall be required if an exception to competitive solicitation applies (RCW 39.26.125).

**18.7. CONFLICT OF INTEREST**

18.7.1. Notwithstanding any determination by the Executive Ethics Board or other tribunal, ESD may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by ESD that there is a violation of the Ethics in Public Service Act, RCW 42.52, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

18.7.2. In the event this Contract is terminated as provided above, ESD shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of ESD 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 ESD

makes any determination under this clause may be reviewed as provided in the DISPUTES clause of this Contract.

**18.8. COSTS**

**18.8.1. Disallowed Costs**

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

**18.8.2. Duplication of Billed Costs**

The Contractor shall not bill ESD for costs if the Contractor is being paid by another source for those same costs.

**18.9. COVENANT AGAINST CONTINGENT FEES**

18.9.1. The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. This does not include bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business that 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.

18.9.2. ESD shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, by its sole discretion, to deduct from the contract price or consideration or otherwise recover by other means the full amount of such commission, percentage, brokerage or contingent fees. In no event shall ESD be liable for any commission, percentage, brokerage, or contingent fees.

**18.10. DEBARMENT AND SUSPENSION**

The Contractor has provided, in Exhibit B to this Agreement, its certification that it is in compliance with, and shall not contract with, individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and "Debarment and Suspension, codified at 29 CFR part 98.

**18.11. DISPUTES**

18.11.1. Except as otherwise provided in this Contract, when a dispute arises between the parties it should be resolved at the lowest administrative level possible and be escalated to the project owners. If it cannot be resolved by direct negotiation, the parties agree to participate in non-binding mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a dispute hearing, a Dispute Resolution Board, or arbitration.

18.11.2. In accordance with the Survival clause, this section, Disputes, shall survive the expiration or termination of this Contract.

**18.12. FORCE MAJEURE**

- 18.12.1. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure.
- 18.12.2. Either party shall have the right to suspend this Contract without liability if delayed by reason of Force Majeure, said party shall provide written notification to the other party. The notification shall provide evidence of the force majeure and commercially reasonable efforts to mitigate the effects to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notice of the same shall be provided. The time of completion shall be extended by contract modification for the period of delay or inability to perform due to such occurrences.
- 18.12.3. Either party shall have the right to terminate this Contract without liability if for reason of Force Majeure, said party shall provide written notice to the other party. The notification shall provide evidence of Force Majeure.
- 18.12.4. Despite Force Majeure parties maintain their rights under this Contract to Terminate for Convenience.

**18.13. INDEMNIFICATION**

- 18.13.1. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State of Washington, ESD, and all officials, agents, and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor, or its employees.
- 18.13.2. 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 this 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 or officials.
- 18.14. In accordance with the Survival clause, this section, Indemnification, shall survive the expiration or termination of this Contract.

**18.15. INDEPENDENT CAPACITY OF CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and their employees or agents performing under this Contract are not employees or agents of ESD. The Contractor will not hold himself/herself out as, nor claim to be an officer or employee of, ESD 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.

**18.16. JURISDICTION AND VENUE**

- 18.16.1. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County. All parties agree to the

exclusive jurisdiction of such court and waive any right to challenge jurisdiction or venue.

**18.17. LIMITATION OF LIABILITY**

- 18.17.1. The parties agree that neither Contractor nor ESD shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except any claim related to bodily injury or death; a breach of confidentiality or cyber security; or a claim or demand based on patent, copyright, or other intellectual property right infringement.
- 18.17.2. Neither party shall be liable to the other party unless damage is proximately caused by such party's respective fault or negligence. Neither the Contractor nor ESD shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the party. Such causes may include, but are not restricted to, acts of God or acts of a governmental body other than the ESD acting in either its sovereign or contractual capacity.
- 18.17.3. In accordance with the Survival clause, this section, Limitation of Liability, shall survive the expiration or termination of this Contract.

**18.18. SEVERABILITY**

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

**18.19. SIGNATURE AUTHORITY**

- 18.19.1. This Contract, any alteration, amendment, modification, or waiver of any clause or condition of is not effective or binding unless made in writing and signed by the Commissioner of ESD or any ESD authorized representative that has been given delegated authority prior to signing.
- 18.19.2. Contractor represents and warrants that the person executing this Contract on its behalf has the full right and authority to fully commit and bind Contractor.

**18.20. SITE SECURITY**

While on ESD premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire, or other security policies or regulations.

**18.21. SURVIVAL**

Any terms of this Contract that would, by their nature or through the express terms of this Contract, survive the expiration or termination of the Contract shall so survive.

**18.22. USE OF NAME PROHIBITED**

- 18.22.1. The Contractor shall not in any way contract on behalf of or in the name of ESD. Nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of ESD.

**18.23. WAIVER**

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 an authorized representative of ESD.

**19. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State Statutes and Regulations;
- Those Terms and Conditions as contained in this Contract;
- The Statement of Work, Exhibit A; and
- Any other provisions of this Contract whether incorporated by reference or otherwise.

**20. INCORPORATED DOCUMENTS**

Each of the documents listed below are incorporated into this Contract:

- Exhibit A** Statement of Work  
**Exhibit B** Certification Regarding Debarment and Suspension  
**Exhibit C** Notice of Non-Disclosure

**21. ELECTRONIC SIGNATURES, COUNTERPARTS, AND DELIVERY**

The parties agree that this Contract may be executed in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement; and that electronic signature, or e-signature, of this Contract shall be the same as execution of an original ink signature; and that e-mail, electronic, or facsimile delivery of a signed copy of this Contract shall be the same as delivery of an original.

