

## STANDARD TERMS & CONDITIONS

### 1. **Independent Contractor; Responsibility for Taxes and Withholding**

- a. Contractor shall perform all Work as an independent contractor. The DHS reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the DHS may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.
- c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of DHS, as those terms are used in ORS 30.265.
- d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, DHS will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.
- e. If payments under this contract are to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

### 2. **Subcontracts, Successors, and Assignments**

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without DHS's prior written consent. In addition to any other provisions DHS may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that DHS will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 1, 2, 3, 5, 6, 7, 11, 12, 13, 15, and 20 of this Exhibit B. DHS's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.

- c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without DHS's prior written consent.

### **3. No Third Party Beneficiaries**

DHS and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

### **4. Funds Available and Authorized; Payments**

Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon. DHS certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the DHS's current biennial appropriation or limitation. Contractor understands and agrees that DHS's payment of amounts under this Contract is contingent on DHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

### **5. Representations and Warranties**

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to DHS that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000, (6) any software products delivered under this Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century,

and (7) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

**b. Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **6. Ownership of Work Product**

**a. Definitions.** As used in this Section 6, and elsewhere in this Contract, the following terms have the meanings set forth below:

- (i) “Contractor Intellectual Property” means any intellectual property owned by Contractor and developed independently from the Work.
- (ii) “Third Party Intellectual Property” means any intellectual property owned by parties other than DHS or Contractor.
- (iii) “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to DHS pursuant to the Work.

**b. Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of DHS. DHS and Contractor agree that such original works of authorship are “work made for hire” of which DHS is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Contractor hereby irrevocably assigns to DHS any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon DHS’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in DHS. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor

Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the DHS's behalf and in the name of the DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS's behalf.

**c. Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property, Contractor hereby grants to DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on DHS's behalf.

**d. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the DHS's behalf and in the name of the DHS, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on DHS's behalf.

## **7. Indemnity**

**a. GENERAL INDEMNITY.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND DHS AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

**b. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD DHS, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS

THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO DHS BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE DHS'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

- c. CONTROL OF DEFENSE AND SETTLEMENT.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**8. Insurance**

CONTRACTOR shall maintain insurance as set forth in Exhibit C, which is attached hereto.

**9. Default; Remedies; Termination**

- a. Default by Contractor.** Contractor shall be in default under this Contract if:

- (i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after DHS's notice or such longer period as DHS may specify in such notice; or
- (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after DHS's notice, or such longer period as DHS may specify in such notice.

**b. DHS's Remedies for Contractor's Default.** In the event Contractor is in default under Section 9.a, DHS may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (i) termination of this Contract under Section 9.e(ii);
- (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and DHS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 9.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 9.e(i).

**c. Default by DHS.** DHS shall be in default under this Contract if:

- (i) DHS fails to pay Contractor any amount pursuant to the terms of this Contract, and DHS fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) DHS commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default

is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**d. Contractor's Remedies for DHS's Default.** In the event DHS terminates the Contract under Section 9.e(i), or in the event DHS is in default under Section 9.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 9.e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by DHS, less previous amounts paid and any claim(s) that DHS has against Contractor. In no event shall DHS be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 9.d, Contractor shall pay immediately any excess to DHS upon written demand provided in accordance with Section 17.

**e. Termination.**

**(i) DHS's Right to Terminate at its Discretion.** At its sole discretion, DHS may terminate this Contract:

(A) For its convenience upon thirty (30) days' prior written notice by DHS to Contractor;

(B) Immediately upon written notice if DHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the DHS's purchase of the Work or Work Products under this Contract is prohibited or DHS is prohibited from paying for such Work or Work Products from the planned funding source.

(D) Immediately upon written notice to Contractor if there is a threat to the health, safety, or welfare of any DHS client under its care.

**(ii) DHS's Right to Terminate for Cause.** In addition to any other rights and remedies DHS may have under this Contract, DHS may terminate this Contract immediately upon written notice by DHS to Contractor, or at such later date as DHS may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 9.e(ii)(B) and 9.e(ii)(C) below, upon the occurrence of any of the following events:

- (A) Contractor is in default under Section 9.a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (B) Contractor is in default under Section 9.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after DHS's notice or such longer period as DHS may specify in such notice; or
- (C) Contractor is in default under Section 9.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after DHS's notice, or such longer period as DHS may specify in such notice.

**(iii) Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to DHS as provided in Sections 9.e(iii)(A) and 9.e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

- (A) DHS is in default under Section 9.c(i) because DHS fails to pay Contractor any amount pursuant to the terms of this Contract, and DHS fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (B) DHS is in default under Section 9.c(ii) because DHS commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and DHS fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**(iv) Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to DHS all of DHS's property (including without limitation any Work or Work Products for which DHS has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of



development and form of recordation such DHS property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless DHS expressly directs otherwise in such notice of termination. Upon DHS's request, Contractor shall surrender to anyone DHS designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

#### **10. Limitation of Liabilities**

Except for liability arising under the related to sections 9.e(ii) or 5.a, neither party shall be liable for (1) any indirect, incidental, consequential or special damages under this contract or (2) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

#### **11. Records Maintenance; Access**

Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Records shall be retained in accordance with OAR 166-05-0000 through 166-40-1050.

#### **12. Compliance with Oregon Applicable Law**

- a. Contractor shall comply and cause all sub-contractor to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the federal laws as set forth in Exhibit F and the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) ORS Chapter 659A.142, as amended; (ii) all regulations and administrative rules

established pursuant to the foregoing laws; and (iii) all other applicable requirements of state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Department's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316 and 279.320, which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279.545(4)), recycled PETE products (as defined in ORS 279.545(5)), and other recycled products (as "recycled product" is defined in ORS 279.545(6)).

- b. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Contractor under this Contract to DHS clients shall, at the request of such DHS clients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Any and all costs and expenses incurred by Contractor in complying with this provision shall be under this Contract, and Contractor shall not be entitled to any additional compensation for costs incurred in complying with this provision. Contractor shall ensure that all subcontractors under this Contract comply with the requirements of this provision.

### **13. Foreign Contractor**

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

### **14. Force Majeure**

Neither DHS nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of DHS or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

### **15. Survival**

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Section I and V of this Contract, Sections 3, 4, 5, 6, 7, 8, 9, 11, 15, and 20 of this Exhibit B.

**16. Time is of the Essence**

CONTRACTOR agrees that time is of the essence under this Contract.

**17. Notice**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or DHS at the address, number or email address set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against DHS, any notice transmitted by facsimile must be confirmed by telephone notice to DHS' Office of Contracts and Procurement at 503-945-5818. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**18. Severability**

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**19. Counterparts**

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**20. Governing Law; Venue; Consent to Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim,

action, suit or proceeding (collectively, "Claim") between DHS (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **21. Recovery of Overpayments**

If billings under this contract, or under any other contract between Contractor and DHS, result in payments to Contractor to which Contractor is not entitled, DHS, after giving written notification to Contractor, may withhold from payments due to Contractor such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

## **22. Amendments**

DHS may amend this Contract to the extent provided in the solicitation document, if any, from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.