**22. THE ENTIRE AGREEMENT**

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter of this Contract. It supersedes any other agreement, representation, or understandings, verbal or otherwise, relating to the subject matter of this Contract.

The parties have mutually agreed to the terms and conditions contained herein, including attached exhibits.

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

CodeSmart Inc.

Washington State  
 Employment Security Department

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title/Division

Voluntary reporting:

OMWBE Certification Number or "Self-certified": # \_\_\_\_\_

- Minority Owned Business
- Woman Owned Business
- Veteran Owned Business
- Micro, Mini or Small Business (as defined by RCW 39.26.010(16),(17) or (22))

**Exhibit A**  
**Statement of Work**

**CodeSmart Developer Resources**

Contractor shall provide one resource to perform the following responsibilities during the contract term:

**Responsibilities**

1. Advanced applications programming, analysis design and creation of application systems, and/or systems programming responsibilities from individual system languages to overall systems configuration, fault diagnosis and isolation, strategic planning, performance measurement and capacity planning and management and/or network design, implementation and performance testing.
2. Extensive involvement in analysis and requirements development, project management, applied quality control practices, and have complete responsibility for complete systems testing and implementation.
3. Assess new situations and provide detailed guidance or problem resolution in the face of new or unfamiliar concepts and tools and oversee and assist others to successfully address these challenges.
4. Under supervision of ESD, this individual is expected to handle problems which come to light, to define, design, and create methods and processes to resolve specific problems and/or improve the efficiency/productivity of processes.
5. Interacts with the ESD's technical staff in successfully executing their responsibilities.
6. Knowledge transfer to ESD developers and staff.
7. Participate in regular project team meetings and stand up meetings.
8. Follow ESD standards in implementing all work.
9. Document work per agency and/or project standard.
10. Utilize Team Foundation Server (TFS) or Visual Studio Team Services (VSTS) for source control and incident management.
11. Provide status as requested.
12. Partners with ESD to create the technical architecture and roadmap.
13. Review Technical designs.
14. Establish and oversee technical standards and practices.

15. Solve cross cutting concerns and business requirements.
16. Overall responsibility for the quality of their development effort.
17. Responsible for branching and merging.
18. Demonstrate respectful communications and behavior.
19. Timing and expectations of delivery of solutions will be mutually agreed upon by both parties.

**Reporting**

The contractor will submit reports monthly describing deliverables/responsibilities accomplished and progress toward deliverables/responsibilities assigned.

**Acceptance**

The Contractor will allow no less than three (3) working days for ESD staff to peer review and comment on draft versions of final deliverables defined in this ESD Contract. ESD’s Contract Manager may extend the peer review period to up to ten (10) working days if needed. If ESD notifies the Contractor in writing of a Defined Deliverable nonconformity, then the Contractor shall promptly use its best efforts to correct the Deliverable, whereupon ESD shall receive an additional ten (10) business day period, commencing upon ESD receipt of the correction, to verify that the previously reported Deliverable has been satisfactorily corrected. ESD shall provide the Contractor with all reasonable assistance required by Contractor to verify the existence of and correct a reported Deliverable nonconformity. The parties shall repeat this process until ESD acceptance of the Defined Deliverable. The Deliverable shall be deemed accepted by ESD upon expiration of any period during which no Defined Deliverable nonconformity has been reported.

**Notice of Non-Disclosure**

All contracted resources must sign a notice of non-disclosure before any work can be performed under this contract.

**Compensation**

The Contractor will be compensated based on hourly rate(s) for work actually performed. The Contractor will submit monthly timesheets.

Hourly Compensation Table					
Name	Estimated Performance Period		Estimated Hours	Hourly Rate	Extended Costs
	From	To			
Chandra Vaiyapuri	01/02/2024	12/31/2024	1928	\$117.00	\$225,576



**Exhibit B**

**Certification Regarding Debarment and Suspension**

APPENDIX A TO TITLE 29, PART 98 - CERTIFICATION REGARDING DEBARMENT AND SUSPENSION  
*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

1. The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her knowledge and belief, that it and its principals:
  - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
  - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal (or plan).

\_\_\_\_\_  
Name of Contractor – Print full legal entity name of organization

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Print Name of person making certifications for firm

\_\_\_\_\_  
Title of person signing certificate

\_\_\_\_\_  
Print city and state where signed

\_\_\_\_\_  
Date

**Exhibit C**

**WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT**

**NOTICE OF NONDISCLOSURE**

As a non-Employment Security Department (ESD) employee, you may be given access to records or information that is deemed private and confidential by statute.

You may not make any unauthorized disclosure of private or confidential information about employers, clients/claimants or employees to any person or entity. Confidential information includes but is not limited to employee's wages or hours, unemployment insurance benefit records, and standard industrial classification (sic) codes of individual employers.

The unauthorized disclosure or absue of the information deemed private and confidential may subject you to a civil penalty, currently up to twenty thousand dollars in 2018 and annually adjusted by the department based on changes in the United States consumer price index for all urban consumers. Other applicable sanctions under state and federal law also apply.

I understand that I shall use the information or records solely for the purpose for which the information was disclosed and that I am bound by the same rules of privacy and confidentiality as Employment Security employees.

I have read and understand the above Notice of Nondisclosure.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Job Title or User ID (AAAA000)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

The above individual has been informed of the obligations of the above referenced Contract and Statement of Work including any limitations, use or publishing of Confidential Data.

\_\_\_\_\_  
Supervisor's Name

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
(Date)

(An original of this notice must be returned to the Employment Security Department.)